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ABSTRACT

This curriculum guide offers an interdisciplinary approach to law-related education (LRE) intended to assist teachers with introducing LRE into a variety of social studies courses. The guide begins with a definition of LRE, its objectives and methods, and its place in the general school curriculum. The introductory section includes a description of the University of Puget Sound School of Law's Institute for Citizen Education in the Law (UPSICEL) and a history of this curriculum project. The lessons cover a broad range of legal issues including the environment, juvenile justice, property rights, rights of Native Americans, international relations, presidential impeachment, voting rights, immigration, crime, and even the future of law in outer space. The lessons encourage interactive and cooperative learning through the methods of brainstorming, hypotheticals and case studies, role playing and simulation, political cartoons, group activities, games, and opinion polls. Each lesson plan specifies the source of the materials, the number of class periods, the need for resource persons, the objectives, and procedures. Most lessons provide student handouts. (JD)

LINKING LAW AND SOCIAL STUDIES, GRADES 9 - 12

AN INTERDISCIPLINARY APPROACH WITH SOCIAL STUDIES, SCIENCE AND LANGUAGE ARTS

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FUNDED BY UNITED STATES DEPARTMENT OF EDUCATION

LINKING LAW AND SOCIAL STUDIES, GRADES 9 - 12: AN INTERDISCIPLINARY APPROACH WITH SCIENCE AND LANGUAGE ARTS

A PUBLICATION OF UPSICEL

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Dr. William Krieger, under contract to UPSICEL, produced the Language Arts lessons, in conjunction with Wilson High School teacher, Jim Sole.

Kerstin Gleim, an investigator at the Washington State Crime Lab, donated her time to develop the crime lab lessons, and we thank her.

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Actual production of this material was eased by the very competent and always cheerful efforts of U.P.S. Law School Secretary, Norma Slaughter, who also designed the cover sheet. Delilah Johnson reproduced the materials under tight deadlines in excellent form. Thank you!

I. INTRODUCTION

A. WHAT IS LAW-RELATED EDUCATION AND HOW DOES IT FIT IN A SCHOOL CURRICULUM?

1. A Definition Of Law-Related Education

According to the Law-Related Education Act of 1978[1] "...the term **law-related education** means education to equip nonlawyers with knowledge and skills pertaining to the law, the legal process, and the legal system, and the fundamental principles and values on which these are based. Law-related education (LRE) helps students develop the knowledge, skills, understanding, and attitudes necessary to function effectively in a pluralistic, democratic society based on the rule of law.

LRE teaches young people how the legal and political systems function and--most of all--how they fit in. How does the law affect them and how can they affect it? What relevance does the Constitution have in their lives? Why have certain legal procedures been established and how well have they worked in resolving disputes?

LRE is about real issues as they affect real people: little people and big people. At its best, LRE teaches students to reason through hard questions and to grapple with realistic problems. Elementary school children might be asked to puzzle through questions of fairness in the water-fountain line or examine the need for rules in sports and games. Older students might look at the problems of assuring equality in a diverse society or the conflict between rights and responsibilities. The emphasis often may be on applied skills, such as how to read a contract and become a wiser consumer, or may be on such broad skills as analytical thinking, ability to persuade others, and ability to reach decisions after having identified issues and weighed evidence.

Law-related education is active. It teaches because it involves kids. It works because it has them confront--in case studies, roleplays, mock trials, and other active instruction techniques -- the actual dilemmas that citizens must face if they are to make democracy work. In many programs, students meet with lawyers, judges, police, and other community people to see the law in action.

LRE is a proven way of improving younger people's self-image, their attitudes, and their knowledge about law and government. The experience of hundreds of communities, large and small, shows that LRE can make a difference.

Another key aspect of law-related education is that when it is properly taught, it reduces delinquency and leads to positive citizenship

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[1] Statement adapted from the Winter 1983 LRE Project Exchange, "Why Lawyers Must Care About LRE," published by the American Bar Association.

behavior. The Center for Action Research identified six criteria for effective LRE programs.[2]

Four of the six characteristics that make up a properly conducted program relate to the curriculum. They include preparation and use of outside resource persons; sufficient quality and quantity of instruction; selection of balanced, illustrative materials and management of controversy; and active participation and student interaction. These criteria are built into the design of this curriculum.

Preparation and use of outside resource persons refers to using a wide variety of appropriate community members in an interactive manner in the classroom. Simply having community members as formal speakers is not sufficient. For example, having a community member respond to students' opinions in an opinion poll or judging a mock trial is more effective than having the resource person lecture students about a topic.

Sufficient quality and quantity of instruction refers to using instructional practices that enhance the likelihood that students will be successful; such practices include checking for understanding, employing sufficient wait time, stating learning objectives, sequencing questions, and others.

Quantity of instruction relates to the amount of time devoted to a single topic and the amount of instructional time spent on law-related topics. While there is no magic number of hours, research suggests that students need enough time to grapple with a topic in some detail, to examine nuances of the issue and to feel some mastery over the topic.

Use of balanced materials and management of controversy constitute the third curricular area considered. Findings in this area indicate that material that shows the judicial and law enforcement systems as always correct or always making mistakes has a negative impact on student attitudes.

Consistently negative examples engender disrespect for the law and judiciary while consistently positive examples do not mesh with students' knowledge that mistakes and injustices do occur. When students feel that the examples are too positive, they may reject all information transmitted through a course. Therefore, examples should be chosen to reflect the realities of law and the judiciary. If a negative example is chosen to illustrate one point, a positive one should be selected for another.

Management of controversy does not mean that it should be avoided, but rather that it should be approached in a positive and constructive manner. Students must recognize that differences of

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[2] Judith Warren Little and Frances Haley, **Implementing Effective LRE Programs** (Boulder, CO: SSEC, 1982). See also Robert M. Hunter, "Law Related Education Practice and Delinquency Theory," **The International Journal of Social Education**, 2 (Autumn 1987): 52-64.

opinion are natural and can be a fruitful vehicle for exploring the various positions that can be taken on any issue. However, for controversy to be beneficial, students must examine and discuss the issues in a thoughtful way, avoiding personal attacks that can be hurtful and destructive.

Opportunities for active participation and student interaction represent the final curricular factor influencing delinquent behavior. Activities that require students to work together cooperatively and encourage student-student communication have a positive impact. Likewise, activities in which students become actively engaged in the learning process are also beneficial. For example, students might interview other students, assume the roles of lawyer or judge or lobbyist, or prepare for a Senate committee hearing rather than passively read.

While each of these factors is clearly influenced by the curricular materials, one must recognize that ultimately the curriculum is what students experience in their classes. Teachers' instruction methods and what they do with the curricular materials available will determine their effectiveness. Inappropriate use of even the best materials will negate their effectiveness. For example, this curriculum recommends the use of community resource persons, but instructors actually determine if that recommendation will be followed. Similarly, quality of instruction will largely be determined by the instructor's choice of instructional practices rather than by the curriculum. The role of the teacher, then, is all important.

2. How LRE Fits Into School Curriculum

Traditionally, LRE has been incorporated into the offerings of social studies, particularly civics and U.S. history or business classes. In recent years, other disciplines have considered whether LRE might also work for them. Law magnet schools in the United States offer science and language arts classes that use LRE.

By studying forensics, students learn biology, chemistry, physics and mathematics. Students can put Galileo on trial and in the process learn more about his theories and the existing views of the world in his time. Health classes can benefit from a study of the laws on sexually transmitted diseases, suicide, governmental provision of medical services to needy families, family law issues of family planning, the right to die and others.

Language Arts can easily benefit from the use of LRE. Students' natural interest in law-related topics can motivate the students to read, apply grammar rules, write, and study literature.

This publication offers infusion lessons for social studies, the language arts, science and health. The materials are directed to a high school audience, with a range in difficulty.

B. UNIVERSITY OF PUGET SOUND SCHOOL OF LAW'S INSTITUTE FOR CITIZEN EDUCATION IN THE LAW (UPSICEL)

UPSICEL was created in 1988 to promote law-related education (LRE) in Washington State, as well as in national and international arenas. It built upon the Street Law Course offered at the UPS School of Law that has made LRE a part of Tacoma schools since 1982. The goals of the Institute are to increase awareness of rules that govern everyday behavior, promote values of democracy and understanding of the Constitution, increase effective citizen participation, promote willingness to use legal means to solve disputes, and increase levels of tolerance, fairness and respect for the rights of others.

The Institute has developed LRE curricula in several areas: the Washington Supplement to the national Street Law text, Juvenile Justice in Washington State, Legal Issues for Community Corrections, Cross-Gender Supervision in Prison, and a law school manual Teaching Law Students to Teach. In 1990, UPSICEL is cooperating with Mississippi Educational TV to produce videos on the Constitution for use with "at risk" ninth graders. A 1990-91 project will result in a detailed handbook on how to implement community service learning in LRE.

