CIVICS & LAW Academy

LESSON SAMPLER FOR

PATHWAY 6:

AMERICAN IDENTITY AND PLURALISM

American Bar Association
Commission on Civic Education in the Nation’s Schools
OVERVIEW: PATHWAY 6: AMERICAN IDENTITY AND PLURALISM

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 lessons follows the “Pathway to Understanding” on American Identity and Pluralism, one of six featured in the Resource Guide (pages 5 – 8). The Pathways offer different curricular frameworks for the Civics and Law Academy. In addition to American Identity and Pluralism (Pathway 6), the other five are 1--Law and Justice; 2-- Power and Empowerment; 3--Constitutions and Constitutionalism; 4--Rights and Responsibilities; and 5—Freedom and Equality. The Resource Guide presents concepts, topics, and suggested court cases for each Pathway.

Concepts and Topics: use of law and legal system to address changing values of American identity and pluralism; relationship of law to custom, norms, and values; fundamental values and principles of constitutional democracy

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.

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

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

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SESSION I – THE CHALLENGE OF PLURALISM
[Time: 2 hrs]

Concepts and Topics: use of law and legal system to address changing values of American identity and pluralism; relationship of law to custom, norms, and values; fundamental values and principles of constitutional democracy

Lesson
“Divided We Stand”

Handouts
Student Handout 1
Student Handout 2

Procedure

Opening
(1) Welcome [10 minutes]
   - Introduce yourselves and participants
   - Give brief background on Civics and Law Academies
   - Review the curricular focus of this Academy (the Pathway you are following), the topics to be covered, and the schedule of sessions [Distribute handout with this information.]
   - Review session agenda

(2) Warm Up [15 minutes]
Use Procedure #1 for your warm up. Consider focusing the brainstorm in this manner: brainstorm the meaning of “diversity” followed by a brainstorm on “sources.” [for guidelines for Brainstorming, page 14, Resource Guide] When the lists are compiled move into the discussion as described.

Curricular Focus
Follow the listed Procedures with possible adjustments as noted.

(3) Follow Procedures #2 and #3 as given. [15 minutes]

(4) Form small groups for Procedures #4 and #5.
   - Have participants work together to identify the legal issues and principles before whole-group discussion. Do the same with rank ordering. [20 minutes]
   - When all groups have reached consensus and are ready to explain their rankings, follow Procedure #6 to discuss and compare group rankings. [25 minutes]

(5) Follow Procedure #7 as presented, with participants working independently followed by whole-group discussion. [20 minutes]
(6) For Procedure #8, have students work in the same small groups as for Step (4). It is possible that some groups will see no need to re-rank their lists but they should be prepared to explain why. [10 minutes]

**Closing**
(7) Debrief and Wrap Up [10 minutes]
Use the Background information to draw the session to a close. Reference this and draw links to the diversity issues participants explored. Ask what evidence is there to support the assertion of the text that—Each generation struggles with diversity issues and works to redefine and rebalance underlying principles . . .
Note that the lesson from which the session activities were drawn is titled “Divided We Stand?” What does the question mark suggest?

(8) Look Ahead
Tell participants that in the next session they will continue their examination of diversity by looking at individual freedom, cultural norms, and the legal system.

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

Divided We Stand?

Joe O’Brien

Background

Each new U.S. generation strives to define both itself and the nation, struggling to reconcile a host of interests and beliefs that often conflict. For example, Americans have always struggled with how to strike a balance between developing a common identity as Americans and fostering individual and group self-expression.

In 1835, Alexis de Tocqueville noted that individualism is one of the unique features of the American character. Ongoing debates over issues such as the constitutionality of affirmative action and the amount of political power wielded by “special interests” illustrate our discomfort with group rights and power.

Thus, while individualism has been closely tied to the “American” identity, group expression and identity have proven troublesome. Many immigrants, for example, strive to become American, yet tenaciously cling to their previous national or ethnic identities. How else is it possible to explain the irony of American compounds such as Polish American and Japanese American, and ethnic enclaves such as Chinatown or Little Italy in every major metropolitan area?

Group identity is not restricted to national or ethnic origins but involves all types of groups. Witness Amish communities, the disabled, and homosexuals. Today, the issues associated with these groups are lumped under the term diversity, as if this were a new phenomenon. Yet, these group-related issues stretch back to the beginning of the country’s history and include

- the disestablishment of state-supported religions in the late 1700s
- race relations as exemplified by the U.S. Supreme Court’s decision not to recognize African Americans as citizens in Dred Scott v. Sanford, 60 U.S. 393 (1857); the Thirteenth Amendment, which abolished slavery (1865); the Court’s Plessy v. Ferguson decision, 163 U.S. 537 (1896), which established the “separate but equal” doctrine; and the Chinese Exclusion Act (1882), which suspended Chinese immigration
- the declaration in Reynolds v. United States, 98 U.S. 145 (1879), that the Mormon practice of polygamy was not in keeping with Western culture
- the guarantee to women of the right to vote under the Nineteenth Amendment (1920)

Each generation in U.S. history has struggled with these, and other, “diversity” issues and attempted to (re)define and (re)balance the principles underlying American society and, ultimately, the legal system.

In this activity, students will explore some of the diversity issues facing their generation. In so doing, they will discuss what they consider to be the overriding legal issues and principles most critical to the future of their society.

Objectives

Students will have the opportunity to
- define diversity
- cite and explain legal issues and principles related to diversity
- apply the legal issues and principles to hypothetical situations
- evaluate the results of each of these applications
- rank-order the legal issues and principles according to their importance to furthering American society

Target Group: High school students
Time Needed: 2-3 classroom sessions
Materials Needed: Student Handouts 1 and 2

Procedures

1. Have students brainstorm meanings and sources of diversity. These might include “differences” and “culture and religion,” for example. Then have students identify legal issues and principles associated with diversity, such as hate speech and equal protection under law. Discuss the ideas generated, and ask students to give reasons for their examples. Explain how these ideas are tied to issues facing society today.

2. Introduce and administer the survey on Student Handout 1, “What Do You Think?”

3. With a show of hands, see how students responded to each survey question. Discuss the results, particularly in light of your recent brainstorming session.

4. Work with the class to identify, define, discuss, and list legal issues and principles associated with each survey question. For example, for question 2, students might identify public safety and freedom of speech. Other examples might include equality, justice, liberty, privacy, cultural diversity, national identity/citizenship, public health, freedom of expression, rights of the accused, and rights of the victim.

5. Have students rank-order their list according to each item’s importance to society. Ask them to explain the reasoning behind the rankings.

continued on page 32
What Do You Think?

Below are some proposed bills that your congressional representative wants your opinion about. She will cast her vote on each bill according to how you and your classmates respond. Underneath each bill is a scale from Strongly Oppose to Strongly Favor. Circle the response that most closely reflects your thinking. Circle Unsure if you are unfamiliar with the bill or not yet sure whether you favor or oppose it. Remember, you will need to explain your choices!

1. English shall be established as the official national language.
   Strongly Oppose  Oppose  Unsure  Favor  Strongly Favor

2. Speaking in public in a highly negative way about a group of people shall be a misdemeanor.
   Strongly Oppose  Oppose  Unsure  Favor  Strongly Favor

3. The existence and degree of sexual harassment shall be determined based on the effects an action under question has on the one allegedly harassed.
   Strongly Oppose  Oppose  Unsure  Favor  Strongly Favor

4. The federal government shall provide money to African-American colleges and universities.
   Strongly Oppose  Oppose  Unsure  Favor  Strongly Favor

5. The federal government shall provide money to traditionally male-only colleges and universities.
   Strongly Oppose  Oppose  Unsure  Favor  Strongly Favor

6. The ethnic/racial identity of each individual shall be determined by that individual.
   Strongly Oppose  Oppose  Unsure  Favor  Strongly Favor

7. Individuals shall be required to register and maintain proof of their ethnic backgrounds.
   Strongly Oppose  Oppose  Unsure  Favor  Strongly Favor

8. A family shall be defined as those with blood or legal connections who live together.
   Strongly Oppose  Oppose  Unsure  Favor  Strongly Favor

9. Each individual shall receive an equal educational opportunity, no matter the cost.
   Strongly Oppose  Oppose  Unsure  Favor  Strongly Favor

10. Students shall be required to provide school districts with personal information that relates to public health/safety concerns.
    Strongly Oppose  Oppose  Unsure  Favor  Strongly Favor

11. Employers shall not hire anyone under 18 years of age.
    Strongly Oppose  Oppose  Unsure  Favor  Strongly Favor
How Strongly Do You Believe This?

**Directions:** Read each hypothetical situation and identify the legal issues and principles involved. Decide how you would respond to each. Be prepared to give reasons for your decisions that are tied to the rankings of legal issues and principles on the list your class has already created.

1. A ninth-grade student and her parents do not want school officials to know that she has AIDS. She is new to the community and is fearful about how people will respond. On the other hand, teachers want to know about such conditions to best provide for all students. Also, the school district is facing a budget crisis and will no longer provide teachers with full comprehensive health insurance. The new health insurance policy will not cover the expenses of AIDS treatment, should a teacher contract the disease from a student.

2. Under the Americans with Disabilities Act (1990) and other legislation and court decisions, school districts are required to provide an equal educational opportunity to the disabled. A hearing-impaired child lives in a small rural community. Having a school sign-language interpreter is the only way she will be able to know what the teachers and students are talking about. There is no person capable of interpreting for the child in over a 50-mile radius. Because of both family and economic reasons, the family is unable to move. There is a teacher who might be willing to relocate, provided the school offers her a salary that is 25 percent more than other teachers receive.

3. The U.S. Department of Education is drafting a regulation that requires a student to be at least 50 percent African American before qualifying for scholarships designed to enhance African-American higher education opportunities.

4. Congress has outlawed sex discrimination. A woman has sought admission to a state-supported male-only military university. Seeking to deny her admission, university officials have cited the school’s 150-year, all-male tradition. Even more important to the school, admitting a woman would dramatically alter the purpose of the university as a military academy for young men. Mixing women and men at the school would prove disruptive. The school day is oriented not only around classes but around a harsh routine—one that is impossible to maintain with women.

5. Federal funds are provided to historically black colleges both to ensure their continuation and to preserve a variety of higher education opportunities for this group. Several Southwestern universities with a large number of Hispanics are considering making a similar request of the federal government.

6. A development is zoned for single-family dwellings. A family from Southeast Asia moves into one of the houses. The family consists of over 20 members, including cousins, aunts, uncles, and two sets of grandparents. The neighbors ask the local housing office to decide if the group qualifies as a “single” family.

**Did You Know?** The largest ancestry group in the United States is German, with about 58 million people; the next nine groups, in order, are Irish, English, African American, Italian, Mexican, French, Polish, American Indian, and Dutch (with about 6.25 million). Source: U.S. Bureau of the Census, 1990.
Divided We Stand? continued from page 4

6. Discuss possible implications of the rankings. General questions might include the following: How do you define the issues and principles that top the list? Why have you so ranked them? What are some applications for each? Why have you ranked the other items in middle or low positions? What might be the consequences of emphasizing the top ones over the bottom ones?

7. Pass out Student Handout 2, “How Strongly Do You Believe This?” Discuss each hypothetical situation and identify the legal issues and principles involved. Ask students to decide how they would respond to each situation and to offer reasons for their decisions, tied to the list they have made.

8. After discussing the hypotheticals, ask students to work in groups to rerank their list. A representative from each group will explain the new rankings.

Evaluation
Design several new hypothetical situations, or draw from actual court decisions. Ask students to apply their new rank order. Also, ask them to define diversity and determine whether each hypothetical situation fits with their definition. Assess their work based on the reasonableness, clarity, and accuracy of the responses, as well as consistency with their legal issues and principles.
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SESSION II – WHEN VALUES CONFLICT: THE COURT, THE LAW, AND INDIVIDUAL FREEDOM?
[Time: 1 hr & 45 min]

Concepts and Topics: use of law and legal system to address changing values of American identity and pluralism; relationship of law to custom, norms, and values

Lesson
“When Values Conflict: The Court, the Law, and Individual Freedom”

Handouts
Student Handout: Court Studies in Law and Culture
Court Resolutions and Reasoning [distribute after full discussion of “Student Handout”]
Prepare a continuum for each student

“E Pluribus Unum: Diverse Ideas from a Native American Perspective [see Session III lesson]
for reading prior to next session

NOTE: The information in the three boxes on page 11 are not directly addressed in the instructions for the lesson; however, you may find ways to utilize them.

Procedure
Opening
(1) Welcome and Warm Up
• Refer to the discussions of last session
• Review agenda

(2) Warm Up [10 minutes]
Use Procedures #1 and #2 for your warm up

Curricular Focus
(3) Continue the discussion initiated in the Warm Up by expanding on the examples given in Procedure #3 [be prepared with additional examples]. Provide a copy of the continuum to each participant to record their position at the end of this discussion. Have them keep these to revisit at the end of the session. [10 minutes]

(4) Conduct the activities as outlined in Procedures #4 and #5. When all cases have been discussed and the court action discussed, distribute copies of the Court Resolutions and Reasons. [Approximately 20 minutes for small group work; 40 minutes for whole-group discussion]

Closing
(5) Debrief and Wrap Up [10 minutes]
Adapt Procedure #6 for your debrief and wrap up. Have participants revisit their continua to consider any changes. Discuss any adjustments. Spend some time in wrestling with the issues that the continuum presents. How easy is it to find one’s position? Does it shift with changing circumstances? Close with the final question regarding the relationship of law and culture.
(6) Look Ahead
Tell participants that in the next session they will examine issues relating to Native American culture and legal rights. Distribute copies of "E Pluribus Unum: Diverse Ideas from a Native American Perspective" to be read prior to next session. Tell participants to bring their copies and any questions with them.

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

When Values Conflict: The Court, the Law, and Individual Freedom
Barbara Miller and Lynn Parisi

Background
In this lesson, students will have the opportunity to consider to what extent a person's cultural orientation may be used as a mitigating circumstance in determining punishment when a law has been broken. In the United States, where there is a wider mix of religions, languages, races, and cultures than in many other nations, courts must often try cases where an individual's cultural practices conflict with the law. This lesson will help students recognize some of the points of tension between two important American values involved in this conflict, and how court solutions have addressed them in specific cases.

The first value involves our concept of individual freedom—for example, ideally, individuals should be able to freely follow their cultural practices. The second value involves the principal of law and ordered liberty; that is, another way of looking at these issues is that certain human rights and principles of conduct transcend all cultures and demand protection, regardless of the traditions of a people who are unacquainted with or do not adhere to them.

Objectives
At the end of this lesson, students will be able to:
1. Analyze cultural practices from the perspective of some U.S. laws.
2. Describe some cultural practices of immigrant citizens and Native Americans that conflict with certain laws.
3. Debate the degree to which our legal and judicial systems can and should be made to allow for differing cultural practices and still be effective for society as a whole.

