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ABSTRACT

This document presents three articles on law-related education (LRE) written either by or for students. Brent Halling, a senior at Castle High School in Newburgh, Indiana, opens the collection with an article on how due process protects rights. Halling explains the concept of due process and illustrates its reach through the case of Kenneth Donaldson, whom the Supreme Court freed in 1975 from a coerced confinement in a Florida mental hospital. Rima Vesely, a senior at Lane Technical High School in Chicago, calls on students to debate questions raised by four school-related Bill of Rights cases. The cases include a First Amendment debate over the restrictions on gang-related clothing, a Fourth Amendment case involving a search of students' book bags, a Fourteenth Amendment conflict over the right of an HIV sufferer to participate in sport activities, and a civil rights case over equal access for girls and boys to a school's athletic facilities. In a concluding article, Ernest Greene, one of the first students to integrate Central High School in Little Rock, Arkansas, offers a personal account of his frightening experience of breaking through the racial barriers of southern society. While applauding the Supreme Court decision in *Brown v. Board of Education* and the Fourteenth Amendment upon which it was based, Green makes it clear that the realization of constitutional rights depends foremost on the courage of citizens. In addition to these articles, the update contains the interactive worksheets related to LRE: "Fill in the Blanks: Create Your Own Great Quotes about Justice"; "Street Scene"; and "Word Search." (JD)

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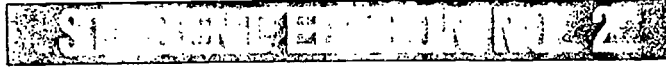
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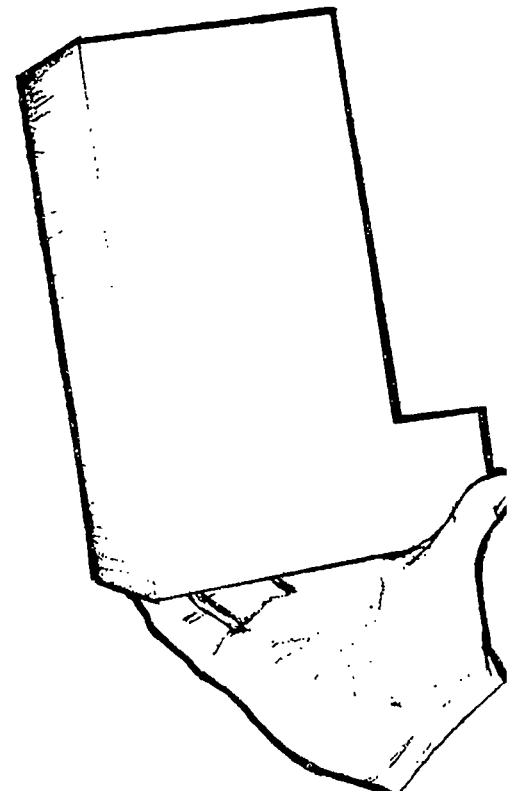
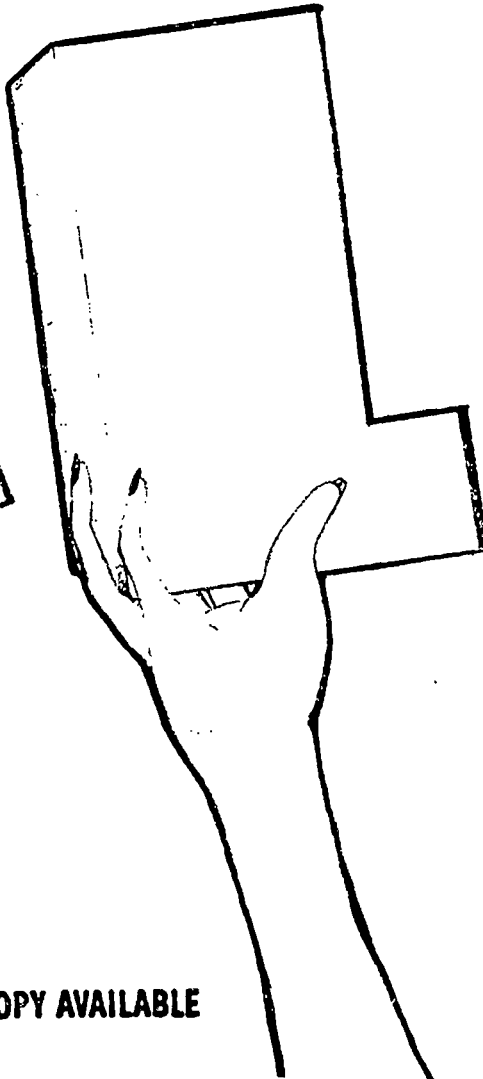
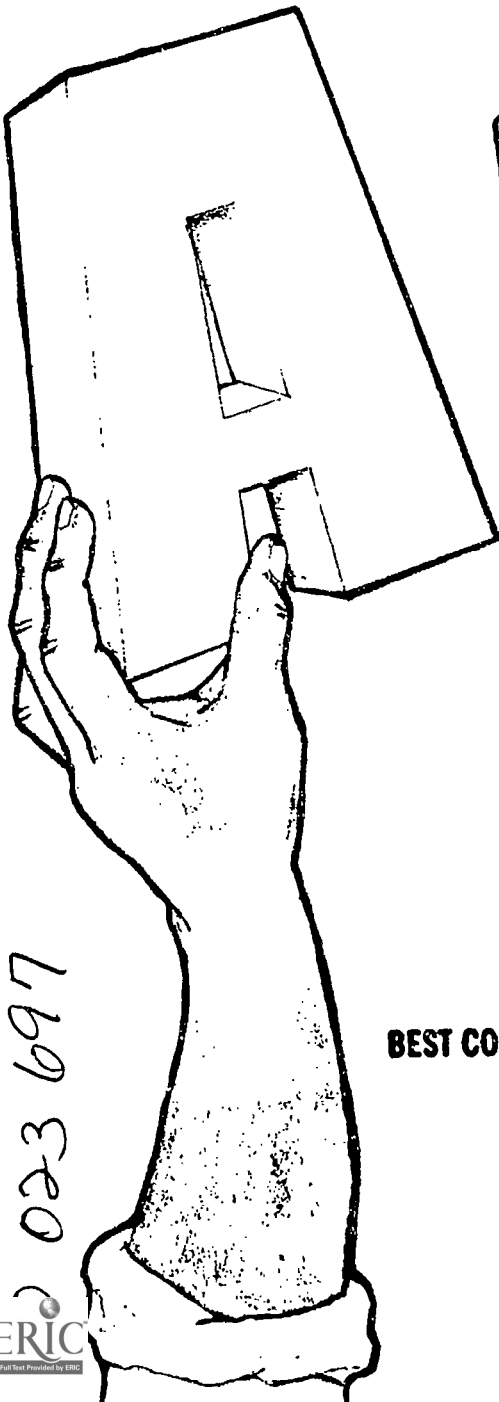
UPDATE