A major component of UPSICEL's work is conducting teacher training. UPSICEL offers training programs in drug focused LRE, interdisciplinary LRE, detention LRE for juveniles and adults, minority outreach LRE, and corrections and probation officer training.

Since 1988, UPSICEL has served as the state coordinator for LRE on behalf of the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention.

Jointly with the American Bar Association's Special Committee on Youth Education for Citizenship, UPSICEL will host a three-state minority outreach LRE conference in Spring 1991.

The Institute coordinates LRE activities with the Southern African country of Lesotho. The Institute hosts lawyers and educators from LRE projects in other countries to participate in Washington's LRE efforts. Efforts are underway to establish UPSICEL as a regional center of a newly developing international center for LRE.

The Institute has compiled a comprehensive directory of LRE materials, events and resources for use in Washington, Teaching About the Law: A Law Related Education Directory for Washington State. Dissemination throughout the State was accomplished in May 1990.

UPSICEL is represented on the Board of Directors of the Washington Center for Law-Related Education, the Advisory Board of the Washington State Council for the Social Studies, and its Director was the 1989 Chair of the American Associations of Law Schools Section on Teaching Law Outside of Law Schools.

The Institute is directed by Margaret Armancas-Fisher, an attorney who has worked in LRE full-time on the national level since 1977 and in

Washington State since 1982. Julia Ann Gold, an experienced trial attorney with a rich variety of LRE experience, is Assistant Director.

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American Bar Association's Special Committee
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Legal Foundation of Washington
National Institute for Corrections
National Institute for Citizen Education in the Law
United States Department of Education
United States Department of Justice

C. A HISTORY OF THE PROJECT

During the 1988-89 academic year, UPSICEL worked extensively with the Tacoma School District and state wide to infuse Street Law: A Course in Practical Law into civics classes, under a U.S. Department of Education grant. David Lange, then Social Studies Director of the Tacoma School District suggested that UPSICEL tackle the development and implementation of LRE "schools within a school" in the Tacoma School District.

An application for funds from the U.S. Department of Education was written to address serious problems facing students in Washington State by creating model schools within a school. The successful proposal sought to increase student interest and success in school by creating an education experience that students like, regardless of prior success in school. The proposal was to take advantage of universally positive reaction to LRE and implement new schools with their core curriculum, including social studies, science and language arts, infused with LRE content and methods.

The school-within-a-school concept emphasizes close working relationships between teacher and students, keeping students in school, developing strong bonds among students selected for the special curriculum, mixing students of various abilities and educational goals, research and writing, intense contact with outside resources, interactive teaching methods, cooperative learning and inquiry.

Two schools were selected to participate in the development of the program: Wilson High School in Tacoma and Franklin High School in Seattle.

Over the course of the academic year 1989-90, four two-day working sessions were held for Wilson High School social studies teachers from each grade level, 9 through 12. The purpose of each session was to review student learning objectives and key topic areas for the courses taught at each grade level in order to assist in the identification of appropriate LRE methods and content.

The project anticipated identifying and using existing LRE materials developed in Washington State, by state LRE projects, and nationally. Materials from the entire nation were obtained and reviewed

for inclusion. Where gaps in curricula existed, UPSICEL staff would write new curriculum.

Detailed working documents were created that formed the basis of the next step, adapting existing curriculum and creating new curriculum to meet the needs of Washington State teachers. UPSICEL staff completed this phase in early summer 1990. Jerry Thorpe at Wilson High School submitted his lesson on the two-party election process.

At the same time, Dr. William Krieger of Pierce College, on contract to UPSICEL, worked with Wilson High School Language Arts Teacher, Jim Sole, to develop lessons to teach grammar, writing, and literature with LRE content and methods. Their lessons were designed to coordinate with the identified social studies lessons.

Ms. Kerstin Gleim, an experienced investigator with the Washington State Crime Lab in Seattle, donated hours of time developing LRE lessons using scientific methods and analysis.

These lessons made their debut in an August 6-10 Summer Institute hosted by UPSICEL for 43 teachers state wide. Additional lessons were developed during the session.

D. HOW TO USE THIS CURRICULUM

A scope and sequence guide is located later in these introductory materials that reveals the social studies courses the various lessons are appropriate for. Explanation of the guide follows.

These lesson plans provide explicit instructions for teachers and accompanying handouts. However, the lesson plans are intended only as guides. Teachers may decide not to cover every point made nor should the teacher read word-for-word except to give hypotheticals or quote facts as needed. Only the handouts are to be distributed to students. Periodically, background information is provided to teachers to assist in answering student questions.

Each lesson begins with an identification of the source of the lesson. Since the original intent of the project was to identify existing lessons, rather than to write all new materials, a good number of the lessons are taken from other sources. Most of these lessons were adapted somewhat to provide more information to teachers and/or to tailor the lesson to Washington State. It is recommended that teachers who like particular lessons developed by other groups obtain the materials referred to for additional lessons. Teaching About the Law: A Law Related Education Directory for Washington State, available from UPSICEL, provides full information on obtaining these materials.

The estimated teaching time is listed, along with the historical period covered by the lesson for those lessons appropriate for World, U.S., and Washington State History courses.

As stated, the use of outside community resource persons in an interactive manner with students is a critical component of successful

LRE. Therefore, suggestions on who may be a useful resource for the classroom are indicated for every lesson.

Next, the lesson plan lists the specific learning objectives for each lesson. Any materials needed for the course are identified, including the accompanying Handouts. Sometimes the lesson plan requires the teacher to take some action prior to the class, for example, cutting up a xerox of one of the handouts and posting them around the classroom.

Next, the procedures are laid out. Answers are provided in this section to the questions and activities presented in the Handouts.

Handouts are identified by lesson number and then handout number. Teachers will need to reproduce the Handouts prior to class in sufficient number for students. The original should be kept clean and returned to the three-ring binder for subsequent use. The teacher should be careful to reproduce all the pages to each Handout since many Handouts have more than one page.

Included throughout the lesson plans are suggested teaching strategies designed to encourage student participation in the classroom. A minimum of lectures and a maximum of student involvement have been found to be most successful in using this type of curriculum. The various methods included in the curriculum are briefly capsulated below. They are merely included as a refresher and an indication of how they fit into this curriculum.

Brainstorming

This method calls for the students to come up with a list of responses to a question posed by the teacher. It is usually best to write these responses on the board as students answer and, after the class' suggestions are exhausted, to add any overlooked answers and then discuss them in more detail.

Hypotheticals and Case Studies

This method presents a statement of fact and requires the application of some aspect of the law to these facts. While the "answer" to the problem is important, the greater value lies in using questions and other discussion techniques to bring out arguments and considerations on all sides of the issues. Most of the hypotheticals (included as handouts or written into the teacher guide) are based on real cases -- the use of these enhances student interest and learning. Suggested steps to take in discussing a hypothetical or case study follow.

a. Have the teacher, or a student who is a good reader, read the hypothetical aloud.

b. Ask other students to list the key factors in the case (write on the board).

c. Ask what the issues are in the specific case. Ask students to state each issue as a question. For example, the issues in the Worcester v. Georgia case study are "Does the State of Georgia's law requiring licenses of non-Indians in order to enter onto a Native American Indian reservation violate the supremacy clause of the U.S. Constitution?"

d. Ask students to give arguments on both sides of the issues. Discuss and try to remain unbiased.

e. Ask the students what they thought the decision was in the real case. Tell them what the decision was and the reasons for it. Ask if this was the correct decision. Why or why not?

f. What was the significance of the decision? What reasoning did the court use to arrive at the decision? Did it set a precedent for the future? Is it likely to be changed in the future?

Role Plays and Simulations

Mock trials are simulations of actual courtroom activities. The activities are designed to focus student interest on a particular law or procedure while allowing them the opportunity to demonstrate the knowledge they have acquired. These activities also allow students to gain different perspectives by observing the role of another. Several mock trials, mock hearings and mock legislative sessions are included.

There are three stages of development in any role play: preparation, enactment, and debriefing. The preparation stage involves assignment of roles, explanation of the process and preparation time for the players to learn their roles. Many of the hearings are simplified to allow completion in a single class period, others are designed with one or two days of preparation. Roles are provided for the entire class to participate, students without specific roles can serve as observers who must write decisions.

Teachers should play a low-key or even invisible role during the enactment of the mock hearing. In certain instances, where the activity has gone way off track or part of it is taking too long, it may be appropriate for the teacher to step in and make suggestions or ask questions.

The most important of these stages is the debriefing, which should ask questions such as: What were the key issues raised in the hearing? What is the law or principle that was involved here? Were the participants realistic and effective in their roles? Could they have performed their roles differently? Were there arguments not made that you would have made? How would you have decided the case? Was the proceeding fair?

