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ABSTRACT

The primary focus of this legal education module, second of five to be integrated into an 11th grade American history course, is on the five legal tools needed to provided for the needs of our society. The functional analysis of government provided by this module allows students to investigate the various branches of government and administrative agencies within a single conceptual framework. In addition, a useful structure is provided for the investigation of the governmental processes of a local community. Four understandings, or objectives, survey the resources at the disposal of a legal system, examining five distinct legal techniques at work on the illustrative social problems of pollution and highway safety; explore each legal technique to discover the roles of various officials and private citizens in its operation; consider techniques of law that might be ill-designed or misused; and examine how effective treatment of a social problem by the legal system may depend on assignment of appropriate legal techniques to work on the problems. The format of this module follows that described for Module I, SO 007 673. (Author/KSM)

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TEACHING ABOUT BASIC LEGAL CONCEPTS
IN THE SENIOR HIGH SCHOOL

MODULE II - THE SYSTEM: LEGAL TECHNIQUES AT WORK

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SP 007 672

MODULE II - THE SYSTEM: LEGAL TECHNIQUES AT WORK

1. *The Main Focus.*

How does law work, and what difference does it make to high school social studies students? Laws exist for people. Law can be viewed as a set of social tools or social control techniques that may be used to improve the quality of life. Like most other tools, laws don't work automatically, but are used by men. Like most tools, laws can be misused or used effectively. This module attempts to convey understandings about the dynamics of the operation of our government and legal system through a survey of legal techniques.

2. *Why This Focus?*

First, a survey of the various legal techniques tells students about the nature of law, giving them a more accurate picture of what law is and how it may be used to facilitate social interaction and to alleviate social problems. Second, a survey of the techniques by which law works should help students to identify the roles of private individuals in influencing, activating, and operating our legal system, and to see that as some of law's resources work, the role of private citizens is quite remote, while in the case of others, that role is critical. Third, by looking at the ways law can work on a problem, students should come to understand that a system of law may fall short of its goals because some laws may be unsound, because sound laws may be unfairly applied, and because the wrong resources may be put to work on a problem.

3. *Outline of the Teaching Scheme.*

This module considers the operation of the legal system through four understandings. The first understanding surveys the resources at the disposal of a legal system, examining five distinct legal techniques at work on the illustrative social problems of pollution or highway safety. The second understanding explores each legal technique to discover the roles of various officials and private citizens in its operation. The third understanding considers how techniques of law, like any other tools, might be ill-designed or misused. The fourth understanding examines how effective treatment of a social problem by the legal system may depend on assignment of appropriate legal techniques to work on the problem.

SUMMARY OF UNDERSTANDINGS

- I. SEVERAL DISTINCT LEGAL TOOLS OR TECHNIQUES CAN BE USED TO DEAL WITH THE NEEDS OF OUR SOCIETY.
- II. THE ROLES OF CITIZENS AND OF OFFICIALS VARY IN INFLUENCING, ACTIVATING, OR OPERATING EACH DISTINCT LEGAL TECHNIQUE.
- III. THE EFFECTIVENESS OF THE LEGAL TECHNIQUES DEPENDS IN PART UPON THE SOUNDNESS OF THE CONTENT OF THE LAWS AND UPON THE SOUNDNESS OF THE PROCESSES USED TO ADMINISTER THE LAWS.
- IV. THE EFFECTIVENESS OF LAW DEPENDS UPON CAREFUL SELECTION OF THE MOST APPROPRIATE LEGAL TECHNIQUE(S) TO USE ON A PARTICULAR PROBLEM.

UNDERSTANDING I

SEVERAL DISTINCT LEGAL TOOLS OR TECHNIQUES CAN BE USED TO DEAL WITH THE NEEDS OF OUR SOCIETY.

A. *Explanation of Understanding I*

For our purposes, law is best explained as a set of specific social resources which may be organized into five basic techniques that can be put to work to perform social functions.

The five basic legal techniques are:

1. The distributive technique
2. The regulatory technique
3. The penal technique
4. The remedial technique
5. The private arrangement technique

The remainder of this section, which describes these legal techniques, is organized as follows:

1. A brief general description of each legal technique
2. An explanation of the reasons for using this scheme in teaching how the government and legal system operates
3. A chart showing the legal techniques scheme at a glance

The distributive technique. A legal system may collect taxes and use them for public benefits (e.g., public highways, welfare assistance, public education). This operation involves governmental action and is a "legal technique" because taxation and the conferral of such public benefits is shaped and ordered by law.

The regulatory technique. A legal system may submit certain acceptable activities to regulation to curb abuses. It is obviously desirable to have manufacturers prepare food, provided such products comply with standards of purity. When a legal system empowers officials to make such standards and see that citizens comply with them, the system is using the regulatory technique.

The penal technique. Some conduct is wholly antisocial (e.g., murder and theft). We use the penal technique to prohibit and punish such conduct in an attempt to discourage its occurrence.

The remedial technique. This basic technique is most familiar in the form of court lawsuits that seek to force defendants to pay compensatory damages to those they have harmed in some way.

The private arrangement technique. A legal system leaves a great many problems to private decisions, private arrangements, and private administration. These private activities may be carried on by individuals, groups, organized bodies, or corporations. The private arrangements involved may include contracts, property transfers, employment relations, and so on. The law plays important roles in these private activities. First, law permits these activities. Second, it facilitates them by specifying in the law itself how, for example, valid corporations shall be formed, how valid contracts shall be formed, and how lawful property transfers shall be made. Third, when such arrangements break down (e.g., when a contract is broken), the law usually stands behind the arrangement, awarding damages for the loss sustained by the wronged party due to the breaking of a contract.

When the government of the United States was formed, three separate branches were constituted. In this governmental framework, specific limited powers were assigned to the legislature, the executive, and the judiciary. The primary reason for such separation of powers was that each branch of government would serve as a check on the others, thus protecting the governed from the potential oppression of a concentration of governmental power. Teaching the function of separated powers to limit officials is important, and is considered in Module IV.

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Traditionally, students learn that the legislative branch makes and changes laws, the executive branch enforces laws, and the judicial branch interprets and applies laws. Unfortunately, this is not an accurate and informative way to analyze the operation of American government. One difficulty, for example, is that government officials of independent regulatory agencies whose positions are normally created by the legislature and filled by the executive (e.g., Federal Communications Commission, Federal Power Commission) are difficult to classify as part of the legislative, executive, or judicial branch.

This module proposes a "legal techniques" analysis of the legal system. Surveying the operation of various legal techniques presents a more refined picture of the activities of government officials than does the analysis of the operation of government branch by branch.

Separation of powers analysis inaccurately suggests that law is made by one branch of government, enforced by another, and interpreted by yet another. Actually, while the power to legislate rests exclusively with the legislature, officials in the executive and judicial branches also make and change law in performance of their constituted duties. The executive is not the only branch that enforces laws, for judges and administrators also share in this task. Laws are interpreted and applied in conflict situations by administrators as well as by judges.

Separation of powers analysis unrealistically separates the structure of government from the operation of law, for not only is the government structured by law, but law provides the tools with which government operates. The legal techniques analysis turns the focus from structure of government to analysis of structure in terms of operational processes. The emphasis is on the process.

In addition, the legal techniques analysis of the legal system helps put law in perspective as a subject for humanities or social studies, for the legal techniques are legal resources that can be used or misused in working on the problems of improving human social life. Finally, the legal techniques analysis provides a greater opportunity than does the separation of powers analysis to consider systematically and realistically many traditionally fragmented concepts of the operation of government, such as the role of the individual in the operation of the legal system.

B. *Teaching Understanding I*

NOTE: Students seem to need a brief introduction to all five law techniques before delving deeply into any one. The purpose of this understanding is to identify the five techniques.

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OBJECTIVES

- . Given examples of problems to be solved in order to improve the quality of life, the student will list several ways that law can provide resources for solution of each problem.
- . The student will list 10 ways in which the average individual is affected by law, and will classify each in terms of the basic legal techniques represented by that function of the law.

QUESTION TO REACH UNDERSTANDING

- . What resources does law have at its disposal to work on the problems of society?

LEGAL TECHNIQUE	DESCRIPTION OF TECHNIQUE	FUNCTION OF TECHNIQUE	EXAMPLES OF TECHNIQUE
DISTRIBUTIVE TECHNIQUE	Provides for the collection of money, for the conversion of this money into benefits for the members of the society, and for the distribution of these benefits.	Provides for the collection of money. Provides for the distribution of public benefits.	Provides for collection of money through government taxation and collection of fees. Provides for the distribution of benefits such as welfare and social security payments and provides for general benefits such as defense and education.
REGULATORY TECHNIQUE	Establishes guidelines for citizen action in order to facilitate and coordinate various activities in our complex society.	Provides guidance and coordination of complex activity for purposes of safety and efficiency.	Provides standards and guidelines for such needs as control of automobile and air traffic and of pollution.
PENAL TECHNIQUE	Prohibits and punishes certain antisocial or criminal behavior in order to discourage such behavior.	Attempts to discourage antisocial behavior through the threat of punishment.	Prohibits and punishes offenses such as rape, murder, and theft.
REMEDIAL TECHNIQUE	Provides for private legal proceedings in order to repair the harm done by one party to another.	Orders harmful activity halted. Attempts to repair harm done.	Orders harmful activity halted through injunction. Orders reparations for harm done through judgments for offenses such as slander, negligence, and breach of contract.
PRIVATE ARRANGEMENT TECHNIQUE	Permits, structures, and enforces certain arrangements where the legal rights and duties of the arrangement have been determined by private parties.	Allows and supports legal arrangements between private parties. Enforces such arrangements when necessary.	Supports private arrangements such as wills and contracts.

DETAILED DESCRIPTION OF STRATEGIES

(a) In a general class session, ask students this question or a variation of it: What sorts of things can law do, or what can law accomplish? Responses from students might include the following: tax people; spend money; make rules; punish wrongdoers; deter wrongdoers; repair damage; settle disputes; encourage or permit various activities.

After listing student contributions for all to see, group these ideas in a manner that will provide a lead-in to the various legal techniques. The teacher should assist students in categorizing their ideas on what law can accomplish to the extent that the students are able to do so. The teacher may then supply the labels for the various techniques, explain the concepts of legal techniques, and have students discuss why a specific label (e.g., distributive) is used with that legal technique.

At the completion of these two steps, the arrangement of information on the board might resemble the following:

What can law do? Techniques of the law:

Distributive

- tax 1. Collect money
- spend 2. Distribute benefits

DISCUSSION OF STRATEGIES AND RESOURCES

1. Distributive Technique. The distributive technique works by collecting public monies and converting them into benefits for members of society and distributing such benefits to most social needs. Federal, state, and local tax collection is the primary source of public monies. These are supplemented by public revenues such as licensing fees and tolls. The benefits of the distributive technique go to the public in many forms. The welfare check may go in the form of money to members of society who have particular financial needs. The benefit distributed in the form of public education may be available to all in the form of classroom instruction.

2. Regulatory Technique. The sorts of activities subject to the regulatory technique vary greatly from directing traffic at a busy intersection to regulating sales of corporate securities. In any case, this technique operates to provide direction, standards, and coordination where they are needed.

3. Penal Technique. Law's penal resource defines activity that creates social problems and discourages such activity by punishing it when it happens. This primary function of the penal technique is its deterrence function. If antisocial activity results in punishment, this will serve as an example and other people will be deterred from similar conduct. The individual who is unconcerned with the danger of drunken driving may be deterred from driving while drunk if the result is an appropriate penalty. Penal laws against theft try to secure rights in property from those who would help themselves to the belongings of others. Laws making rape, murder,

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DETAILED DESCRIPTION OF STRATEGIES

- . make rules
 - . punish wrongdoers
 - . deter wrongdoers
 - . repair damage
 - . settle disputes
 - . encourage/permit activities
- Regulatory
1. Guidance
- Penal
1. Punish
 2. Deter
- Remedial
1. Stop harmful activities
 2. Repair damage
- Private Arrangements
1. Allow legal arrangements among private parties

(b) The following strategy is intended to develop an understanding of how the five legal techniques work on two specific problems. The strategy is directed toward clarifying the functions of those techniques.

Divide the class into five groups. Give each group one of the following statements.

1. The distributive technique is used to provide for the collection of money, for the conversion of this money into benefits for members of the society, and for the distribution of these benefits.

DISCUSSION OF STRATEGIES AND RESOURCES

and assault crimes try to protect the security of people by discouraging those who might otherwise do them physical harm.

The penal technique performs other functions. In theory, after criminals are convicted, they are to be rehabilitated at our correctional institutions. This process also serves to isolate antisocial people from society so they cannot do more harm. Orderly, official sanctioning of criminals also serves as a healthy substitute for private retaliation by the victims of crimes or their friends and family.

The penal technique services to support the regulatory technique. There may be a tendency to confuse the penal and the regulatory techniques because there is an overlap. If one fails to conform to the guidance of the regulatory technique, he may be faced with a penalty of the penal technique. If one proceeds to drive while not meeting the regulatory standards for getting a license, he may be arrested and punished. But there is an important difference between laws setting standards for drivers' licenses and laws prohibiting murder and theft.

The regulatory laws set standards where *guidance* is necessary to inform people and direct and coordinate social activity. Highways would be less safe if everyone decided when he was qualified to drive. With laws that are primarily *penal*, such as those prohibiting rape, the *function of the law* is not *primarily guidance*; it is accepted that rape is wrong and should be prohibited and punished.

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DETAILED DESCRIPTION OF STRATEGIES

2. The regulatory technique is used to establish guidelines for citizen action in order to facilitate and coordinate various activities in our complex society.
3. The penal technique is used to prohibit and punish certain antisocial or criminal behavior in order to discourage such behavior.
4. The remedial technique is used to provide for private legal proceedings in order to repair harm done by one party to another.
5. The private arrangement technique is used to permit, structure, and enforce certain arrangements where the legal rights and duties of the arrangement have been determined by private parties.

Direct each group to determine how the assigned technique can be brought to bear on these two problems:

- Pollution
- Highway Safety

Each group should also attempt to list other examples of how the assigned technique might be used on other problems or for other concerns. The teacher should insure that the proper emphases are developed. (See below.)

Using a fishbowl format, have a representative of each group explain how the technique

DISCUSSION OF STRATEGIES AND RESOURCES

The function of the penal technique is to deter people from antisocial activity; the function of the regulatory technique is to help inform people and supply guidance and standards to coordinate social activity. But when people purposefully disregard the regulatory technique, they confront sanctions similar to those of the penal technique.

4. Remedial Technique. The remedial technique is concerned with providing an orderly means by which one party can legally settle disputes with another private party. This technique provides remedies for private citizens who have been harmed by other individuals by providing for private lawsuits. These are civil suits between private parties. The criminal prosecutions of the penal technique are between the state and an accused.

This technique differs from the three already presented in that its primary function is compensation or repair once injury has occurred. This technique remedies by court action one individual's harm to another. This court action takes the form of judgments for payment for harm caused or injunctions (court orders) to halt a harmful activity.

5. Private Arrangement Technique. The final technique is not actually legal activity, but legal arrangement and legal support of certain private arrangements. Much social activity is not regulated by official direction of the law, but is controlled by private arrangements that are backed by law. This technique provides that in certain ways, the law will support the terms of these arrangements and give the force of law to privately created rights and duties. For example, a person can make a will

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DETAILED DESCRIPTION OF STRATEGIES

assigned to his group could be brought under consideration. The exchange of information must be thorough enough so that each student gains a grasp of how each technique would work. Have each group summarize its ideas on a large piece of paper. "Magic markers" would be useful. The large summary sheets can be posted on the walls. One or two students may be assigned to make notes and duplicate them for each member of the class.