LAW-RELATED

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American Bar Association Special Committee on Youth Education for Citizenship



for Justice

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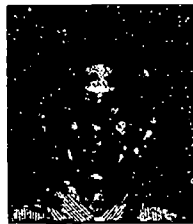
The Update on Law-Related Education Student Edition

"Justice for All, All for Justice"

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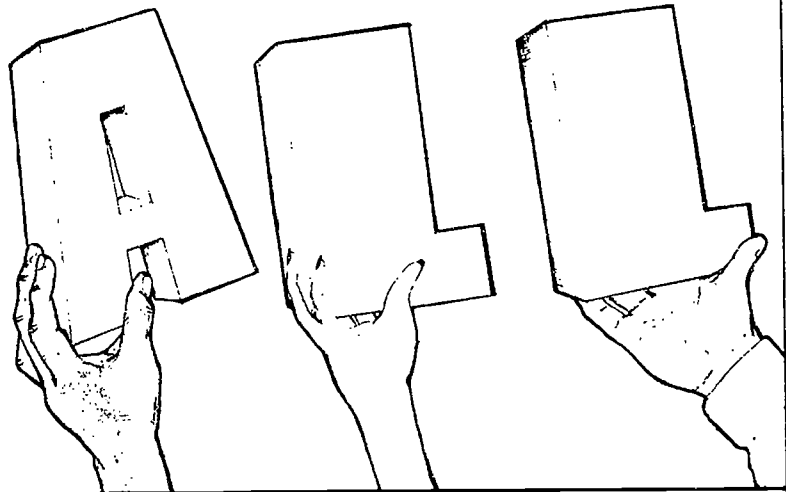
David Tokofsky
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Justice for **ALL** for Justice

A STUDENT EDITION OF
UPDATE ON LAW-RELATED EDUCATION



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How Due Process Makes For a More Just America

by Brent Halling

The expression “due process” is one that we hear often. But how many of us know what due process is, how it protects us, or how it affects our society?

Due process means that when someone has been charged with a crime, they must be treated fairly according to certain procedures which apply to everyone. The right to due process is based on the presumption of innocence, and it limits the powers of both law enforcement agencies and the courts so that the innocent and the guilty alike are protected from possible abuses of power.

Due process has been referred to as “the keystone of liberty” and “the cornerstone of a civilized system of justice.” Our society is strengthened when criminals are convicted in a fair trial, but it suffers when an accused person is treated unfairly. Supreme Court Justice Felix Frankfurter had this to say about due process: “Not out of the tenderness for the accused, but because we have reached a certain stage of civilization... [in which] respecting the dignity of even the least worthy citizen, raises the stature of all of us.”

Many of our rights to due process are found in Amendments Four, Five, Six, Seven, and Eight of the Bill of Rights. Some of the more important rights are as follows: right against unreasonable searches and seizures; right to be informed of rights; right against self-incrimination; right to a fair and speedy trial; and the right not to be tried twice for the same offense.

When an agency of government attempts to deprive people of their right to liberty or property, the procedural requirements of due process come into play.