Political Cartoons

In a number of lessons, for example, FDR and the Supreme Court, students are asked to examine political cartoons that appeared at the

time of this event. Students are asked to analyze each item in the cartoon, to decipher the artist's viewpoint and decide whether or not they agree with the artist. Additionally, students are given the opportunity to express their own viewpoint by creating their own cartoon.

Small Groups

Used in conjunction with a number of other strategies, small groups are a very effective tool for promoting cooperative learning and student interaction. Research has shown that having students work in groups of from two to five on specifically directed tasks can be a very successful educational technique. There are a variety of roles that can be assigned to the group: recorder, reporter and others. To ensure that each member of the group contributes, each student can be required to provide one idea.

Groups should be instructed in the amount of time available for their work and instructions clarified with an example before the groups start.

Games

Games capitalize on students' desire to have fun and to compete. It is crucial that the rules of the game be explained to everyone's understanding and that the rules are not changed during the game. A game of Jeopardy is presented to teach students about the Electoral College. There are also games to present the Executive Cabinet, Claim Your Powers, and others.

Visual Aids

Pictures and charts are also useful ways to present information. Students studying Old Growth Forests, for example, see a visual depiction of the stages of growth.

Opinion Poll

An opinion poll is a strategy that allows students to express their opinions on the topic of study. Typically, a poll allows for a spread of opinions (agree, undecided, disagree). An opinion poll can serve as a springboard for classroom discussion, give the teacher feedback on student values, be used to assess changes in students' attitudes following instruction and lay the foundation for how the law in fact applies to the situation described.

To conduct an opinion poll, the teacher should have each student privately express his or her opinion (for example, by writing the appropriate response on the student handout). The teacher should then develop a class composite. This can be done by a simple show of hands, by having students move to align themselves under a banner agreeing with their position, or other creative ways. Finally, students should be asked to identify their opinions and list opposing points of view.

The instructor can use various poll items dealing with the same principle to check the consistency of student beliefs. Afterwards, the teacher should then present information as to the state of the law in Washington on the items in the poll. It is important that teachers recognize that varying shades of opinions are legitimate, even when opinions differ from the law or the teacher's own views. Students, however, are expected to give reasons for their opinions. It is useful to use the opinion poll as a demonstration of the legislative process which evaluates various values and designs statutes based on the majority's values.

Questioning

Questioning is used in this material to 1) check for student understanding, 2) solicit student opinions on controversial issues, 3) teach higher level thinking skills, and 4) lead students to an answer the teacher desires. In each case, teachers should try to equalize wait time (that is, the time given to students to respond to a particular question). It is also desirable to promote student-to-student questioning and discussion where appropriate.

Lecture

This method should be limited as much as possible since great use of lecturing will be of negative value. However, there are times when certain points may be made most appropriately by lecture. It is important to give examples, ask questions and brainstorm during a lecture.

Evaluation

Teachers should use a variety of methods to check frequently for student understanding. Question and answer techniques and short hypotheticals are useful to measure class progress and understanding. The lesson objectives are useful guides to writing questions for review.

Resource Persons

The characteristic of law-related education that has the greatest potential for having a positive impact on students' behavior is the appropriate use of outside resource persons. Using lawyers, courtroom personnel, judges, police, state inspectors, social workers, and other key resource persons in the classroom is important.

In the first page of each lesson, suggestions are made as to possible resources persons and their role in the class.

When contacting resources, it is extremely important to inform them of the goals and objectives of the class and to review briefly the classes that come before and that will follow in order to allow for continuity. Share a copy of the lesson with the resource person, who may devise a way to interact successfully with the students.

E. SCOPE AND SEQUENCE GUIDE FOR TEACHING SOCIAL STUDIES WITH LAW-RELATED EDUCATION METHODS

This guide identifies the scope and sequence of using these LRE lessons to teach social studies in grades 9 through 12. The guide is based upon work undertaken with Wilson High School teachers in 1989-90 as part of a project funded by the U.S. Department of Education to create a model law-related education project. This guide demonstrates the infusion of LRE materials into a high school social studies program.

It is hoped that this guide and the lessons will be useful throughout the State of Washington, even while acknowledging that individual School Districts' choices of social studies classes at the high school level vary tremendously around the state.

The Scope and Sequence Guide is based on selected courses: 9th Grade Washington State History, 10th grade World Geography, 11th Grade U.S. History and 12th Grade Civics and World Problems. However, many of these lessons are equally appropriate in other social studies, business, language arts, science, and health courses.

For example, the lessons on the spotted owl and old growth forests have learning objectives which accomplish those in Geography, Washington State History, Civics, U.S. History, Biology, Language Arts, and World Problems.

To ensure as much as possible that lessons are not repeated year to year, it is suggested that teachers consult with each other about what lessons have actually been used at each grade level. Additionally, the lessons that were designed specifically for that particular course as distinguished from those that are also appropriate for that course have been identified in a bold typeface.

WASHINGTON STATE HISTORY

Washington's Natural Environment

a. Our Old Growth Forests (Lesson 1)

b. The Northern Spotted Owl - A Legal Tool? (Lesson 2)

c. Old Growth Forests - A Congressional Inquiry (Lesson 3)

d. Protecting the Environment (Lesson 4)

The Original Inhabitants

e. Juvenile Jurisdiction on Indian Reservations (Lesson 5)

Sea and Land Exploration

f. The Great American Property Quiz (Lesson 6)

g. Finders Keepers: Who Owns Lost, Mislaid and Abandoned Property? (Lesson 7)

Early Christian Missionaries

h. Native American Religious Practices: A Letter of Apology (Lesson 8)

i. Native American Religious Practices: Peyotism and the Supreme Court (Lesson 8)

Settling Disputed Boundaries

j. Settling Disputes Outside of Court (Lesson 9)

k. International Boundary Disputes - Point Roberts, Washington (Lesson 10)

19th Century Pioneers and Settlers

l. Crazy Laws (Lesson 11)

m. Law in the Future: Moon 2010 (Lesson 12)

n. Immigrants to the Pacific Northwest: Discrimination (Lesson 13)

A Century of Economic Growth and Development

n. Washington's Anti-Discrimination Law -- Employment (Lesson 13)

o. Development of Child Labor Laws (Lesson 14)

p. Private Land, Public Good (Lesson 15)

Evolution of Contemporary Government

q. Search and Seizure in Washington (Lesson 16)

r. Bill of Rights for Youth (Lesson 17)

s. No Vehicles in the Park (Lesson 18)

Population Trends and Patterns

t. 2087: A Time for Second-Degree Citizenship (Lesson 19)

Manufacturing Consumer Products

u. Minors and Contracts (Lesson 20)

Current Issues, Possible Solutions

v. Drugs in the Schools program of Center for Civic Education. This involves identifying how serious the drug problem is at School, what the students can learn about the problems nationally from newspapers, what responsibilities should be considered in creating a plan to solve the problem at school what makes a good rule, and how the class can develop a plan for addressing the problem at their own school. (Separate Curriculum)

w. How Government Protects Kids - Washington's Child Abuse Laws (Lesson 21)

x. Juvenile Justice in Washington State Curriculum including sentence completion Problem Solving, opinion poll on Laws Based on Values, brainstorm What is a Juvenile, game for Steps in Washington's Juvenile Justice System, actual case analysis to determine to Divert or Prosecute, Mock Juvenile Trial, and Sentencing hypotheticals. (Separate Curriculum)

y. Teens, Crime and the Community Curriculum (Separate Curriculum)

WORLD GEOGRAPHY

United States and Canada

a International Boundary Disputes - Point Roberts, Washington (Lesson 10)

Latin America and the Caribbean

b. Living on Less Than $200 a Year (Lesson 22)

Western Europe

c. Living on Less Than $200 a Year (Lesson 22)

Northern Africa and the Middle East

d. Living on Less Than $200 a Year (Lesson 22)

Sub-Saharan Africa

e. Living on Less Than $200 a Year (Lesson 22)

South Asia

f. Cultural Perspectives on Family and Marriage - India and the United States (Lesson 23)

g. Living on Less Than $200 a Year (Lesson 22)

East Asia

h. Mediation in China (Lesson 24)

Antarctica and Australia

i. Antarctica - The Case of the Plane Crash (Lesson 25)

j. Antarctica - Who Cares? (Lesson 26)

k. The Antarctic Treaty (Lesson 27)

l. International Law in a Global Age (Constitutional Rights Foundation -- Separate Curriculum.)