(c) Before preceding further, the teacher may want to insure that students have more information regarding the five legal techniques. The teacher may use a modified version of the chart on page 6. In simplest form, the chart might appear as follows:

Name of Technique	What it is/ What it does	Examples
1.		
2.		
3.		
4.		
5.		

With help from the teacher students can "flesh out" the chart. Each student can be provided with a duplicated blank chart, and the teacher can work with a transparency of the chart on an overhead projector.

DISCUSSION OF STRATEGIES AND RESOURCES

indicating to whom he would like to leave his property when he died. If his will follows a particular form, it will be given the force of law. The content of the law is determined by the private party who made the will.

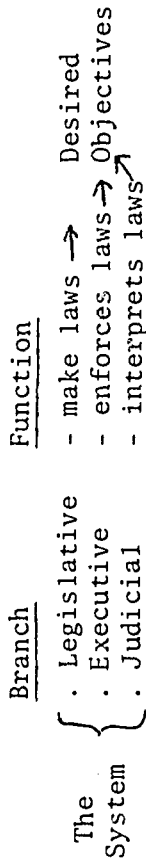
Our legal system leaves a great many matters to private decision, private arrangements, and private administration. These private activities may be carried on by individuals, organized groups, or corporations. Common examples of the private arrangement technique are contracts and charters of corporations or other associations. With a contract, the parties become legally bound to fulfill the promises they have exchanged. With a charter, an association or corporation has legal rights and duties in the activity it performs. The directors privately establish in a charter what the purpose of the group will be. The law plays important roles in these *private* arrangements. It permits them, it lays down formal guidelines of validity to be followed, and it enforces the arrangements if disputes arise in the course of their private administration.

Possible ways in which the five legal techniques can be brought to bear on the problems of pollution and highway safety, and the major thrust in the function of each technique include:

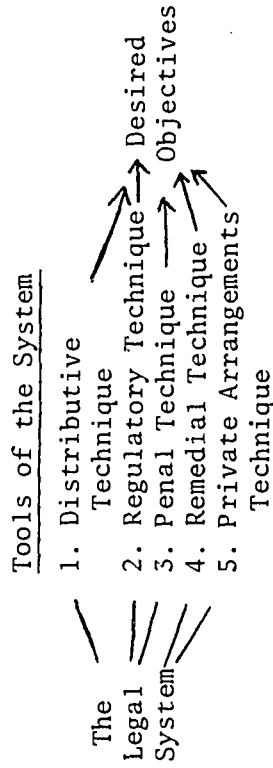
1. Distributive Technique
 - Emphasis: the two aspects of the distributive technique:
 - a. collection of money
 - b. distribution of benefits

DETAILED DESCRIPTION OF STRATEGIES

(d) Ask students to analyze the functions of government in accordance with the traditional division of government into three branches. Summarize the analysis, which might approximate the following on the chalkboard:



Have students present a brief analysis of the functions of the legal system in terms of the five legal techniques. The teacher may assist with a simple summarizing diagram similar to this:



Conduct a discussion around the following questions:

- Are there any difficulties or inaccuracies to be found in the traditional analysis? Explain or give examples.

DISCUSSION OF STRATEGIES AND RESOURCES

Pollution:
Tax dollars for sewage and rubbish disposal
Tax dollars for research

Highway Safety:
Tax dollars for safe highway construction
Tax dollars for driver education

Additional Examples:
Public education
Public sanitation
Public parks and recreation
Welfare
Public transportation

2. Regulatory Technique
Emphasis: the guidance function of the regulatory technique.

Pollution:
Setting guidelines for amounts of permissible air and water pollution
Setting standards for auto manufacturers

Highway Safety:
Licensing drivers
Inspecting autos
Establishing uniform traffic control devices

Additional Examples:
Making and applying licensing standards for pilots, airplanes, airports
Controlling and coordinating use of radio and TV airwaves
Regulating limits on the amount of wildlife and timber that can be taken by hunters and lumberman

DETAILED DESCRIPTION OF STRATEGIES

boys and girls should be assigned to work with the topic. Teachers who feel insecure in terms of background on this subject may wish to contact women's action groups, such as NOW, women's organizations such as Business and Professional Women, and women attorneys in the community for assistance.

Valuable resources include the Fall 1972 issue of the *Bill of Rights Newsletter* entitled "Sex and Equality" (see bibliography). The Public Information Service, Office of Civil Rights, Department of Health Education and Welfare, Washington, D.C. 20201, will supply without charge a wall chart entitled "Federal Laws and Regulations Concerning Sex Discrimination in Educational Institutions."

The Feminist Press, SUNY, Old Westbury, N.Y., is a foundation-supported organization which publishes a number of titles useful for a case study of this topic.

DISCUSSION OF STRATEGIES AND RESOURCES

Additional Examples:

One might seek a remedy for:
 harm caused by a physical attack (assault and battery)
 damages to his reputation (written libel or spoken slander)
 harm caused by another's carelessness (negligence)
 harm caused by taking or destruction of or interference with property (conversion or trespass)
 harm caused by breaking of a binding contract (breach of contract)

5. Private Arrangement Technique

Emphasis: the function of the private arrangement technique to allow legal arrangements between private parties.

Pollution:

Private associations (the Sierra Club)
 . encouraged with tax-free status

Highway Safety:

Encouragement of private efforts (AAA)
 Liability, collision, medical insurance arrangements

Additional Examples:

Private employment, sales, loan or insurance agreements (contracts)
 Arrangements to give away possessions at death (wills)
 Arrangements where property is entrusted to one person to care for it for another person (trusts)

UNDERSTANDING II
IN INFLUENCING, ACTIVATING, OR OPERATING EACH DISTINCT LEGAL TECHNIQUE, THE ROLES OF CITIZENS
AND OF OFFICIALS VARY.

A. *Explanation of Understanding II*

The scheme of legal techniques presented in the first understanding provides an approach for analysis of how government and the legal system operates. By considering each legal technique to see what government officials are at work and to see what roles the individual citizen might play, students can get a reasonably good idea of how the system works.

B. *Teaching Understanding II*

OBJECTIVES

- The student can classify statements from laws or from a constitution in terms of the legal technique delineated by the statement and the function provided for.
- Given a case history of an individual, the student can describe each situation in which law has affected the individual and identify the agencies or officials who played an important part in applying the specific legal technique in that instance.
- Using situations described in the newspaper, or portrayed on TV, in which an individual is purported to be wronged by another, the student can list the appropriate agencies and/or officials to whom the person should apply for redress.

QUESTIONS TO REACH UNDERSTANDING

- What different legal officials take part in operating the various legal techniques?
- How does the role of the individual differ in the operation of the various techniques?

NOTE: It is not necessary to use all of the following suggested strategies with any given technique.

DETAILED DESCRIPTION OF STRATEGIES

(a) Small Group Strategies

Divide the class into five groups. Have each group follow the small group strategies related to one of the legal techniques. As each group completes the examination of laws or documents related to one of the legal techniques, the group should exchange materials with another group so that each group of students will have progressed through a study of the materials related to all of the five legal techniques. Students will find it helpful to make notes regarding the laws and documents as they are examined by the group.

Distributive Technique - Small Group Strategies

The group should examine a local, state or Federal law that provides for the collection of money or for the distribution of benefits.

Collection of money:*

McKinney's Consolidated Laws of New York, Vol. 59, "Tax Law," Sections 801 and 809.

Distribution of benefits:

New York Constitution, Article XI, Section I.

*See p. 28 for excerpts from these references.

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1. Distributive Technique. Legislative bodies usually decide to launch a distributive program. By passing statutes, legislators decide how revenues will be raised, and they decide how to channel the distribution of public benefits. The executive, by asserting political pressure on legislators; voters, by expressing public opinion and by influencing representatives; and private interest groups, by political pressure of the lobby have an influence on these decisions.

The officials who decide to launch a distributive program are not the same people who actually carry these programs out. Special administrators may direct these efforts and may employ private citizens to deliver the benefit to members of the public. For example, influence from the executive, interest groups, or voters may cause the legislative branch to allocate dollars to the problem of pollution. A state or local administrative bureau may then decide how this money will be spent. It might employ a private contractor to carry out some research or to build a sewage disposal plant. The public is ultimately the beneficiary of this process.

Expert administrators do much of the detailed work of the legal system. Legislatures normally pass laws authorizing the creation of administrative organs such as the Highway Department, the Internal Revenue Service, the Food and Drug Administration, or the Education Department. The executive usually appoints the administrative official to fill the positions created by the legislature.

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The group should examine a local, state, or Federal law that provides the governmental structure necessary to apply this law.

Collection of money:

McKinney's Consolidated Laws of New York, vol. 59, "Tax Law," Sections 170 and 171.

Distribution of benefits:

McKinney's Consolidated Laws of New York, vol. 16, "Education Law," Section 101.

Regulatory Technique - Small Group Strategies

The group should examine a local, state, or Federal law that provides guidance for citizens through specific regulation of activities.

McKinney's Consolidated Laws of New York, vol. 62A, "Vehicle and Traffic Law," Sections 501, 301 (see also, Motor Vehicle Dept. Forms MV-2000, MV-501, and MV-1075.1).

McKinney's Consolidated Laws of New York, vol 3, "Alcoholic Beverage Control Law," Section 103.

"Air Quality Control Act" in United States Code, Title 42, Section 1857d.

DISCUSSION OF STRATEGIES AND RESOURCES

2. Regulatory Technique. Legislators and administrators play the key role in operating the regulatory technique. Private individuals, interest groups, and the executive may have an important influence. Generally, the legislature decides that a particular subject area needs expert regulation and creates administrative commissioners and bureaus of experts to carry out a regulation program. The legislature may make broad guidelines for regulation, but details of making and implementing regulations are usually left to the administrators. For example, the legislature may decide that some kind of standards are needed for licensing drivers. The legislature then passes a statute creating a body of administrative experts (Bureau of Motor Vehicles) and gives them some general guidelines: "Before a license is granted the applicant shall pass such examinations as to his qualifications as the Commissioner of Motor Vehicles shall require." The details of constructing and administering standards for getting a license are left to the experts.

The regulatory technique is generally operated by experts of particular subject areas who supply directions and set standards which help prevent problems in the subject areas: many air tragedies are probably avoided because pilots, aircraft, and airports must meet minimum standards of the regulatory technique in order to be licensed; problems of alcohol use and abuse are probably reduced because of guidelines and standards concerning consumption, age, and manufacture. Much of the work of the regulatory technique is carried out by private citizens as they voluntarily conform to established regulatory standards.

DETAILED DESCRIPTION OF STRATEGIES

The group should examine a local, state, or Federal law that provides the governmental structure necessary to apply this law.

McKinney's Consolidated Laws of New York, vol. 62A, "Vehicle and Traffic Law," Sections 200 and 210.

McKinney's Consolidated Laws of New York, vol. 5 "Alcoholic Beverage Control Law," Section 10.

"Air Quality Control Act" in United States Code, Title 42, Sections 1857c-1 and 1857o.

Penal Technique - Small Group Strategies

The group should examine a local, state, or Federal law that defines an illegal act or provides punishment for committing illegal acts.

Definition of act:

McKinney's Consolidated Laws of New York, vol. 39, "Penal Law," Sections 125.25, 155.05 and 170ff.

Punishment for act:

McKinney's Consolidated Laws of New York, vol. 39, "Penal Law," Sections 55 through 80.

DISCUSSION OF STRATEGIES AND RESOURCES

Other examples of the regulatory technique operate in a similar manner. The legislature decides that regulation of pollution, transportation, education, stocks and bonds, communications, or commerce is necessary. It then lays down broad guidelines and creates administrative offices. The executive usually fills these offices and the administrators provide the day-to-day regulating.

The executive, private individuals, and interest groups may have an influence on the regulatory process. For example, shortly after he entered office, President Nixon made it clear that he wanted Congress to create a new administrative agency to regulate environmental abuse more effectively. Private interest groups like the Environmental Defense Fund or the auto manufacturers' lobby put pressure on the legislature to increase or decrease regulation in an area like pollution control. The highway department may put a stop light at an intersection when the need is pointed out by private citizens.

3. Penal Technique. Like the two techniques already discussed, various officials have roles in putting the penal technique to work. The legislature again plays a key part in the initial decision to use this technique. The legislature decides which activities are to come within the reach of the penal technique. It defines "crimes." The executive, public opinion, or specific events may influence the legislature in this process. The executive may present a bill to the legislature that would stiffen penal laws on organized crime. Legislatures may respond to public hostilities toward drug use with penal statutes that

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DETAILED DESCRIPTION OF STRATEGIES

School rules defining acts considered illegal in school, and rules providing for punishment for disobeying certain other rules.

The group should examine a local, state, or Federal law providing for officials to enforce penal laws.

McKinney's Consolidated Laws of New York, vol. 65, "Unconsolidated Laws," sections 5771 through 5776, and 5811 through 5817.

McKinney's Consolidated Laws of New York, vol. 18, "Executive Law," sections 210, 211, and 223.

Remedial Technique - Small Group Strategies

The group should examine a local or state constitution that establishes a court system where cases using the remedial technique can be heard.

New York Constitution, Article VI, sections, 1, 20, 22, and 23.

The group should examine the rules of procedure structuring the use of the remedial technique.

McKinney's Consolidated Laws of New York, vol. 29, "Judiciary Law," section 14.

McKinney's Consolidated Laws of New York, vol. 7B, "Civil Practice Law and Rules," section 304.

DISCUSSION OF STRATEGIES AND RESOURCES

harshly punish users, sellers, and possessors of drugs. Events like plane hijackings or campus riots may stir legislatures to define certain antisocial acts or crimes.

Although the legislature decides what acts will be punished by the penal technique, actual operation of the penal technique is not left to legislators. Private citizens have an important role in bringing some violations of the penal law to the attention of the police. The police try to stop people in the process of breaking penal laws and to apprehend those suspected of having committed crimes. The prosecutor (district attorney) brings the case before a judge and jury of private citizens. Further officials such as prison wardens or probation officers are involved if the accused is convicted.

4. Remedial Technique. The rules of law of the remedial technique are often not found in the statutes passed by the legislature. This law is frequently judge-made (common law) rather than statutory law. The rules of common law have their source in cases that have come before (precedent) all the way back to and including English common law.

With the private remedial technique, there are not nearly so many special officials. Important organizational rules set up and organize the courts for action. But unlike with the distributive, regulatory, or penal techniques, the decision to initiate the private remedial technique rests in the hands of private individuals who claim to have been injured by activities of others.

DETAILED DESCRIPTION OF STRATEGIES

in each case above, consider that the framework of courts, officials, and procedural rules remains inactive until activated by the parties who use this technique.

Private Arrangement Technique - Small Group Strategies

The group should examine the sale and financing arrangement for the purchase of a car, TV, or other major appliance, or:

- . Examine the mortgage arrangement for the financing of a home purchase.
- . Examine the lease arrangement for the rental of a house or apartment.
- . Examine the insurance arrangement for a car, health policy, or home.
- . Examine a formal employment arrangement.
- . Examine a will.
- . Examine the charter of a local corporation.

The teacher may himself be a party to many of the suggested private legal arrangements and may have in his own possession copies of appropriate contracts, wills, leases, or other legal arrangements for classroom use. Examples of such formal written arrangements should be available through friends if the teacher does not have samples in his own possession.

DISCUSSION OF STRATEGIES AND RESOURCES

5. Private Arrangement Technique. In contrast to the other four techniques, the law of the private arrangement technique cannot be identified as particular rules, preestablished by legislators, judges, or administrators. This is because the law of private arrangements is made by private parties. Each validly made will, contract, or lease is the law for the parties involved. The rights and duties under the suggested arrangements are laws of the private arrangement technique.