The concept of liberty includes several different interests, ranging from protection against physical restraints which limit an individual’s freedom of movement to protection against less direct infringements of a person’s rights. Unwarranted confinement is one way in which a person is deprived of the right to liberty.

The case of Kenneth Donaldson is an example of how a person’s liberty can be violated. In 1957, Donaldson was committed to a Florida mental institution and confined there for 15 years against his will, even though he claimed he was not mentally ill or dangerous. He received no treatment for the supposed illness which put him there in the first place. Finally, in 1975, the Supreme Court ruled that confining Donaldson solely on the ground of his illness deprived him of his liberty.

The right to property is another extremely important right protected by due process, and one of the most important forms of property which people have is their salary. Several years ago a woman in Wisconsin found that her salary had been “garnished”—reduced by a certain amount to repay a debt—without her knowledge as a result of a court order signed by a court clerk. The order was signed at the request of a finance company lawyer without a hearing. With no advance notice of the clerk’s action, the woman did not have the opportunity to be heard. She protested this denial of her right to her property, took her arguments to the Supreme Court, and won.

Sometimes, the due process rights of those accused of crimes seem to be in conflict with the rights of the victims of those crimes. Some people argue

that America’s criminal justice system appears to favor the criminal, not the victim. Most of the time, they say, victims are left out of courtroom proceedings, and prosecutors are under no legal obligation to converse with victims before making plea or sentencing agreements.

It has been pointed out that early in our nation’s history, the Founding Fathers acknowledged the importance of providing rights for those accused of criminal offenses. The result was that five of the first ten amendments to the Constitution have to do with the rights of the accused. Some people say that if the Founders were able to see that two centuries later, one of every eight citizens would be victimized by crime each year they might have added an amendment to protect the rights of those victimized by crime.

Wherever one’s feelings on this issue, most people can agree that due process is designed to protect the liberty and property of *all* individuals. Our right to liberty guarantees our right to travel when and where we please, to wear long hair, and to be free from government efforts to brand us with stigmatizing labels. Our property rights include more than just the tangible things we possess. They also include public services, the protection of social welfare agencies, jobs, and other benefits we are entitled to by law or regulation. Whenever government tries to take away any of these, it must act according to due process.

Brent Halling is a senior at Castle High School in Newburgh, Indiana. His instructor, Stan Harris, teaches Advanced Government at Castle High.

FILL IN THE BLANKS:

Create Your Own Great Quotes About Justice

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

1. Legal justice is the art of the _____ and the _____.
2. The love of justice in most men is simply the fear of _____.
3. Man's capacity for justice makes _____ possible, but man's inclination to injustice makes _____ necessary.
4. One man's is _____ another man's _____.
5. Why has _____ been instituted at all? Because the passions of men will not conform to the dictates of reason and _____ without constraint.
6. _____ anywhere is a threat to _____ everywhere.
7. Justice is truth in _____.
8. ...the United States of America...established upon these principles of _____, _____, and _____...
9. Justice, justice, shalt thou _____.
10. There is no _____ so truly great and godlike as justice.
11. There is no such thing as _____—in or out of _____.
12. Delay of _____ is _____.
13. Let _____ be done, though the _____ fail.
14. _____ discards party, friendship, and kindred, and is therefore represented as _____.
15. Whenever a separation is made between _____ and justice, neither, in my opinion, is safe.
16. Justice is the sum of all _____ duty.

You Be the Judge

by Rima Vesely

Case #1

"Congress shall make no law...abridging the freedom of speech or of the press or the right of the people peaceably to assemble, and to petition the government for redress of grievances."

—First Amendment



In the last few months, there has been an increasing amount of gang violence at Wilson High. Several students have been jumped after school on campus, and two students were shot across the street from Wilson by students from another school. In an effort to control gang activities, school authorities have banned sports team jackets, which are often worn to signify which gang a person belongs to. In addition, the school authorities have prohibited boys from wearing earrings and hats.

Jamal wears a Raiders jacket and an earring in his left ear. He refuses to put the jacket in his locker for fear it might be stolen. One morning he was taken to

the vice principal's office and was told he couldn't wear the jacket or an earring. Jamal protested that he did not belong to a gang and, under the First Amendment, he had the right to freedom of expression. The school authorities told him he would be suspended until he complied with the rules.

- 1) What are Jamal's rights? Are they being violated under the First Amendment?
- 2) Would it make any difference if Jamal consistently wore gang colors and was reputed to be a gang member?
- 3) If a teacher wore a Raiders jacket or an earring in his left ear, could school authorities prohibit the teacher from wearing such items?
- 4) If Jamal's family was too poor to

buy another jacket, could the school authorities still keep him out of school?

Case #2

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

—Fourth Amendment

Last Halloween, the principal of Valley High announced over the PA system that teachers would search students' bags that afternoon. She also announced that teachers and school administrators would be randomly searching students' lockers for such items as shaving cream and eggs.

One student, Kara, refused to let her locker be searched. She was taken to the discipline office and told she must open her locker because it was the property of the Board of Education. Kara maintained that the locker contained her personal belongings and she had rights under the Fourth Amendment. Kara was suspended for five days.