Time: 1 class period
Materials: Copies of the handout for all students

Procedure
1. Explain that this lesson will address a question in legal philosophy: that of how tolerant our legal system should be of immigrants' and indigenous peoples' cultural practices when cultural notions of justice conflict with existing laws.

2. Draw the continuum on the board. Define the terms universalist and relativist. Ask students which position best represents their view of the relationship between cultural values and the law. If a culture does not share the values that underlie a law, should its members be excused from the consequences of breaking that law? On the other hand, do certain values transcend culture, being so basic as to apply everywhere regardless of tradition and to demand that the laws designed to uphold them be followed to the letter, or else? Where do individual students fall on the continuum?

3. To help students consider this philosophical question more concretely, pose some possible cultural practices that are accepted in other countries, such as:
   - Parents select whom their children will marry.
   - Some people must work against their will without pay.
   - Newborn girl children are killed during times of famine.
   - One man may have several wives.

   Have students place themselves on the continuum based on their answers.

4. Provide each student with the handout, and explain that they will have an opportunity to test their philosophical position through analysis of a specific case involving a conflict between existing laws and cultural practices. Divide the class into seven groups, and assign each group one of the cases (there are two in case 7, both involving the religious practices of Native Americans).
Americans). Each group will discuss the case and present a decision and the reasoning behind it to the rest of the class. If the group cannot, have them explain why they couldn’t agree.

5. As each decision is presented, share the court resolution and reasoning. How do these compare with the students’ decisions? What do the resolutions say about the way our courts work?

6. To conclude the lesson, have students reconsider their position on the legal philosophy continuum. Has this exercise caused them to reevaluate how law and culture should interact?

*Adapted from Teaching About Law and Culture: Japan, Southeast Asia (Hmong), and Mexico by Barbara Miller and Lynn Parisi (Boulder, Colo.: Social Science Education Consortium, 1992).*

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**The powerful drug mescaline** comes from the peyote cactus’s “button” top. U.S. federal law prohibits mescaline’s use except by the Native American Church, which has traditionally included the plant as a sacrament in religious ceremonies. The effects of a 350-microgram mescaline capsule last about 12 hours and resemble those of LSD, with users seeing beautiful color patterns or frightening visions of themselves and others as monsters. Regular users may become unproductive and disinterested in life. In most cases, these reactions end after a person stops taking the drug.

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**Universal Declaration of Human Rights**

Adopted by the U.N. General Assembly in 1948, this declaration identifies basic civil, economic, political, and social rights and freedoms of every individual. Meant to serve “as a common standard of achievement for all peoples and all nations,” it recognizes that every person is born free, with inherent dignity and inalienable rights. For example, Article 18 declares that everyone has the right to freedom of thought, conscience, and religion, while Article 25 says that motherhood and childhood are entitled to special care and assistance. If you wish, start this lesson by asking your students if they can think of one historical or contemporary cultural practice of any people that conflicts with either of these articles. Can they think of any situations where the articles might conflict with each other? What implications might this have for a legislature’s difficulties in arriving at just laws, or a court’s difficulties in arriving at just solutions?

The preamble to the Universal Declaration of Rights appears with the teaching strategy, “With Liberty and Justice for All . . .” in this *Update* edition.

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**A Look at Samoa**

Western Samoa, an independent country, and American Samoa, a U.S. possession, are part of a predominantly volcanic island chain that lies in the South Seas southwest of Hawaii. Almost all Samoans are Polynesian villagers who live very simply, much as their ancestors did. They are organized into extended family groups called aiga, with each group headed by a matai (chief) who controls the family’s property, represents it in the village council, and takes care of its sick or aged. Author Robert Louis Stevenson had a home in Apia, Western Samoa’s capital, where he spent his last years. The Samoans honored him with the title Tusitala (Teller of Tales). Stevenson is buried in Apia, and today his home is used as the residence of Western Samoa’s head of state.

Stevenson was an attorney, although he never practiced the profession. One wonders what he might have thought of the Samoan’s simple justice system compared to that of his native Great Britain. Encourage your students to learn more about the Samoan people and customs, as well as those of other peoples mentioned in this lesson. How might our society adapt some of the customs they have that are meant to ensure justice?
Student Handout
Case Studies in Law and Culture

Case 1
A Colorado county court must decide a custody dispute between a Hmong husband and wife. The case began six months ago when the couple, who had been married for 10 years, separated. At that time, the court placed the five children in the temporary custody of the father, who was then living with his extended family in the same county. The mother was allowed frequent visitation, as established by the court.

Two months after this temporary custody was established, the mother fled with her five children to Minnesota, where her family lives. After a warrant was issued for her arrest by the Colorado county, the mother returned to Colorado. Speaking through an interpreter during her court testimony, she claimed that her children had been abused and neglected by their father and his family; she felt forced to flee with her children to her own family in Minnesota, unaware that she was breaking the law by doing so.

The mother's attorney has argued that the mother's guilt in taking her children to Minnesota must be resolved in the context of Hmong culture and that the judge must understand that Hmong define themselves in terms of their clan. The father's attorney has argued that the father put his faith in the American legal system and had been abiding by the temporary custody arrangement, and that the father's rights had been violated.

The court must decide on two issues: the mother's guilt in breaking the custody guidelines and the final custody arrangements for the children.

How do you think the court should rule on these two issues, and why? Present and explain your decision.

Case 2
In spring 1993 on a remote Connecticut hillside, Binh Gia Pham, a 43-year-old Boston postal clerk, burned himself to death as a Buddhist religious sacrifice with the help of five friends. He had been planning the act for several years to call attention to persecution of Buddhists in his native Vietnam.

To carry out the self-immolation, Pham lowered himself onto a wooden altar. His friends assisted him in several ways. One poured gasoline on his head and shoulders and nailed a sheet of metal to the altar. Others carried equipment and videotaped and photographed the event. The friends covered the corpse with a Vietnamese flag and telephoned state police from a nearby restaurant.

The police treated the case as assisted suicide and charged each participant with second-degree manslaughter—a felony carrying a maximum prison term of 10 years. A police sergeant stated, “They say it's a religious act, but that's not ours to decide.”

How do you think the court should rule on this case, and why? Present and explain your decision?

Case 3
A California county judge must rule on a misdemeanor charge of cruelty to animals against two Cambodian refugees who admitted to killing a German shepherd for food. They said that eating dog meat was a common practice in their country and that they had no idea that killing a dog for food would be illegal in the United States. The penalty for the misdemeanor is a fine and/or up to one year in jail.

How do you think the court should rule on this case, and why? Present and explain your decision.

Case 4
The customary folk remedy for headaches among some Vietnamese is to massage the back and shoulders with the serrated edge of a coin. This practice leaves bruises that teachers easily notice.

Teachers and social workers are obligated to report and investigate any allegation of child abuse. A teacher noticed bruises on one of her Vietnamese student's shoulders and called in a social worker, who filed child-abuse charges against the Vietnamese family.

How do you think the court should rule on this case, and why? Present and explain your decision.

Case 5
In the Miami, Florida, suburb of Hialeah, members of the church of the Likumi Babalu Aye practice an ancient African religion called Santeria that was brought to the Caribbean with slavery and to the United States with Cuban immigration in the 1960s. This religion requires animal sacrifice as part of important rituals related to death, birth, and marriage. During the rituals, animals are killed by cutting carotid arteries; they are then typically cooked and eaten.
In 1987, Hialeah enacted a law to stop Caribbean immigrants from killing chickens, pigeons, doves, ducks, goats, sheep, and turtles in the practice of this ancient religion. Officials explained that they adopted ordinances against animal sacrifice in response to citizen concern about religious practices that are inconsistent with public health and community moral standards.

The church argued that the city and state of Florida permit the killing of animals for many secular reasons (e.g., food and recreational hunting and fishing), so that the ban on religious ceremonial sacrifice as practiced by Santeria followers is wrongful government infringement on their religion. The minister says that his religion should be institutionalized as other faiths have been so that its practitioners can become part of mainstream America.

How do you think the U.S. Supreme Court should rule on this case, and why? Present and explain your decision.

**Case 6**

Anosau Foutuua, a Samoan immigrant, was stabbed to death outside the door of his home in Hawaii by Tonny Williams, also a Samoan. Williams was charged with murder and jailed until his trial. His family responded to the crime by initiating an ancient traditional Samoan ceremony called an ifonga. In this ceremony, two Samoan high chiefs (one of whom was Tonny’s father) went to the Foutuua family home covered with treasured Samoan fine mats and gifts of food, money, and handicrafts. Through the ceremony, the Williams family placed themselves at the mercy of the Foutuua family and asked for forgiveness. The Foutuua family accepted the offer and gave something in return. They agreed that they would not testify against Williams at his trial. The prosecutor’s office was not pleased about this decision. Without the eyewitness account of the stabbing, Williams would serve about 10 years in prison rather than a life sentence.

Should the U.S. legal system recognize the ifonga as a legitimate form of handling criminal cases when both parties are Samoan? Why or why not?

**Case 7**

Many Native American groups concerned about recent Supreme Court decisions that weaken religious freedom of indigenous peoples are seeking congressional action. In response to concerns, Senator Daniel Inouye of Hawaii has introduced The Native American Free Exercise of Religion Act of 1993 (S. 1021). Proponents hope this legislation will restore human rights that they feel were unfairly denied through the following Supreme Court decisions:

**Unprotected Sacred Sites**

Native Americans are concerned that a growing number of irreplaceable tribal sites no longer under federal protection may be destroyed. In Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439 (1988), the Supreme Court allowed the Forest Service to withhold protection of an ancient Indian sacred site located on federal land. A Native American group in Colorado views this decision as a barrier to their efforts to block construction of a visitor center at a popular tourist attraction, the Garden of the Gods—a site they consider sacred.

**Peyotism**

Peyote, a cactus plant that grows only along the Rio Grande, has been used in Indian religious ceremonies for centuries. While classified as an illegal substance because of hallucinogenic properties, it serves as a sacramental symbol similar to bread and wine in certain Christian churches. In the 20th century, the Drug Enforcement Administration (DEA) and 27 states created laws to regulate the use, possession, and transportation of peyote for ceremonial purposes.

In Employment Div. of Human Resources of Oregon v. Smith, 110 S. Ct. 1595 (1990), the Supreme Court denied unemployment compensation to two Native Americans who were terminated from their employment as counselors at a substance abuse rehabilitation center because of their participation in a sacramental peyote ceremony. The two employees had signed a contract agreeing not to use illegal drugs. Following the Smith decision, an elderly member of the Native American Church in Oklahoma was arrested for peyote possession. This arrest is one of the events that cause Native Americans to believe that the Smith decision is a threat to practitioners of peyotism.

If you were a member of Congress, what legislation, if any, might you support in efforts to restore Native American religious liberties?
Case 1
The Colorado county district judge admitted that he was stymied by the cultural and language barriers posed by the custody case. The judge appointed a separate attorney to represent the five children. After hearing the testimony of all parties, as well as that of psychologists, the court decided that the case should not be settled by the judicial system, but by the couple's own people. The case was referred to the Laotian Family Counsel, a mediation group of Laotian and Hmong located in cities where large numbers of Southeast Asian refugees have settled. Charges were dropped against the mother for breaking the custody arrangement and leaving the state with her children, and she was admonished to familiarize herself with the laws of the state and country where she resides.

Case 2
During a court hearing, all five Buddhists accused of assisting with the ritual suicide applied for and were admitted to an accelerated rehabilitation program. Admission to the program was not tied to entering pleas of guilt or innocence. The state did not support or oppose the application. If the accused remained conviction free for a year, all criminal charges related to assisting with the religious sacrifice would be dropped.

Case 3
The California judge dismissed all charges against the Cambodian refugees for misdemeanor cruelty to animals. In the decision, the judge stated that killing an animal for food is not illegal unless done in a cruel way; the evidence did not indicate that defendants had inflicted any unreasonable pain on the animal. The judge supported his decision by citing common practice in slaughterhouses and on farms.

Case 4
When prosecutors learned about the Vietnamese folk remedy for headaches, child-abuse charges against the family were dropped.

Case 5
In *Church of the Likumi Babalu Aye, Inc. v. Hialeah*, 113 S. Ct. 2217, the Supreme Court reversed the decision of the lower courts by overturning the city ordinance in a 9-0 vote. In writing for the Court, Justice Kennedy stated that the ordinance was not neutral because it failed to prohibit nonreligious uses in a similar way to religious uses. The city failed to explain why religion alone must bear the burden of not killing animals.

Case 6
As a result of the *Ifong*, the Foutuua and Williams families have a very good relationship. The Williams family did not expect the Foutuua family to refuse to testify. The families do not see the ceremony as thwarting the criminal justice system. Courts in Hawaii and California have looked for ways to integrate the *Ifong* into the criminal justice proceedings so as to serve both systems of justice. While the practice is not uniformly accepted, the courts have "accepted the *Ifong* ... a strong cultural tradition of the Samoan community" as part of a plea-bargaining process. (For more information on Samoan traditions of justice, order "Justice in America" Lesson 1 #909677 from the CRADLE repository.)

Case 7
S. 1021 will be debated in the 103rd Congress. If passed, it will affect the Supreme Court decisions in the following ways:

The bill provides protection to Native American sacred sites by requiring the federal government to give notice to relevant Indian tribes, Native Hawaiian organizations, and Native American traditional leaders that an undertaking may impact a site; consultation must be held to minimize the impact, and a written impact statement must be prepared.

With regard to peyotism, the DEA will regulate Indian peyote harvest and distribution using existing regulations that cover use, possession, and transportation. The bill will restore the "compelling-state-interest test" as the legal standard for protecting Native American religious freedom in all instances not specified in the bill.
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SESSION III – PROTECTING NATIVE AMERICAN RELIGIOUS FREEDOM
[Time: 1hr & 45 min]

Concepts and Topics: use of law and legal system to address changing values of American identity and pluralism; relationship of law to custom, norms, and values

Lesson
“Protecting Native American Religious Freedom”

Handouts
Student Handout 1
Student Handout 2
Student Handout 3
Presentation Topics
Extra copies of “E Pluribus Unum: Diverse Ideas from a Native American Perspective”

“Muslim Students’ Needs in Public Schools” [see Session IV lesson] assigned to be read prior to next session

Resource Persons
Consider inviting an attorney and/or anthropologist who specializes in Native American culture and law.

NOTE: This lesson was originally written when S. 2269, NAFERA, was proposed. As the article by Richard Monette reports, it was never enacted. When it was passed by the Senate it was referred to the Senate Energy and Natural Resources Committee and no further action was taken on the bill perhaps largely due to issues relating to sacred sites and the extraction of minerals. Examination of the issues raised by the legislation as described in this lesson remains valid no matter the fate of S. 2269. It would be helpful to get an expert’s perspective on the fate of this bill.

Procedure
Opening
(1) Welcome
• Refer to previous discussions on conflicting cultural values
• Review today’s agenda
(2) Warm Up [15 minutes]
Open the session with discussion of Monette’s article. Explore his observations of how E Pluribus Unum relates to Native Americans and issues of the collective and individual rights.