The strategies for assisting students in achieving this understanding are separated into two categories. A brief summarizing exercise is also given. The first category consists of strategies for small group work. There are five sets of small group strategies, one set for each of the five legal techniques. Each of these sets of small group strategies consists of the examination of laws, excerpts of which are contained in the resource section, or in the case of the Private Arrangement technique, the examination of readily available documents.

The second main category of strategies for this understanding consists of series of large group strategies for the entire class. A number of these suggestions include visits by students to governmental bodies and visits by speakers to the classroom. However, it may be desirable for small groups to make field trips rather than entire classes.

Should school facilities permit, TV tapes could be made of some speakers for future use or for use with additional classes.

Module 2 DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

In each case consider:

- (1) the importance of the individual in operating this technique
- (2) the fact that many of the procedures followed are based on judge-determined common law
- (3) the point that officials are not necessary for the operation of this technique unless a private arrangement is broken.

Review briefly with the class the structure of officials within the remedial technique, noting that when a private arrangement is broken, the remedial technique is used to repair the harm done.

(b) Large Group Strategies for the Entire Class

Many of the following suggestions include field trips to observe components of the legal system in action. Several suggestions involve speakers visiting the classroom. The teacher will probably wish to encourage the maximum number of students to participate in both types of event; therefore these activities are suggested as large group strategies for use with the entire class. However, several of the suggestions will serve equally well as small group activities.

The large group events can be used concurrently with the small group work over a period of days.

Distributive Technique - Strategies for the Entire Class

Have the class do one or more of the following:

- . Examine the hearings of an appropriations committee of a local lawmaking body or the New York Legislature or the U.S. Congress.
- . Visit a committee hearing of one of these bodies.
- . Invite a member of one of these bodies to visit the class.

In each case, consider:

- (1) the purpose of the distributive law passed
- (2) the problems encountered in trying to decide just what and how much money should be collected from whom or distributed to whom
- (3) the organization of the governmental structure necessary to apply this law
- (4) the role of the citizen in influencing such a distributive law

(As the legislative process is particularly important to the distributive technique, this might be the point to examine this process.)

Have the class:

- . Visit a local, state, or Federal agency that applies laws using the distributive technique, or
- . Invite an official from one of these agencies to visit the class.

Possible places to visit or sources of speakers:

- . County Welfare Department
- . Federal Internal Revenue Service
- . Board of Education
- . County Tax Assessor

In each case, consider:

- (1) how these officials apply distributive laws to a particular problem
- (2) what additional rules have to be made by these officials in order to apply the law effectively
- (3) how the private citizen influences the decisions of these government officials

Regulatory Technique - Strategies for the Entire Class

Have the class do one or more of the following:

- . Examine the hearings of a local law-making body or the N.Y. Legislature or the U.S. Congress.

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- Visit a committee hearing of one of these bodies.
- Invite a member of one of these bodies to visit the class.

In each case, consider:

- (1) the purpose of the regulatory law passed
- (2) the problems encountered in deciding just what standards are necessary
- (3) the organization of the governmental structure necessary to apply this law
- (4) the role of the citizen in influencing such a regulatory law

Have the class:

- Visit a local, state or Federal agency that applies laws using the regulatory technique.
- Invite an official from one of these agencies to visit the class.

Possible places to visit or sources of speakers:

- County Health Department
- N.Y.S. Dept. of Motor Vehicles

In each case, consider:

- (1) how these officials apply regulatory laws to a particular problem
- (2) what rules have had to be made within the agency by agency officials in order to provide necessary guidance for citizens
- (3) why these expert officials are necessary in order to apply the regulatory technique effectively

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- (4) how the private citizen influences the decisions of government officials applying the regulatory technique
- (As administrative processes are particularly important to the regulatory technique, this might be the point to examine these processes.)

Penal Technique - Strategies for the Entire Class

Have the class:

- . Invite a local, state, or Federal law enforcement official to describe his job to the class.
- . Visit a local, state, or Federal agency.

In each case, consider the limits of the officer's duty. (He does not make law or settle disputes in court.)

Have the class do one or more of the following:

- . Examine an excerpt of a transcript of an actual criminal trial. (See strategy on p. 7, Module I, for use of actual case transcript from H. Norris, A Casebook of Complete Criminal Trials.)
- . View selected TV programs depicting prosecution of criminal cases. (Discuss the degree to which the programs are realistic in the portrayal of courtroom action.)

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- . View a movie on prosecution of a criminal case.
- . Visit a local court hearing a criminal case.

In each case, consider the reasons for providing a judicial process for determining guilt or innocence in addition to the lawmaking and the law-applying process.

Examine the role of the private citizen in activating the penal technique in a class or a small group discussion. Compare the role of the private citizen in the penal technique with that of the private citizen in the distributive and regulatory technique.

Remedial Technique - Strategies for the Entire Class

Have students do one or more of the following:

- . Read a civil case study prepared for secondary students. (See resource section.)
- . View a movie on the use of the remedial technique.
- . Invite a lawyer to discuss with the class some of the rules of the remedial technique.
- . Visit a local trial to see a lawsuit where one party is asking for a remedy for harm done by another party.

DETAILED DESCRIPTION OF STRATEGIES

The clerk of the local county court can make arrangements for a class visit to a trial.

In each case above, consider:

- (1) the function of the remedial technique to provide (a) a judgment to remedy harm done, (b) an injunction to halt a specific action.
- (2) the importance of the individual in activating the remedial technique

(c) Have students complete and discuss the following summary table:

Legal Technique	Legislative Bodies	Executives	Special Administrators, Officials, Experts, Bureaucrats	Private Interest Groups	Private Individuals, Voters	Judges
Distributive						
Regulatory						
Penal						
Remedial						
Private Arrangement						

Indicate whether the individuals and groups listed at the top of the table play a role that is very important (++), moderately important (+), or minimal (0) in the formulation and administration of law within the various techniques by writing the correct symbol in each space. Each indication should be explained. Whether the role of a given individual or group with regard to a specific technique is primarily one of formulating or administering, the law should also be explained.

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(d) Have students find examples in the local press of the impact of the various individuals and groups on the formulation and administration of the law. An example would be the Governor's state of the State message to the Legislature indicating needs for new legislation.

Give students the documentation concerning a discrimination case, (see p. 47). Using the chart on p. 26, they can classify each contact with law or a legal agency, both in terms of the legal technique used and in the degree of importance of the individual or agency with respect to that function.

DISCUSSION OF STRATEGIES AND RESOURCES

RESOURCES *

McKinney's Consolidated Laws of New York, Vol. 59, "Tax Law," Article 24—Local Tax for School Purposes on General Telephone Service.

Section 801. General authorization

"1. Pursuant to the provisions of this article a tax shall be imposed in any county, except a county wholly within a city, and in any city having a population of one million or more inhabitants, whenever its imposition is requested as hereinafter set forth, at the rate of ten per cent on the amount paid for general telephone service. Such tax shall be imposed:

- (a) where, within any one calendar year, the school authorities of any school district or districts located wholly or partly within such county, which school district or districts contain a majority of the children residing within the territorial limits of such county and attending public schools, request the imposition of such tax; or
- (b) where the school authorities of such city, with the concurrence of its local legislative body, request the imposition of such tax.

"2. Such tax shall be levied and collected for school district purposes within the territorial limits of such county or city and shall be so levied and collected, without discrimination between residents and nonresidents thereof, on the amount paid for general telephone service, as hereinafter defined, originating within such county or city and terminating within this state. Any tax imposed pursuant to this article shall be paid by the person paying for the service, and shall be collected by the person furnishing the service."

Section 809. Distribution of revenues; certification by commissioner of education

"The net amount of taxes collected pursuant to this article shall be paid over to the school district or districts of the county, or city having a population of one million or more inhabitants, in which such tax is imposed... The full amount of such payments shall be distributed in such proportion as the commissioner of education shall certify as being due each school district, such certification to be based on the total average daily attendance for the last preceding school year of pupils residing in each district and attending schools... The commissioner of education shall make such certification to each person furnishing general telephone service in a county, or city having a population of one million or more inhabitants, within which a tax is imposed pursuant to this article. Such certification shall be made by

*Direct quotations from statutes are indicated by the use of quotation marks. Other statements are summaries or paraphrases of the statute listed.

June first in each year from the average daily attendance and census figures for the last preceding school year, to take effect on such date, and copies thereof shall be filed with the school district or districts to which such revenues are payable and with the state tax commission. Such certification shall apply to all revenues required to be distributed under returns filed for periods ending prior to the June first next following the effective date of such certification."

New York State Constitution, Article XI, Section 1.

See resource section for Module I, Understanding V.

McKinney's Consolidated Laws of New York, Vol. 59, "Tax Law," Article 8—Department of Taxation and Finance; State Tax Commission.

Section 170. Department of taxation and finance; state tax commission; president

"The existing department of taxation and finance and its present functions are continued. The head of the department of taxation and finance shall be the commissioner of taxation and finance. The state tax commission, which is hereby continued, shall consist of three members, one of whom shall be the commissioner of taxation and finance and ex officio the president of the state tax commission. The commissioner of taxation and finance shall be appointed by the governor by and with the advice and consent of the senate and shall hold office as commissioner of taxation and finance until the end of the term of the governor by whom he was appointed and until his successor has been appointed and has qualified.

"2. Existing divisions or bureaus in the department of taxation and finance or transferred to the department shall continue until consolidated or abolished pursuant to this section. There shall be in the department of taxation and finance a division of taxation, a division of the treasury, and a division of the lottery.

"3. The commissioner of taxation and finance may establish such additional divisions and bureaus as he may deem necessary. He may appoint the heads of such divisions and bureaus and fix their duties and he may consolidate, alter or abolish any divisions or bureaus.

"4. The commissioner of taxation and finance may appoint and remove such officers, assistants and other employees as he may deem necessary for the exercise of the powers and duties of the department, all of whom shall be in the classified civil service unless otherwise provided by law; and he may prescribe their duties, and fix their compensation within the amounts appropriated therefor. The commissioner of taxation and finance may transfer officers or employees from their

positions to other positions in the department, or abolish or consolidate such positions. He shall have all powers necessary to operate and administer the state lottery authorized by article thirty of this chapter.

"5. The head of the division of taxation shall be the state tax commission, which shall consist of the president and two commissioners, who shall be appointed by the governor by and with the advice and consent of the senate and who shall continue in office until their present terms expire. ...

"6. The head of the division of the treasury shall be an officer entitled the deputy commissioner and treasurer to be appointed by and to hold office during the pleasure of the commissioner of taxation and finance. ...

"7. The head of the division of the lottery shall be an officer to be appointed by, and hold office during the pleasure of the commissioner of taxation and finance. ..."

Section 171. Powers and duties of state tax commission

"The state tax commission shall:

"First. Make such reasonable rules and regulations, not inconsistent with law, as may be necessary for the exercise of its powers and the performance of its duties under this chapter.

"Second. Assess, determine, revise, readjust and impose the corporation taxes under articles nine and nine-a of this chapter, ..have the power and perform the duties of the state comptroller in the collection of such taxes and the crediting of such taxes erroneously paid, as jurisdiction thereof is vested in such commission by section one hundred and seventy-six of this chapter.

"Third. ...Have the powers and perform the duties of the state comptroller in relation to the assessment, determination and collection of the tax on transfers of property, as jurisdiction thereof is vested in such commission by section one hundred and seventy-six of this chapter.

"Fourth. ...Have the powers and perform the duties of the state comptroller in the collection of the tax on transfers of stock under article twelve of this chapter, as jurisdiction thereof is vested in such commission by section one hundred and seventy-six of this chapter.

"Fifth. ...Have the power and perform the duties of the state comptroller in the assessment, determination, review, readjustment and collection of taxes upon and with respect to personal income as jurisdiction thereof is vested in such commission by section one hundred and seventy-six of this chapter.

"Sixth. Administer, supervise and enforce the tax on mortgages as provided in article eleven of this chapter.

"Seventh. ...Have the powers and perform the duties of the secretary of state under articles eleven and eleven-a of the highway law, in relation to motor vehicles and motor cycles, as jurisdiction thereof is vested in such commission by section one hundred and seventy-eight of this chapter.

"Eighth. Take testimony and proofs, under oath, with reference to any matter within the line of its official duty. Any member of such commission, a deputy tax commissioner and such other officials and employees of the department of taxation and finance as may be nominated by such commission by resolution recorded in its minutes may be designated for the purpose of taking such testimony and proofs and any such member of the commission, deputy tax commissioner or other official or employee so nominated may be designated by such commission for the purpose of holding any hearing authorized or required under the provisions of this chapter.

"Ninth. Require from all state and local officers such information as may be necessary for the proper discharge of its duties.

"Tenth. Hold meetings at an office to be assigned it in one of the state buildings at Albany, at such times as may be fixed by the president or a majority of the commission or by adjournment thereof, or at such other places as it may designate.

"Eleventh. Compile and publish statistics relating to state and local taxation.

"Twelfth. Make investigations of the general system of state taxation from time to time.

"Thirteenth. Inquire into the provisions of the laws of other states and jurisdictions; to confer with tax commissioners of other states regarding the most effectual and equitable methods of taxation, and particularly regarding the best methods of avoiding conflicts and duplication of taxation, and to recommend to the legislature such measures as will bring about uniformity of methods, harmony and co-operation between the different states and jurisdictions in matters of taxation.

"Fourteenth. Perform the other powers and duties conferred upon it by law. ..."

Module 2

McKinney's Consolidated Laws of New York, Vol. 16, "Education Law."

Section 101. Education department; regents of the university

"There shall continue to be in the state government an education department. The department is charged with the general management and supervision of all public schools and all of the educational work of the state, including the operations of The University of the State of New York and the exercise of all the functions of the education department, of The University of the State of New York, of the regents of the university and of the commissioner of education and the performance of all their powers and duties,... The head of the department shall continue to be the regents of The University of the State of New York, who shall appoint, and at pleasure may remove, the commissioner of education. The commissioner shall continue to be the chief administrative officer of the department. The regents also may appoint and, at pleasure, remove a deputy commissioner of education, who shall perform such duties as the regents may assign to him by rule and who, in the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by this chapter. The regents of The University of the State of New York shall continue to constitute a board and The University of the State of New York,...shall continue to be governed and all its corporate powers to be exercised by such board."

McKinney's Consolidated Laws of New York, Vol. 62A, "Vehicle and Traffic Law."

Section 501. Drivers' licenses and learners' permits

See Resources section for Understanding III, Module I.

Section 301. Periodic inspection of all motor vehicles

"(a) The commissioner shall require that every motor vehicle registered in this state be inspected once each year in accordance with the provisions of this article, and that every motor vehicle sold or transferred for use on the public highways of this state by a dealer licensed under section four hundred fifteen of this chapter to any person other than another such licensed dealer must be inspected and bear a valid certificate of inspection prior to delivery to the purchaser or transferee.

"(c) (1) Such inspection shall be made with respect to the brakes, steering mechanism, wheel alignment, lights, and such other mechanisms and equipment as shall be determined by the commissioner to be necessary for proper and safe operations.

"(2) With respect to any motor vehicles or class of motor vehicles which when new, or the engines of which when new, are required...to contain any equipment, systems or design features to reduce such emission, as soon as the commissioner,...determines that it is technologically feasible...he shall establish regulations for the inclusion of such inspections in the periodic inspection of motor vehicles."

McKinney's Consolidated Laws of New York, Vol. 3, "Alcoholic Beverage Control Act."