- 1) What are Kara's rights? Were they violated under the Fourth Amendment?
- 2) Suppose someone had called the school and said there was a bomb in a student's locker. Would the school authorities be allowed to search Kara's locker then? Why?
- 3) What if a teacher was suspected of a crime? Under what circumstances could the teacher's locker be searched?
- 4) While searching bags for eggs, one teacher found drugs in a student's gym bag. Would that evidence be admissible in court?

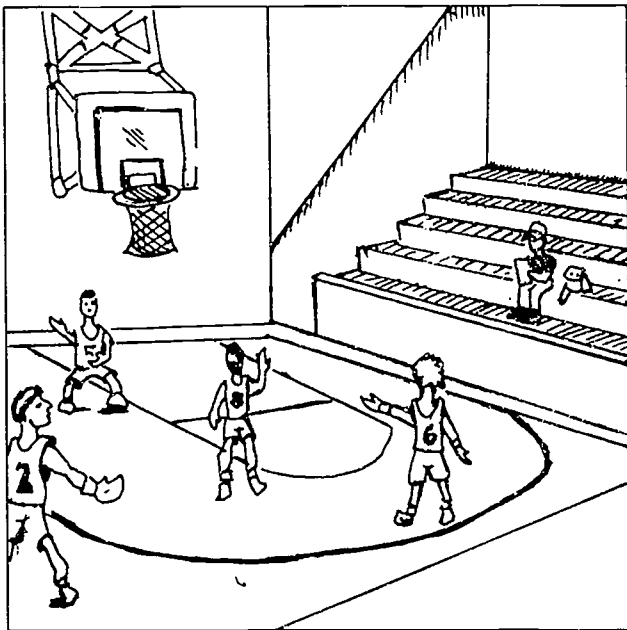
Case #3

"...No state shall...deny to any person within its jurisdiction the equal protection of the law."

—Fourteenth Amendment

"We hold these truths to be self-evident, that all men are created equal, they are endowed by their Creator with certain inalienable rights..."

—The Declaration of Independence



Central High School requires that all students take four years of physical education in order to graduate. According to Board of Education rules, an exception will be made only if a student's disability prevents him or her from taking part in Phys Ed activities.

Two months ago, Robert tested positive for HIV, the virus that leads to the disease AIDS, for which there is no cure. Robert's condition is not a secret in school; both students and school authorities are aware of it. The virus has not affected Robert physically in any way. One day while playing basketball in gym, Robert cut his wrist on the rim and drew a small amount of blood. The gym teacher noticed the cut and ordered Robert to stop playing.

The next day, the gym teacher told him to see the principal during gym class. The principal told Robert that he would not be participating in gym class any more, that he would become a gym aide and would still receive credit for the course. Robert was told that this was necessary for the safety of the other students. Robert protested the decision, saying that unless someone else had an open cut and came into contact with his blood, he could not harm anyone and that he had rights under the Fourteenth Amendment.

- 1) What are Robert's rights? Are they being violated under the Fourteenth Amendment?

Case #4

"No person in the United States shall, on the basis of sex, be excluded from participation in, or be denied the benefit of, or be subjected to discrimination under any education program or activity receiving federal financial assistance...."

—Title IX of the Education Act of 1972

Over the years, Kennedy High has excelled in sports, with its teams winning many city and state championships. In some sports, such as track and swimming, Kennedy has both a girls' and a boys' team.

Amy, a sophomore, would like to join the girls' track team, which the school started just this year. Although the coach has encouraged Amy to try out, Amy doesn't think she will be able to be on the team because its practices are held too late and she

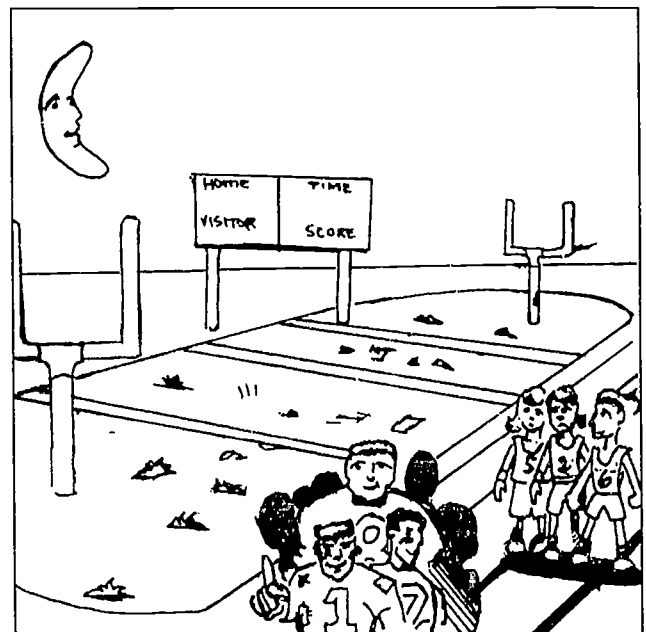
- 2) Would it make any difference if Robert were in a home economics or cooking class? a social studies class? a woodshop class?
- 3) Let's say a gym teacher tested HIV-positive. Could the school administration fire that teacher, saying that it was for the safety of the students?

must be home to take care of her 4-year-old brother. The schedule drawn up by the coaches lets the boys' teams use the school athletic field first; the girls are allowed to practice after the boys are finished. When the girls do have their chance to use the field, it is often in bad shape, especially after football practice.