Curricular Focus
Follow Procedures as presented.
(3) Student Handout 1 - Procedures #2, small group work, and #3, full class discussion. [30 minutes]
(4) Student Handout 2 – Procedures #4. Individual reading and full group discussion. [20 minutes]

(5) Student Handout 3 – Procedure #5. Individual reading and full group discussion. [20 minutes]

(6) Procedure #6. Small group work and presentation of positions. [45 minutes]

Closing
(7) Debrief and Wrap Up [10 minutes]
Use Procedure #7 to debrief and wrap up. What are the strongest arguments for their votes.

(8) Look Ahead
Tell participants that the next session will focus on the issue of religious freedom as it relates to Muslim students. Distribute the article “Muslim Students’ Needs in Public Schools” for reading prior to next session.

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

Protecting Native American Religious Freedom

Lisa D. Harjo

Objectives
As a result of this lesson, students will
1. Recognize the status of American Indian religious rights in the United States
2. Be able to identify historical events and laws that relate to this status
3. Recognize issues that involve current struggles for the free exercise of American Indian religions
4. Be able to describe and explain court challenges to the American Indian Freedom of Religion Act (AIFRA) of 1978
5. Be able to formulate reasoned views regarding S. 2269, the proposed Native American Cultural Protection and Free Exercise of Religion Act of 1994

Target Group: Secondary students

Time Needed: 3 class periods

Materials Needed: Student Handouts 1–3

Procedures
1. The First Amendment states “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” Discuss the Establishment

and Free Exercise Clauses with students. Do they protect everyone, or are there exceptions?
2. Divide the class into small groups and pass out Student Handout 1, “Historical Intolerance of American Indian Religions.” Have each group read the handout and discuss its significance for American Indians and all citizens.
3. As a class, have students share their feelings and opinions regarding the status of American Indians as citizens, and Indian rights to the free exercise of their religion.
5. Distribute Student Handout 3, “American Indian Religious Freedom Since 1978.” Discuss how the acts H.R. 4230 and S. 2269 are meant to compensate for the AIFRA’s inadequacy.
6. Divide students into five groups. Assign each group one of the presentation topics, which relate to the legislation proposed in S. 2269. Give students time to discuss the issues, develop their viewpoints, and plan their presentations.
7. When the presentations are finished, ask students to develop their own reasoned opinions on whether or not to vote for S. 2269. Facilitate class discussion of students’ individual conclusions or opinions.

Presentation Topics
a. Certain locations sacred to Native Americans should be protected from tourism, development, and resource exploitation.
b. The religious use of peyote should be protected in all states of the United States.
c. Native American prisoners should be given access to their own spiritual leaders and be exempt from prison requirements that conflict with their cultural and religious customs.
d. Native Americans should be exempt from criminal prosecution under the Bald and Golden Eagle Protection Act if they are found in possession of eagle parts or feathers.
e. Executive departments and agencies should improve their collection and transfer of eagle carcasses and eagle body parts for Native American religious purposes, shipping them to the National Eagle Repository.

Lisa D. Harjo is executive director of the Denver Indian Center and a member of the Choctaw Nation of Oklahoma.
North American Indian religions have their roots in traditions and beliefs that have guided these people for more than 30,000 years. The fundamental elements survive today in oral literature, ceremony, prayer, music, and symbols. The universe is the Indians' church. Sacred sites are scattered across the land and have been the location of the ceremonies and prayers that have kept the Indian world in balance.

Indian religions are as diverse as the tribes themselves, having evolved to modern times within varied geographic locations, cultures, and peoples. Yet all include certain fundamental elements. Now, as in the past, the way of life—daily life—is the American Indian religion, inseparable from life itself and from civic participation.

American Indians were once free to live their lives and practice their religions. But after Europeans came to North America, the Indians lost their freedom. They were declared savages, their homes and lands were taken forcibly, and their religions were suppressed as pagan. As Europeans moved west, more and more tribes experienced suppression of their traditional practices, of which their religion was an inherent part.

By the late 1800s, there were written regulations in the Bureau of Indian Affairs Court of Indian Offenses that prohibited the use of Indian languages, the practice of Indian ceremonies such as the sun dance, association with medicine men, and the practice of traditional medicine. Punishment ranged from withholding of rations for up to a month to imprisonment.

American Indians were finally given U.S. citizenship in 1924. This would seem to mean that all constitutional rights and responsibilities were extended to them. But they were not fully protected under the First Amendment and continued to be arrested for practicing their religions, including traveling to and maintaining sacred sites and using sacred objects.

The laws prohibiting the use of Indian languages and the practice of Indian religions were finally stricken from the books beginning with the Indian Reorganization Act of 1934. But by that time Big Foot and over 390 others had been killed at Wounded Knee, and countless others around the country had lost their lives for observing their traditions. They had been saturated with Christianity through missionaries, Indian agents, and boarding schools, where speaking Indian languages and practicing Indian religions continued to be banned. Denial of religious freedom for American Indians continued into the 1970s.
whereas the freedom of religion for all people is an inherent right, fundamental to the democratic structure of the United States and is guaranteed by the First Amendment of the United States Constitution;

Whereas the United States has traditionally rejected the concept of a government denying individuals the right to practice their religion and, as a result, has benefited from a rich variety of religious heritages in this country;

Whereas the religious practices of the American Indian (as well as Native Alaskan and Hawaiian) are an integral part of their culture, tradition and heritage, such practices forming the basis of Indian identity and value systems;

Whereas the traditional American Indian religions, as an integral part of Indian life, are indispensable and irreplaceable;

Whereas the lack of a clear, comprehensive, and consistent Federal policy has often resulted in the abridgment of religious freedom for traditional American Indians;

Whereas such religious infringements result from the lack of knowledge or the insensitive and inflexible enforcement of Federal policies and regulations premised on a variety of laws;

Whereas such laws were designed for such worthwhile purposes as conservation and preservation of natural species and resources but were never intended to relate to Indian religious practices and, therefore, were passed without consideration of their effect on traditional American Indian religions;

Whereas such laws and policies often deny American Indians access to sacred sites required in their religions, including cemeteries;

Whereas such laws at times prohibit the use and possession of sacred objects necessary to the exercise of religious rights and ceremonies;

Whereas traditional American Indian ceremonies have been intruded upon, interfered with, and in a few instances banned; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites.
Student Handout 3
American Indian Religious Freedom Since 1978

The American Indian Religious Freedom Act (AIRFA), providing numerous protections for American Indians, was passed after many years of work. But several lawsuits challenged its intent, and court decisions weakened its implementation. After only a few years, it has become apparent that the AIRFA is too vague and that it is inadequate to protect American Indian religious freedom.

_Badoni v. Higgins_, 638 F.2d 172 (10th Cir. 1980). In 1977 the Bureau of Land Reclamation completed the Glen Canyon Dam in southern Utah, creating a large recreational lake surrounding Rainbow Bridge National Monument, one of the Navajos' sacred religious sites. Navajo religious leaders sued federal officials, claiming a violation of the Establishment Clause. Among other problems, officials had licensed concessionaires to run boat services to the monument and to sell alcoholic beverages. The Navajo lost their lawsuit on appeal, with the Tenth Circuit Court stating that it could not establish Rainbow Bridge as a Native American religious monument as that would violate the Establishment Clause of the First Amendment. The circuit court supported the right of other citizens to low-cost electricity and rejected the notion of Navajo proprietorship. (A 1910 executive order had withdrawn Rainbow Bridge Monument from the Navajo Reservation without tribal consent or compensation.)

_Sequoyah v. Tennessee Valley Authority_, 620 F.2d 1159 (6th Cir. 1980). Two bands and several members of the Cherokee Nation lost an appeal to the Sixth Circuit to obtain an injunction against the completion of the Tellico Dam on the Little Tennessee River in southeastern Tennessee. They argued that the dam's flooding would violate their First Amendment rights by preventing access to their sacred birthplace, Chota, ancestral burial grounds, and a ceremonial area important for the collection of medicinal herbs. The Cherokee lacked a direct title to the area, but the circuit court found a proprietary interest unnecessary to their claim. It reasoned that the plaintiffs failed to prove that the geographical location was imperative to the practice of their religion.

_Ling v. Northwest Indian Cemetery Protective Association_, 485 U.S. 439 (1988). The Supreme Court overturned a lower court ruling in a lawsuit brought by the Yurok, Karok, and Tolowa Tribes to bar the U.S. Forest Service from constructing a six-mile road near Chimney Rock in California and from authorizing logging in the surrounding area, which the tribe used for religious practices. The Court concluded that, while the government's proposed actions will have adverse effects on the practice of the tribes' religions, its activities did not prohibit the tribes from exercising their religious beliefs.

_Employment Div. of Human Resources of Oregon v. Smith_, 110 S.Ct. 1595 (1990). In Oregon, where using peyote is a felony, two American Indian employees of a private drug and alcohol abuse treatment agency with a policy prohibiting employee use of controlled substances were fired from their jobs and denied unemployment benefits after ingesting peyote at a Native American Church ceremony during off-duty hours. The Supreme Court upheld a lower court decision for refusal of benefits, reasoning that peyote's sacramental character could carry no weight against neutral laws passed by the state against criminal activities.

In 1994 two new acts introduced to Congress aimed to strengthen the protection of Native American religious freedom. They are H.R. 4230, an amendment to the AIRFA, and S. 2269, the Native American Cultural Protection and Free Exercise of Religion Act. H.R. 4230 is intended to protect the Indians' religious use of peyote by codifying the existing regulation of the Drug Enforcement Administration that protects such use and by making this applicable in all 50 states. (The religious use of peyote, while protected under the laws of 28 states, is a crime in 22, despite Drug Enforcement Agency exemptions for Native American Church members.)

S. 2269 refines and supersedes the AIRFA, offering protection for Native American cultural and religious sites, Indians' religious use of peyote, the cultural and religious rights of Native American prisoners, and Native American cultural or religious uses of eagle feathers and other animals and plants.

H.R. 4230 passed the House and Senate with no opposition expressed, and President Clinton signed it into law on October 6, 1994. S. 2269 will be considered in the next congressional session.
E Pluribus Unum. Out of Many, One. Something wonderfully cyclical resonates from that old Latin phrase. Today, it symbolizes the United States of America, whose strength comes from the gathering of distinct peoples of different races and cultures into a common people with shared interests and values. In America, the strength of the Pluribus depends upon the strength of the Unum, and vice versa. A full-circle reading of the phrase is reminiscent of the old Musketeer battle cry “All for one and one for all.”

Diversity in the University
In America, the “university” is a place of ideas. On university campuses across America, “diversity” is a hot topic for debate. Pardon me, did I say “diversity” when speaking of the “university”? Can the two coexist?

The word university draws heavily from its base words, uni and verse—words struggling to represent the commonalities of the universe running through everything. Of course, the word diversity begins with di, meaning more than one, accounting for the differences of the parts within the whole. Ideally, the mission of the university, in an educational context, is every bit as immense, and every bit as immeasurable, as the universe itself. The universe encompasses all things, no matter how diverse. Likewise, the university, being a place of ideas, should encompass all ideas, no matter how diverse. Like the universe and America, the university’s strength draws from its pluribus, or diversity, for the success of the unum, the university. Indeed, the two can and must coexist.

The diversity debate in our universities has drifted into our educational institutions at all levels, from high school down to kindergarten. And one thing is certain: today’s students will be tomorrow’s leaders in a world far more representative of the world’s diversity, and their experiences in the classroom will guide both their endeavors in the workplace and America’s international standing. Recent actions to diversify our schools on racial grounds have subtly illustrated the inherent value of having faces of different colors and features in the classroom. More important, students and teachers of diverse cultures bring the richness of different beliefs and practices to the classroom.

Native American Ideas
Unfortunately, the diversity debate seems to focus only on racial or cultural diversity. However, neither culture nor skin color necessarily determines the nature of a person’s values, interests, philosophy, or politics. And race and culture certainly do not determine the level of an individual’s intellectual capacity. Therefore, our educational system must be more than racially and culturally diverse. With the university at its helm, it must remain a place of ideas, and the strength of America must draw upon the diversity of ideas.

Native Americans provide our classrooms with racial and cultural diversity. However, Native Americans also seek a tolerance for the diversity of their ideas. Consider that most Americans descend from those who came to America in the past 300 years after having been citizens of foreign societies and nations. As a result, they often couch their primary interests in terms of individual freedoms or civil rights. On the other hand, in the context of American history, Native Americans did not come here from anywhere. Rather, Europeans, Africans, and Asians encountered collective units of peoples with governments, cultures, languages, and religions. Native Americans couch their interests in terms of collective rights. It is the diverse nature of this idea that Native Americans would like to share with America’s schools.

Consider the manner in which our country has dealt with collective groups of Native Americans. We have referred to them as nations, states, and tribes. We have referred to their place names as reservations, pueblos, and...
rancherias. We have recognized the vast differences that may exist from tribe to tribe. Almost always, we have recognized the collective nature of each tribe's existence.

**Indian Child Welfare Act**

Perhaps most important, America's laws dealing with Native Americans also reflect the collective nature of their existence. For example, in the Indian Child Welfare Act of 1978, Congress required federal and state courts to recognize the laws of the tribes over adoptions of the tribes' children. Prior to the federal law, in some states, Native American children were removed from their families and placed in foster homes at a rate up to 40 times higher than for non-Indian children. Quite often, non-Indian social workers measured the living conditions of the Indian child against a non-Indian standard, without considering many tribes' ideas regarding extended families, clans, and communities.

After much prodding by Indian tribes, the federal government finally recognized that Native American children are the future of tribes. Therefore, the act requires that tribe political institutions, including their own courts, must determine the future of Indian children. Where the act allows federal and state courts to have jurisdiction, these must recognize the different cultural values of the tribes. For example, in the American system, the "best interest" of the child is paramount. However, under the laws of many tribes and the Indian Child Welfare Act, the interests of the collective unit, whether family, clan, or tribe, often outweigh the interests of the child and the parents.

**Indian Civil Rights Act**

In yet another example, quite often Americans see social despair on the reservations and believe they can help. Their attempts at beneficence inevitably find them dealing with tribe governments. Unfortunately, and quite often at the urging of disgruntled tribe citizens, they seek legal means to restrict the tribe's government by imposing laws from the outside.

One such federal law is the Indian Civil Rights Act of 1968, which attempted to make tribe governments abide by the U.S. Bill of Rights. Unfortunately, some members of Congress and the Supreme Court again recognized that the collective interests of tribes often outweigh individual interests. Therefore, the Bill of Rights does not restrict the actions of tribes when dealing with their own citizens. And, to the extent that tribes must consider rights within the context of the Indian Civil Rights Act, the Supreme Court ruled in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), that it is up to the tribe to decide when, how, and to what extent these rights apply. Only in this way can the collective tribe work as a unit to solve its problems and evolve its own culture and society in a democratic fashion.