Section 103. Provisions governing manufacturers

"1. No manufacturer shall sell, or agree to sell or deliver in the state any liquors and/or wines, as the case may be, in any cask, barrel, keg, hogshead or other container, except in sealed containers containing quantities not to exceed one quart each of liquor or fifteen gallons each of wine, and not less than twelve ounces each of liquor except brandy, cordials, liqueurs and bitters or six ounces each of wine,... Such containers shall have affixed thereto such labels as may be required by the rules of the liquor authority, together with all necessary federal revenue and New York state excise tax stamps, as required by law.

"2. No manufacturer shall transport alcoholic beverages in any vehicle owned and operated or hired and operated by such manufacturer, unless there shall be attached to or inscribed upon both sides of such vehicle a sign, showing the name and address of the licensee, together with the following inscription: "New York State Distiller (or Brewer or Winery) License No. . . .," in uniform letters not less than three and one-half inches in height.

"3. No manufacturer shall deliver any alcoholic beverages, except in vehicles owned and operated by such manufacturer, or hired and operated by such manufacturer from a trucking or transportation company registered with the liquor authority, and shall only make deliveries at the licensed premises of the purchaser.

"4, 5 Repealed.

"6. Each manufacturer shall file with the liquor authority, at Albany, within thirty days after the granting of a license, an employee's questionnaire for each male person employed by him in any capacity whatsoever, whether on a salary or commission basis. Such questionnaire shall be upon a form prepared by the liquor authority, and shall be accompanied by the fingerprints of each employee together with the photograph of such employee, the size of which shall be two inches. No male person shall be employed by any manufacturer in any capacity, unless such manufacturer, within five days after such employee has been employed for ten days, shall file an employee's questionnaire for such new employee."

United States Code, Title 42, "Public Health and Welfare."Section 1857d. Abatement of air pollution by means of conference procedure--Air pollution subject to abatement

"(a) The pollution of the air in any State or States which endangers the health or welfare of any persons and which is covered by subsection (b) or (c) of this section, shall be subject to abatement as provided in this section.

Conferences of air pollution agencies

"(b) (1) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Administrator shall, if such request refers to air pollution which is alleged to endanger the health or welfare of persons in a State other than that in which the discharge or discharges causing or contributing to such pollution) originate, give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in whose jurisdictional area such municipality is located, and shall call promptly a conference of such agency or agencies and of the air pollution control agencies of the municipalities which may be adversely affected by such pollution, and the air pollution control agency, if any, of each State, or for each area, in which any such municipality is located.

"(2) Whenever requested...the Administrator shall, if such request refers to alleged air pollution which is endangering the health or welfare of persons only in the State in which the discharge or discharges...originate...promptly call a conference of such agency or agencies, unless in the judgment of the Administrator, the effect of such pollution is not of such significance as to warrant exercise of Federal jurisdiction under this section.

"(3) The Administrator may, after consultation with State officials of all affected States, also call such a conference whenever, on the basis of reports, surveys, or studies, he has reason to believe that any pollution referred to in subsection (a) of this section is occurring and is endangering the health and welfare of persons in a State other than that in which the discharge or discharges originate. The Administrator shall invite the cooperation of any municipal, State, or interstate air pollution control agencies having jurisdiction in the affected area on any surveys or studies forming the basis of conference action..

"(4) A conference may not be called under this subsection with respect to an air pollutant for which (at the time the conference is called) a national primary or secondary ambient air quality standard is in effect under section 1857c-4 of this title.

"(c) [Refers to situations similar to those above but involving participation of foreign countries which grant the U.S. the same rights.]

...presentation of views...

"(d) (1) ...The chairman of the conference shall give interested parties an opportunity to present their views to the conference with respect to such Federal report, conclusions or findings (if any), and other pertinent information. ...

Recommendations of Administrator for remedial action by agencies; commencement of recommended action

"(e) If the Administrator believes, upon the conclusion of the conference or thereafter, that effective progress toward abatement of such pollution is not being made and that the health or welfare of any persons is being endangered, he shall recommend to the appropriate State, interstate, or municipal air pollution control agency (or to all such agencies) that the necessary remedial action be taken. The Administrator shall allow at least six months from the date he makes such recommendations for the taking of such recommended action.

Hearings for failure to abate pollution; board members; findings and recommendations

"(f) (1) If, at the conclusion of the period so allowed, such remedial action or other action which in the judgment of the Administrator is reasonably calculated to secure abatement of such pollution has not been taken, the Administrator shall call a public hearing, to be held in or near one or more of the places where the discharge or discharges causing or contributing to such pollution originated, before a hearing board of five or more persons appointed by the Administrator. ...

"(2) On the basis of evidence presented at such hearing, the hearing board shall make findings as to whether pollution referred to in subsection (a) of this section is occurring and whether effective progress toward abatement thereof is being made. If the hearing board finds such pollution is occurring and effective progress toward abatement thereof is not being made it shall make recommendations to the Administrator concerning the measures, if any, which it finds to be reasonable and suitable to secure abatement of such pollution.

"(3) The Administrator shall send findings and recommendations to the person or persons discharging any matter causing or contributing to such pollution; to air pollution control agencies of the State or States and of the municipality or municipalities where such discharges originate; and to any interstate air pollution control agency whose jurisdictional area includes any such municipality, together with a notice specifying a reasonable time (not less than six months) to secure abatement of such pollution.

Judicial proceedings to secure abatement of pollution

"(g) If action reasonably calculated to secure abatement of the pollution within the time specified in the notice following the public hearing is not taken, the Administrator--

- (1) in the case of pollution of air which is endangering the health or welfare of persons (A) in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, or (B) in a foreign country which has participated in a conference called under subsection (c) of this section and in all proceedings under this section resulting from such conference, may request the Attorney General to bring a suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

Federal court proceedings; evidence; jurisdiction of court

"(h) The court shall receive in evidence in any suit brought in a United States court under subsection (g) of this section a transcript of the proceedings before the board and a copy of the board's recommendations and shall receive such further evidence as the court in its discretion deems proper. The court, giving due consideration to the practicability of complying with such standards as may be applicable and to the physical and economic feasibility of securing abatement of any pollution proved, shall have jurisdiction to enter such judgment, and orders enforcing such judgment, as the public interest and the equities of the case may require."

McKinney's Consolidated Laws of New York, Vol. 3, "Alcoholic Beverage Control Law," Article 2--Liquor Authority

Section 10. State liquor authority

"There shall continue to be in the executive department an alcoholic beverage control division, the head of which shall be the state liquor authority which shall consist of five members, who shall be known as commissioners, all of whom shall be citizens and residents of the state. The state alcoholic beverage control board created and appointed pursuant to chapter one hundred

and eighty of the laws of nineteen hundred thirty-three, as presently constituted, shall continue in existence and hereafter shall be known and designated as the state liquor authority. The terms 'state alcoholic beverage control board,' 'state board' or 'liquor authority,' wherever occurring in any of the provisions of this chapter or of any other law, or in any official books, records, instruments, rules or papers, shall hereafter mean and refer to the state liquor authority provided for in this section."

United States Code Annotated, Title 42, "Air Quality Control Act."

Section 1857c--1. Interstate air quality agencies; program cost limitations

"For the purpose of developing implementation plans for any interstate air quality control region...the Administrator is authorized to pay, for two years, up to 100 per centum of the air quality planning program costs of any agency designated by the Governors of the affected States, which agency shall be capable of recommending to the Governors plans for implementation of national primary and secondary ambient air quality standards and shall include representation from the States and appropriate political subdivisions within the air quality control region. After the initial two-year period the Administrator is authorized to make grants to such agency in an amount up to three-fourths of the air quality planning program costs of such agency.

Section 1857e. Air Quality Advisory Board; advisory committees--Establishment of Board; membership; appointment; term

"(a) (1) There is hereby established in the Environmental Protection Agency an Air Quality Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and fifteen members appointed by the President, none of whom shall be Federal officers or employees. The appointed members having due regard for the purposes of this chapter, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with air pollution, and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of air pollution prevention and control, as well as other individuals who are expert in this field.

Duties of Board

"(b) The Board shall advise and consult with the Administrator matters of policy relating to the activities and functions of the Administrator under this chapter and make such recommendations as it deems necessary to the President.

Module 2

Clerical and technical assistance

"(c) Such clerical and technical assistance as may be necessary to discharge the duties of the Board and such other advisory committees as hereinafter authorized shall be provided from the personnel of the Environmental Agency.

Advisory committees

"(d) In order to obtain assistance in the development and implementation of the purposes of this chapter including air quality criteria, recommended control techniques, standards, research and development, and to encourage the continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution, the Administrator shall from time to time establish advisory committees. Committee members shall include but not be limited to, persons who are knowledgeable concerning air quality from the standpoint of health, welfare, economics, or technology."

McKinney's Consolidated Laws of New York, Vol. 39, "Penal Law."

Section 125.25. Murder

"A person is guilty of murder when:

1. With intent to cause the death of another person, he causes the death of such person or of a third person; except that in any prosecution under this subdivision, it is an affirmative defense that:

- (a) The defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, . . .
- (b) The defendant's conduct consisted of causing or aiding, without the use or duress or deception, another person to commit suicide.

"2. Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person; or

"3. Acting either alone or with one or more other persons, he commits or attempts to commit robbery, burglary, kidnapping, arson, rape in the first degree, sodomy in the first degree, sexual abuse in the first degree, escape in the second degree, and, in the course of

and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants;...

"Murder is a class A felony."

Section 155.05. Larceny; defined

"1. A person steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

"2. Larceny includes a wrongful taking, obtaining or withholding of another's property, with the intent prescribed in subdivision one of this section, committed in any of the following ways:

- (a) By conduct heretofore defined or known as common law larceny by trespassory taking, common law larceny by trick, embezzlement, or obtaining property by false pretenses;
- (b) By acquiring lost property. ...
- (c) By committing the crime of issuing a bad check, as defined in section 190.05;
- (d) By false promise. ...
- (e) By extortion. ..."

Section 170.10. Forgery in the second degree

"A person is guilty of forgery in the second degree when, with intent to fraud, deceive or injure another, he falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

1. A deed, will, codicil, contract, assignment, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status; or
2. A public record, or an instrument filed or required or authorized by law to be filed in or with a public office or public servant; or
3. A written instrument officially issued or created by a public office, public servant or governmental instrumentality; or ...

(Number 4 omitted.)

5. A prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device used in the taking or administering of drugs for which a prescription is required by law.

"Forgery in the second degree is a class D felony."

Section 170.15. Forgery in the first degree

"A person is guilty of forgery in the first degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

1. Part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental instrumentality; or
2. Part of an issue of stock, bonds or other instruments representing interests in or claims against a corporate or other organization or its property.

"Forgery in the first degree is a class C felony."

Section 170.55. Unlawfully using slugs in the second degree

"A person is guilty of unlawfully using slugs in the second degree when:

1. With intent to defraud the owner of a coin machine, he inserts or deposits a slug in such machine; or
2. He makes, possesses or disposes of a slug with intent to enable a person to insert it in a coin machine.

"Unlawfully using slugs in the second degree is a class B misdemeanor."

Section 180.50. Tampering with a sports contest

"A person is guilty of tampering with a sports contest when, with intent to influence the outcome of a sports contest, he tampers with any sports participant, sports official or with any animal or equipment or other thing involved in the conduct or operation of a sports contest in a manner contrary to the rules and usages purporting to govern such a contest.

"Tampering with a sports contest is a class A misdemeanor."

Section 125.30. Murder; sentence

"1. When a defendant has been convicted by a jury verdict of murder...the court shall...determine whether the defendant shall be sentenced to death in lieu of being sentenced to the term of imprisonment for a class A felony prescribed in section 70.00, if it is satisfied that:

(a) Either:

(i) the victim of the crime was a peace officer who was killed in the course of performing his official duties, or

(ii) at the time of the commission of the crime the defendant was confined in a state prison or was otherwise in custody upon a sentence for the term of his natural life, or upon a sentence commuted to one of natural life, or upon a sentence for an indeterminate term the minimum of which was at least fifteen years and the maximum of which was natural life, or having escaped from such confinement or custody the defendant was in immediate flight therefrom; and

(b) The defendant was more than eighteen years old at the time of the commission of the crime; and

(c) There are no substantial mitigating circumstances which render sentence of death unwarranted. ..."

Section 70.00. Indeterminate sentence of imprisonment for felony

"1. Indeterminate sentence. A sentence of imprisonment for a felony shall be an indeterminate sentence. When such a sentence is imposed, the court shall impose a maximum term in accordance with the provisions of subdivision two of this section and the minimum period of imprisonment shall be as provided in subdivision three of this section.

"2. Maximum term of sentence. The maximum term of an indeterminate sentence shall be at least three years and the term shall be fixed as follows:

(a) For a class A felony, the term shall be life imprisonment;

(b) For a class B felony, the term shall be fixed by the court, and shall not exceed twenty-five years;

(c) For a class C felony, the term shall be fixed by the court, and shall not exceed fifteen years;

(d) For a class D felony, the term shall be fixed by the court, and shall not exceed seven years; and

(e) For a class E felony, the term shall be fixed by the court, and shall not exceed four years. ..."

Section 70.10. Sentence of imprisonment for persistent felony offenders

"1. Definition of persistent felony offender.

(a) A persistent offender is a person who stands convicted of a felony after having previously been convicted of two or more felonies, ...

"2. Authorized sentence. When the court has found, pursuant to the provisions of the code of criminal procedure, that a person is a persistent felony offender, and when it is of the opinion that the history and character of the defendant and the nature and circumstances of his criminal conduct indicate that extended incarceration and life-time supervision will best serve the public interest, the court, in lieu of imposing the sentence of imprisonment authorized by section 70.00 for the crime in which such person presently stands convicted, may impose the sentence of imprisonment by that section for a class A felony. In such event the reasons for the court's opinion shall be set forth in the record."

McKinney's Unconsolidated Laws of New York, Book 65 - Chapter 11—Town Police Departments in Counties of 700,000--1,000,000.

Section 5771. Establishment

"Notwithstanding the provisions of any general, special or local law the town board of each town within any county having a population of not less than seven hundred thousand and not more than one million which now has a police force shall...establish a police department for each such town, which shall be known as the police department of such town and which shall be organized and operate and function in the manner provided by this act. ...

Section 5772. Appointment; salaries, powers and duties of police officers

"The town board of each such town shall have the power and it shall be its duty from time to time to appoint and at pleasure remove a chief of police for such town and such other officers and such number of policemen as such board may by resolution determine are needed for the proper protection of such town. Such board shall also fix the amount and the times of payment of compensation of the members of such police force so appointed. When appointed such members of the police force of each such town shall be peace officers and shall have all the powers and be subject to all the duties and liabilities of town constables and peace officers in all criminal and civil actions and proceedings and special proceedings of a criminal nature.

Section 5773. Qualifications of police officers

"...No person shall be appointed a member of such police force except chief of police, unless he shall have passed an examination held by the state civil service commission and unless at the time of his appointment his name shall be on the eligible list of the state civil service commission; ...

Section 5774. Rules and regulations of department

"Such town board shall from time to time make, adopt and enforce rules, orders and regulations for the government, discipline, administration and disposition of the police department of each such town and members thereof. ...

Section 5775. Discipline

"Any member of any such police force except the chief of police in any town wherein his position shall not be subject to civil service rules and requirements, found guilty upon written charges and after a hearing, of neglect or dereliction in the performance of official duty, violation of rules and regulations, disobedience of orders, absence without leave or other breach of discipline, incompetency to perform official duty or an act or delinquency seriously affecting his general character or fitness for office may be punished by each such town board..."