The coaches of the boys' teams say that they need to use the field first because many boys have afterschool jobs. They also say that the girls' teams aren't very good anyway and that changing practice times might cost the school its chance to repeat as state champion. Amy says that if she wants to play on the girls' team she must be given a chance, even if it means changing the practice schedule.

- 1) Are Amy's rights being violated under Title IX? Is Amy being denied any right?
- 2) Should the practice schedule be changed for Amy even if the rest of the school is affected? Whose rights are more important?
- 3) How could the schedule be changed so that practice times are fair to everyone?

Rima Vesely is a senior at Lane Technical High School in Chicago and is editor of the student magazine New Expressions. Her teacher, Jill Wayne, teaches law at Lane.



Illustrations by Edgar Jurez, a 10th grader at Prosser High School in Chicago.

Street Scene



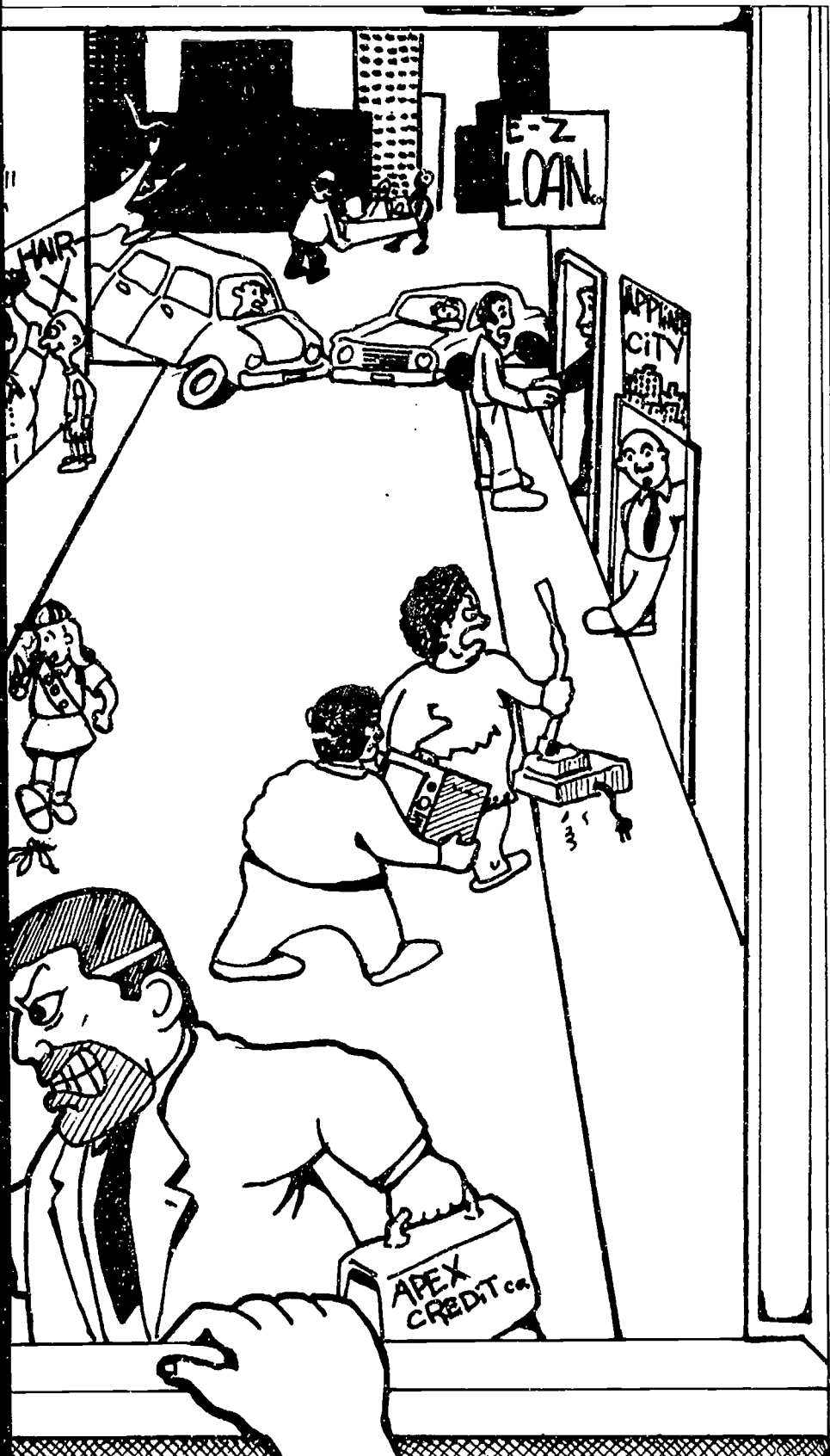


Illustration by Victor Savolainen. Concept adapted from "Street Law: Practical Law for South African Students, Book 3, Consumer Law," published by the Association of Law Societies of South Africa and the Centre for Socio-Legal Studies at the University of Natal, Durban.