**NAFERA**

Perhaps one of the more pressing problems that Native Americans face in our society has to do with their religious beliefs and practices. Because of government actions that restricted the religious practices of many Native Americans, in 1993 and 1994 Congress proposed the Native American Free Exercise of Religion Act (NAFERA). Unfortunately, many Americans and lawmakers misunderstand Native American cultures and religions. As a result, NAFERA was not enacted.

Like the Indian Child Welfare and Indian Civil Rights Acts, NAFERA would deal with tribes as collective units, recognizing both that they have the right to control their own cultures, including religion, and that, in many instances, the interest of the tribes outweighs the interests of their individual members. The ideology behind this law turns on an idea that is widely divergent from views held by most Americans.

Many tribes do not have a formal separation of religion and government. In fact, many have just the opposite—a formal connection between the two. And even in those tribes that have a formal separation, it is up to the tribe, not federal and state courts, to determine the separation's scope and extent. Therefore, individual Indians do not want the federal or state governments to infringe upon the free exercise of their religions, but they defend their tribes' rights to do just that in order to be self-governing. Only an adequate education will help non-Indians and their lawmakers understand this difference.

Native American students are not trying to impose their ideas of culture, religion, or government on others any more than they want others' ideas imposed on them. But they want to be able to participate in school, to bring their rich histories and experiences into the classroom, and to have their ideas tolerated and deliberated.

On every American dollar, an eagle holds leaves from the tree of peace in one claw and arrows of war in the other. The bundle of 13 arrows represents a Native American idea that one arrow standing alone is easily breakable, but a bundle of arrows united into one remains strong and unbreakable—an idea readily adopted by the 13 American colonies. *E Pluribus Unum* waves from the beak of the eagle, a sacred religious symbol to many Native Americans, reminding us that the strength of America's oneness lies in the diversity of its parts—including Native Americans, their governments, cultures, languages, religions, and ideas.

In this spirit, Sitting Bull of the Hunkpapa Lakota said, "Let us put our minds together and see what kind of life we can provide for our children."
### PATHWAY 6: AMERICAN IDENTITY AND PLURALISM

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SESSION IV – ACCOMMODATING STUDENTS’ RELIGIOUS NEEDS:
CULTURAL AND RELIGIOUS DIVERSITY IN SCHOOLS
[Time: 1hr & 45 min]

Concepts and Topics: relationship of law to custom, norms, and values; fundamental values and principles of constitutional democracy

Lesson
“Accommodating Students’ Religious Needs”

Handouts
Student Handout – Understanding Students’ Religious Liberty Rights
Muslim Students’ Needs in Public Schools

Materials
Large sheets of chart paper
Markers

Resources

NOTE: This lesson is designed to be taught over 3 to 4 class periods. To accommodate the time available for this Session, the procedure described below omits activities described in lesson Procedures 5, 6, & 7 and makes some adjustments of Procedure 4. Prior to this session, read the information in the “Parents’ Guide” in order to be prepared with answers for the questions in the Student Handout.

Procedure
Opening
(1) Welcome [5 minutes]
- Refer to previous study of Native American rights
- Review today’s agenda

(2) Warm Up [15 minutes]
Distribute the Student Handout. Read each question aloud, ask for a show of hands for “yes” and “no” responses, and then provide the correct response and brief information. [see A Parents’ Guide . . . ]

Curricular Focus
(3) Refer to the discussion points in Procedure #3 to introduce the discussion of the article “Muslim Students’ Needs in Public Schools,” which was provided to participants at the close of the previous session. (15 minutes)
(4) Form no more than 5 small groups to work together to generate a proposal for accommodating needs of Muslim students as directed in Procedure #4. [30 minutes]
[NOTE: Unless your Academy is based in and sponsored by a school, participants should consider their proposal as being for secondary and/or middle schools in general.]

(5) Bring the groups together to present and defend their proposals. Work with participants to generate a consensus proposal. Is the finished product both practical and constitutional? (45 minutes)

Closing

(6) Debrief and Wrap Up [5 minutes]
Ask participants what new information did they learn about Muslim religions and culture?

(7) Look Ahead
The next session examines another issue relating to religious and cultural diversity.

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

Accommodating Students’ Religious Needs

Background
In “State of the First Amendment: Freedom of Religion,” Donna Demac reviews the history of religious freedom in the United States and identifies issues involving this First Amendment freedom. Charles Haynes reflects on how Muslim students can meet their religious obligations while attending public schools in “Muslim Students’ Needs in Public Schools.” He considers whether the schools can accommodate students’ religious needs without violating the establishment clause of the First Amendment. This strategy offers students an opportunity to weigh the establishment clause against the free exercise clause of the First Amendment. They check their understanding about the role of public schools in religious expression and consider how or if schools can accommodate the religious needs of students.

Objectives
As a result of this lesson, students will
• Reflect on the historical background of the impact of religious freedom on schools
• Determine what role religious expression can play in public schools

- Identify the challenges schools face in balancing the establishment and free exercise clauses of the First Amendment
- Examine the religious obligations of Muslim students as a case study for accommodating various religious practices

Target Group: Secondary
Time Needed: 3-4 classes
Materials Needed: Articles “State of the First Amendment: Freedom of Religion” and “Muslim Students’ Needs in Public Schools,” Student Handout, answers to Student Handout questions provided by The Freedom Forum First Amendment Center


Procedures
1. To introduce the concept of religious freedom in relation to the First Amendment, have students read “State of the First Amendment: Freedom of Religion” by Donna Demac on page 10. Briefly discuss the article and encourage students to list on the chalkboard dos and don’ts related to religious expression in public schools. Explain that schools must carefully balance the establishment and free exercise clauses of the First Amendment.
2. Organize the class into small groups of three to four students and distribute copies of the Student Handout to the groups. Allow time for group members to record a response to each question. After groups have prepared their responses, discuss each question and provide answers with the background information available from The Freedom Forum First Amendment Center. (You can find the answers, with discussion, at http://www.fac.org/publicat/parents/parents.htm or by contacting The Freedom Forum First Amendment Center at Vanderbilt University, 1207 18th Avenue, South, Nashville, TN 37212; (615) 321-9588. You may wish to have students obtain the forum’s answers to these questions as part of the activity, or you might obtain the answers before beginning the activity.)
3. Explain to students that in the United States there is a rich diversity of religious communities. Each has its own teachings and practices. Tell students that sometimes religious obligations and practices impact the schools. For example, students may be absent from school as they observe religious holidays. In this activity, students will examine the
religious practices and obligations of Muslims and their impact on schools as a case study. To build background for the activity, students should read the article “Muslim Students’ Needs in Public Schools” by Charles Haynes on page 17.

4. After discussing the background information about Islam, divide the class into groups. Each group is to serve as a committee appointed by the superintendent of schools to recommend a response to the suggestions for accommodating the needs of Muslim students identified in “Muslim Students’ Religious Needs” on page 19. Give groups a week to draft their responses. Which suggestions can be accommodated? Which requests cannot be granted? Responses must be supported by practical and constitutional arguments. Provide time for the groups to present their responses.

5. Assign a group of students to represent school administrators. Have them research the policies of the school and school district concerning special requests from religious groups. Assign another group to represent Muslim parents. Ask them to formulate ideas that could accommodate the religious needs of their children and arguments to support the policy of accommodation. Have the two groups role-play in class a meeting between the administrators and the parents in which the accommodations the school can make are discussed. Students should use the information acquired in steps 2–4 as a resource for the role play. After the role play, have the class discuss whether administrators were able to meet most needs and whether parents understood limitations facing the school as it tries to meet the needs of all students.

6. Ask the class to identify existing school practices that accommodate special needs unrelated to religion (for example, medical excusal and absentee policies, facilities for those with physical disabilities). Discuss the differences, if any, between these accommodations and accommodations based on religious belief. Have the class consider existing school policies and practices as applied to religion. Do these policies and practices favor some religious groups over others, or are they neutral toward religion in general?

7. If time permits, show a video that focuses on the challenges and opportunities presented by pluralism in the United States. Help students identify the major emphasis of the film, suggest ways that society can show respect for and accommodate differences, and identify potential benefits that may accrue to schools when they accommodate religious needs. Two excellent films are Free to Be? distributed by the Anti-Defamation League and Religious Diversity, a production of Phoenix Films.

Free to Be? New York City: Anti-Defamation League, distributor. Asks the viewer to think about questions raised by diversity and conformity in American life: What are the values of ethnic and religious group loyalty and identification, and what degree of assimilation is desirable in order to foster a united nation?

Religious Diversity. New York: Phoenix Films. Points out that religious liberty has allowed religions to flourish in the United States. Young people from a number of major faiths describe how they understand their religious beliefs and practices.

8. Conclude the activity by summarizing ways in which schools can accommodate religious needs. Then ask students to suggest ways that they as students can show respect for the beliefs and traditions of all students.
Student Handout

Understanding Students' Religious Liberty Rights

Consider these questions regarding religious expression and practices in schools. You can find the answers, with discussion, at http://www.freedomforum.org or by contacting The Freedom Forum First Amendment Center at Vanderbilt University, 1207 18th Avenue, South, Nashville, TN 37212; (615) 321-9588.

Did the Supreme Court rule against student prayer in public schools?

May students pray together in public schools?

May students offer prayers at graduation ceremonies and baccalaureate services?

Is it constitutional to teach about religion in public school?

May students form religious clubs in public schools?

May students wear religious garb and display religious symbols in public schools?

May students distribute religious literature in public schools?

May students be released for off-campus religious instruction during the school day?

Adapted from "A Parent's Guide to Religion in the Public Schools," Nashville, Tenn.: The Freedom Forum First Amendment Center at Vanderbilt University, (no date), with permission of the publisher.
Muslim Students' Religious Needs

Terminology
Those who practice the faith of Islam are known as Muslims, literally "those who submit" to God. The spelling Muslim is considered more accurate than Moslem, and the term is preferable to Islamic when referring to people. The terms Muhammadanism and Muhammadan are inappropriate as references to the faith and its adherents, respectively.

The adjective Islamic should be used only for what pertains to the religion itself (Islamic beliefs, Islamic law, etc.), while Muslim should be used to denote the works and acts of Muslims or groups of people and their institutions (such as Muslim women or men, Muslim population, Muslim countries or civilization, Muslim art, etc.).

Fulfilling Religious Obligations
Muslims become thoroughly accountable for fulfilling religious obligations upon reaching puberty, although many Muslim children learn and perform the various duties at an earlier age. Muslim students in public schools may express a desire to adhere to certain religious principles or fulfill certain religious requirements. It is important to note that many of the religious needs outlined here can be met through the individual initiative of students and/or their parents, in which the main accommodation by the school lies in creating a supportive atmosphere of tolerance and respect for freedom of individual choice. Over the past 10 years, many schools and school systems have found practical and mutually acceptable solutions to meeting the needs outlined below.

Daily Worship (Salah)
Muslims engage in formal worship or prayer (salah in Arabic) five times daily. Depending upon seasonal time changes and school schedules, one or two of the worship times (midday and afternoon) may fall during typical school hours, and thus some suitable arrangement should be made for students who wish to fulfill this obligation. Teachers should provide Muslim students who are conscientious about observing their prayers with an area for a few minutes during lunchtime or afternoon break for this purpose.

Suggestion: Allow students to conduct their daily prayers in an empty room on campus during lunchtime and/or breaks.

Friday Congregational Worship (Jumah)
For Muslims, Friday is a day of congregational worship. The Friday prayer takes the place of the midday worship performed on other days and occurs close to most students' lunch hour. The sermon and worship typically require 30 to 45 minutes to complete. Some Muslim students may wish to make arrangements to leave campus temporarily to attend congregational prayers at a local masjid (mosque), while others may ask to use an empty classroom to conduct the worship service themselves.

Suggestions: Allow students to perform the Friday worship in an empty room on campus during lunchtime. Allow students to be excused for the time required to attend a local masjid and to make up any missed work.

Dietary Needs
The Qur'an specifies which foods are lawful and unlawful for Muslims to eat. Islam prescribes a particular method for slaughtering lawful animals for meat, designed to minimize suffering for the animal. The meat of lawful animals, such as cows, goats, and chickens, among others, that are slaughtered in this prescribed manner is commonly designated halal, or lawful. Seafood is exempt from rules for slaughter.

The Qur'an states that the food of Jews and Christians is lawful for Muslims, provided that certain conditions of method, cleanliness, and purity have been fulfilled. Some Muslims eat meat of lawful animals available commercially in American society, while others, believing the above-mentioned conditions have not been met, eat only meat from animals that have been slaughtered in the prescribed way by a Muslim butcher.

The meat of swine is prohibited in Islam. Muslims do not eat pork or foodstuffs made with pork derivatives such as gelatin, lard, and certain enzymes. Examples of such foods include pepperoni pizza, pork hot dogs, and certain brands of refried beans, tortillas, gelatin desserts, candy, and marshmallows, unless these contain kosher gelatin. Consumption of alcoholic beverages is prohibited in Islam. Muslims avoid foodstuffs prepared with alcohol as well.

Suggestions: Muslim students can be asked to bring halal meat dishes for parties, picnics, and potlucks.
Vegetarian alternatives can be provided for Muslim students who only eat meat available directly from Muslim sources.
Baked goods made with vegetable shortening should be requested for such events in order to avoid products or foods containing lard or animal shortening. Teachers should be made aware of gelatin as a source of pork derivatives when they provide treats.

Fasting (Sawm)
During the Islamic month of Ramadan (a lunar month of 29 or 30 days), Muslims abstain from all food and drink from dawn to sunset. This religious duty is known as sawm in Arabic. Many Muslim students observe the fast.

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Consequently, they will be unable to participate in meals or refreshments during the daylight hours. In addition, they will not be able to engage in heavy physical exertion often required in physical education classes during this time.

**Suggestions:** If students eat lunch in a common cafeteria, Muslim students should be allowed to spend lunchtime during Ramadan fasting in an alternative location, such as a study hall or library.

Physical education teachers should provide alternatives to rigorous physical exercise during Ramadan.

**Additional Issues**

**Mixing of the Sexes**

As a general principle, Muslim men and women minimize casual mixing of the sexes in society, emphasizing strong adherence to the marital bond. Dating, mixed-sex dancing, or any form of premarital intimacy are not allowed in Islam. Consequently, conscientious Muslim students are likely not to participate in proms and dances or similar events. In terms of mixing in physical education classes, segregated sports and activities are preferred by Muslim parents. This is especially true for swimming classes.

**Suggestions:** Well-meaning school personnel should avoid putting unnecessary stress on youngsters by encouraging them to participate in what they consider “normal” socializing activities such as dances or giving the impression that a student who is not involved in these activities is antisocial or socially immature and needs to be coerced into participation.

**Modesty and Muslim Modes of Dress**

Islam places great emphasis on modesty in dress and behavior for both sexes. Men and women are expected to dress in clothing that does not reveal the features of the body. As part of their Islamic dress, many Muslim women and girls wear what is termed *hijab*, commonly used in reference to a scarf or head covering, but more broadly meaning appropriate covering of the entire body except for hands and face.