(Note: Chapter 12 of "Unconsolidated Laws", Book 65 of McKinney's is similar to Chapter 11, but relates to town police departments in counties with populations in the range of 160,000 to 190,000.)

McKinney's Consolidated Laws of New York, "Executive Laws," Book 18—Article 11—Division of State Police.

Section 210. Division of state police

"The division of state police in the executive department shall be known as the 'New York State Police.' The head of the New York state police shall be the superintendent of state police who shall be appointed by the governor by and with the advice and consent of the senate, and hold office during his pleasure. ...

Section 211. Employees

"The superintendent may appoint such employees as may be necessary and fix their compensation within such sum as may be appropriated by law.

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Section 212. Equipment

"The superintendent shall provide the state police force, within the amounts appropriated therefor, with suitable equipment and supplies, including vehicles and uniforms, all of which shall remain the property of the state; when this property shall become unfit for use it shall be disposed of in accordance with the provisions of the finance law.

Section 213. Acquisition of real property

"1. The superintendent shall from time to time establish headquarters or substations in such localities as he shall deem most suitable for the efficient performance of police duty in the rural sections of the state, ...

Section 223. Duties and powers of the superintendent of state police and of members of the state police

"It shall be the duty of the superintendent of the state police and of members of the state police to prevent and detect crime and apprehend criminals. They shall also be subject to the call of the governor and are empowered to co-operate with any other department of the state or with local authorities. They shall have power to arrest, without a warrant, any person committing or attempting to commit within their presence or view a breach of the peace or other violation of law, to serve and execute warrants of arrest or search issued by proper authority and to exercise all other powers of peace officers of the state of New York. Any such warrants issued by any magistrate of the state may be executed by them in any part of the state according to the tenor thereof without indorsement. But they shall not exercise their powers within the limits of any city to suppress rioting and disorder except by direction of the governor or upon the request of the mayor of the city with the approval of the governor. Any member of the rank of sergeant or above may take pre-arraignment bail from any defendant in the amounts and under the circumstances and conditions that police may take bail."

Norris, Harold. *A casebook of complete criminal trials*. 1965.

Contains complete actual transcripts from trials. Excerpts from transcripts can be used as scripts for dramatic readings in the classroom.

New York State Constitution, Article VI, Judiciary.

Section 1. [Establishment and organization of unified court system; courts of record; service and execution of process]

"a. There shall be a unified court system for the state. The state-wide courts shall consist of the court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court and the family court, as hereinafter provided. The legislature shall establish in and for the city of New York, as part of the unified court system for the state, a single, city-wide court of civil jurisdiction as hereinafter provided, and may upon the request of the mayor and the local legislative body of the city of New York, merge the two courts into one city-wide court of both civil and criminal jurisdiction. ..."

Section 20. [Judicial office, qualifications and restrictions]

"a. No person, other than one who holds such office at the effective date of this article, may assume the office of judge of the court of appeals, justice of the supreme court, or judge of the court of claims unless he has been admitted to practice law in this state at least ten years. No person, other than one who holds such office at the effective date of this article, may assume the office of judge of the county court, surrogate's court, family court, a court for the city of New York established pursuant to section fifteen of this article, district court or city court outside the city of New York unless he has been admitted to practice law in this state at least five years or such greater number of years as the legislature may determine.

"b. A judge of the court of appeals, justice of the supreme court, judge of the court of claims, judge of a county court, judge of the surrogate's court, judge of the family court or judge of a court for the city of New York established pursuant to section fifteen of this article who is elected or appointed after the effective date of this article may not:

- (1) hold any other public office or trust except member of a constitutional convention or member of the armed forces...
- (2) be eligible to be a candidate for any public office other than judicial office or member of a constitutional convention, unless he resigns his judicial office;...
- (3) hold any office or assume the duties or exercise the powers of any office of any political organization or be a member of any governing or executive agency thereof;
- (4) engage in the practice of law, act as an arbitrator, referee or compensated mediator in any action or proceeding or matter or engage in the conduct of any other profession or business which interferes with the performance of his judicial duties. ..."

Section 22. [Removal for cause or forced retirement of judge or justice; court on the judiciary]

"a. Any judge of the court of appeals, justice of the supreme court, judge of the court of claims, judge of the county court, judge of the surrogate's court or judge of the family court may be removed for cause or retired for mental or physical disability preventing the proper performance of his judicial duties after due notice and hearing by a court on the judiciary.

"b. The court on the judiciary shall be composed of the chief judge of the court of appeals, the senior associate judge of the court of appeals and one justice of the appellate division of the supreme court in each judicial department designated by concurrence of a majority of the justices of each such appellate division of the supreme court. . . .

"c. The affirmative concurrence of not less than four members of the court shall be necessary for removal or retirement and the court may disqualify a judge or justice removed from office from again holding any public office of this state. . . .

"d. The chief judge of the court of appeals may convene the court on the judiciary upon his own motion and shall convene the court upon written request by the governor or by a presiding justice of the appellate division of the supreme court or by a majority of the executive committee of the New York State Bar Association thereunto duly authorized. . . ."

Section 23. [Removal of judges or justices by legislature for cause]

"a. Judges of the court of appeals and justices of the supreme court may be removed by concurrent resolution of both houses of the legislature, if two-thirds of all the members elected to each house concur therein.

"b. Judges of the court of claims, the county court, the surrogate's court, the family court, the courts for the city of New York established pursuant to section fifteen of this article, the district court and such other courts as the legislature may determine may be removed by the senate, on the recommendation of the governor, if two-thirds of all the members elected to the senate concur therein.

"c. No judge or justice shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the journal."

Section 14. Disqualification of judge by reason of interest or consanguinity

"A judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which he is a party, or in which he has been attorney or counsel, or in which he is interested, or if he is related by consanguinity or affinity to any party to the controversy within the sixth degree. ..."

Section 304. Method of commencing action or special proceeding

"An action is commenced and jurisdiction acquired by service of a summons. A special proceeding is commenced and jurisdiction acquired by service of a notice of petition or order to show cause."

The Lawsuit. AEP Unit Books. 1968.

National Council for the Social Studies. *Judgement Series, No. 11.* "Studying Tort Cases." 1968.

Record:

Law-U, Auto Accidents.

Feldman, Sylvia. *The rights of women.* Rochelle Park, N.J. Hayden Book. 1974. Chapter 3.

Bill of Rights newsletter. Vol. VI, No. 2. Fall 1972.

See list of sources, page 10, as well as article concerning Supreme Court cases, pages 12-15.

Phi Delta Kappan. October 1973. pp. 129-131. "Legal tools to fight sex discrimination."

UNDERSTANDING III

THE EFFECTIVENESS OF THE LEGAL TECHNIQUES DEPENDS IN PART UPON THE SOUNDNESS OF THE CONTENT OF LAWS AND UPON THE SOUNDNESS OF THE PROCESSES USED TO ADMINISTER THE LAWS.

A. *Explanation of Understanding III*

The detailed survey in the second understanding of how various legal techniques operate should help students to understand how the legal system works. Yet, students may be eager to point out that the system does not always work satisfactorily. The third understanding undertakes a systematic investigation of why the law, through use of its legal techniques, does not always work as effectively as possible. Our scheme views law as a series of tools that can be put to work on various social needs and problems. This understanding considers how the rules of the legal techniques may not be sound and how the processes for implementing these rules may be ill-designed.

B. *Teaching Understanding III***OBJECTIVES**

- Given details about a situation in which a person has received inequitable treatment, the student will list pertinent questions to determine why the legal technique has not operated more effectively.
- The student will demonstrate understanding of social responsibility to improve "the system" by suggesting several practical ways that rules or administration of rules in a given situation can be improved to make the legal technique more effective.

QUESTIONS TO REACH UNDERSTANDING

- How may each legal technique fail to perform its function?
- What may explain the failure of each legal technique to perform efficiently?

DETAILED DESCRIPTION OF STRATEGIES

(a) Have the entire class bring in examples, (oral accounts of observations and experiences, pictorial materials, news articles, etc.) of ways in which each of the various legal techniques may have failed to perform its function. As students contribute examples, group the examples on the chalkboard according to the techniques involved. Have students attempt to identify the cause of failure in each instance.

The list of examples might include items such as the following:

<u>Technique</u>	<u>Shortcoming</u>	<u>(Possible) Cause</u>
Distributive	tax law with "loopholes"	poor law
	inadequate spending for the benefits of education	unwise law
Regulatory	waste in welfare	corrupt administration
	low standards for pollution control	unsound law
Penal	hazardous multi-family housing	lax enforcement
	traffic ticket fixing	dishonest officials

DISCUSSION OF STRATEGIES AND RESOURCES

- Distributive Technique. The distributive technique does not always effectively perform the tasks it undertakes. Substantively unwise laws to gather revenues or distribute benefits might be passed. For example, tax laws have "loopholes," or we might spend too much or too little on the benefits of education, pollution, highways, or defense. The substance of laws might be sound, but the procedures for their administration might be inefficient. For example, welfare might be administered in a wasteful or corrupt manner.
- Regulatory Technique. Why might the regulatory technique fail to solve the problems it addresses? First, legal officials may make unsound regulations. For example, pollution standards might be dangerously lax. Second, there may be sound regulations, but no processes which assure they are effectively carried out. For example, landlord violations of building and sanitation codes in many places are simply ignored by officials.
- Penal Technique. The penal technique sometimes fails to work well in controlling antisocial conduct. Sometimes the legislature passes unwise penal statutes. For example, until the Supreme Court recently declared the laws unconstitutional, the marriage of a black and a white person was a crime in some states. Even where there are good penal laws, there may be poor processes for their application. For example, officials may be dishonest; accused people may sit in jail for a year waiting for a trial; or convicted persons may be sent to "correctional" institutions

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DETAILED DESCRIPTION OF STRATEGIES

- "correctional" institutions that create criminals
- poor implementation
- unequal application of the law
- Remedial
 - impracticality of lawsuits
 - overburdened courts and costly procedures
 - enjoining a polluting business that employs many workers
 - problems in willing property owners
 - excessively complex and expensive rules

With each of the examples contributed by students, have them distinguish between shortcomings in the law itself and shortcomings in the processes involved in application of the law.

The objective in this initial strategy is to suggest something of the nature of shortcomings that may exist in legal techniques. The rest of the suggested strategies will provide greater depth in developing the overall understanding.

- (b) Give students several days to search for detailed examples of shortcomings of legal techniques at work. Local newspapers, *The New York Times*, and weekly news periodicals will serve as resource material. In each

DISCUSSION OF STRATEGIES AND RESOURCES

that help to turn them into hardened criminals. Penal laws may not be equally applied. For example, the rich boy who possesses marijuana may get a quiet slap on the wrist while the poor boy may get 5 years.

4. Remedial Technique. Critical evaluation of the remedial technique reveals circumstances where this technique is not effective. The remedies available in private lawsuits may not be suitable for the problem. For example, enjoining pollution when the polluting corporation employs the entire community would be ineffective. With 14 million auto accidents per year and pollution injury to almost everyone, private lawsuits may be an impossible burden on the courts. In some places, it may take years of waiting to bring a case before a court. The person wishing to sue may not be able to afford a lawyer to take his case to court; counsel is only constitutionally guaranteed in serious criminal cases. The person being sued may simply have no money with which to pay a judgment or to get a lawyer to defend him. The case in court may not be determined on its own merits, but on the basis of which party hired the more able lawyer.

5. Private Arrangement Technique. The private arrangement technique also has possible defects. The ground rules that the legal system establishes for making and carrying out valid private arrangements may be unnecessarily technical. For example, arrangements for making and carrying out wills may be so complex, time-consuming, and expensive that this private arrangement becomes unsatisfactory for passing property at death, and only those who collect the legal fees really gain.

The first strategy offers a good opportunity for students who are more visually than verbally oriented.

DETAILED DESCRIPTION OF STRATEGIES

example that students come up with, the legal technique or techniques involved should be identified. As materials are brought to class and accumulated, they can be compiled in a scrapbook or arranged on a bulletin board. One or more of the more interesting examples of failures of each legal technique might be used for class discussion. Have students distinguish between (1) criticism of the law itself and (2) criticism of the processes used to apply the law.

(c) An alternative approach is for the teacher to compile material illustrating the failure of a legal technique to work effectively on a specific problem. These materials can be used as the basis of class consideration of an illustrative failure of a legal technique. (On page 53, are suggestions of cases and situations available in texts and paperbacks available in many schools and classroom libraries.)

(d) In some cases, identification of specific examples of failures of legal techniques in the local community can provide opportunity for depth studies. Have teams of students gather information from the local press and by interviewing knowledgeable persons. One example might be the lax enforcement of housing ordinances by weak officials resulting in substandard and dangerous housing. This problem is sometimes brought into dramatic focus by the press when death results from fires traced to violations of local codes. Presentations made in class can be analyzed with respect to the effectiveness of the legal technique.

DISCUSSION OF STRATEGIES AND RESOURCES

Pictures from newspapers and periodicals, or photographs taken by the students can provide the illustrations of situations in which the legal techniques apparently are not working. Data can be generated from the pictures by using a variation of the thematic aperception task, that is, having the student describe what is happening in the scene as shown, what happened before, and what will probably happen next.

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DETAILED DESCRIPTION OF STRATEGIES

- (e) In situations where teams of students gather information on the failure of legal techniques, have representatives from the various groups meet in a fishbowl format and exchange information and ideas.

In all of the above strategies, be careful that the discussants distinguish between criticism of the law itself and criticism of the process involved in the application of the law.

R E S O U R C E S

Levin, M. A., and Eisenberg, J. A. *Dilemma 1*: "Pollution Control"; "Mrs. Robinson"

_____. *Dilemma 3*: "Kidnap." Toronto. Holt, Rinehart, and Winston of Canada. 1971.

These pamphlets contain fictional accounts of situations in which one or more of the legal techniques do not seem to be working effectively.

Goodykoontz, William. *Law, You, The Police and Justice*. New York. Scholastic. 1968. pp. 86-93.

A series of short, simply written incidents that are relevant in developing understanding 3.

Gibson, William. *Lessons In Conflict*. Boston. Boston University School of Law. 1970. pp. 60-64.

The incidents described here may be useful for analysis in later understandings also.

Ratcliff, R. H. , editor. *Justice In Urban America Series*.* Boston. Houghton Mufflin. 1970.

* Since the six titles in this series include case materials related to the basic legal techniques, students can find examples to use in developing Understanding III.

UNDERSTANDING IV

THE EFFECTIVENESS OF LAW DEPENDS UPON CAREFUL SELECTION OF THE MOST APPROPRIATE LEGAL TECHNIQUE(S) TO USE ON A PARTICULAR PROBLEM.

A. *Explanation of Understanding IV*

Laws of unsound content or ill-designed processes for administration of laws are not the only ways that the legal system may fail to operate with maximum efficiency in dealing with social problems. The effectiveness of law may also depend in part on putting the most appropriate legal resources or combination of resources to work on any given problem. There is no assurance that legal techniques will be allocated in the most effective or appropriate manner possible.

B. *Teaching Understanding IV*

OBJECTIVES

- Given the detailed account of an unsuccessful legal attempt to change social behavior, the student will be able to analyze the effectiveness of the legal technique employed, and to suggest more appropriate legal techniques to employ in solving this problem.
- The student will be able to list practical applications of several legal techniques to a current social problem, and to list them in order of probable effectiveness.

QUESTIONS TO REACH UNDERSTANDING

- On a given problem, how can legal techniques be allocated differently?
- How can inappropriate allocation of legal techniques reduce the effectiveness of law in working on a problem?