How many different legal issues are shown in this picture? Identify each situation and describe the parties involved.

Are any laws being broken? How and by whom?

Choose one of the legal issues shown. List the rights and responsibilities of each party. Next, list some solutions that are fair to those involved, and tell what might be done to see that the problem doesn't happen again.

For extra credit: For each legal issue shown, tell whether the law involved is local, state, or federal.

Young People Who Have Worked for Justice

Brown, Tinker, and Gault are not just the names of famous Supreme Court case, but of real young people who questioned the adult world's rules and won new rights for young people throughout the country.

The United States Supreme Court is an imposing institution, with its monumental columns and its nine justices dressed in black. But occasionally the Court bends down to listen to the voice of children and stands up to remind the nation that children, too, have rights.

Such was the case in the early 1950s when the Supreme Court reviewed the practice of racial segregation in public schools. Linda Brown was one of thousands of black children not allowed to attend the white-only public schools throughout the South and even some states outside of the South.

Class actions were brought to federal district courts in Kansas, South Carolina, Virginia, and Delaware on behalf of the black children who were refused admission to white schools. The landmark decision, *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483 (1954), consolidated cases on appeal to the Supreme Court from the four different states.

The Court unanimously ruled that having separate schools for black and white children was unconstitutional. Segregated schools are not equal, no matter how much the states claimed they were, the Court said, and therefore they deny black children the equal protection which they are entitled to under the Fourteenth Amendment.

Arguing the case before the Supreme Court on behalf of black children was Thurgood Marshall, a young lawyer for the National Association for the Advancement of Colored People

(NAACP) Legal Defense Fund. Marshall told the Court:

... I got the feeling on hearing the discussion yesterday that when you put a white child in a school with a whole lot of colored children, the child would fall apart or something. Everybody knows that is not true.

Those same kids in Virginia and South Carolina — and I have seen them do it — they play in the streets together, they play on their farms together, they go down the road together, they separate to go to school, they come out of school and play ball together. They have to be separated in school.

Marshall urged the Court to make it clear that singling out “people who were formerly in slavery [to be kept] as near that stage as is possible” is not what the Constitution stands for.

The Court agreed. After reviewing the importance of public education in a democratic society, the Court concluded that education is a right which must be made available to all on equal terms.

Chief Justice Earl Warren, who wrote the opinion, cited psychological studies on the effects of enforced segregation contained in a Kansas case. The Kansas court had noted

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usu-

ally interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.

Despite these findings, the Kansas court had ruled against the blacks seeking school integration. The court relied on a 1896 Supreme Court case, *Plessy v. Ferguson*, 163 U.S. 537 (1896), which challenged a Louisiana statute requiring blacks and whites to occupy separate railway cars. The Court there determined that as long as the facilities were “separate but equal” the state law satisfied the Equal Protection Clause.

Plessy became the rationale for segregation laws which required blacks to use different bathrooms and drinking fountains, sit in the back of the bus, and attend separate public schools and colleges. Public ordinances, known as “Jim Crow laws,” were reflected in private businesses and organizations which excluded blacks from restaurants and hotels, trade unions, churches, theaters, and even cemeteries.

In deciding *Brown v. Board of Education*, the Supreme Court overruled *Plessy*. The Court's opinion states:

... We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place.

Separate educational facilities are inherently unequal.

Although *Brown v. Board of Education* was concerned solely with the segregation of school children, the Supreme Court and lower federal courts extended its logic in many cases which followed to dismantle the entire network of Jim Crow laws. Laws requiring segregation in public places and on public transportation were ruled unconstitutional. In the 1960s, Congress enacted laws prohibiting racial discrimination in places of public accommodation, employment, and housing, and greatly strengthened laws protecting voting rights for blacks.

While these laws and court decisions have not totally eradicated racial discrimination in this country, *Brown v. Board of Education* paved the way for the concept that discrimination is incompatible with democracy.

First Amendment Rights

In 1969, the Supreme Court was asked to review the question of whether or not students have the right to express their opinion in school even when the subject is a controversial one. The Court determined that they do, and the decision in *Tinker v. Des Moines School District*, 393 U.S. 503 (1969) extended the First Amendment's guarantee of free speech to students in school as well as adults.

Mary Beth Tinker and her brother, John Tinker, were high school students in Des Moines, Iowa, who wore black armbands to school in protest of the Vietnam War. School officials, anticipating the protest, had enacted a rule prohibiting armbands in school. When the Tinkers wore the armbands anyway, they suspended Mary Beth and John, along with a third student, on the basis that their armband protest might disrupt school routine.