Physical education classes can pose certain problems for Muslim children, since such courses typically require students to wear shorts and tank tops. Such attire is not permissible for Muslim women and girls, and men and boys must wear shorts that reach at least to the knees.

Muslims of both sexes are required to be modest even in front of persons of the same sex. Therefore, situations requiring nudity in front of others, such as using the toilet and taking showers in an open area devoid of partitions or curtains, present serious problems for a Muslim child.

**Suggestions:** During P.E. activities allow female Muslim students to wear long-sleeved T-shirts and sweat pants, instead of tank tops and shorts, and male students to wear long shorts. Also, Muslim girls who observe *hijab* must be allowed to wear appropriate modest attire and head covering in mixed classes. Moreover, swimwear that covers more of the body than most swimsuits should be allowed for Muslim students.

**Islamic Holidays**

Muslims observe two major religious holidays during the year. *Eid al-Fitr* (Festival of Ending the Fast) is the celebration that occurs after Ramadan, while *Eid al-Adha* (Festival of the Sacrifice) is the celebration that coincides with the end of the *Hajj*. On the day of *Eid*, a worship service is held in the morning at a local *masjid* or designated site. Afterwards, Muslims visit each other’s homes to celebrate, share meals, and exchange gifts. These Muslim holidays are of similar importance and significance to Muslims as are Christmas and Easter to Christians and Hanukkah and Passover to Jews.

_Eid_ celebrations (like other important dates in Islam) occur within the Islamic lunar calendar and thus take place roughly eleven days earlier each year in relation to the standard Gregorian calendar. Schools can consult a local *masjid* for information on the *Eid* dates each year.

**Suggestions:** Muslim students should be given excused absences to participate in the two major religious holidays in Islam.

School officials and teachers are requested not to schedule standardized testing or exams on these holidays and to allow for makeup time on important assignments so that Muslim students can avoid any adverse effects upon their academic efforts.

**Curriculum Issues**

**Teaching About Religions**

Instructional materials and classroom activities should adhere to the civic framework and approaches to teaching about religion. As it is very common for such materials to contain major errors and misconceptions that contradict the guidelines for accurate and authentic portrayal of Islam, Muslim students should be allowed the opportunity to prepare research reports and state their opinions regarding errors they have identified in mandated materials. (These guidelines are described in detail in Chapter 7, Haynes and Thomas, eds., *Finding Common Ground: A First Amendment Guide to Religion and Public Education*, The Freedom Forum First Amendment Center, 1994.)

**Art/Art History**

Some aspects of Western culture are viewed with reticence by Muslims, as they differ from Islamic values and principles. For example, much of Western art focuses on
the human form, and nudes are a prominent component of paintings. The concept of modesty in Islam makes viewing such works a strange exercise for some Muslims, though doing so may seem quite ordinary for others. Moreover, the emphasis on the human form appears to reflect a human-centered view of the world rather than the God-centered one found in Islam and to contradict the injunctions against representative art to which many Muslims adhere.

Dance
After the age of puberty, classes necessitating mixed dancing are not appropriate for Muslim students, whether cultural or other types of dances are involved. There are varying views among Muslims about single-sex folk or cultural dancing for older children. Some Muslims also disapprove of music. It is desirable to give Muslim students the opportunity to opt out or participate in an alternative activity if they so choose.

Drama
Drama classes or exercises involving performance of scenes from the Nativity or acting as deities, gods, or goddesses of mythology may be objectionable to Muslims. Other dramatic roles and classroom role-plays are generally acceptable, as long as the concerns regarding modest dress, mixing of the sexes, and physical contact are taken into consideration.

Field Trips/Camping
Regarding school outings, Muslim parents may not allow participation in overnight mixed-sex outings, though some would permit single-sex outings of similar nature. Daylong field trips typically meet with approval. Organizers of such events should keep in mind the needs of Muslim students, such as allowing time for worship during breaks (Islamic worship accommodates travel with increased flexibility), allowing them to gracefully opt out of communal experiences involving prohibited foods, the need for privacy in showers and bathrooms, and appropriate forms of interaction between boys and girls.

Muslim Students’ Needs in Public Schools

Can public schools accommodate the religious needs of students?

Charles Haynes

There are now millions of American Muslims. Within the next 20 years, Islam will become the second largest religion, after Christianity, in the United States. Worldwide, there are over one billion Muslims. Many American educators are finding it necessary to overcome the common lack of familiarity with Islam as growing Muslim communities across the nation express their needs and make their contributions in the public school environment.

Islam in America

There are records of Muslims in America as early as the 18th century, and there is evidence that settlers from Spain may have included persons of Muslim heritage before that. Archival materials indicate that many slaves brought to the Americas were Muslims. In the late 19th and early 20th centuries, significant numbers of Muslims began to migrate to the United States from the Middle East, despite restrictive and discriminatory immigration laws. From the middle of the 20th century on, Muslim immigrants arrived from other Muslim regions, such as South Asia, Africa, and Arab countries. Today, by some estimates, 14 percent of all immigrants entering the United States are Muslims.

According to the American Muslim Council in Washington, D.C., as many as 40 percent of the Muslims in the United States are African Americans whose families converted to Islam in the 20th century. This growing Muslim community is adapting to and flourishing in the American environment. Its vitality can be seen in the more than 1300 mosques and Islamic centers across the country.

American Muslims face a variety of challenges as they practice their faith in this pluralistic society, and they are meeting these challenges by becoming more organized and visible. Highly supportive of education and cooperation between parents and the schools, local and national Muslim organizations nevertheless have important issues to address regarding their communities’ effective participation in public schools. Among these organizations is the Council on Islamic Education, a national, scholar-based resource organization that provides information to teachers, education officials, and textbook publishers.

Islamic Beliefs and Practices

Islam means “peace through submission to God,” and a Muslim is “one who submits to the will of God.” Muslims recognize a continuous line of prophets and revelations, beginning with Adam and extending through Noah, Abraham, Moses, and Jesus, ending with Muhammad as the last prophet, who completed God’s message to humankind. The Qur’an is the sacred scripture of Islam, which Muslims hold to be the literal word of God revealed to Muhammad through the angel Gabriel.

Muhammad’s role, in addition to being the vessel of revelation, is viewed as providing a model behavior in accord with the guidance given in the Qur’an. Thus, the two sources of the principles and practices that make up a Muslim way of life are the Qur’an and Muhammad’s example or precedent, recorded in various authentic sources. Interpretation and application of these two sources constitute the evolving body of Islamic law. This includes guidelines affecting prescribed modes of worship, family, social and financial relations, diet and dress, among others.

The basic practices of Muslims are identified as the “Five Pillars,” acts of...
worship with broad implications for individual and communal life:

1. Acceptance and repetition of the creed: “There is no god but God, and Muhammad is the prophet of God.” This confession of faith and its repetition constitute the first step in being a Muslim. The concept of unity stated in the creed is central to the Islamic model for spiritual and social life.

2. Prayer: Every pious Muslim sets aside time each day for five acts of devotion and prayer at dawn, at midday, at midafternoon, at sunset, and after nightfall.

   Friday is the special day of community prayer. The faithful assemble in the masjid (mosque) for prayers.

3. Almsgiving: Muslims who have the means to do so are required to give to those who are less fortunate. Almsgiving is considered an act of worship both for offering thanks to God for material well-being and as purification of wealth.

4. Fasting during the sacred month of Ramadan: During Ramadan, all healthy Muslims are required to abstain from food, drink, and conjugal relations from dawn to sunset. The first day of the next month is Eid Al-Fitr, “the Festival of Ending the Fast.” This festival is a joyous celebration.

5. Pilgrimage: Every Muslim hopes to be able to make the Hajj (pilgrimage) to the holy city of Makkah, in Saudi Arabia, at least once in a lifetime. Pilgrimage takes place during Dhu al-Hijjah, the twelfth month of the lunar Islamic calendar.

The pilgrimage rites commemorate the Abrahamic heritage of Ka’bah and other sites. The Ka’bah is the focal point of Muslims’ daily prayer and a symbol of unity and continuity of faith. On the tenth of Dhu al-Hijjah, Muslims celebrate Eid al-Adha, the Festival of the Sacrifice. Muslims around the world observe this holiday simultaneously with the pilgrims at Makkah.

Among the practices required by Islamic law that distinguish Muslims wherever they live are teachings concerning modest dress for Muslim men and women in public, as well as required decorum concerning mixing together of the two sexes and standards of personal hygiene. The Muslim diet excludes alcohol and pork products in any form and requires certain procedures in the slaughter of animals.

Students’ Religious Needs and the First Amendment

The Council on Islamic Education (CIE) and other organizations have identified the basic needs and requirements of Muslim students in public schools, as they seek to uphold their faith. They also raise vital church-state issues public schools are now struggling to resolve. These organizations appeal to religious freedom. In the American context, of course, this is a reference to the free exercise clause of the First Amendment.

Local and national organizations have urged public schools to make accommodations for Muslim students so that they may practice their faith. These accommodations, already implemented to some degree in many states, help practicing Muslims attending public schools meet very real religious needs. However, some schools, as state-sponsored institutions, may find some of the identified accommodations difficult to make.

At issue is a question that runs through public education history: To what extent may the state accommodate the needs and requirements of religious communities represented in schools? Or, in a broader context, when does the establishment clause of the First Amendment prohibit the state from accommodating free exercise claims of religious groups?

The requirements of religious belief protected under the free exercise clause of the First Amendment can come into tension with the establishment clause when the practice of one’s belief is conducted in a state institution such as a public school. The requirement not to hinder belief must be balanced by a sensitivity not to provide inadvertent state support for a particular belief. Some Americans argue that state support is valid if it is nonpreferential, while others argue that no state support is allowable.

Many accommodations may be easily made by sensitive and thoughtful public school administrators without raising constitutional questions. Muslim students should be able to wear modest clothing or refrain from attending social activities without violating school policies, for example.

Students in most public schools are routinely allowed excused absences for religious holidays. Such a policy is generally considered a reasonable accommodation to the religious needs of a religiously diverse school population. Accordingly, several state and local districts with large Muslim populations have placed Muslim holidays alongside other religious holidays on the school calendars for teachers’ information and planning.

Many schools have excusal policies that allow students to opt out of limited portions of the curriculum that offend their religious beliefs. If focused on a specific discussion, assignment, or activity, such requests should be routinely granted in order to strike a balance between the students’ religious freedom and the school’s interest in providing a well-rounded education. The easiest requests to grant are accommodations focused on activities connected with such holidays as Halloween or Valentine’s Day. If opt-out requests cover significant academic portions of the curriculum, however, schools may be unable to excuse students on educational grounds.

Physical education presents a number of difficulties, especially in school districts that require coeducational

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P.E. classes. Here the public school's interest in developing a particular physical education curriculum may come into conflict with religious practices of Muslims and others.

More difficult still is the question of whether the state should construct separate, private showers or provide enclosed toilets. Since such accommodations would involve spending tax money to meet the needs of a particular religious group, some will argue that the public schools are prohibited by the establishment clause from making these changes. Others might appeal to the free exercise clause, claiming that by not providing these facilities the state is forcing Muslims to choose between public education and obedience to the strictures of their faith. Here again, a third position might be that the schools are not required to provide such facilities but may do so without "establishing" religion, especially if schools provide a secular reason for doing so that benefits many students, such as recognizing the possible benefit of a privacy option for any student who so chooses. For schools with large Muslim populations, this last position may prove the only practical alternative.

Religious dietary restrictions have led to requests concerning the labeling and preparation of food. Meeting these requests may raise First Amendment, as well as practical, questions for some school officials. Schools, especially those with few Muslim students, may resist investing the time and money required to make these accommodations. And it is unlikely that the courts will compel school cafeterias to take into account the religious requirements of all students. Nevertheless, some schools do label food and provide a variety of selections in an effort to accommodate the health, dietary, and, in some cases, religious needs of their students.

Two accommodations concern the obligation to pray. Excusal for Friday prayer off campus may present some practical problems for class scheduling, but there should be no legal barrier if it is construed as a "released time" program. In Zorach v. Clausen (1952), the Supreme Court ruled that schools may release students during school hours to participate in off-campus religious programs.

Schools may find it more difficult to excuse students for 15 minutes of afternoon prayer in a designated area. Since the time for prayer is somewhat flexible (mid-afternoon), schools may expect students to find time in their schedule to pray without interrupting class time (this may be possible only at the high school level). Public schools will certainly be challenged on constitutional grounds if a particular area of the school is designated as a place for prayer. The most an administrator may be able to do is to indicate what rooms, if any, are available to students for study or other activities between classes.

As reflection shows, questions involving religious needs are challenging but not insurmountable—especially if practical and constitutional solutions are sought in light of the promise of American pluralism and the principles that lie behind the American system of religious liberty.
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SESSION V – CHRISTIAN CRECHE CRISIS: RELIGIOUS SYMBOLS & THE PUBLIC SQUARE
[Time: 1hr & 45 min]

Concepts and Topics: use of law and legal system to address changing values of American identity and pluralism; relationship of law to custom, norms, and values

Lesson
Christian Creche Crisis

Handouts
The creche scenario [opening three paragraphs]
The map
Cases for Reference
Section I

Background Information on the Hirabayashi case [see Session VI lesson] to be read prior to next session

Resources
Secure overviews of any other relevant Supreme Court cases since Lemon

NOTE: Adjustments have been made to the procedures outlined in the accompanying lesson. It provides more time for study of the cases and omits the Section II activities.

Procedure
Opening
(1) Welcome
  • Refer to previous study of Muslim culture and religion
  • Review the agenda

(2) Warm Up [10 minutes]
Have participants work in pairs to define the terms “secular” and “religious.” Is there consensus on the definitions?

Curricular Focus
(3) Focus on the cases.
  • Prior to launching their examination of the Creche scenario, give participants time to study and understand the Cases for Reference [as well as any others you provide]. Form as many small groups as there are cases and assign each group 1 case. After reading and discussing the case, they should prepare their presentation using chart paper to list: (a) the facts, (b) the issue/s, and (c) the Court’s decision. (20 minutes)
  • Bring the groups together to give their reports. When all reports are given, compare and discuss the differences and similarities in the cases and the principles that emerge. (30 minutes)
(4) Examine the Creche scenario
   • For procedures #1 and #2 small groups of participants assume the roles of Federal Distri
     c Court judges to decide the case brought by the UASC S in the hypothetical scenario. They shou
     ld have copies of the scenario, Section I instructions, and the Cases for Reference [and any addi
     tional ones]. Charge them to be prepared to explain how the guidelines and holdings of each o
     f the Cases informed their decision. (20 minutes)
   • Bring the groups together for their reports, follow the discussion guides in “Questions for Sc
     enario I” (20 minutes)

Closing
(5) Debrief and Wrap Up [10 minutes]
Ask participants to reflect on why the courts have so often been the final arbitrator of questions re
lating to religious displays in the public square. What does this say about the demographics of ou
r society and the legal system?