DETAILED DESCRIPTION OF STRATEGIES

Case Study 1: Legal Techniques Applied to Alcohol Abuse

- (1a) Implement the case study of the law's treatment of the social problem of alcohol abuse. Begin with a clarification in a class session of the nature of alcohol abuse. Have students consider why alcoholic beverages have existed so long and attained such widespread use. Read and discuss Amendment XVIII to the United States Constitution. Then have students read excerpts from the Volstead Act which was passed by Congress to enforce the Prohibition Amendment. This law made it a crime to "sell, barter, transport, import, export, furnish or possess any intoxicating liquor..."

Discussion of the National Prohibition Act might center on these questions:

- . What was the social problem?
- . What was the solution? Upon which legal technique did the act rely?
- . Why did the act not succeed?
- . In what way did the act do harm to the legal system? (What can be inferred from this situation?)

- (1b) Have students read excerpts from "Alcoholic Beverage Control Before Repeal" by Clark Byse. Divide the class into groups to discuss these questions:

- . What factors brought about Prohibition?

DISCUSSION OF STRATEGIES AND RESOURCES

When law fails to treat a social problem effectively, it may not be a matter of unsound rules regulating a given activity, or of unsound organization of legal officials. The need may be for change in the choice of legal resources (legal techniques). There is no assurance that the most appropriate combination of legal techniques will be used on any given social problem. Where inappropriate legal resources have been used, there is need for legal change.

Perhaps the most dramatic example of change in use of legal resources in American history came with the twenty-first amendment and the repeal of prohibition. The penal technique had been the basic legal resource used to combat alcohol abuse. The result was increased alcohol abuse, little regulation where regulation was needed, corruption, and promotion of general disrespect for the law. Adding the use of the regulatory and distributive resources to the penal technique after prohibition was a legal change that resulted in substantial progress in the handling of problems of alcohol abuse. Manufacturers now produce liquor according to established quality standards, minors are not served indiscriminately, public funds are extended on research and rehabilitation of alcoholism.

The development of organized labor in the United States provides a second example of reallocation of legal techniques in American history. As labor unions first formed, they were met with the penal technique. Unions were treated as criminal conspiracies, and labor leaders were prosecuted. Later, management used the remedial technique to discourage development of unions. Strikes were enjoined and

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DETAILED DESCRIPTION OF STRATEGIES

- Why did Prohibition fail?
- How could the social problem have been better treated? What suggestions does Byse offer?

Have students in each group formulate an outline of how they would have coped with the social problem of alcohol abuse.

- (1c) Have students read excerpts from the New York State "Alcoholic Beverage Control Law" in preparation for a discussion of the effectiveness of the various legal techniques in coming to grips with alcohol abuse today. Briefly discuss the nature and the objectives of these laws.

- (1d) Divide the class into groups. Have each group compare and contrast the relative effectiveness of the following legal techniques which are brought to bear on the problem of alcohol abuse.

- Distributive technique in spending on rehabilitation centers.
- Regulatory technique in regulating, manufacture and sale of alcoholic beverages (licenses, age limits).
- Penal technique in punishing for non-conformity to regulated standards. (See reference to *People v. Long*, a transcript of a drunk driving case, in Norris, *A Casebook of Complete Criminal Trials*, Understanding II of this module.)

DISCUSSION OF STRATEGIES AND RESOURCES

Labor leaders were sued and made to pay management for damage to business caused by union activity. As the legal system recognized organized labor as a legitimate force, labor-management relations have been handled through regulated private arrangements. Today, aspects of the regulatory and private arrangement techniques are important parts of legal work in the field of labor relations.

The final procedure in this understanding suggests consideration of a contemporary social problem to examine which legal techniques are currently emphasized in handling the problem. Students should be encouraged to speculate on how the legal system might treat the problem more effectively by reallocation of legal techniques.

The abortion issue might provide an illustration of interest to students. Before the summer of 1970, it was a crime in New York State to cause an abortion unless it was necessary to save the mother's life. Now, New York has "legalized" abortion. This does not mean that the law now permits any abortion. The New York law now uses the regulatory technique in addition to the penal technique to control abortions with carefully considered standards. In the area of abortion, emphasis of legal resources has shifted from penal to regulatory.

Analysis of legal techniques currently at work on problems of marijuana abuse, pollution, or automobile accidents might provide interesting alternative case studies. The problem of effective regulation of marijuana might require greater use of legal techniques other than the penal technique. In this

DETAILED DESCRIPTION OF STRATEGIES

- Private arrangement technique in promoting private programs (Alcoholics Anonymous).

Following discussion of the relative effectiveness of these four techniques, introduce the following questions to each group:

- How can current legal efforts regarding the problem of alcohol abuse be made more effective?
- How can the various legal techniques be reallocated to further reduce alcohol abuse?
- How effective are the visual/auditory promotions of the current advertising campaign? What legal function does this program represent?

Move from the small group discussions of these matters to a fishbowl. Summarize discussion on the above questions. Conclude with this question: How has the emphasis shifted from one legal technique to other legal techniques in meeting the problem of alcohol abuse?

- (1e) Present groups of students with the challenge to devise their own system for coping with alcoholic abuse today: How would you reorganize the system? Have each group outline its plan for allocating the various legal techniques. The degree of consensus may be ascertained after student reactions to the various proposals have been expressed.

DISCUSSION OF STRATEGIES AND RESOURCES

respect, this case study would be similar to those of alcohol abuse and of the abortion problem. In the problem of pollution, it might be necessary to place more emphasis on the penal technique in order to enforce present regulations more effectively. Private insurance arrangements are organized under the private arrangement technique. "No-fault" insurance plans, like the plan being successfully used in Massachusetts, place greater emphasis on the regulatory technique.

In reaching this understanding, students may examine the legal treatment of social problems which extended over a period. They may observe the shifts in the allocation of legal resources which were aimed at more effective treatment of the problem. Consideration of one or two case studies of an historical nature (either teacher-designed or from this guide) may be followed by a student-designed case study of a contemporary social problem. The two suggested case studies from American history involve the legal system's approach to alcohol abuse and organized labor. The teacher may wish to take advantage of the motivational advantage of considering a more timely problem and design another case study related to the legal treatment of a social problem.

Module 2

DISCUSSION OF STRATEGIES AND RESOURCES

DETAILED DESCRIPTION OF STRATEGIES

- (1f) Invite speakers to present views on various dimensions of the problem of alcohol abuse. Alternatively, organize a panel discussion with a talk show format which brings together various persons interested in the problem. Possible discussants include a tavernkeeper, a policeman, a concerned citizen who is a social drinker, and a representative of Alcoholics Anonymous or a temperance organization. Discussion might center on the views of the discussants on the present effectiveness of the legal system in dealing with alcohol abuse. If facilities for inschool video taping are available, make a tape of the panel discussion for viewing by other classes.
- (1g) As an alternative or an adjunct to the panel discussion, students could conduct elementary research in the community on the social problem of alcohol abuse by interviewing persons such as those suggested above as discussants. Students engaged in this activity would confer with each other and with the teacher concerning questions to be asked. Findings should be reported back to class and discussed.
- This activity could reach persons in the community who would be unavailable for a panel discussion in school.
- (1h) Using a radio-program format, have students engage in a dramatic reading of "people v. Long" from Harold Norris, *A Casebook of Complete Criminal Trials*. This reasonably

brief transcript is the complete record of the trial of a person charged with driving while under the influence of alcohol. Following the reading, conduct a discussion aimed at an analysis of the courtroom process. Questions the class might consider include the following:

- . Do you think that proof of guilt was established? Explain.
- . Had you been the judge, what would your verdict have been?
- . How effectively did the attorneys and the judge conduct themselves?
- . How would you have acted differently than the person whose part you read?

Case Study 2: Legal Techniques Applied to Organized Labor

(2a) Explain the background of Commonwealth v. Hunt to students. (see p. 76). Pose question such as this: If you had been the Chief Justice of the Massachusetts Supreme Court, how would you have ruled? Why?

Either the class as a whole can consider this matter or several groups of students can deliberate the question.

After discussing how and why students would have decided the case, assign the reading of excerpts of the case. Guide the reading with a few questions:

- . Why was the charge of criminal conspiracy made?

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DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

- How did the judge decide? Why?
(Unions were not criminal conspiracies.)
- In this situation, what legal technique was brought to bear on the "labor problem?" (Penal technique)

Additional research by interested students will help put the case in historical perspective especially with regard to the second question above.

- (2b) The next step is based on the two cases of In Re Debs (which in 1842 was related to the enjoining of the Pullman strike) and Loewe v. Lawlor (the "Danbury Hatters Case" which in 1908 involved collection of damages by a business from a union following a peaceful strike). Use an approach similar to that suggested for the treatment of Commonwealth v. Hunt. Present the class or groups of students with brief verbal or written background information on each case in turn. In each instance, pose a question similar to this: If you were the presiding judge, how would you have ruled in this case? Why? Possible answers can be discussed by the entire class or by small groups of students.
- After speculating as to how they might have decided each case, students can read the actual decisions in edited form. Followup discussion for both cases might center on questions similar to these:

- Why was the particular change made?

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DISCUSSION OF STRATEGIES AND RESOURCES

DETAILED DESCRIPTION OF STRATEGIES.

- Why did the judge decide as he did?
- What technique was brought into play against organized labor? (Remedial: injunction, money damages.)
- How effective was this technique in dealing with labor?
- In what ways did organized labor have to modify its practices?
- What prevailing attitudes toward labor were reflected in these decisions?

(2c) Divide the class into six teams. Have each team investigate an example of Federal legislation from the late 19th and 20th centuries dealing with organized labor. The suggested legislation for students to consider includes:

- Sherman Anti-Trust Act (1890)
- Clayton Anti-Trust Act (1914)
- Railway Labor Act (1926)
- Norris LaGuardia Anti-Injunction Act (1932)
- National Labor Relations Act (Wagner Act) (1935)
- Taft-Hartley Act (1947)
- Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) (1959)

Basic questions to be kept in mind include:

- Which legal technique was most in evidence in the act?

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DETAILED DESCRIPTION OF STRATEGIES

What was the effect of the act with regard to the following?
 - right to organize; right to collective bargaining; right to strike; unfair labor practices

In putting their findings together, students should observe how the combined resources of the regulatory and private arrangements techniques have been used to deal with organized labor.
 Move into a fishbowl format with a representative of each team sitting in the inner circle or have a representative of each group give a presentation of the group's findings to the class. As group findings are reported, students should record them and react to them.

Summarizing questions for the discussion might include the following:

In terms of the various legal techniques, how did the legal system change the way in which it dealt with organized labor?

What was the trend or pattern of change in the legal system's response to labor?

(2d) Compilation of a table might assist students in understanding their consideration of changing legal techniques applied to organized labor. A possible design for such a table follows:

NAME OF CASE OR ACT	PRIMARY LEGAL TECHNIQUE APPLIED	EFFECT ON			RIGHT TO STRIKE	UNFAIR LABOR PRACTICES	OTHER
		RIGHT TO ORGANIZE	RIGHT TO COLLECTIVE BARGAINING				
COMMONWEALTH V. HUNT (1842)							
SHERMAN ANTI-TRUST ACT (1890)							
IN RE DEBS (1895)							
(ETC.)							
ANALYSIS OF TRENDS:							

Case Study 3: Legal Techniques Applied to Contemporary Social Problems

(3a) Have students design and carry out their own case studies of the legal treatment of current social problems. Suggested problems include:

- . Abortion
- . Marijuana Abuse
- . Narcotics Adiction
- . Pollution
- . Automobile Accident Injuries

Have individuals or groups gather information on the legal techniques applied to these social problems. Consideration should be given to these questions:

- . Which legal techniques have been used on this problem in the past?
- . Which legal techniques are currently emphasized as the legal system works on this problem?
- . How might the emphasis of legal techniques be changed to deal more effectively with this problem?

Students should be encouraged to draw on experience gained from the two previous case studies. For example, consideration of the Prohibition/ Repeal study might suggest "lessons to be learned" in devising more adequate approaches to coping with marijuana abuse.

Module 2

DETAILED DESCRIPTION OF STRATEGIES

(3b) Each team can make a presentation of its study to the rest of the class, or representatives from each team can exchange findings and share reactions in a fishbowl setting.

Discussion, facilitated by the teacher, should center on the emphasis or arrangement of legal techniques thought to be best in confronting each social problem selected.

DISCUSSION OF STRATEGIES AND RESOURCES

RESOURCES *

Summers, R.S., Campbell, A.B., & Hubbard, G.F. *American legal system*. Unit II - "The techniques of law." Lexington, Mass. Ginn & Co. 1973.

Alcoholic Beverage Control Before Repeal. Clark Byse. 7 Law and Contemporary Problems (1940) pp. 544-566. Reprinted by permission of Fred B. Rothman & Co., South Hackensack, N.J.

The quoted material removed in compliance with copyright law.

National Prohibition Act ("Volstead Act"). Chapter 85 of the U.S. Laws of 1919 in Vol. 41, U.S. Statutes at Large, p. 305-323.

"CHAP. 85.—An Act To prohibit intoxicating beverages, and to regulate the manufacture, production, use, and sale of high-proof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye, and other lawful industries.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the short title of this Act shall be the 'National Prohibition Act.'

"TITLE I. TO PROVIDE FOR THE ENFORCEMENT OF WAR PROHIBITION.

"The term 'War Prohibition Act' used in this Act shall mean the provisions of any Act or Acts prohibiting the sale and manufacture of intoxicating liquors until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States. The words 'beer, wine, or other intoxicating or vinous liquors' in the War Prohibition Act shall be hereafter construed to mean any such beverages which contain one-half of 1 per centum or more of alcohol by volume. ...

"Sec. 2. The Commissioner of Internal Revenue, his assistants, agents, and inspectors, shall investigate and report violations of the War Prohibition Act to the United States attorney for the district in which committed, who shall be charged with the duty of prosecuting, subject to the direction of the Attorney General, the offenders as in the case of other offenses against laws of the United States; and such Commissioner of Internal Revenue, his assistants, agents, and inspectors may swear out warrants before United States commissioners or other officers or courts authorized to issue the same for the apprehension of such offenders, and may, subject to the control of the said United States attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury.

"Sec. 3. Any room, house, building, boat, vehicle, structure, or place of any kind where intoxicating liquor is sold, manufactured, kept for sale, or bartered in violation of the War Prohibition Act, and all intoxicating liquor and all property kept and used in maintaining such a place, is hereby declared to be a public and common nuisance....

"Sec. 4. The United States attorney for the district where such nuisance as is defined in this Act exists, or any officer designated by him or the Attorney General of the United States, may prosecute a suit in equity in the name of the United States to abate and enjoin the same. Actions in equity to enjoin and abate such nuisances may be brought in any court having jurisdiction to hear and determine equity causes. The jurisdiction of the courts of the United States under this section shall be concurrent with that of the courts of the several States.

"If it be made to appear by affidavit, or other evidence under oath, to the satisfaction of the court, or judge in vacation, that the nuisance complained of exists, a temporary writ of injunction shall forthwith issue restraining the defendant or defendants from conducting or permitting the continuance of such nuisance until the conclusion of the trial. Where a temporary injunction is prayed for, the court may issue an order restraining the defendants and all other persons from removing or in any way interfering with the liquor or fixtures, or other things used in connection with the violation constituting the nuisance. ...

"In the case of the violation of any injunction, temporary or permanent, granted pursuant to the provisions of this Title, the court or in vacation a judge thereof, may summarily try and punish the defendant. ...