U.S. HISTORY

Growth Of A New Nation

a. Understanding Concepts of Power (Lesson 28)

b. The Constitution: Consensus and Compromise (Lesson 29)

c. Claim Your Powers (Lesson 30)

d. A Visitor from Outer Space (Lesson 31)

e. Prelude to the Trail of Tears: Worcester v. Georgia (1832) (Lesson 32)

Civil War Through Industrialization

f. Slavery and the Law: From Indentured Servitude to Dred Scott (Lesson 33)

g. Separate but Equal: From "Jim Crow" to Plessy v. Ferguson (1896) (Lesson 34)

h. The Gettysburg Address (Lesson 35)

i. Constitutional Issues Through Documents: Ex Parte Milligan (Lesson 36)

j. Mock Impeachment Trial of Andrew Johnson (Lesson 37)

k. The Electoral College System: Jeopardy Game (Lesson 38)

l. The General Allotment Act of 1887 (Dawes Act): Senate Committee Hearing Simulation (Lesson 39)

m. Labor's Struggle for Legal Recognition (Lesson 40)

n. Development of Child Labor Laws (Lesson 14)

o. Should Men Have the Vote? (Lesson 41)

p. Schenck v. United States (1919) (Lesson 42)

The Modern Era

q. The Supreme Court, Roosevelt, and the New Deal (Lesson 43)

r. The Supreme Court and FDR: Interpreting Political Cartoons (Lesson 44)

s. The Japanese Relocation in World War II: Toyosaburo Korematsu v. United States (1944) (Lesson 45)

t. Immigration and Refugees (Lesson 46)

CIVICS

Unique American System

a. No Vehicles in the Park (Lesson 18)

b. Understanding Concepts of Power (Lesson 28)

Federalism

c. The Constitution: Consensus and Compromise (Lesson 29)

d. Claim Your Powers Game (Lesson 30)

Executive Branch

e. The Cabinet Game (Lesson 47)

f. Prelude to the Trail of Tears: Worcester v. Georgia (1832) (Lesson 32)

g. Foreign Policy and the Constitution (Lesson 49)

h. The Constitution, Treaties and International Law (Lesson 50)

i. A Current Political Election and its Relationship to the Two-Party System: An Activity Outside the Classroom (Lesson 52)

Judicial Branch

j. Claim Your Jurisdiction Game (Lesson 51)

k. Federal and State Courts (Lesson 51)

l. Settling Disputes Outside of Court (Lesson 9)

The Legislative Branch

m. The General Allotment Act of 1887 (Dawes Act): Senate Committee Hearing Simulation (Lesson 39)

n. The Supreme Court, Roosevelt, and the New Deal (Lesson 43)

o. Old Growth Forests - A Congressional Inquiry (Lesson 3)

p. Private Land, Public Good (Lesson 15)

q. A Current Political Election and its Relationship to the Two-Party System: An Activity Outside the Classroom (Lesson 52)

Major Freedoms and Rights

q. A Visitor from Outer Space (Lesson 31)

r. Search and Seizure in Washington (Lesson 16)

s. Bill of Rights for Youth (Lesson 17)

t. From the Newsroom to the Courtroom: Lessons on the Hazelwood Case and Free Expression Policy Making in the Public Schools. (Constitutional Rights Foundation - Separate Curriculum)

WORLD PROBLEMS

a. What Is International Law? (Lesson 48)

b. Foreign Policy and the Constitution (Lesson 49)

c. The Constitution, Treaties and International Law (Lesson 50)

d. Immigration and Refugees (Lesson 46)

e. Mediation in China (Lesson 24)

f. Living on Less Than $200 a Year (Lesson 22)

g. Antarctica - The Case of the Plane Crash (Lesson 25)

h. Antarctica - Who Cares? (Lesson 26)

i. The Antarctic Treaty (Lesson 27)

j. 2087: A Time for Second-Degree Citizenship (Lesson 19)

g. Criminal and Juvenile Justice: Level Two (Lesson 59)

h. Criminal and Juvenile Justice: Level Three (Lesson 59)

i. Literature and Law One (Lesson 60)

j. Literature and Law Two (Lesson 60)

k. Literature and Law Three (Lesson 60)

l. Literature and Law Four (Lesson 60)

m. The Buffalo in the River (Lesson 61)

Grammar and Punctuation

a. Attorneys: Activity One (Lesson 55)

b. Landlord-Tenant Problems: Level One (Punctuation) (Lesson 57)

c. Criminal and Juvenile Justice: Level One (Lesson 59)

k. Bill of Rights for Youth (Lesson 17)

SCIENCE

a. Tracking Down the Criminal with Paint Chips (Lesson 53)

b. Whose Footprint Is This? (Lesson 54)

c. Science, Technology, Society, A Framework for Curricular Reform in Secondary School Science and Social Studies (Social Science Education Consortium - Separate Curriculum)

LANGUAGE ARTS

Literature

a. Attorneys: Activity Two (Lesson 55)

b. Attorneys: Activity Three (Lesson 55)

c. Facts and Inferences (Lesson 56)

d. Landlord-Tenant Problems: Level Three (Lesson 57)

e. Landlord-Tenant Problems: Level Four (Lesson 57)

f. Injuries to Persons (Lesson 58)

g. Criminal and Juvenile Justice: Level Two (Lesson 59)

h. Literature and Law 1 (Lesson 60)

i. Literature and Law 2 (Lesson 60)

j. Literature and Law 3 (Lesson 60)

k. Literature and Law 4 (Lesson 60)

Composition

a. Attorneys: Activity Three (Lesson 55)

b. Attorneys: Activity Four (Lesson 55)

c. Attorneys: Activity Five (Lesson 55)

d. Facts and Inferences (Lesson 56)

e. Landlord-Tenant Problems: Level Two (Lesson 57)

f. Injuries to Persons (Lesson 58)

OUR OLD GROWTH FORESTS

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 2-4

Use of Outside Resource Persons:

For those schools near North Bend, Washington, the Seattle City Watershed located there has stands of old growth timber, and welcomes school groups with a serious interest in learning about the forest. The staff naturalist is available to lead tours of the watershed, so that students can actually see an old growth forest. Access to the Watershed is limited to authorized groups only, and it is not available for unscheduled visits. Contact Marie Ruby, Education Director, Seattle Water Dept. for information (888-1507).

NOTE FOR SCIENCE TEACHERS: Science classes studying old growth forests could study the structure of the forest by taking point samplings of the forest structure. For example, pick a point within the forest, and go out in all directions a radius of 30'. Divide into quadrants. Have students measure the height of the trees. (To do a rough measurement of the height of a tall tree, have a student stand in front of the tree, and an observer stand back and hold up their thumb until the first person's height is a thumb width. Then roughly see how many thumb widths the tree is.) Then measure other bushes and plants. They can then draw a bar graph that will show the complexity of the old growth forest.

For comparison purposes, the same procedure can be followed in a second-growth forest, and an area that was recently clear cut.

Objectives:

1. Students will examine their views regarding old growth forests and the spotted owl controversy.

2. Students will identify the characteristics of an old growth forest.

Materials:

Handouts 1, 2, 3 and 4

Procedures:

1. Announce that the students will begin their study of the spotted owl and old growth forests by taking an opinion poll. Pass out Handout 1, and ask each student to write "SA" for strongly agree, "A" for agree, "D" for disagree, "SD" for strongly disagree and "U" for

c. Wilderness and old growth forest are a spiritual resource, and should be protected as a sanctuary where people can go to escape the pressures of our fast paced society.

This is another view of those who seek to preserve the forests. The forests play an important role in the religion and beliefs of Native Americans of the Pacific Northwest. In Native American traditional belief, the tree and the forest are living beings.

d. Sufficient old growth is preserved in wilderness areas and national parks. The remaining old growth forests on public land should be available for the forest products industry and the American consumer.

This is the view of timber industry groups today.

e. If the spotted owl becomes extinct, that's just evolution, and cannot be helped.

This is the view of many timber industry people, loggers, and others who depend on old growth timber for their livelihood. What this view does not take into account, however, is that the owl is just an indicator species for the entire ecosystem within old growth forests. This means that the ability of the owl, which is near the top of the food chain, to survive, is an indication of how the entire ecosystem is doing.

4. Pass out Handout 2, a letter to the Seattle Times about the spotted owl controversy. Ask students to read the letter and respond to the following questions.

a) What is the complaint that the author of this letter is making?

The author is complaining that the article in the paper, particularly the headline, misrepresented what the issue in the spotted owl controversy really is -- the loss of our old growth forests -- and sensationalized it as simply jobs v. owls.

b) What does the author predict about the logging industry?

The forest industry is doomed anyway because there will soon be no logs left to harvest because cutting has exceeded the rate of reforestation.

c) According to the author, why is it so important to act now?

Unless cutting of the old growth forest is stopped soon, old growth forests will disappear.

d) What is the role of the legislation to preserve the spotted owl in the author's opinion? Why does she call it a "legal tool?"