(6) Look Ahead
Tell participants that during the next session they will revisit a particularly stressful period in ou
r nation’s history and the constitutional issues that arose. Distribute copies of the Background In
formation on the Hirabayashi case to be read prior to next session.

(7) Adjourn – remind participants when and where they will meet next!
In this establishment of religion simulation, the town of Middleboro owns a traditional Christmas creche, or nativity scene. Each year, for the past 30 years, it has been displayed on a corner of the town hall grounds from Thanksgiving to January 5th. The creche, made of life-sized figures, was donated by the Middleboro Pioneers Society. It is illuminated at night by spotlights. Many residents come by, especially when walking or driving to the nearby stores and shopping center.

A citizens’ group, United Americans for Separation of Church and State (UASCS), asked the town council not to erect the scene, but the council continued to do so. The UASCS disputes the constitutionality of the creche being placed on town land. The group decides to file suit in federal district court, asserting that the town has violated the First and Fourteenth Amendments.

The religion clauses of the First Amendment state, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The Fourteenth Amendment applies that regulation to state and local governments.

**Objectives**

1. To develop an understanding of the religion clauses of the First Amendment.
2. To develop an understanding of governmental limitations on religious practices.
3. To develop an understanding of governmental regulations that may incidentally support religious beliefs.

**Materials**

1. One copy of the handout per student.
2. One map per group.
3. One copy of the referenced cases per group.

**Procedure**

1. Divide the class into groups of four or five.
2. Have each group read the creche scenario and discuss the constitutionality or unconstitutionality of the creche using the information in Section I.
3. Conduct class discussion using “Questions for Section I.”
4. Have each member assume a different “community role” in Section II to select suggested sites for placement of a creche.
5. Conduct class discussion using “Questions for Section II.”

**Section I**

As a panel of judges, decide the constitutionality of the creche scene. Guidelines were formulated in the *Lemon v. Kurtzman* case of 1971 (see “Cases for Reference”). Also refer to the other cases heard since then by the Supreme Court. Consider the following: what is in the scene, who owns it, where is it displayed, and is the city supporting a religion by erecting the scene? The group should apply the guidelines and the holdings in the other cases. The town map may be used.

**Section II**

If the panel of judges finds the creche scene unconstitutional, take new roles as townspeople who are to solve the dilemma of the Middleboro creche. Using the map on p. 37, a new site may be selected, or the group may make adjustments to the creche scene so that it could remain on the grounds of the town hall. All sections of the map — commercial, public, and private — should be considered.
**Cases for Reference**

**LEMON V. KURTZMAN, 91 S.Ct. 2105 (1971)**
Rhode Island passed a law providing state financial assistance to supplement the salaries of teachers in nonpublic elementary schools who taught secular subjects. The money would go directly to the teachers, who would agree in writing not to teach a course in religion while receiving the monies and to use materials used in the public schools.

The Court said that the purpose of the law was to benefit the child and improve the quality of education, but it found that teachers could probably not totally separate their religious beliefs from their teaching. The state's efforts to keep track of these teachers and their subjects would create an “excessive entanglement” for the government and churches. For these reasons, the law was found to be unconstitutional under the establishment clause of the First Amendment, as applied to the states through the Fourteenth Amendment.

The Court established a guideline, popularly called the Lemon criteria, to use in reviewing establishment clause cases. A governmental law or conduct will be held to be constitutional only if it meets all of the following three criteria:

1. The purpose of the law or conduct must be secular, not sectarian.
2. The principal or primary effect of the law or conduct must be neither to advance nor inhibit religion.
3. The act or conduct must not create an excessive governmental entanglement with religion.

**LYNCH, MAYOR OF PAWTUCKET V. DONELLY, 104 S.Ct. 1355 (1984)**
For more than forty years, Pawtucket, R.I., had erected a Christmas display in a privately owned park in the midst of the downtown business section. The display included a Christmas tree, Santa Claus house, candy-striped poles, reindeer and sleigh, carolers, a “Season’s Greetings” banner, hundreds of colored lights, a creche or nativity scene, and cut-out figures of a bear, clown, and elephant. All the items were owned by the city. Some local residents challenged the constitutionality of the creche on the grounds that it violated the establishment clause of the First Amendment, as applied to the states through the Fourteenth Amendment.

The present value of the display was $200, and it cost the city about $20 to erect and dismantle it. Until this lawsuit, there had been no complaints about the creche’s inclusion.

In a 5 to 4 decision, the Court allowed the display, emphasizing that the nativity scene commemorated the origins of “a particular historic religious event” that is recognized by Congress as a national holiday. With all the other secular display items, the creche did not seem to advance a particular religion, and the town’s involvement was minimal.

**BOARD OF TRUSTEES OF THE VILLAGE OF SCARSDALE V. MCCREARY, 105 S.Ct. 1859 (1985)**
A citizens committee in a New York village had been displaying their privately owned creche in a public park for 25 years. In 1982, local officials for the first time rejected it because it was a religious symbol.

**GROUPS REPRESENTED ON THE COMMITTEE**
Here is a list of groups whose members are appointed to the committee. If you want more students to participate, extra people can double up on the roles:

1. Middleboro Pioneers Society (prefers placement in a park, but will consider other suitable locations; may be interested in reassuming ownership of the creche);
2. Easttown Shopping Area Merchants’ Association (opposed to placing the creche at the shopping area, fearing offending the public; may be interested in donating funds for enlarging the display);
3. Community Church of Middleboro (wishes to place the creche in a respectable location; will consider additional items, but doesn’t want secular items placed right next to religious ones);
4. United Americans for Separation of Church and State (opposed to the creche being placed on any public land).

**Questions for Section I**

1. What was each group's decision?
2. How did the groups arrive at their decision? How were the Lemon criteria and other cases used?
3. Would the decision be different if Christmas were considered a public holiday rather than strictly a religious one?
4. Would the judges rule another way in the following related situations:
   a. The town erects the creche along with other secular holiday symbols in a private park near the downtown area.
   b. The town denies a request to place a privately owned creche in a public park, as had been done for the previous 14 years. The creche belongs to an inter-denominational group. The town has no ordinances limiting any type of public displays in public parks.

**Questions for Section II**

1. What was the solution of each group? What other choices did the group have?
2. How did the group arrive at its decision?
3. What kinds of things motivated group members' actions? What part did different personalities play in the decision-making process? Were alliances formed?
4. Is there a holiday display in the students' town? How does it meet the Court's criteria and opinions?

Leeann Jones teaches seventh and eighth grades at Desert Horizon Elementary School in Phoenix, Arizona. She has been involved in the Arizona Center for Law-Related Education since 1980. She wishes to acknowledge the support of Isidore Starr, Ellie Sbragia, and the Center's staff.
denied permission to place the creche on the park property and suggested the committee place the nativity scene on private property. The creche committee took the decision to the federal district court.

When the case went before the Supreme Court, one of the justices was ill. On a 4 to 4 vote the Court upheld the court of appeals decision. They said that since the park had been used as a traditional public forum for all types of purposes, the village was not involved in any sectarian activity. The permission to exhibit the display did not advance religion. The town's role was "indirect, remote, and incidental," especially since the committee had placed a disclaimer sign in 1976 stating that only the committee had erected and maintained the creche. Since there was no financial support, Scarsdale was not engaged in any entanglement with religion.

COUNTY OF ALLEGHENY, CHABAN, AND CITY OF PITTSBURGH V. AMERICAN CIVIL LIBERTIES UNION, 106 L. Ed. 2d 472 (1989)
This case is really two cases in one, involving two different displays at separate public buildings during the winter holiday period. Since 1982, the Allegheny County Courthouse in downtown Pittsburgh has permitted a Roman Catholic group to display a creche scene at the grand staircase of the entranceway. The group donated the creche, and a sign to that effect is in place. The mayor had at its crest an angel bearing a banner proclaiming "Gloria in Excelsis Deo," meaning "Glory to God in the Highest." The county transports the display, places poinsiettas around the display, and invites school groups to sing Christmas carols around it during the season.

About a block away is the City-County Building. For a number of years city employees have erected a 45-foot Christmas tree near one of the entrances. The city has placed a sign at the exhibit, bearing the mayor's name, which explains that the tree's lights are to remind citizens of the importance of liberty and freedom. At least since 1982, the display has included an eighteen-foot menorah representing the Jewish holiday of Chanukah. A local Jewish group owns the menorah, but the city stores, erects, and removes it.

The Supreme Court split its decision, ruling the creche scene unconstitutional, but the second display acceptable. On a 5 to 4 vote, the Court said that the creche was violating the establishment clause of the First Amendment because of the religious message of the banner above the creche and the lack of any other object which might detract from its meaning. The county was endorsing a Christian message instead of just celebrating a cultural event.

In the second part of the case, the justices voted 6 to 3 that the holiday display at the City-County Building did not violate the First Amendment. The combination of the Christmas tree, menorah, and message did not show a governmental endorsement of a religion, namely Judaism. The Christmas tree is a secular symbol of Christmas. The menorah reminds people of different ways to celebrate the winter season. The sign's message proves the government is not sponsoring a particular religion but just recognizing citizens' cultural differences.
# PATHWAY 6: AMERICAN IDENTITY AND PLURALISM

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SESSION VI – EXPLORING U.S. V. HIRABAYASHI: THE CONSTITUTION, PLURALISM, and WAR TIMES

[Time: 1hr & 45 min]

Concepts and Topics: use of law and legal system to address changing values of American identity and pluralism; fundamental values and principles of constitutional democracy

Lesson
“Exploring U.S. v. Hirabayashi”

Handouts
- Student Handout 1
- Student Handout 2
- Student Handout 3
- Student Handout 4
- Time Line, p. 33

[NOTE: As noted in the introduction, February 19, 1992 marked the 50th anniversary of the signing of Executive Order 9066. Participants should recognize that February 19, 2012 marks the 60th anniversary of this act.]

Procedure
Opening
(1) Welcome
- Refer to the cultural groups and rights studied in previous sessions.
- Review today’s agenda.

(2) Warm Up
Working in pairs have participants think of instances of discrimination that different minority groups have faced throughout U.S. history. Share and briefly discuss before turning to the example explored in this session.

Curricular Focus
(3) Follow Procedure #2 for work in pairs and full group discussion. Participants should have already read the Background Information in Student Handout 1. Be sure everyone has a copy of that handout and distribute Student Handout 2 and the Time Line. (20 minutes)

(4) Follow Procedures #3 and #4 in leading a discussion to focus participants’ examination of the case. (15 minutes)

(5) The trial—October 20, 1942. Organize participants to hold “mock arguments” as suggested in Procedure #5. Each hearing should consist of a panel of 3 judges, 2 attorneys representing Hirabayashi, 2 representing the government. [Hearings will be held simultaneously. Numbers in each role can be adjusted as needed.]
- Provide time for attorneys to prepare their arguments and for judges to study the case and consider what questions they would ask counsel. (15 minutes)
• Hold hearings. Establish time limits for attorneys’ statements, judges’ queries, and judges to come to their decision. (20 minutes) Compare and discuss decisions. (10)

(6) Follow Procedure #6 in focusing on Handout #3. (20 minutes)

**Closing**

(5) Debrief and Wrap Up [15 minutes]
Conclude by having participants complete and discuss Student Handout #3. Probe for any affect the study of the Hirabayashi case might have had on their responses.

(6) Look Ahead
In the next session participants will explore another issue of diversity and the role of law.

(7) Adjourn – remind participants when and where they will meet next!
The Challenge of Diversity

Exploring U.S. v. Hirabayashi/Secondary

Julia Ann Gold

Objectives
1. Students will place the order of events in the case of United States v. Hirabayashi on a time line.
2. Students will identify the arguments put forward by Hirabayashi and the U.S. government at his trial.
3. Students will analyze the actions of the judge and jury, and the outcome of the case.
4. Students will consider current and future implications of the decision.

Time Needed
Two or three class periods

Resources
Student Handouts 1 through 4; "A Personal Matter," a 30-minute videotape about Gordon Hirabayashi has been produced by the Constitution Project, P.O. Box 2787, Portland, OR 97207. Call (503) 224-6722 for information on how to order.

Background for the Teacher
February 19, 1992 marked the 50th anniversary of the signing of Executive Order 9066, which authorized military commanders to exclude persons from vast areas of the western United States during World War II. Gordon Hirabayashi, a college student at the time, was one of a very few Japanese-Americans who challenged the military orders all the way to the U.S. Supreme Court. While the Supreme Court upheld the military orders in 1943, Hirabayashi's conviction was vacated in 1987 by the Ninth Circuit Court of Appeals, under an unusual legal proceeding called coram nobis.

After the war, Gordon Hirabayashi went on to complete his education and became a professor of sociology at the University of Alberta, in Edmonton, Canada. He is presently retired, as Professor Emeritus, and spends much of his time speaking and educating others about his experiences. He is a strong believer in the U.S. Constitution, and has stated that "It was not the Constitution that failed me, but those who were supposed to uphold it."

The video "A Personal Matter" is an excellent introduction to this lesson.

(Editor's note: Additional background information on the Hirabayashi case and the relocation and internment of Japanese-Americans can be found in the Spring 1990 issue of Update. The issue contains a secondary level classroom activity, excerpts from testimony to the Commission on Wartime Relocation and Internment of Civilians and a bibliography.)

Procedure
1. Pass out Student Handout 1, and ask students to read the background information about the case.
2. Pass out Student Handout 2 (time line) and ask the students to work in pairs to place the events in chronological order on the time line. Review the sequence of events with the entire class.
3. Review the charges against Hirabayashi. He was charged with two counts, or two crimes:

   Violation of Public Proclamation Number 3: Public Proclamation Number 3 established a curfew period and provided that all persons of Japanese ancestry must remain within their place of residence between the hours of 8:00 p.m. and 6:00 a.m.

   Violation of Civilian Exclusion Order Number 57: Civilian Exclusion Order Number 57 required persons of Japanese ancestry in a specific area (including the University District where Hirabayashi lived) to report to a Civil Control Station in Seattle between the hours of 8:00 a.m. and 5:00 p.m. on May 11 or 12, 1942.

   Remind students that the government had the burden to prove these charges beyond a reasonable doubt.
4. Discuss the arguments that both the government and Hirabayashi made at trial. To win its case for violation of the exclusion order, the government was only required to show that Hirabayashi did not report to the Civilian Control Station on May 11 or May 12, 1942. To win its case for violation of the curfew order, the government was only required to prove that he violated the curfew by staying out between 8:00 p.m. and 6 a.m. Hirabayashi argued that he was a loyal American citizen, and that his constitutional rights, specifically his Fifth Amendment right to due process, were violated by the issuance of the orders. He stated that the orders discriminated against him because he was of Japanese ancestry.
5. Discuss with students both arguments, and the reasoning for each side's position. Ask students, in small groups, to decide how they would decide this case if they were the jury. Alternatively, you may ask students to make mock arguments to panels of judges or a jury. Tell students that a jury is bound to apply the law as given to them by the judge, but in some cases a jury could choose to "nullify" the law by disregarding the judge's instructions. (This is called "jury nullification," and is not expressly approved by most courts; in this exercise, however, it allows the students more room to argue.)
6. Ask students to read Student Handout 3. Review and discuss the U.S. Supreme Court decisions and the coram nobis petitions discussed in the handout.
7. As a final activity, ask students to complete Student Handout 4, an opinion poll, and discuss.