"Sec. 5. The Commissioner of Internal Revenue, his assistants, agents, and inspectors, and all other officers of the United States whose duty it is to enforce criminal laws, shall have all the power for the enforcement of the War Prohibition Act or any provisions thereof which is conferred by law for the enforcement of existing laws relating to the manufacture or sale of intoxicating liquors under the laws of the United States. ...

"TITLE II. PROHIBITION OF INTOXICATING BEVERAGES.

"Sec. 1. When used in Title II and Title III of this Act (1) The word 'liquor' or the phrase 'intoxicating liquor' shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are fit for use for beverage purposes: ...

"Sec. 2. The Commissioner of Internal Revenue, his assistants, agents, and inspectors shall investigate and report violations of this Act to the United States attorney for the district in which committed, who is hereby charged with the duty of prosecuting the offenders, subject to the direction of the Attorney General as in the case of other offenses against the laws of the United States; and such Commissioner of Internal Revenue, his assistants, agents, and inspectors may swear out warrants before United States commissioners or other officers or courts authorized to issue the same for the apprehension of such offenders, and may, subject to the control of the said United States attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury. ...

"Sec. 3. No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

"Liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor: ...

"Sec. 4. The articles enumerated in this section shall not, after having been manufactured and prepared for the market, be subject to the provisions of this Act if they correspond with the following descriptions and limitations, namely:

- (a) Denatured alcohol or denatured rum produced and used as provided by laws and regulations now or hereafter in force.
- (b) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary or the American Institute of Homeopathy that are unfit for use for beverage purposes.
- (c) Patented, patent, and proprietary medicine that are unfit for use for beverage purposes.
- (d) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for beverage purposes.
- (e) Flavoring extracts and sirups that are unfit for use as a beverage, or for intoxicating beverage purposes.
- (f) Vinegar and preserved sweet cider.

"A person who manufactures any of the articles mentioned in this section may purchase and possess liquor for that purpose, but he shall secure permits to manufacture such articles and to purchase such liquor, give the bonds, keep the records, and make the reports specified in this Act and as directed by the commissioner. ...

"Any person who shall knowingly sell any of the articles mentioned in paragraphs a, b, c, and d of this section for beverage purposes, or any extract or sirup for intoxicating beverage purposes, or who shall sell any of the same under circumstances from which the seller might reasonably deduce the intention of the purchaser to use them for such purposes, or shall sell any beverage containing one-half of 1 per centum or more of alcohol by volume in which any extract, sirup, or other article is used as an ingredient, shall be subject to the penalties provided in section 29 of this Title. ...

"If the manufacturer of said article fails to show to the satisfaction of the commissioner that the article corresponds to the descriptions and limitations provided by section 4 of this Title, his permit to manufacture and sell such article shall be revoked. ...

"Sec. 6. No one shall manufacture, sell, purchase, transport, or prescribe any liquor without first obtaining a permit from the commissioner so to do, except that a person may, without a permit, purchase and use liquor for medicinal purposes when prescribed by a physician as here-in provided....

"All permits to manufacture, prescribe, sell, or transport liquor, may be issued for one year, and shall expire on the 31st day of December next succeeding the issuance thereof: ...

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- "Sec. 7. No one but a physician holding a permit to prescribe liquor shall issue any prescription for liquor. ...
- "Sec. 8. The commissioner shall cause to be printed blanks for the prescriptions herein required, and he shall furnish the same, free of cost, to physicians holding permits to prescribe. ...
- "Sec. 10. No person shall manufacture, purchase for sale, sell, or transport any liquor without making at the time a permanent record thereof showing in detail the amount and kind of liquor manufactured, purchased, sold, or transported, together with the names and addresses of the persons to whom sold, in case of sale, and the consignor and consignee in case of transportation, and the time and place of such manufacture, sale, or transportation. ...
- "Sec. 11. All manufacturers and wholesale or retail druggists shall keep as a part of the records required of them a copy of all permits to purchase on which a sale of any liquor is made, and no manufacturer or wholesale druggist shall sell or otherwise dispose of any liquor except at wholesale and only to persons having permits to purchase in such quantities.
- "Sec. 12. All persons manufacturing liquor for sale under the provisions of this title shall securely and permanently attach to every container thereof, as the same is manufactured, a label stating name of manufacturer, kind and quantity of liquor contained therein, and the date of its manufacture, together with the number of the permit authorizing the manufacture thereof:...
- "Sec. 13. It shall be the duty of every carrier to make a record at the place of shipment of the receipt of any liquor transported, and he shall deliver liquor only to persons who present to the carrier a verified copy of a permit to purchase which shall be made a part of the carrier's permanent record at the office from which delivery is made. ...
- "Sec. 17. It shall be unlawful to advertise anywhere, or by any means or method, liquor, or the manufacture, sale, keeping for sale or furnishing of the same, or where, how, from whom, or at what price the same may be obtained. ...
- "Sec. 18. It shall be unlawful to advertise, manufacture, sell, or possess for sale any utensil, contrivance, machine, preparation, compound, tablet, substance, formula direction, or recipe advertised, designed, or intended for use in the unlawful manufacture of intoxicating liquor. ...

"Sec. 20. Any person who shall be injured in person, property, means of support, or otherwise by any intoxicated person, or by reason of the intoxication of any person, whether resulting in his death or not, shall have a right of action against any person who shall, by unlawfully selling to or unlawfully assisting in procuring liquor for such intoxicated person, have caused or contributed to such intoxication, and in any such action such person shall have a right to recover actual and exemplary damages. . . .

"Sec. 21. Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of this title, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance, of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or be imprisoned for not more than one year, or both. . . .

"Sec. 22. An action to enjoin any nuisance defined in this title may be brought in the name of the United States by the Attorney General of the United States or by any United States attorney or any prosecuting attorney of any State or any subdivision thereof or by the commissioner or his deputies or assistants. . . .

"Sec. 25. It shall be unlawful to have or possess any liquor or property designed to the manufacture of liquor intended for use in violating this title or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue. . . and such liquor, the containers thereof, and such property so seized shall be subject to such disposition as the court may make thereof. . . .

"Sec. 26. When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. . . .

"Sec. 29. Any person who manufactures or sells liquor in violation of this title shall for a first offense be fined not more than \$1,000, or imprisoned not exceeding six months, and for a second or subsequent offense shall be fined not less than \$200 nor more than \$2,000 and be imprisoned not less than one month nor more than five years.

"Any person violating the provisions of any permit, or who makes any false record, report, or affidavit required by this title, or violates any of the provisions of this title, for which offense a special penalty is not prescribed, shall be fined for a first offense not

more than \$500; for a second offense not less than \$100 nor more than \$1,000, or be imprisoned not more than ninety days; for any subsequent offense he shall be fined not less than \$500 and be imprisoned not less than three months nor more than two years. ...

"Sec. 30. No person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence in obedience to a subpoena of any court in any suit or proceeding based upon or growing out of any alleged violations of this Act; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify or produce evidence, but no person shall be exempt from prosecution and punishment for perjury committed in so testifying. ...

"Sec. 33. After February 1, 1920, the possession of liquors by any person not legally permitted under this title to possess liquor shall be prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this title. ...

"Sec. 34. All records and reports kept or filed under the provisions of this Act shall be subject to inspection at any reasonable hour by the commissioner or any of his agents or by any public prosecutor or by any person designated by him, or by any peace officer in the State where the record is kept, and copies of such records and reports duly certified by the person with whom kept or filed may be introduced in evidence with like effect as the originals thereof, and verified copies of such records shall be furnished to the commissioner when called for. ...

"Sec. 36. If any provision of this Act shall be held invalid it shall not be construed to invalidate other provisions of the Act. ...

"A manufacturer of any beverage containing less than one-half of 1 per centum of alcohol by volume may, on making application and giving such bond as the commissioner shall prescribe, be given a permit to develop in the manufacture thereof by the usual methods of fermentation and fortification or otherwise a liquid such as beer, ale, porter, or wine, containing more than one-half of 1 per centum of alcohol by volume, but before any such liquid is withdrawn from the factory or otherwise disposed of the alcoholic contents thereof shall under such rules and regulations as the commissioner may prescribe be reduced below such one-half of 1 per centum of alcohol:....

"In any case where the manufacturer is charged with manufacturing or selling for beverage purposes any malt, vinous, or fermented liquids containing one-half of per centum or more of alcohol by volume, or in any case where the manufacturer, having been permitted by the commissioner to develop a liquid such as ale, beer, porter, or wine containing more than one-half of 1 per centum of alcohol by volume in the manner and for the purpose herein provided, is charged with failure to reduce the alcoholic content of any such liquid below such one-half of 1 per centum before withdrawing the same from the factory, then in either such case the burden of proof shall be on such manufacturer to show that such liquid so manufactured, sold, or withdrawn contains less than one-half of 1 per centum of alcohol by volume. . . .

"Sec. 38. The Commissioner of Internal Revenue and the Attorney General of the United States are hereby respectively authorized to appoint and employ such assistants, experts, clerks, and other employees in the District of Columbia or elsewhere, and to purchase such supplies and equipment as they deem necessary for the enforcement of the provisions of this Act, but such assistants, experts, clerks, and other employees, except such executive officers as may be appointed by the Commissioner or the Attorney General to have immediate direction of the enforcement of the provisions of this Act and persons authorized to issue permits, and agents and inspectors in the field service, shall be appointed under the rules and regulations prescribed by the Civil Service Act. . . .

"TITLE III. INDUSTRIAL ALCOHOL.

"Sec. 1. When used in this title—

"The term 'alcohol' means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or whatever processes produced. . . .

"INDUSTRIAL ALCOHOL PLANTS AND WAREHOUSES

"Sec. 2. Any person now producing alcohol shall, within thirty days after the passage of this Act, make application to the commissioner for registration of his industrial alcohol plant, and as soon thereafter as practicable the premises shall be bonded and permit may issue for the operation of such plant, and any person hereafter establishing a plant for the production of alcohol shall likewise before operation make application, file bond, and receive permit. . . .

"TAX-FREE ALCOHOL.

"Sec. 10. Upon the filing of application and bond and issuance of permit denaturing plants, may be established upon the premises of any industrial alcohol plant, or elsewhere, and shall

be used exclusively for the denaturation of alcohol by the admixture of such denaturing materials as shall render the alcohol, or any compound in which it is authorized to be used, unfit for use as an intoxicating beverage.

"Alcohol lawfully denatured may, under regulations, be sold free of tax either for domestic use or for export. ...

"GENERAL PROVISIONS.

"Sec. 15. Whoever operates an industrial alcohol plant or a denaturing plant without complying with the provisions of this title and lawful regulations made thereunder, or whoever withdraws or attempts to withdraw or secure tax free any alcohol subject to tax, or whoever otherwise violates any of the provisions of this title or of regulations lawfully made thereunder shall be liable, for the first offense, to a penalty of not exceeding \$1,000, or imprisonment not exceeding thirty days, or both, and for a second or cognate offense to a penalty of not less than \$100 nor more than \$10,000 and to imprisonment of not less than thirty days nor more than one year. It shall be lawful for the commissioner in all cases of second or cognate offense to refuse to issue for a period of one year a permit for the manufacture or use of alcohol upon the premises of any person responsible in any degree for the violation. ...

"Sec. 21. Titles I and III and sections 1, 27, 37, and 38 of title II, of this Act shall take effect and be in force from and after the passage and approval of the Act. The other sections of title II shall take effect and be in force from and after the date when the eighteenth amendment of the Constitution of the United States goes into effect."

McKinney's Consolidated Laws of New York. Book 3. "Alcoholic Beverages." 1970.

Section 2. Policy of state and purpose of chapter

"It is hereby declared as the policy of the state that it is necessary to regulate and control the manufacture, sale and distribution within the state of alcoholic beverages for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to law. It is hereby declared that such policy will best be carried out by empowering the liquor authority of the state to determine whether public convenience and advantage will be promoted by the issuance of licenses to traffic in alcoholic beverages, the increase or decrease in the number thereof and the location of premises licensed thereby, subject only to the right of judicial review hereinafter provided for. It is the purpose of this chapter to carry out that policy in the public interest. The restrictions, regulations and provisions contained in this chapter are enacted by the legislature for the protection, health, welfare and safety of people of this state.

Section 17. Powers of the authority

"The authority shall have the following functions, powers and duties:

1. To issue or refuse to issue any license or permit provided for in this chapter.
3. To revoke, cancel or suspend for cause any license or permit issued under this chapter.
5. To fix by rule the standards of manufacture and fermentation in order to insure the use of proper ingredients and methods in the manufacture of alcoholic beverages to be sold or consumed in the state. ...
7. To inspect or provide for the inspection of any premises where alcoholic beverages are manufactured or sold.
11. To prohibit, at any time of public emergency, without previous notice or advertisement, the sale of any or all alcoholic beverages for and during the period of such emergency.

Section 65. Prohibited sales

"No person shall sell, deliver or give away or cause or permit or procure to be sold, delivered or given away any alcoholic beverages to

1. Any minor, actually or apparently, under the age of eighteen years;
2. Any intoxicated person or to any person, actually or apparently, under the influence of liquor;
3. Any habitual drunkard known to be such to the person authorized to dispense any alcoholic beverages. ...

Section 103. Provisions governing manufacturers

See Resource section for Understanding II, Module II, page 53.

Section 130. Penalties for violations of chapter

"1. Any person who manufactures for sale or sells alcoholic beverages, other than the illicit alcoholic beverages as defined in section one hundred fifty, without having an appropriate license therefor, or whose license has been revoked, surrendered or cancelled, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred dollars nor more than twelve hundred dollars or by imprisonment in a county jail or penitentiary for a term of not less than thirty days nor more than one year or both...."

Module 2

Commonwealth v. Hunt, Vol. 4, Metcalf's Reports (Massachusetts Reports), pp. 111-137. (1842).

Edited versions of the decision are contained in:

Commager, H.S., ed. *Documents in American history, part 1*. New York. Appleton-Century-Crofts. Document 160.

Sufrin, S.C. & Sedgwick, R.C. *Labor law: development - administration - cases*. New York. Crowell. 1954. pp. 38-41.

Case background:

Two years prior to this historic decision, seven journeymen, members of the Boston Journeymen Bootmaker's Society, were found guilty of criminal conspiracy. When the case was appealed Chief Justice Lemuel Shaw wrote the decision from which the following excerpts are taken.

Although the Society was opposed to its members working in shops with nonmembers, it tolerated this practice as long as the nonmembers were paid the higher Society wage rate. When one non-member name Horne accepted less than the Society's rates, the employer, Isaac Waite was pressured into paying Horne the scheduled rates. On another occasion when Horne, again, broke Society rules Waite fired him to keep the other workers from leaving. Horne went to the district attorney who prosecuted the union officials. When the Boston Municipal Court decided the union members were guilty, they appealed. Justice Shaw's decision resulted. The question was whether the actions of the members of the Society constituted criminal conspiracy. The fundamental questions were these: Were unions such as the Boston Bootmakers' Society lawful? Were strikes for a closed shop lawful?

In Re Debs, Vol. 158, U.S. Reports, p. 564-600. (1895).

Edited versions of the decision are to be found in:

Commager, H.S., ed. *Documents in American history, part 1*. New York. Appleton-Century Crofts. Document 336.

Mueller, S.J. & Myers, A.H. *Labor law and legislation*. Cincinnati. South-Western Publishing Co. pp. 153-159.