The U.S. Supreme Court concluded that students in school as well as out of school are considered persons under the Constitution and as such have fundamental rights that the state must respect. The schools, which are state-operated, cannot be "enclaves of totalitarianism" by banning armbands. The

Court said that students are not to be confined to the expression of officially approved sentiments only.

Due Process Guarantees

A 1967 Supreme Court case examined the juvenile court system in light of constitutional guarantees and found that the system often denied young people due process of law that was the right of every adult charged with a criminal offense. As a result of the Court's decision, *In re Gault*, 387 U.S. 1, (1967) revolutionized the way in which juveniles were treated by the courts.

The case involved a 15-year-old, Gerald Gault, who was ordered by a Arizona juvenile court to be confined to a reformatory for up to six years for allegedly making an obscene telephone call. An adult guilty of the same offense would have either been fined \$5 to \$50 or received a jail sentence of two months.

The juvenile court which decided the case did so without affording the teen some basic rights. For example, it did not explain to Gerald or his parents what the charges against him were and did not provide him with the opportunity to have a lawyer. The neighbor who accused Gerald of making the call was not required to testify. The court kept no written record of the proceedings and did not allow an opportunity for

Gerald to appeal the judgement.

The Arizona juvenile court's procedures were typical of others throughout the country. These courts had been set up to help young people in trouble. They had loose, informal procedures because they believed flexibility was needed to guide troubled young people to the best path. However, as Gerald Gault's case shows, these courts could impose very long sentences. In deciding the case, the U.S. Supreme Court outlined basic rights that must be observed by all juvenile courts:

- 1) notice of the charges;
- 2) right to counsel;
- 3) right to confront and cross-examine witnesses; and
- 4) privilege against compelled self-incrimination.

In subsequent decisions, the Supreme Court has held that juveniles are also entitled to constitutional guarantees against double jeopardy and have the right to have the charges against them proven beyond a reasonable doubt.

Linda Brown, Mary Beth and John Tinker, and Gerald Gault were all young people who asked the U.S. Supreme Court to look at the world from their point of view. They challenged adult rules and, by challenging, changed the world. Thanks to their cases, the Court extended young people many basic constitutional rights.

Other Young People and Justice

Have you—or any young person you know—ever worked for justice? Please write about these experiences in the space below—use additional sheets if necessary—and send it to YEFC, 541 N. Fairbanks Ct., Chicago, IL 60611-3314, or fax to 312-988-5032. We'll consider publishing it in the next *Student Update*.

Integrating the Schools

A First-Person Account by a Young Man Whose Courage Helped Change American History

Ernest Green was one of the “Little Rock Nine,” the first students to integrate Central High School in 1957, and, as a senior that year, the first black to graduate from Central. Today he is managing director at the Washington, D.C. office of Lehman Brothers, and investment firm. He recalls here his turbulent senior year:

When the U.S. Supreme Court handed down its historic *Brown v. Board of Education* decision in 1954, I was a student in Little Rock, Arkansas, finishing the eighth grade. Little Rock had one high school for blacks, Horace Mann High School, and one for whites, Little Rock Central High School.

While I may not have understood all of the constitutional issues surrounding the *Brown* case, I did recognize it as an opportunity for ending segregation in Little Rock and for helping me get a better education. At black schools, for instance, we had to use books that had first been used by white students.

The *Brown* decision made me feel that the U.S. Constitution was finally working for me and not against me. The Fourteenth Amendment provided for equal protection and due process under the law, but it also meant I could believe I was a full citizen in this country, not a second-class citizen as segregation had made me feel.

In the spring of 1957 [three years after *Brown* was decided and cited], I was asked, along with other black students to consider attending Central High School the following fall. Initially, a number of students signed up to enroll but when fall came, only nine of us had survived the pressure to quit and our names were published by the school board in the local newspaper. I knew this was my personal opportunity to change conditions in Little Rock. And I knew that if I didn't go, things would never change.

When we tried to attend school, we

were met by an angry white mob and armed soldiers. Arkansas Governor Orval Faubus had called out the National Guard to prevent us from enrolling, defying a federal court order to integrate the Little Rock schools.

President Dwight Eisenhower called out the U.S. Army's famous 101st Airborne Division to protect us and enforce the federal court's integration order. “Mob rule cannot be allowed to override the decisions of our courts,” the president declared. It was a powerful symbol that the president of the United States was willing to use his power and his might to protect nine black students and to uphold the Constitution.

When we tried to attend school again, about 1,000 paratroopers were there to protect us. We rode to school in an army station wagon, surrounded by army jeeps that were loaded with soldiers holding machine guns and drawn bayonets. It was an exciting ride to school! I told Terrance Roberts, “I guess we'll get into school today.”

Once we got inside, it was like being in a war zone. We were harassed, our books were destroyed, and our lockers were broken into several times a day.

As graduation neared, I was surprised at the number of students who signed my yearbook, saying they admired my courage in sticking it out. But on the night of graduation, there was an eerie silence when my name was called. I didn't care that no one clapped for me. I knew that not only had I achieved something for myself, I had broken a barrier as well.