Student Handout 1:
Background Information

Japanese began to immigrate to the U.S. in the late 1800s, to replace Chinese laborers who were excluded after the Chinese Exclusion Act was passed by Congress in 1882. Asian aliens were prohibited from becoming naturalized U.S. citizens, and by 1913, limits had been placed on the ability of Japanese to own land (the Webb Act). Finally, in 1924, the Immigration Exclusion Act was passed by Congress, barring all immigration by Japanese to the U.S.

In early 1942, the United States was at war with Japan, following the surprise attack on Pearl Harbor on December
7, 1941. Almost immediately, the Japanese went on to attack Malaysia, Hong Kong, the Philippines, and Wake and Midway Islands. Many people feared Japanese air raids and invasion of the West Coast by Japanese forces. Attitudes toward Japanese-Americans went from relative tolerance to hostility. For example, Henry McLenore, a syndicated columnist wrote in his January 29, 1942 column in the "San Francisco Examiner":

I am for the immediate removal of every Japanese on the West Coast to a point deep in the interior.... I don't mean a nice part of the interior either. Herd 'em up, pack 'em off and give 'em the inside room in the badlands.... Personally, I hate the Japanese. And that goes for all of them.

Other newspapers carried reports of subversive activities by Japanese aliens and Japanese American citizens living on the West Coast of the United States. The "Washington Post," on February 17, 1942, carried a column by Walter Lippmann, the nation's most prestigious political commentator, under the headline:

THE FIFTH COLUMN ON THE COAST

It is a fact that communication takes place between the enemy at sea and enemy agents on land...

[The fact that since] the outbreak of the Japanese war there has been no important sabotage on the Pacific Coast... is a sign that the blow is well-organized and that it is held back until it can be struck with maximum effect.

Nobody’s constitutional rights include the right to reside and do business on a battlefield... And nobody ought to be on a battlefield who has no good reason for being there. There is plenty of room elsewhere for him to exercise his rights.

Reacting to public pressure, and relying on the advice of the War Department that military necessity required it, President Franklin D. Roosevelt issued Executive Order 9066 on February 19, 1942.

Roosevelt signed Public Law 503 on March 21, 1942, making it a crime to violate any of the orders that military commanders prescribed. Lt. General John L. DeWitt, appointed Military Commander of the Western Defense Command on February 20, 1942, began immediately to issue orders pursuant to Executive Order 9066.

These orders included Public Proclamation No. 3 issued March 24, 1942, ordering all persons of Japanese ancestry, both aliens and Japanese American citizens, within certain military areas, to remain in their homes between the hours of 8:00 p.m. and 6:00 a.m. This is referred to as the "curfew order."

DeWitt also issued a series of “exclusion orders,” ordering all persons of Japanese ancestry to leave their homes and report to assembly centers. They were then transported to internment camps.

Gordon Hirabayashi was a student at the University of Washington in the spring of 1942, when the curfew and exclusion orders were issued. Born in Washington State, Hirabayashi attended public schools, where he was a Boy Scout. Later, at the university, Hirabayashi was active in the YMCA and the Society of Friends, or Quakers. His parents were both born in Japan and came to the U.S. as teenagers.

Hirabayashi decided to defy the orders by remaining in the library to study after 8 p.m., and by refusing to comply with the Exclusion Order requiring him to report on May 11 or 12, 1942 because:

It was my feeling at that time, that having been born here and educated and having the culture of an American citizen, that I should be given the privileges of a citizen—that a citizen should not be denied such privileges because of his descent. I expressed my thoughts that I had a right to stay.

Hirabayashi turned himself in to the FBI on May 16, 1942. The FBI charged him with a violation of the Exclusion Order, and placed him in jail, where he remained until his trial. Hirabayashi admitted to defying the curfew order as well, and was charged with a second count.

The case was tried on October 20, 1942, before a jury and Judge Lloyd L. Black, in Seattle, Washington. The judge instructed the jury that both orders were valid and enforceable, and that they were to be found as matters of fact that Hirabayashi was of Japanese ancestry and therefore subject to the orders, that he had violated the curfew, and that he failed to report for evacuation. Based on these findings, the judge instructed the jury to find Hirabayashi guilty. The jury returned in 10 minutes with a finding of guilty on both counts.

At sentencing the next day, the judge took the five months that Hirabayashi had already spent in the King County Jail into account, and sentenced him to 30 days on each count, to be served consecutively. Hirabayashi then asked if he could serve a longer sentence—90 days—because he had found that if his sentence were at least 90 days, he would be allowed to serve the sentence outside a prison, in a roadcamp. The judge agreed, and changed the sentence to 90 days for each count, to be served concurrently (at the same time). Hirabayashi and his lawyers agreed, not realizing that the U.S. Supreme Court would use the concurrent sentences to avoid ruling on the constitutionality of the exclusion order, and rule only on the curfew order, considered to be less obstructive, and therefore more “justifiable.”

Hirabayashi’s was the first case the Supreme Court heard regarding the constitutionality of the military orders issued pursuant to Executive Order 9066. Hirabayashi’s lawyers argued that Congress unconstitutionally delegated its legislative power to the military by authorizing DeWitt to issue the orders, and that the due process clause of the Fifth Amendment prohibited the discrimination against citizens of Japanese descent. Since Hirabayashi was a loyal citizen, he should be treated as an individual. He was being deprived of his life, liberty and property without due process of law.

The government argued that the military commander, DeWitt, had authority from Congress and the President, and that there was no time, due to the imminent danger of air raids and invasion by Japanese forces, to determine the loyalty of individual Japanese citizens.

The Supreme Court issued a unanimous ruling, affirming Hirabayashi’s conviction, and upholding the government’s action. The Court chose to address only the curfew order, because the trial judge had made the sentences on the two convictions concurrent. The Court found that under the war powers given to the President and Congress in Articles I and II of the Constitution, the President and Congress have wide discretion to determine the nature and extent of the danger during war, and how to resist it. The Court concluded that there was a “substantial basis” for the action taken, citing information about how Japanese had not assimilated into the white population, how Japanese children attended Japanese language schools believed to be sources of Japanese nationalistic propaganda, and how many Japanese American citi-
zens were actually citizens of Japan as well, since Japan allowed dual citizenship.

The Court then turned to the discrimination argument, and began by pointing out that the Fifth Amendment does not contain an equal protection clause, such as found in the Fourteenth Amendment. (The Equal Protection Clause of the Fourteenth Amendment is the amendment cited today in discrimination cases (along with many specific laws that prohibit discrimination). However, the Fourteenth Amendment, as written, only applied to actions by the states. At the time of Hirabayashi's trial, the Fourteenth Amendment's "equal protection" clause had not been formally "incorporated" into the Fifth Amendment, and therefore was not applicable to the federal government.)

After stating that distinctions between citizens solely because of their race are "odious to a free people whose institutions are founded upon the doctrine of equality," and that discrimination based on race alone would be insupportable, "were it not for the fact that the danger of espionage and sabotage, in time of war and of threatened invasion, calls upon the military authorities to scrutinize every relevant fact bearing on the loyalty of populations in the danger areas," the Court concluded that:

The adoption by Government, in the crisis of war and of threatened invasion, of measures for the public safety, based upon the recognition of facts and circumstances which indicate that a group of one national extraction may menace that safety more than others, is not wholly beyond the limits of the Constitution and is not to be condemned merely because in other and in most circumstances racial distinctions are irrelevant.

Three other Japanese-Americans challenged Executive Order 9066 all the way to the Supreme Court. Those cases can be classified into three categories, based on the Court's treatment of the issues in its decisions:

Challenge of the Curfew Orders
Hirabayashi v. U.S., 320 U.S. 81 (decided June 21, 1943), and Yasui v. U.S., 320 U.S. 115 (decided June 21, 1943) were both unanimous decisions, in which the Court upheld the constitutionality of the curfew order, as applied to Gordon Hirabayashi and Minoru Yasui.

Challenge of the Exclusion Orders
In Korematsu v. U.S., 323 U.S. 214 (decided Dec. 18, 1944), the Court, in a 6-3 decision, relied on the Hirabayashi case, and affirmed the conviction of Korematsu, upholding the constitutionality of the exclusion orders, as applied to Korematsu. Doing another sidestep, the Court also avoided ruling on the issue whether it would be constitutional to detain Korematsu, concededly a loyal citizen, in one of the camps, since there was no evidence that he would have been sent to a camp, had he reported to an assembly center. Justice Roberts, one of the dissenters, along with Justices Murphy and Jackson, characterized the exclusion orders as "imprisonment in a concentration camp, based on ancestry."

Challenge of the Detention
Ex Parte Endo, 323 U.S. 283 (decided Dec. 18, 1944), was a habeas corpus challenge by Mitsuye Endo in which the Court, in a unanimous decision, found that Endo, as a loyal citizen, could not be legally detained in a camp. The day before the Endo case was decided, the government announced that the camps would close.

Student Handout 2
Time Line
Place the letter of each item where the event would appear on the time line below.
A. The United States declares war on Japan.
B. Gordon Hirabayashi fails to report to the U.S. Civil Control Station.
C. Japanese are encouraged to immigrate to the western United States.
D. President Franklin Roosevelt signs Executive Order 9066.
E. U.S. Supreme Court upholds Gordon Hirabayashi's conviction.
F. Judge Lloyd Black presides at the jury trial of Gordon Hirabayashi.
G. The Webb Act passed, denying Japanese born in Japan the right to own land in the U.S.
H. Japanese planes bomb Pearl Harbor.
I. Gordon Hirabayashi reports to the FBI and is charged with violating the law.
J. Lt. General DeWitt is appointed Military Commander to carry out evacuations in the Western Defense Command.
K. The U.S. enacts the Immigration Exclusion Act, which closes all immigration to the U.S. from Japan.
L. Lt. General DeWitt declares a curfew for all persons of Japanese ancestry.
M. President Franklin Roosevelt signs Public Law 503, which makes a knowing violation of the DeWitt's orders a crime.

Student Handout 3:
The Aftermath
Since the Supreme Court decisions, the United States has reexamined its treatment of Japanese-Americans during World War II. In 1976, President Ford rescinded Executive
Order 9066; four years later, Congress repealed Public Law 503 and created the Commission on Wartime Relocation and Internment of Civilians.

From July to December 1981, the Commission conducted hearings on the internment and, in December 1982, issued its report, *Personal Justice Denied*, which concluded that “a grave injustice” had been committed against Japanese-Americans.

In 1985, Gordon Hirabayashi sought to overturn his convictions, using an unusual legal proceeding called *coram nobis*. The evidence at his second trial consisted of documents found at the National Archives, and others obtained under a Freedom of Information Act request that showed that during the appeal to the Supreme Court in 1943, government lawyers had intentionally withheld from the courts important intelligence reports and other evidence that showed that the “military necessity” for the internment was less dire than the government claimed.

For example, the government lawyers had claimed that there was no time to determine the loyalty of individual Japanese-Americans. The evidence uncovered, however, revealed that the military commanders had decided that it would be impossible to determine loyalty of the Japanese, regardless of the time factor.

The judge at Hirabayashi’s second trial set aside the conviction on Count I, the exclusion order, but not Count II, the curfew order. Both sides appealed, and the Ninth Circuit Court of Appeals set aside both convictions. Finally, in 1987, Gordon Hirabayashi’s struggle to clear his name was over.

In August 1988, Congress passed a statute that provides compensation, up to a maximum of $20,000 per individual, for Japanese-Americans and resident aliens who were living as of August 10, 1988 and who were confined, held in custody, relocated or otherwise deprived of property or liberty as a result of Executive Order 9066.

**Student Handout 4:**

*An Opinion Poll—How Far Can the Government Go?*

*Directions:* Read the following statements and place the letter that most closely corresponds with your opinion in the left-hand blank. SA (strongly agree), A (agree), U (undecided), D (disagree), SD (strongly disagree).

1. The U.S. is at war with Norway. There have been threats of terrorism against Americans, and reports that Norwegians in the U.S. are planning terrorist attacks in major American cities. The U.S. government should be able to require all Norwegian aliens in the United States to report to the government for questioning.

2. The U.S. is at war with Paraguay. There have been terrorist attacks on American citizens living in Los Angeles, allegedly led by Paraguayans. The government should be able to require all American citizens of Paraguayan descent living in the Los Angeles area to report to the FBI for questioning.

3. The U.S. is at war with Pakistan. An American passenger plane was destroyed by a terrorist bomb, killing 250 people. Airline officials in the U.S. should have the right to stop and question anyone boarding an airplane who looks like a Pakistani.

4. Both homosexual men and drug addicts with AIDS should be forcibly quarantined (kept in isolation from all other people) until the AIDS epidemic is controlled. This would be for their own protection, as well as the safety of the public.

5. It is the year 1997. The drug problem in the U.S. has reached epidemic proportions. Crack dealers are on every street corner, and crack houses have taken over large areas in many American cities. The President has issued an Executive Order, declaring the situation a national emergency and authorizing the National Guard to round up dealers and users within areas to be determined by commanders of the National Guard and put them in prison. This should be allowed.

6. Crime involving teenagers in the early morning hours has been on the rise in a large urban area. In order to protect teens from being victims of crime, and to control roving gangs of teens, a curfew should be enacted by the County Council. The curfew would require that everyone 16 years old and under be off the streets between the hours of 11:00 p.m. and 6:00 a.m.

*Julia Ann Gold is an attorney and Deputy Director of the Institute for Citizen Education in the Law at the University of Puget Sound School of Law, Tacoma, WA. The concept for the time line activity was contributed by Larry Lindquist. Funding for the development of this activity was provided by the Commission on the Bicentennial of the U.S. Constitution.*

**Time Line Answer Key**

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<th>G</th>
<th>K</th>
<th>HA</th>
<th>DJ</th>
<th>ML</th>
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<td>1913</td>
<td>1924</td>
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<td>1942</td>
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34 Update on Law-Related Education
### PATHWAY 6: AMERICAN IDENTITY AND PLURALISM

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SESSION VII & VIII – STUDENT FORUM—AMENDMENT 28: PROTECTING DIVERSITY
[Time: Session II—1 hr & 45 min, Session III—1 hr & 45 min]

NOTE: This Student Forum will require two sessions to complete. It should serve as an excellent wrap up to this Academy on American Identity and Pluralism. The Forum draws on the knowledge participants have gained as they consider a hypothetical Constitutional amendment on diversity. The first session introduces participants to the forum structure and provides time for them to prepare for the simulated forum to be held during the following session.