The legislation being used as a "legal tool" is the Endangered Species Act, which protects the spotted owl from activities that could lead to its extinction. The term legal tool refers to the use of laws to

undecided beside each of the statements. Inform students that there are no right or wrong answers, and that every opinion is worthwhile, as long as the student can give reasons for that opinion.

2. Draw a chart on the board to record students' opinions as they are polled. First get a hand count of how many agree with Statement " a.", then how many disagree, how many are undecided. After the entire chart is completed, go back to the first statement, and ask for student reasons. Ask those who are undecided what makes it hard for them to decide. Ask one of the ones who agrees or disagrees to respond to that difficulty.

Alternatively, students can be asked to line up as you call out each question along one side of the room, where you have posted signs for "Strongly Agree," "Agree," "Undecided," "Disagree" and "Strongly Disagree" . Students at opposite ends of the continuum should be asked for their reasoning, and to respond to those with whom they disagree.

3. After students have provided their arguments and reasoning about each statement, you should inform them of the information provided below about the statements.

Supplementary Information for Handout 1

a. Our nation's forests should be used primarily as an economic resource (to build houses, etc.) and put to use in a way that will serve the most people.

In 1891, Congress gave the President authority to create forest "reservations." Congress decided that our forests should be managed to protect watersheds (the region from which a river draws its water supply) and "to furnish a continuous supply of timber for the use and necessities of citizens of the United States." In 1905, President Theodore Roosevelt, an ardent conservationist, gave authority for managing the forest reservations to the Forest Service, and appointed Gifford Pinchot as its first chief.

This statement reflects the view of Gifford Pinchot, and represents the view of many foresters today. John Muir, the founder of the Sierra Club, held the opposite view, that the forests should be preserved as wilderness areas.

b. Logging should be banned in old growth forests, even if the cost is lost jobs.

This is the view of conservation groups today, who believe that the remaining old growth forests must be preserved as habitat for wildlife and other natural resources, and for recreation.

_____c. The national forests belong to you and me.

True. As citizens of the United States, we all own the national forests, and the resources within them.

_____d. Our national forests and the U.S. Forest Service were created for the sole purpose of preserving forests and the trees within them.

False. The national forests are supposed to be for multiple uses, which include timber production, recreation, fishing, hunting, and wildlife habitat. When the national forests were originally created, however, there was no pressure to cut timber from them, because private landowners were cutting timber from their lands, and pressured the Forest Service to keep national forest timber off the already glutted market.

During and after the Second World War, however, the demand for lumber grew, and wood from national forests took the place of wood from private timberland that was by then almost exhausted. The demand for national forest timber has not let up since.

_____e. Dead trees are of no value in an old growth forest.

False. Standing and fallen dead trees are an essential part of the old growth forest. Standing dead trees, called snags, provide homes for insects, birds, and mammals. Fallen dead trees open up a hole in the forest canopy when they fall to the ground, allowing sunlight through, and then provide nutrients as they decay.

_____f. Tree farms grow wood more efficiently than old growth forests.

True. In an old growth forest, the growth of trees slows down after about 100 years, and eventually the trees begin rotting on the inside as quickly as they are growing on the outside. Since these forest reach maturity at about 200 years, their growth slows down, and most of the forest's energy is used to maintain itself. Eventually, the trees either rot, are blown over or burned by a forest fire. In the amount of time that this cycle takes, timber companies can grow many crops of trees.

_____g. The old growth forests of the Olympic Peninsula of Washington State are temperate rain forests.

True. These forests receive as much as 180 inches of rain a year. More than a hundred species of mosses and lichens grow in the forest canopy. For comparison purposes, a tropical rain forest, such as the Amazon, receives 80 to 100 inches of rain per year.

_____h. Old growth forests are "biological deserts," meaning there is little animal and plant life within them.

False. Only 40 years ago, a Forest Service expert described the ancient forests as "biological deserts." While tropical rain forests had

protect the owl for a larger purpose - to protect the entire forest, and in the author's words, the entire planet.

e) Do you agreed with the rewritten headline: "Small down-payment to save the Earth: 28,000 jobs?"

This calls for an opinion.

5. Once students have had a chance to examine their opinions about this issue, inform them that you will now give them a test of their knowledge about old growth forests. This pre-test is designed to highlight common misconceptions about old growth forests, and to introduce the complexity of the issue. The goal is that students will consider whether the issue is "owls vs. jobs," or perhaps a much larger issue of the survival of an entire ecosystem. After students have completed the test, go over the answers. The test can be repeated at the end of the unit to check for knowledge gained.

6. Pass out Handout 3. Explain that this is not a graded test, but a measurement of what they already know about old growth forests.

Answers to Handout 3

_____a. An old growth forest is a forest in which most trees are older than 100 years.

False. The definition of an old growth forest is far more complex that the age of the trees within it. While the numbers vary depending on who is quoting, most foresters say that to be considered old growth, the trees must be at least 175-200 years old. (The Douglas fir tree can grow to be 1000 years or more.)

The "signature" of an old growth forest is its diversity - both in terms of the variety of tree species and the age of trees. The mix of old and young trees results in a multi-layered canopy over the forest floor. Standing dead trees, called snags, are an essential ingredient of the old growth forest, as well as lots of fallen logs and rotting wood on the ground. The dead trees fall and leave gaps in the canopy, letting sunlight in so that young trees can grow. Handout 4 is a diagram of the progression as an old growth forest is formed.

_____b. Most remaining old growth is on publicly-owned land, such as national parks.

True. Approximately 94% of the remaining old growth forest is on publicly-owned federal land. Some of this is protected in wilderness and national park land. Most of this is in higher elevations. Almost all old growth has been logged from private lands. Some old growth remains on state lands in Washington, but it is less than 10% of the remaining forest land.

them overseas. This practice is legal, but there is talk of making it illegal.

Why are logs exported? Because of high prices paid overseas. The raw logs are then processed by Japanese mills. Ironically, the Japanese mill owners have successfully lobbied their government to limit the importation into Japan of finished lumber from the U.S., to protect their mills.

_____**m. Nurselogs are logs that baby animals are drawn to when their mother abandons them or is killed.**

False. Nurselogs are fallen, rotting logs on the floor of an old growth forest. Tree seedlings grow out of the downed trees as they decay, therefore they are called nurselogs. They are an important component of the old growth ecosystem.

been studied extensively, the first comprehensive ecological study of the Pacific forest was not published until 1981. It was not until then that biologists and ecologists began to understand the complexity of the Pacific Northwest temperate rain forests.

Only recently have scientists learned that the old growth forests do far more than provide wood. They purify water; provide shelter for wildlife and cool, shady pools and breeding grounds for fish, such as salmon; and cause up to a third of the local precipitation.

They contain a greater mass of living things, called biomass, than the tropical rain forests (The tropical rain forest contains more variety of species than the temperate rain forest.) While a tropical rain forest may contain 185 tons of plants per acre, a Pacific forest will contain 400 tons an acre. Some redwood forests contain as much as 1,800 tons an acre.

_____i. A pair of nesting northern spotted owls requires approximately 5,000 acres of old growth forest for its hunting grounds.

True. Spotted owls are "picky eaters." They have a very specialized diet of small mammals such as flying squirrels, kangaroo rats and mice, and other rodents that are found in old growth forests. They need a large range to find enough of the food they like. They prefer cavities in snags (standing dead trees found in old growth) and the broken tops of tall living trees as nesting sites because they can sit and watch for their prey from these high vantage points.

_____j. It takes longer for snow to melt in an old growth forest than in a clear cut area.

True. Due to the heavy canopy of branches, less sunlight can penetrate an old growth stand. This is beneficial, as it prevents rapid run-off that could cause erosion and flooding.

_____k. "New forestry" is another name for the practice of clear cutting.

False. The new forestry, advocated by foresters such as Jerry Franklin of the University of Washington, suggests leaving debris in a clear-cut area to stimulate the growth of fungi and microbial organisms, and to provide habitat for smaller mammals. Decaying wood also builds the nutrients in the soil.

_____l. In 1988, almost 4 out of every 10 trees harvested in Washington state was shipped overseas as raw logs.

True, according to a story in the Seattle Times, November 12, 1989. Presently, only logs from private and state lands may be exported, as there is a federal ban on export of raw logs from federal lands. Most logs are shipped to Japan, South Korea, and China, with by far the most going to Japan. A practice called "substitution," however, allows exporters to buy logs off federal lands from a third party, and then ship

OWLS VS. JOBS?
A LETTER TO THE EDITOR OF THE SEATTLE TIMES

The Times' front-page headline, "Price to save owl: 28,000 jobs." (May 4, 1990), is yet another flagrant example of journalism designed to inflame and manipulate rather than inform.

The reader is being asked to question whether it is reasonable to sacrifice 28,000 jobs for 1,500 pairs of nesting spotted owls. But that is clearly not the issue and you know it, as do [the] reporters.