Case background:

The Pullman strike of 1894 began in the company town of the "Pullman Palace Car Company" which built the famous sleeping cars. Depressed economic conditions had led Pullman to lay off most employees and lower the wages of the rest. However, Pullman did not reduce dividends or lower

the rents workers were required to pay in the town of Pullman. When protestors were fired, most workers went on strike and the rest were locked out. Since some of the workers were members of the American Railway Union, that organization declared a boycott and its members refused to work on any train which included a Pullman car. Eugene Debs, a union leader, proposed arbitration, but Pullman refused. Pullman was supported by the Railway Managers Association which sought to run Pullman cars on more trains than usual. Debs urged the 100,000 striking workers to obey the law and not interfere with trains bearing the U.S. mail. Although the Governor of Illinois and the Mayor of Chicago claimed to have matters well in hand, President Cleveland sent in Federal troops to protect the mail. Mobs sympathetic to the workers taunted the soldiers; rioting broke out. In the meantime, the U.S. Attorney General had made application to the Chicago District Court for an injunction forbidding interference with interstate transportation, and attempts to persuade railway workers to strike. The issuing judge justified the injunction on the grounds that the strike was a conspiracy in restraint of trade and therefore a violation of the Sherman Anti-Trust Act. Debs and other strike leaders were jailed for contempt of court when they refused to obey. Both the strike and the union fell apart. Although the conspiracy case was never brought to a conclusion, the contempt trial became famous as In Re Debs and was decided by the Supreme Court.

To the supporters of organized labor, one of the key issues was this: If Debs and the others had broken the law, should they not be indicted and tried by a jury rather than be deprived of liberty at the discretion of a judge? Beyond that, did Federal courts of equity have the right to issue strike-shattering injunctions?

Lowe v. Lawlor (The Danbury Hatters' Case), Vol. 208, U.S. Reports, pp. 274-309. (1908).

The decision in edited form is contained in:

Sufrin, S.C. & Sedgwick, R.C. *Labor law: development - administration - cases*. New York. Crowell. 1954. pp. 48-50.

Case background:

The plaintiffs were manufacturers of hats in Danbury, Connecticut who sold most of their products in various other states. The defendants were members of the United Hatters of North America which was affiliated with the American Federation of Labor. When the factory owners resisted efforts to unionize their shops, the union members in Connecticut acted to prevent the manufacture of hats by their employers. In 1902, union members in other states carried out a secondary boycott to prevent hats manufactured at the Danbury plants from being resold by vendors around the country.

At the time the union initiated actions against the manufacturers, the factories were engaged in substantial production to meet agreements with hat dealers in some 20 states. Being unable to meet these contracts, the hat manufacturers sued the union for damages, claiming that the union had violated sections of the Anti-Trust Act of 1890. In accordance with that act, any injuries suffered as a result of actions declared unlawful were to result in the payment of triple damages plus the costs of the suit. This was the first time the Sherman Anti-Trust Act was applied to labor organizations. The basic question was whether organized labor had conspired to act in restraint of trade or commerce among states.

Case decision:

"Mr. Chief Justice Fuller delivered the opinion of the court. ...

"The averments here are that there was an existing interstate traffic between plaintiffs and citizens of other States, and that for the direct purpose of destroying such interstate traffic defendants combined not merely to prevent plaintiffs from manufacturing articles then and there intended for transportation beyond the State, but also to prevent the vendees from reselling the hats which they had imported from Connecticut, or from further negotiating with plaintiffs for the purchase and intertransportation of such hats from Connecticut to the various places of destination. So that, although some of the means whereby the interstate traffic was to be destroyed were acts within a State, and some of them were in themselves as a part of their obvious purpose and effect beyond the scope of Federal authority, still, as we have seen, the acts must be considered as a whole, and the plan is open to condemnation, notwithstanding a negligible amount of intrastate business might be affected in carrying it out. If the purposes of the combination were, as alleged, to prevent any interstate transportation at all, the fact that the means operated at one end before physical transportation commenced and at the other end after the physical transportation ended was immaterial.

"Nor can the act in question be held inapplicable because defendants were not themselves engaged in interstate commerce. The act made no distinction between classes. It provided that 'every' contract, combination or conspiracy in restraint of trade was illegal. The records of Congress show that several efforts were made to exempt, by legislation, organizations of farmers and laborers from the operation of the act and that all these efforts failed, so that the act remained as we have it before us. ...

"At the risk of tediousness, we repeat that the complaint averred that plaintiffs were manufacturers of hats in Danbury, Connecticut, having a factory there, and were then and there engaged in an interstate trade in some twenty States other than the State of Connecticut; that

they were practically dependent upon such interstate trade to consume the product of their factory, only a small percentage of their entire output being consumed in the State of Connecticut; that at the time the alleged combination was formed they were in the process of manufacturing a large number of hats for the purpose of fulfilling engagements then actually made with consignees and wholesale dealers in States other than Connecticut, and that if prevented from carrying on the work of manufacturing these hats they would be unable to complete their engagements.

"That defendants were members of a vast combination called The United Hatters of North America, comprising about 9,000 members and including a large number of subordinate unions, and that they were combined with some 1,400,000 others into another association known as The American Federation of Labor, of which they were members, whose members resided in all the places in the several States where the wholesale dealers in hats and their customers resided and did business; that defendants were 'engaged in a combined scheme and effort to force all manufacturers of fur hats in the United States, including the plaintiffs, against their will and their previous policy of carrying on their business, to organize their workmen in the departments of making and finishing, in each of their factories, into an organization, to be part and parcel of the said combination known as The United Hatters of North America, or as the defendants and their confederates term it, to unionize their shops, with the intent thereby to control the employment of labor in and the operation of said factories, and to subject the same to the direction and control of persons, other than the owners of the same, in a manner extremely onerous and distasteful to such owners, and to carry out such scheme, effort and purpose, by restraining and destroying the interstate trade and commerce of such manufacturers and their customers in the several States, of boycotting them, their product and their customers, using therefor all the powerful means at their command, as aforesaid, until such time as, from the damage and loss of business resulting therefrom, the said manufacturers should yield to the said demand to unionize their factories.'

"That the conspiracy or combination was so far progressed that out of eighty-two manufacturers of this country engaged in the production of fur hats seventy had accepted the terms and acceded to the demand that the shop should be conducted in accordance, so far as conditions of employment were concerned, with the will of the American Federation of Labor; that the local union demanded of plaintiffs that they should unionize their shop under peril of being boycotted by this combination, which demand defendants declined to comply with; that thereupon the American Federation of Labor, acting through its official organ and through its organizers, declared a boycott. . . .

"We think a case within the statute was set up and that the demurrer should have been overruled.

"Judgment reversed and cause remanded with a direction to proceed accordingly."

Landrum-Griffin Act ("Labor-Management Reporting and Disclosure Act of 1959"). Vol. 73, U.S. Statutes at Large, pp. 519-546. (1959).

"Section 1. This Act may be cited as the "Labor-Management Reporting and Disclosure Act of 1959.

"DECLARATION OF FINDINGS, PURPOSES, AND POLICY

"Sec. 2. (a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

"(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation, that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

"(c) The congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended, and the Railway Labor Act, as amended, and have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce;

(2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing into or from the channels of commerce. . . .

"TITLE I — BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

"Sec. 101. (a) (1) EQUAL RIGHTS.—Every member of a labor organization shall have equal rights and privileges within such organization. . . .

" (2) FREEDOM OF SPEECH AND ASSEMBLY.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings. . . .

" (3) DUES, INITIATION FEES, AND ASSESSMENTS.—Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date of enactment of this Act shall not be increased, and no general or special assessment shall be levied upon such members, except—

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing. . . .

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention. . . .

" (4) PROTECTION OF THE RIGHT TO SUE.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator. . . .

" (5) SAFEGUARDS AGAINST IMPROPER DISCIPLINARY ACTION.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such members has been (A) served with written

specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

"(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect. ...

"RIGHT TO COPIES OF COLLECTIVE BARGAINING AGREEMENTS

"Sec. 104. It shall be the duty of the secretary or corresponding principal officer of each labor organization, in the case of a local labor organization, to forward a copy of each collective bargaining agreement made by such labor organization with any employer to any employee who requests such a copy and whose rights as such employee are directly affected by such agreement....

"INFORMATION AS TO ACT

"Sec. 105. Every labor organization shall inform its members concerning the provisions of this Act. ...

"TITLE II--REPORTING BY LABOR ORGANIZATIONS, OFFICERS AND EMPLOYEES OF LABOR ORGANIZATIONS, AND EMPLOYERS

"Sec. 201. (a) Every labor organization shall adopt a constitution and bylaws and shall file a copy thereof with the Secretary, together with a report, signed by its president and secretary or corresponding principal officers....

"(b) Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year....

(c) Every labor organization required to submit a report under this title shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under a duty enforceable at the suit of any member of such organization...to permit such member for just cause to examine any books, records, and accounts necessary to verify such report. ...

"REPORT OF OFFICERS AND EMPLOYEES OF LABOR ORGANIZATIONS

"Sec. 202. (a) Every officer of a labor organization and every employee of a labor organization (other than an employee performing exclusively clerical or custodial services) shall file with the Secretary a signed report listing and describing for his preceding fiscal year--

(1) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child derived directly or indirectly from, an employer whose employees such labor organization represents or is actively seeking to represent, except payments and other benefits received as a bona fide employee of such employer; ...

"REPORT OF EMPLOYERS

"Sec. 203. (a) Every employer who in any fiscal year made--

(1) any payment or loan, direct or indirect, of money or other thing of value (including reimbursed expenses), or any promise or agreement therefor, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization... shall file with the Secretary a report, in a form prescribed by him, signed by its president and treasurer or correspondent principal officers showing in detail the date and amount of each payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments....

"TITLE IV--ELECTIONS - TERMS OF OFFICE: ELECTION PROCEDURES

"Sec. 401. (a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

"(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing. ...

"(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

"TITLE V—SAFEGUARDS FOR LABOR ORGANIZATIONS - FIDUCIARY RESPONSIBILITY OF OFFICERS OF LABOR ORGANIZATIONS

"Sec. 501. (a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. . . . A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

"(b) When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative....

"(c) Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than \$10,000 or imprisoned for not more than five years or both. ...

"MAKING OF LOANS; PAYMENT OF FINES

"Sec. 505. (a) No labor organization shall make directly or indirectly any loan or loans to any officer or employee of such organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of \$2,000.

"(b) No labor organization or employer shall directly or indirectly pay the fine of any officer or employee convicted of any willful violation of this Act. ...

"AMENDMENT TO SECTION 302, LABOR MANAGEMENT RELATIONS ACT, 1947

"Sec. 505. Subsections (a), (b), and (c) of section 302 of the Labor Management Relations Act, 1947, as amended, are amended to read as follows:

"Sec. 302. (a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who

acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value--

- '(1) to any representative of any of his employees who are employed in an industry affecting commerce; or
- '(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in any industry affecting commerce; ...'

"TITLE VI--MISCELLANEOUS PROVISIONS - EXTORTIONATE PICKETING

"Sec. 602. (a) It shall be unlawful to carry on picketing on or about the premises of any employer for the purpose of, or as part of any conspiracy or in furtherance of any plan or purpose for, the personal profit or enrichment of any individual (except a bona fide increase in wages or other employee benefits) by taking or obtaining any money or other thing of value from such employer against his will or with his consent. ..."

The Railway Labor Act, Vol. 44, U.S. Statutes at Large. pp. 577-587. (1926).

"GENERAL DUTIES

"Sec. 2. First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier and its employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.

"Fourth. In case of a dispute between a carrier and its employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held. . . .

"BOARDS OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

"Sec. 3. First. Boards of adjustment shall be created by agreement between any carrier or group of carriers, or the carriers as a whole and its or their employees.

"The agreement—

- (a) Shall be in writing;
- (b) Shall state the group or groups of employees covered by such adjustment board;
- (c) Shall provide that disputes between an employee or group of employees and a carrier, growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but failing to reach an adjustment in this manner, that the dispute shall be referred to the designated adjustment board by the parties, or by either party, with a full statement of the facts and all supporting data bearing upon the dispute; . . .
- (e) Shall stipulate that decisions of adjustment boards shall be final and binding on both parties to the dispute; and it shall be the duty of both to abide by such decisions; . . .
- (j) Shall stipulate that adjustment boards shall meet regularly at such times and places as designated; and
- (k) Shall provide for the method of advising the employees and carrier or carriers of the decisions of the board. . . .

"BOARD OF MEDIATION

"Sec. 4. First. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the Board of Mediation and to be composed of five members appointed by the President, by and with the advice and consent of the Senate. . . .

"FUNCTIONS OF BOARD OF MEDIATION

"Sec. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Board of Mediation created by this Act, or the Board of Mediation may proffer its services, in any of the following cases:

- (a) A dispute arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions not adjusted by the parties in conference and not decided by the appropriate adjustment board;
- (b) A dispute which is not settled in conference between the parties, in respect to changes in rates of pay, rules, or working conditions;
- (c) Any other dispute not decided in conference between the parties. . . .

"Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Board of Mediation for an interpretation as to the meaning or application of such agreement. The said board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

"Third. The Board of Mediation shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

- (a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Board of Mediation to name such remaining arbitrator or arbitrators. It shall be the duty of the board in naming such arbitrator or arbitrators to appoint only those whom the board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. . . .
- (d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Board of Mediation in writing, stating in such notice the question or questions to be submitted to such reconvened board.

"ARBITRATION

"Sec. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the

preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons....

"Sec. 8. The agreement to arbitrate--

- (a) Shall be in writing; ...
- (d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or circuit court of appeals of the United States, or before a member of the Board of Mediation, and, when so acknowledged, shall be filed in the office of the Board of Mediation;
- (e) Shall state specifically the questions to be submitted to the the said board for decisions as to the questions so specifically submitted to it;...

(1) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement. ...

"EMERGENCY BOARD

"Sec. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Board of Mediation, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential service, the Board of Mediation shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable. ..."

Federal Legislation Dealing with Organized Labor - Late 19th and 20th Centuries

Edited versions of acts marked with an asterisk (*) are readily available in:

Commager, H.S., ed. *Documents of American history*. New York. Appleton-Century-Crofts. 1963.

Starr, Isidore, Todd, L.P., & Curti, Merle. *Living American documents*. New York. Harcourt, Brace and World. 1961.

*Sherman Anti-Trust Act (1890)

*Clayton Anti-Trust Act (1984)

Railway Labor Act (1926)

*Norris-LaGuardia Anti-Injunction Act (1932)

*National Labor Relations Act (Wagner Act) (1935)

*Taft-Hartley Act (1947)

Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) (1959)

Students may also find the following references helpful:

Gibson, W.M. *Lessons in conflict*. Boston. Boston University School of Law. 1971. pp. 102-105.

Iman, R.S. & Koch, T.W. *Labor in American society*. Chicago. Scott, Foresman. 1964. Problem 7.

Oliver, D.W. & Newman, F.M. *The rise of organized labor*. Public Issues Series, Harvard Social Studies Project, Middletown, Conn. American Education Press. 1967.

Parker, Donald, O'Neil, R.M., & Econopouly, Nicholas. *Civil liberties*. Medford, Mass. The Lincoln Filene Center, Tufts University. 1965. pp. 103-112.

Books Useful to the Teacher on the Relationship of Law to Organized Labor

Cohen, Sanford. *Labor law*. Columbus. Charles Merrill Books. 1964.

Comprehensive study of labor legislation in the United States. Emphasizes the political and ideological forces that shaped the law and the administrative applications of the law. Appendixes contain entire Labor-Management Relations Act, 1947 (Taft-Hartley Act) and Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act).

Module 2

Rayback, J.G. *A history of American labor*. New York. Macmillan. 1966.
Readable, compact, and comprehensive account in paperback. Valuable source of background information.

Williams, J.S., ed. *Labor relations and the law*. Boston. Little Brown and Co. 1965.
Part I puts labor relations in historical perspective.