Concepts and Topics: use of law and legal system to address changing values of American identity and pluralism; relationship of law to custom, norms, and values; fundamental values and principles of constitutional democracy

Lesson/Student Forum
“Amendment 28: Protecting Diversity”

Handouts
Copy and distribute the entire Student Forum directions, pp 43-46, to all participants
Enlarged copies of the Proposed Amendment for all participants [consider making an extra large poster copy for display]
Two separate copies of the Forum Ballot [without Know Your Terms attached] for every Forum participant. Head one set “PRE-FORUM” and the second set “POST-FORUM”

SESSION VII [PREPARING FOR THE FORUM]
[Time: 1 hr & 45 min]
Procedure

Opening
(1) Welcome and Warm Up [30 minutes]
- Remind participants that the previous sessions have all focused on issues relating to pluralism and diversity in American society.
- Distribute one copy of the Forum Ballot to each participant. Collect completed copies and retain until the Panel is selected.
- Observe that during this and the following session participants will take charge to conduct a Student Forum on diversity.
- Distribute copies of the Student Forum, pp 43-46 and review it together.

Curricular Focus [1 hour]
(2) Due to time constraints, the length of the character sketches should be much shorter than those given. Students who choose one of these to represent should edit and shorten the information.
Assist [but do not direct!] participants in organizing for the Forum as per the directions given. By the close of this session they should have:

- Tallied the responses to the Pre-Forum Ballot (Panel responsibility)
- Assigned roles for everyone (Panel responsibility) [consider pairs to serve as Clerk and Facilitator]
- Determined what/if any community members will be invited and who will invite them (Panel responsibility)
- Brainstormed and recorded viewpoints for and against the amendment (Facilitator responsibility)
- Formed groups to choose and/or develop sketches for characters to present pro and con viewpoints
- Written additional character sketches and edited any chosen from pp 44-45
- Determined that an even number of pro and con viewpoints will be represented in the sketches (Panel responsibility)
- Outlined an agenda for the Forum, with time frames for each activity/event. The entire Forum should take no more than 1 hour. (Clerk & Facilitator responsibility)

Closing

(3) Debrief and Wrap Up [10 minutes]

- Check to be certain that everyone understands his/her role and responsibility.
- Do they have any questions about what will transpire in the Forum that they will conduct next session?
- How far along are participants in developing their character sketches? They must complete this task prior to coming to the next session.

(4) Look Ahead
The next and final session of this Academy will be the Student Forum.

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

SESSION VIII [CONDUCTING THE FORUM]
[Time: 1 hr & 45 min]

An approximate timeframe for this session follows.

- Allow 10 minutes for everyone to assume their roles and take their places.
- The Forum with follow-up discussion should consume approximately 1 hour and 15 minutes.
- Allow another 20 minutes for participants to complete their Post-Forum Ballot; Panel to tally results, compare to Pre-Forum Ballot tally, and post or report results.

IF THIS IS THE FINAL SESSION OF YOUR ACADEMY, YOU WILL PROBABLY CLOSE BY DISTRIBUTING CERTIFICATES OR OTHER MEMENTOS TO PARTICIPANTS.
Amendment 28: Protecting Diversity

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To the Teacher
The Student Forum is a student-organized open discussion of a legal issue. Your role is to provide copies of materials to the students and to serve as a consultant. The forum is expected to take from two to five class periods depending on the number of characters included and the amount of discussion involved. Copy and distribute forum pages 43-46 to each student. You will need two copies of the ballot on page 46 for each student.

This Student Forum is an opportunity for you to take charge of your own learning. The forum is similar to a town hall meeting in which people come together to discuss ideas and issues. In the forum, you will consider a proposed amendment to the U.S. Constitution. The amendment reads:

All persons born or naturalized in the United States shall enjoy their government’s commitment to the preservation and enhancement of cultural diversity. No state shall make or enforce any law that abridges the fundamental right of citizens of the United States to freely and proudly express their diversity. No rights or opportunities shall be denied based on such expression.

Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

You will also examine your personal views on the subject. Before the forum begins, you will complete a ballot to identify your attitudes about the proposed amendment. Following the forum, you will complete another ballot to determine whether your attitudes have changed.

How to Conduct a Forum
1. The class selects five students to serve on the forum panel.
2. All students complete the pre-forum ballot and submit it to the panel.
3. All students form groups to develop or adapt character sketches for the forum.
4. The class members identify community members that they would like to invite to participate in the forum. With the teacher’s permission, panel members invite guest speakers to the forum.
5. The panel selects student volunteers to serve as facilitator and clerk. It also identifies the students chosen to role-play the characters.

6. The clerk schedules the presentations of the characters and the guest speakers.
7. The students conduct the forum.
8. The class members discuss what policies they would implement.
9. All students complete the post-forum ballot. The panel reviews, compares, and summarizes the results.
10. The panel submits the tally to the American Bar Association.

Getting Ready
To prepare for the forum, become familiar with the language used in the Bill of Rights; observe how language is used to refer to people (1st, 4th, 5th, 6th, 14th, and 15th Amendments); read two or more of the articles in this issue of Update on Law-Related Education. Then, as a class, brainstorm viewpoints for and against the proposed amendment. The facilitator will chart the viewpoints on the board.

As a class, identify community members whom you would like to invite to participate in the forum. You might ask some professionals to testify at the forum; for example, a civil rights attorney, a school district diversity coordinator, an affirmative action administrator.

Organize into an even number of groups of up to five students. With your group, choose a viewpoint for which you will develop a character. Make sure that an even number of pro and con viewpoints are chosen by the groups.

Develop and write a character sketch to promote your viewpoint. These pages include sample character sketches. You may use or adapt these sketches or create your own. Your character sketch should include the character’s name, a specific viewpoint on the proposed amendment, background informa-
tion about the character that supports the viewpoint, and a request for a specific policy position to be adopted. After you have developed the character sketch, select a group member to play the character’s role in the forum. Give a copy of your character sketch to the panel, and tell the panel who will role-play the character.

**Student Roles**

**Panel**
The panel organizes the forum. Members tally and submit the results of the pre-forum and post-forum ballots. The panel sends ballot data to the ABA. It invites community members to participate in the forum upon recommendations from the class. It reviews and selects characters to be included in the forum and selects student volunteers to serve as clerk and facilitator. It provides a list of student and guest participants to the clerk. During the forum, panel members serve as members of the audience.

**Clerk**
The clerk receives a list of characters and guest speakers from the panel. The clerk then schedules the speakers for the forum. She or he may organize the presentations so that, for example, each pro position is followed by a con position or all pro positions are presented first followed by all con positions. The clerk presents the schedule of speakers to the facilitator. During the forum, the clerk may wish to take notes.

**Facilitator**
The facilitator opens the forum with a statement of purpose, such as “to explore whether the U.S. Constitution should be amended to preserve and protect cultural diversity.” The facilitator calls on speakers to present their arguments in a five-minute period. He or she times the presentations and encourages audience members to ask questions and participate in a discussion of the issues. The facilitator closes the forum.

**Audience**
The audience (students who have not assumed roles as clerk, facilitator, or characters) participates by listening to testimony, asking questions, and discussing the issues.

**Characters**
Characters have five minutes to testify about their experience, viewpoint, and recommendation. They are questioned by the audience and should answer consistently within their role.

**Character 1** My name is Michael Tymkovich. I have studied the U.S. Constitution for many years, and I want to explain how our Constitution has been changed in the past to reflect our evolving respect for diverse peoples. It is time for us, once again, to revise this document to bring it into alignment with the character of this nation.

The drafters of the Constitution and Bill of Rights were very similar to one another. They were educated and Anglo-European, and they were all men. The only constitutional reference they made to people other than themselves is found in Article I, Section II: “Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons.”

It wasn’t until after the Civil War that additional Amendments to the Constitution addressed, and attempted to remedy, injustices imposed on some groups. In 1868, for example, the Fourteenth Amendment was passed, and it changed the Constitution to read: “Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed.” (Bracketed material was set aside by later Amendment.) This and other Amendments addressed problems specifically related to the states’ limiting equal protection and due process rights. They did not address the rights of diverse groups of people, but the rights of individuals who were members of minority groups.

The U.S. population has changed significantly in the past century. We are no longer a melting pot but a nation of many diverse populations who are proud of, and want to protect and promote, their unique identities. It is time to once again amend the Constitution to institutionalize our support for the diversity that now characterizes our population.

**Character 2** My name is Henry Chin, and I work for the U.S. Census Bureau. Therefore, I am well qualified to comment on the socioeconomic changes that we are witnessing in this nation. In 1990, the U.S. Census uncovered a wealth of data that demonstrate just how diverse a nation we have become, and the disparities within which we live.

Many people will look at the proposed constitutional amendment and think about our changing ethnic and cultural diversity. From the census
data, they can cite statistics that tell us that between 1980 and 1990, there was a 53% increase in the number of people who identified themselves as of Hispanic origin, and a 54% increase in those who identified themselves as Mexican. They can tell us that 15% of the students in the New York City Public Schools are not proficient in English. The students speak many different tongues—including 90,000 who speak primarily Spanish, 13,000 who speak Chinese, 7,000 who speak Haitian Creole, 5,000 who speak Russian, and 500 who speak Farsi.

And the 1990 census revealed many problems. We know that black teenagers are six times more likely than whites to be fatally shot by someone else, but half as likely to take their own lives with a gun. We know that, in the past decade, births to unmarried women soared about 75%. More households owned three vehicles than those that owned one vehicle; yet home ownership declined for the first time in 50 years, while crowding and poverty increased.

There is much more that we can learn from the census data. But the important point that I want to make is that amending the Constitution will change nothing. Respect for cultural diversity must come from the people themselves, and solutions to socioeconomic problems must come through legislation by our elected officials. Amending the Constitution will only hold out an empty promise to decent people who deserve better.

**Character 3** My name is Sherman Free Soul. I am a member of an Iroquois Nation, and my ancestors inhabited this land long before the invasion by Europeans. I strive to live my life in a manner that is consistent with the values and traditions of my ancestors. The actions of the U.S. government make it more and more difficult for me to do so. My children attend schools where they do not learn about their culture and the role that our tribe played in the founding and development of this nation. For example, Benjamin Franklin sent a delegation to visit the Iroquois Nation to learn about our confederacy, and that information was used to help them write the U.S. Constitution. As you can see, our contributions have been great.

My children are growing up in an environment in which their culture is not respected. The United States creates an artificial boundary for my people. Many members of my tribe live in Canada, where their cultural heritage is respected and protected by law. The Canadian Charter of Rights and Freedoms, which is part of the Canadian Constitution, states: "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians." I think that it is time to amend the U.S. Constitution to include similar protection.

**Character 4** My name is Martha Alexander, and I am a member of America for Americans. We are a national organization that provides educational programs to teach people about this nation’s history and founding principles. America has provided a safe haven for people throughout the world at times when their own countries denied them freedom and safety. People have come to our shores to find a better life, one where they can raise their families free of conflict. In the past 100 years, we have taken in people from every continent. All these people should stand ready to become Americans and forsake those nations and cultures that they abandoned.

America for Americans believes that the liberty, freedom, and resources that U.S. citizens enjoy should be reserved only for them. This is why we mobilized in California this fall to support Proposition 187, which denies illegal aliens schooling, social service, and most medical care. People who understand this nation’s history know that this is the land of freedom, and will always be so. The same freedom and liberty are offered to every person who legally enters our country. There is no need to change the Constitution, which has served us well for over 200 years, as it already contains the necessary protection for persons of diverse cultures. Instead, we should be protecting U.S. citizens from obvious inequities, such as in California, where taxpayers are paying $2.4 billion a year to provide for 1.7 million illegal aliens.

**Character 5** My name is Juanita Garcia, and I am a high school junior. At my school, only 7% of the students are Latino or Latina. There are only two Latina teachers out of a faculty of over 50. I am always aware of how different I am from the majority of students. I still have an accent and am uncomfortable speaking publicly. My parents do not attend school functions because they do not speak English well, and they do not look like the other students’ parents. I am proud that I am still in school and I plan to graduate. It is very important to my parents for me to receive a high school diploma because they never had a chance to do so. However, my high school has a dropout rate of more than 50% for Latino students. Anglo students drop out at a rate of only 6%. Many of our parents came to this country so that their children would have better opportunities than they did. But we do not really have the opportunity to receive a high school education if we always feel uncomfortable at school.

I believe that passage of the proposed constitutional amendment will send a message to everyone in the United States that my friends, family, and I are respected and valued as much as anyone else in this country. We are willing to work hard, and we are good citizens. We deserve the same respect and opportunities as everyone else.
FORUM BALLOT

Respecting and Protecting Diversity: What Should the U.S. Government Do?

Circle the choice that best answers how you feel about the issue.

I believe all public schools should
1. Make diversity-sensitivity training a graduation requirement.  
2. Incorporate multicultural perspectives into the teaching of all classes.  
3. Only hire teachers who have been trained to work with diverse populations.  
4. Expel students who demonstrate intolerance for minority groups.  
5. Maintain a library that provides resources about all cultures and lifestyles.  
6. Prohibit speech that is hostile to any minority group.

I believe all law-making bodies should
7. Include a diversity clause in every bill that is passed, just as we include safety or budget clauses now.
8. Allocate funds to equally serve diverse ethnic, racial, and lifestyle groups.
9. Enhance punishment for bigotry-based criminal behavior.
10. Require diversity-sensitivity training for all elected officials before they take office.

I believe justice system agencies should
11. Be required to hire staff proficient in the languages spoken by the populations served.
12. Broaden the jury selection process to insure greater diversity in jury pools.
13. Require diversity-sensitivity training for all staff.
15. Provide documents and literature to the public in each language read by the populations served.

Complete the sentences below based on your personal opinion.
16. The most useful and effective measure that the government can take to promote multicultural unity in schools is to

17. Lawmakers will serve the best interests of all cultural groups if they would

18. The most valuable thing that the justice system agencies can do to enhance equal treatment and respect for all cultural groups is to

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Know These Terms

**Constitutional amendment** Constitutional amendments may be proposed by a two-thirds vote of each house of Congress or by a national convention called by Congress at the request of two-thirds of the states. To become part of the Constitution, amendments must be ratified, or approved, by the legislatures of three-fourths of the states, or by conventions in three-fourths of the states.

**Due process** This basic legal principle, which appears in the 5th and 14th Amendments, requires the government to be fair in its dealings with people. The Amendments forbid federal, state, and local governments from depriving people of "life, liberty, or property, without due process of law."

**Equal protection under law** This phrase from the 14th Amendment means that no person or class of persons may be denied the same protection of the laws that is enjoyed by other persons in similar circumstances.

**Fundamental right** This is a right explicitly or implicitly guaranteed by the Constitution.

**Naturalized citizen of the United States** This person has completed the process of acquiring U.S. citizenship and so has become entitled to all privileges of citizenship.