Regardless of the fate of the owl, the jobs based on the forest-product boom are doomed for a very simple reason: The rate of harvesting in Northwest forests has vastly exceeded the rate of reforestation, requiring continued decimation of old-growth forests, 90 percent of which have already been destroyed. "Sustainable yield" and "renewable resource" are cruel hoaxes foisted on the public by the timber industry. Touring our state by car or, most revealingly, from the air leads even the casual observer to the conclusion that our magnificent forests are rapidly being converted to a giant stump farm.

The forest resource is disappearing, and the only question is whether we will lose jobs now while we still have an ancient forest ecosystem, with owls, or in the future when it has been destroyed. This is only the beginning. Preservation of other ecosystems upon which our survival depends will require enormous economic and social upheavals, nationally and globally. Legislation to preserve the spotted owl is merely the legal tool to force us to do what we appear to be unable to do by enlightened and creative action; namely, to save our planet.

Your headline would have been infinitely more accurate had it read: "Small down-payment to save the Earth: 28,000 jobs?"

a) What is the complaint that the author is this letter is making?

b) What does the author predict about the logging industry?

c) According to the author, why is it so important to act now?

d) What is the role of the legislation to preserve the spotted owl in the author's opinion? Why does she call it a legal tool?

e) Do you agreed with the rewritten headline: "Small down-payment to save the Earth: 28,000 jobs?"

OPINION POLL-OLD GROWTH FORESTS

Directions: Read the following statements and place the letter that most closely corresponds with your opinion in the left-hand blank. SA (strongly agree), A (agree), U (undecided), D (disagree), or SD (strongly disagree). There are no right or wrong answers, every opinion is good when you can give reasons for that opinion.

_____**a. Our nation's forests should be used primarily as an economic resource (to build houses, etc.) and put to use in a way that will serve the most people.**

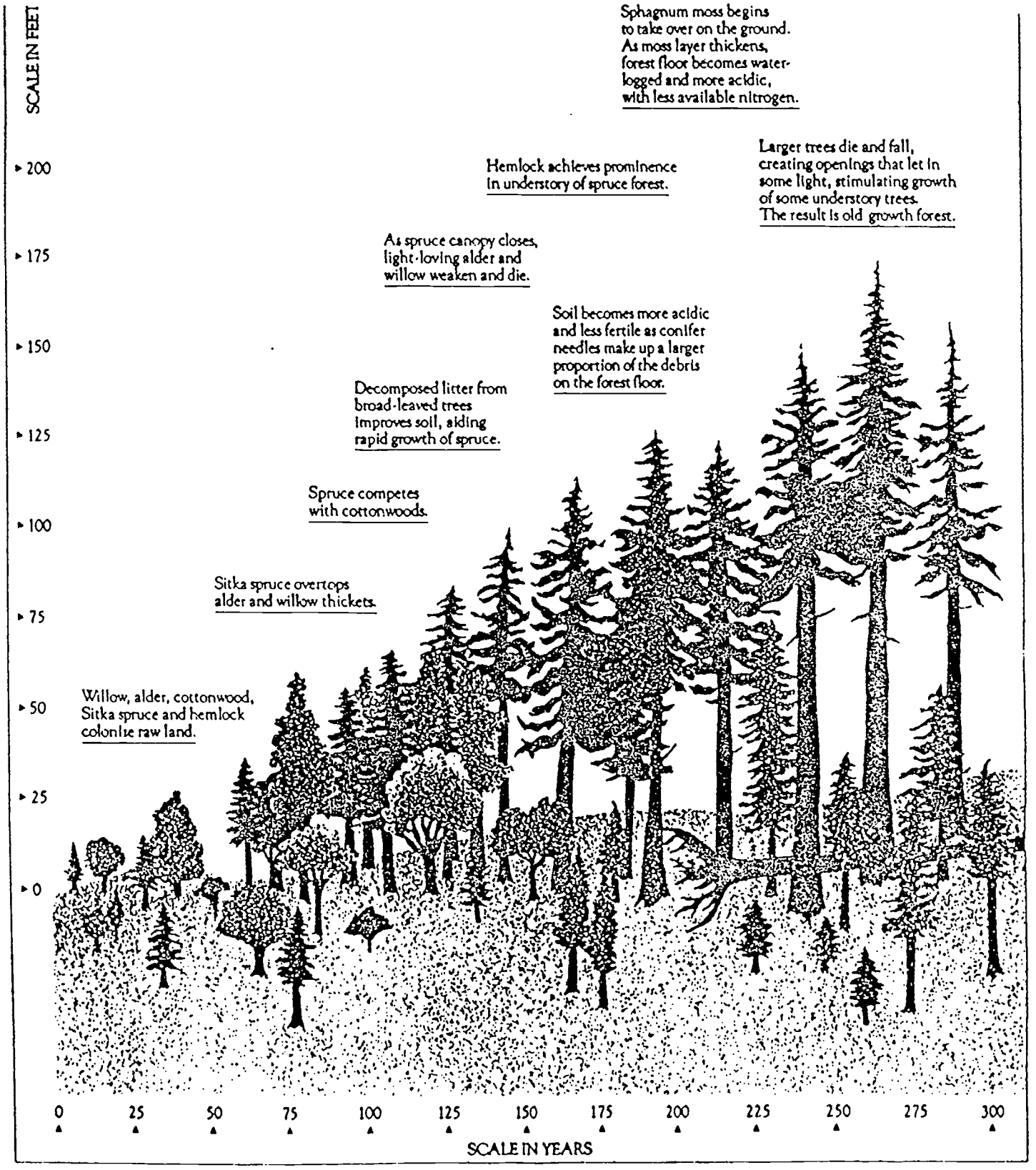
_____**b. Logging should be banned in old growth forests, even if the cost is lost jobs.**

_____**c. Wilderness and old growth forest are a spiritual resource, and should be protected as a sanctuary where people can go to escape the pressures of our fast paced society.**

_____**d. Sufficient old growth is preserved in wilderness areas and national parks. The remaining old growth forests on public land should be available for the forest products industry and the American consumer.**

_____**e. If the spotted owl becomes extinct, that's just evolution, and cannot be helped.**

STAGES IN THE CREATION OF AN OLD GROWTH FOREST



OLD GROWTH FORESTS

Directions: Write the word TRUE in the blank if you believe that the statement is correct. Write FALSE in the blank if you believe the statement to be incorrect.

_____**a. An old growth forest is any forest with trees that are older than 100 years.**

_____**b. Most old growth is on publicly-owned land, such as national parks.**

_____**c. The national forests belong to you and me.**

_____**d. Our national forests and the U.S. Forest Service were created for the sole purpose of preserving forests and the trees within them.**

_____**e Dead trees are of no value in an old growth forest.**

_____**f. Tree farms grow wood more efficiently than old growth forests.**

_____**g. Old growth forests are "biological deserts."**

_____**h. The old growth forests of the Olympic Peninsula of Washington State are temperate rain forests.**

_____**i. A pair of nesting spotted owls requires approximately 5,000 acres of old growth forest for its hunting grounds.**

_____**j. It takes longer for snow to melt in an old growth forest than in a clear cut area.**

_____**k. "New forestry" is another name for the practice of clear cutting.**

_____**l. In 1988, almost 4 out of every 10 trees harvested in Washington State was shipped overseas as raw logs.**

_____**m. Nurselogs are logs that baby animals are drawn to when their mother abandons them or is killed.**

3. What does "threatened species" mean?

"Threatened species" is defined in the Act as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range."

4. Ask students if they can name any species that have been listed as endangered or threatened under the Act.

More than 1000 species of plants, animals and fish have been listed under the Act since it was enacted in 1973. Probably the most infamous species listed in the last few years was the snail darter, a tiny fish that delayed construction of the Tellico Dam in Tennessee for two years in the late 1970's.

Other species that have been listed as endangered or threatened under the Act include the bald eagle, gray wolf, red wolf, condor, grizzly bear, Florida panther, black footed ferret, and whooping crane.

5. Why is it important to protect species from extinction?

Genetic diversity is the major rationale for saving species from extinction. The diversity of species is a potential resource to the planet. As the U.S. Supreme Court stated, these species are "keys to puzzles which we cannot solve, and may provide answers to questions which we have not yet learned to ask."[1] There are many medical applications of chemicals derived from animals, including anticancer agents, antibiotics, antiviral agents, anticoagulants, contraceptives, and antivenoms.