I learned from my high school experience that you can express and act on unpopular beliefs. We must all be willing to make the Constitution a living document, and you don't have to be an adult to do it. Only when we stand for what we believe in do we improve life for all Americans.





The U.S. Army's 101st Airborne Division both protected the students who were integrating the schools and enforced the federal court's order.

Word Search

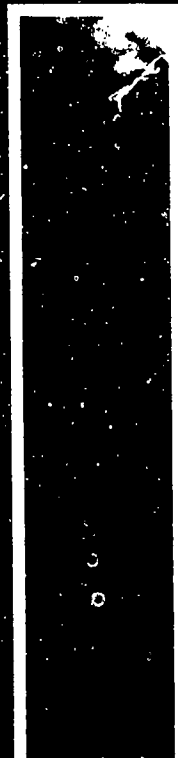
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 O T N A R D E V D M F T L P C C E E A N C
 F I T C N A D O A D I O J A T E P R Y R O
 L E U A P A L I M O N Y Q I R N L S Z E D
 A R R N Z I E D N Z M R S R O Y Y O Q T C
 W I M O A X P O S E T U T A T S A N T A R O
 M A J J N O I T A R T I B R A A R B A P O

Fill in the missing words below and find them in the chart above. Be careful; they may be spelled in any direction and some are even backwards!

1. Caught in the _____.
2. When the parties could not settle their dispute, they agreed to _____.
3. _____ for the defendant was set at \$10,000.
4. A person who fails to appear for trial may forfeit his _____.
5. A _____ to the jury is an instruction from the judge.
6. The deposit was placed in an _____ account.
7. The suit was dismissed as being without _____.
8. Several of the widow's _____ challenged the will.
9. Alcohol and other drugs _____ one's judgment.
10. She was sentenced to 30 days in the county _____.
11. _____ is another way to describe theft.
12. Lincoln said: "With _____ toward none and charity toward all."
13. _____ is another way to settle a dispute.
14. When making arrests, police must be sure to give _____ (2 words)
15. Both lawyers filed a number of pretrial _____.
16. An _____ helps to investigate problems and provide solutions that are fair to both parties.
17. When unmarried people who live together break up, one party will sometimes ask for support, called _____.
18. After being released from jail, he was required to see his _____ officer once a month.
19. Mothers get maternity leave; fathers get _____ leave.
20. One who has threatened to breach the peace or has done so in the past may be required to post a _____ bond.
21. Sexual intercourse without consent is called _____.
22. _____ are laws enacted by legislatures.
23. When the landlord refused to return the security deposit, the tenant filed a _____ to recover it.
24. A _____ is a wrongful act.
25. Charging too much interest on a loan is called _____.
26. Null and _____.
27. After she failed to appear in court, the judge issued a _____ for her arrest.
28. A _____ is a list of instructions to be followed after a person's death.
29. The right to obtain a _____ of habeas corpus protects against unlawful imprisonment.

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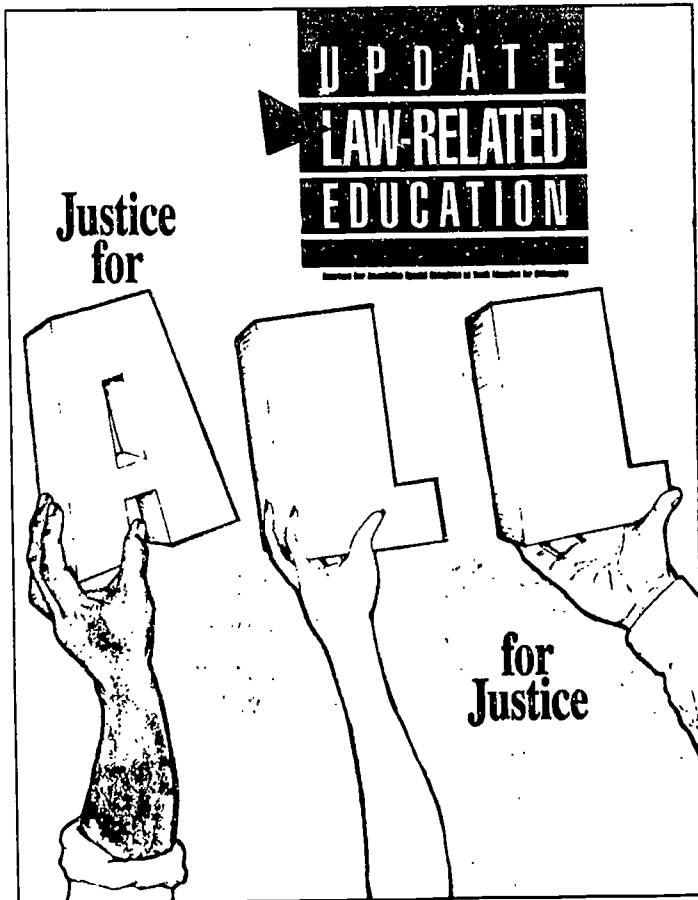
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