The importance of maintaining natural genetic variation was recognized by Congress in passing this law. When Congress passed the Endangered Species Act it cited the rising extinction rate in the U.S. and the world. At the time the law was passed in 1973, the extinction rate was thought to be one species per year. In 1979, the rate was estimated to be one species per day. Recently, one expert predicted the future rate of extinction to be one hundred species of plants and animals per day.[2]

6. How do we decide what species should be listed as endangered or threatened?

The Fish and Wildlife Service, the federal agency that is charged with enforcing the Act, is directed to consider scientific data and determine whether the species is endangered or threatened. Any economic consequences of listing a species should not be considered. Therefore, the consequences of a cutback in logging were not supposed to be taken into account in deciding whether or not to list the spotted owl.

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1 TVA v. Hill, 437 U.S. 153, 180 (1977) (the case about the snail darter).

2 Linden, "The Death of Birth," Time, Jan. 2, 1989, at 32.

THE NORTHERN SPOTTED OWL-A LEGAL TOOL?

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 1

Use of Outside Resource Persons:

An attorney who practices environmental law would be useful to review the Endangered Species Act, or possibly a biologist, to explain genetic diversity and its importance.

Objectives:

1. Students will define a "threatened" and "endangered" species.
2. Students will review major points in the Endangered Species Act.
3. Students will examine political cartoons and analyze the author's viewpoint.

Materials:

Handout 1

Procedures:

1. Write "Endangered Species Act" on the board and ask if anyone knows what it is.

The Endangered Species Act (ESA) is a federal law that was first passed in 1973 to protect species of plants or animals that are threatened by extinction. Since the passage of the Act more than 500 American species have been listed as either endangered or threatened. (Over 500 foreign species are also listed, such as African elephant. For example, the law forbids Americans to bring ivory into the country, in an effort to prevent Americans abroad from purchasing ivory and thus contributing to the elephant's demise.)

2. Ask what "endangered species" means.

"Endangered species" is defined in the Act as "any species which is in danger of extinction throughout all or a significant portion of its range."

administration views the owl through the scope of a gun, and probably wishes it could shoot it or that it would just go away.

b. Can you tell how the cartoonist feels about the spotted owl and the Bush administration's attitude toward it?

The cartoonist feels that the Bush administration has it out for the owl, and that its policies will eventually kill the bird.

c. What is the cartoonist saying in Cartoon 2?

That the forest and the owl are both going extinct, and it is because Bush is afraid to stand up to big timber interests.

d. What is President Bush doing in the third panel? What is the effect of his action?

He is bowing down before the sacred stump, representing big timber companies, who oppose setting aside old growth forests for owl habitat.

e. From what you have learned so far about the spotted owl, do you agree with these cartoonists?

In fact, a lawsuit had to be filed by 25 environmental groups, Northern Spotted Owl v. Hodel, to require the U.S. Fish and Wildlife Service to list the owl after the Service delayed for years in making a decision about the owl, and then came out with a decision that it was not endangered. In 1988, a federal court judge in Seattle ruled that the Fish and Wildlife Service's decision not to list the bird was "arbitrary and capricious," and ordered the Agency to go back and study the matter again. Later, the General Accounting Service found that the Service had rewritten portions of a major study, taking out critical portions suggesting the owl was endangered. It was not until June 1990 that the owl was finally listed as "threatened." (The decision that the owl is threatened rather than endangered does not have any significant effect on the protections that the bird is entitled to.)

7. What does the Endangered Species Act have to do with logging and old growth forests?

There is no law that protects old growth forests in their own right. Therefore, the Endangered Species Act has been used by environmentalists in the battle to protect these forests. Scientists first noted that the northern spotted owl might be endangered in 1973. Since that time further studies have shown that the owl probably cannot survive outside of old growth forests.

The law requires the Fish and Wildlife Service to protect a species, once it is determined to be endangered or threatened, from any activity that would jeopardize its existence. This means that logging on lands known to be the home of spotted owls would be prohibited. This includes both public and private lands. Since each pair of nesting owls requires somewhere between 2500 and 8000 acres of old growth forest to forage for its prey, a large amount of old growth must be preserved if the spotted owl is to survive.

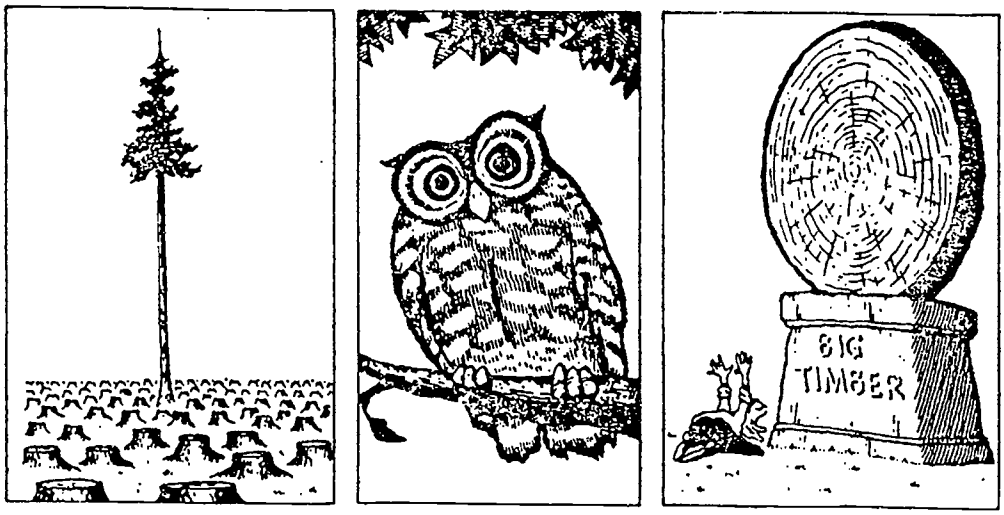
8. Tell the class that even though economic considerations may not be considered in deciding whether to list a species, they often play a part in how to protect the species after it is listed. The Secretary of the Interior can make an exemption, or there can be an appeal to the Endangered Species Committee -- also known as the "God Committee" -- a special congressional panel to whom appeals can be make. The fate of the owl, then, falls to the political arena (where it remains as of this writing).

9. Ask the class if they now understand why we call the owl a "legal tool?"

10. Pass out Handout 1, two political cartoons about the spotted owl controversy, and the Bush administration, and ask students the following questions.

a. What is happening in Cartoon 1?

The owl is viewed through binoculars by the Fish and Wildlife Service in its category as an endangered species. The Bush



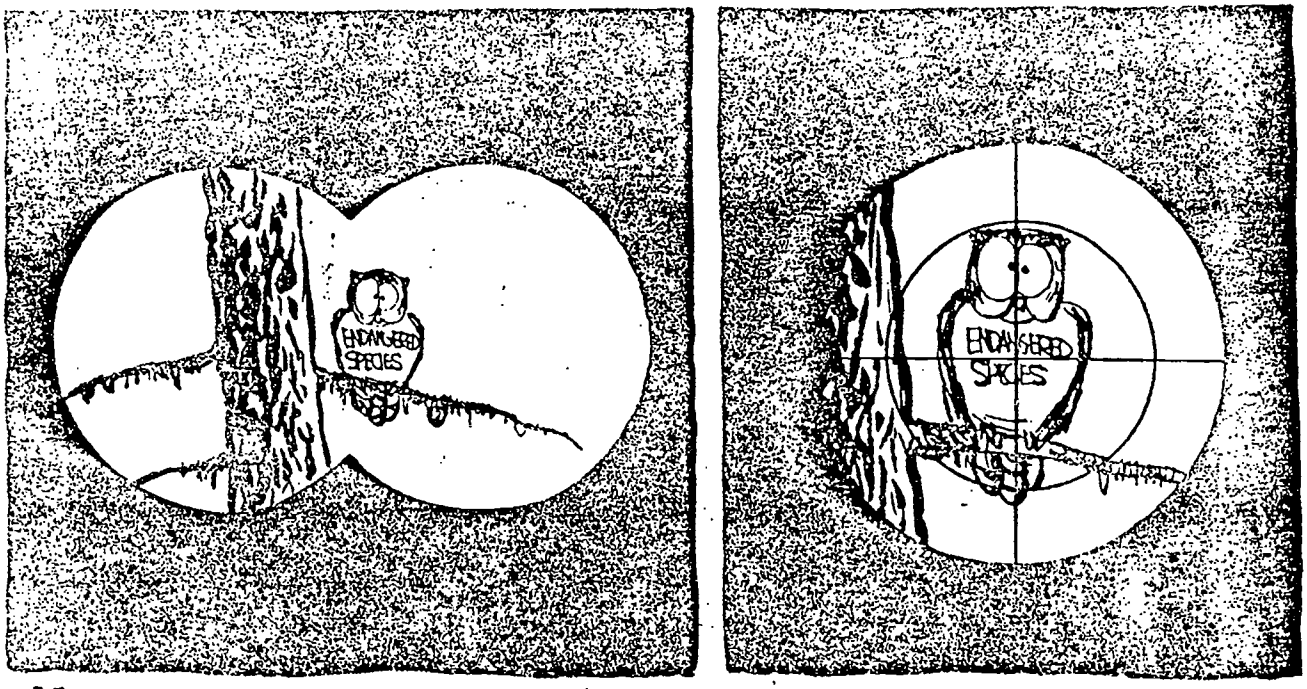
a. What is happening in this Cartoon?

b. Can you tell how the cartoonist feels about the spotted owl issue?

c. What is President Bush doing in the third panel? What is the effect of his action?

d. From what you have learned so far about the spotted owl, do you agree with this cartoon?

TWO CARTOONISTS' VIEWS OF THE SPOTTED OWL CONTROVERSY



a. What is happening in this Cartoon?

b. Can you tell how the cartoonist feels about the spotted owl issue?

c. From what you have learned so far about the spotted owl, do you agree with this cartoon?

OLD GROWTH FORESTS - A CONGRESSIONAL INQUIRY

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 2

Use of Outside Resource Persons:

A legislator could assist with debriefing the simulation. Any of the many special interest groups described could be used to work with small groups in preparing their testimony. A debate on the positions among various representatives of the special interest groups after the simulation would reinforce learning from the hearing.

Objectives:

1. Students will identify a variety of viewpoints on the Northwest timber controversy.
2. Students will advocate the position of a special interest group.
3. Students will practice lobbying on behalf of their position.
4. Students will learn the scientific rationale for saving old growth forests.

Materials:

Name tags for 30-35 students

Handouts 1, 2, 3 and 4.

Background information for teachers:

Logging is Washington's second biggest private industry. Our old growth forests have, however, become a national issue, for which there is no easy solution. The goal of this lesson is for students to see and hopefully appreciate the wide range of viewpoints, and to be exposed to the scientific rationale for why old growth forests are a valuable resource for us all. The emphasis on the scientific arguments is not meant to belittle the economic impact of limiting the cutting of our forests, and those views are given equal voice in the role play. In the end, it comes to the political arena, which is where the students are asked to find a solution.

The federal agencies that manage the public lands on which most of the remaining old growth forests lie are ultimately answerable to Congress. These agencies are the U.S. Forest Service (a branch of the U.S. Department of Agriculture), and the following branches of the Department of Interior: the Fish and Wildlife Service (which administers the Endangered Species Act), the Bureau of Land Management, the National Park Service, and the Bureau of Indian Affairs.

In Washington state, old growth forests remain on lands owned by the state, and are managed by the Department of Natural Resources (DNR). Under the Washington State Constitution, however, the DNR is required to manage the state timber lands to bring the highest amount of money into the state treasury. That money is used for school construction. In order to change this policy, the state Constitution would have to be amended.

As of August 1990, the export of raw logs from national forests was banned. The Washington and Oregon legislative delegations have agreed to push for a law that would allow states to limit exports from state forests. Senator Packwood and Rep. DeFazio of Oregon have advocated a ban on exports of logs from private land, but Washington politicians have not supported such a move because private timber interests are much more powerful in Washington state. (Also, trade groups in Washington claim that any jobs gained by stopping exports would be cancelled out by a loss of jobs in the export industry.)

Even the present ban on export of logs from federal lands is not working. A currently legal, but controversial process called "substitution" allows exporting timber companies, primarily large companies like Weyerhaeuser, ITT Rayonier, Portac, and Merrill and Ring to buy logs that were cut from federal lands from a third party, and then export them. There is talk in Congress of outlawing this practice.

Procedures:

1. Inform the class that they will conduct a simulation of a Congressional joint select committee investigating the Northwest timber controversy and the preservation of old growth forests. Each student will play the role of either a member of a special interest group, a scientific expert, or a politician. Either ask for volunteers or assign students the following roles:

Special Interest Groups (3-4 students each, except Weyerhaeuser)

The Wilderness Society

Earth First!

The Sierra Club

Washington Forest Action Committee

Northwest Forest Resource Council

The Save Forks for the Future Coalition

Large Timber Company Representative
George Weyerhaeuser, Weyerhaeuser Co

Scientific Experts

Fran Forester
Gerry Ramirez
Danny Smith
Pat Wild
Dr. Terry Thomas

Congressional Committee (5-10 students)

Senator Wood, from Washington State whose district includes the Olympic Peninsula, where logging and timber are the major source of income.

Representative Green, from Washington State whose district includes Seattle. This person is leaning toward protecting environmental interests, but opposes a ban on exporting logs overseas.

Senator Logan, from Oregon who strongly supports a ban on log exports.

Remaining members are undecided and are not from the Northwest. (They may use their own names.)

2. Give a copy of Handout 1 to each special interest group member, Handout 2 to the Congressional committee members, Handout 3 to scientists, and a copy of the role packet, Handout 4, to everyone. Tell students that before the hearing, they will have an opportunity to lobby their representatives. If time allows, give students the rest of the class period to prepare their roles. During preparation time, have committee members prepare questions for witnesses, have special interest group members individually learn their group's position on the issue, and have the scientists learn their roles. At

the end of class give the special interest groups at least 15 minutes to meet as a group to plan a lobbying strategy. Refer them to Handout 1. The Committee members can also meet at that time and elect a chairperson. Refer them to Handout 2. (Scientists should continue to study their roles.) Further preparation can be assigned as homework. If time allows, it would also be helpful to outline the position of each group with the entire class, putting major points on the board.

3. The next class, inform students that prior to the hearing, there will be a "reception," at which members of the special interest groups will have an opportunity to talk (i.e. lobby) with their representatives and senators. Everyone will have the opportunity to exchange views with and question the scientific experts there to testify. To insure that everyone stays "on task" during the reception, tell them that after the reception, everyone will list those people they spoke to, and a brief description of what was said.

4. Give students name tags identifying their roles. Have the members of the Congressional committee stand first, or wear hats, so that the lobbyists can easily identify them and find them during the reception.

5. Announce that the reception will last 20 minutes. During that time, members of the special interest groups should try to talk to as many politicians as possible (at least two). At the same time, the experts should circulate and give their input as appropriate, in response to questions from politicians and group members.

6. After the reception, convene the Congressional committee meeting. Set up the room with the committee in front, and those there to testify in the audience. (There probably won't be time to complete the hearing in this class period.)

7. Ask the chairperson to call the meeting to order. Allow 35 minutes for testimony. First, each special interest group will have 3 minutes to present their position, including questions from the panel. The groups may select one spokesperson, or all members may speak. The scientific experts will then have 3 minutes each to present their testimony, including answering any questions from the committee members. After hearing all of the testimony, the committee will conduct an open discussion, and decide what, if any, action they will take. (10 minutes). (Alternatively, the committee can meet privately for 10 minutes to deliberate. During this time, the rest of the class can write out what action they think the committee should take.) The Chairperson should announce the committee's decision.

8. After the meeting, debrief by asking the following questions:

a. Did each special interest group manage to have its views heard? Were some more effective than others? What were the reasons for this?

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b. Were the scientific experts persuasive? Did their views carry more weight with the Committee than the special interest groups? Why or why not?

c. To the committee members: Was the lobbying exercise useful to you? Why or why not?

d. To the lobbyists: How did it feel to try to influence someone's views?

9. As an alternative exercise, the entire class could be divided into groups of 7-8 students, to mediate a solution to the problem. Each mediation group would consist of one member of each of the 6 special interest groups, and one or two mediators. The mediators would follow the steps of mediation outlined in Lesson 24 (Mediation in China). Scientific experts could be called in as well. The same exercise could be done using negotiation or arbitration.

INSTRUCTIONS TO SPECIAL INTEREST GROUPS FOR LOBBYING SIMULATION AND CONGRESSIONAL HEARING

Your goal at the reception is to convince the Committee members that they should find a solution to the problem of how to manage old growth forests that will fit the goals of your group. In planning a strategy, decide whether you will target those politicians who are opposed to your view and try to change their minds, or spend time with those who seem to be undecided.

Determine your best arguments, identify the strengths and weaknesses of your position, and be prepared to respond to questions about your weak points. Keep your presentation brief and to the point. Review the positions of other groups, and point out the weaknesses of the other positions. Review the testimony of the scientific experts, and talk to those experts who you think can help your side. Avoid arguing or interrupting other conversations. Remember that this is a social occasion.

Finally, decide a strategy for the hearing. You may select a spokesperson for the entire group, or you may each testify. Remember, you only have 3 minutes to testify.

INSTRUCTIONS FOR CONGRESSIONAL COMMITTEE

First, elect a chairperson. (The chairperson is responsible for seeing that each committee member's views are heard during committee meetings, for chairing the hearing and for announcing the committee's decision. During the hearing, the chairperson should make sure that speakers do not take more than their allotted time, and keep order.)

Then review this information, and Handout 4 and prepare questions to ask the lobbyists and scientists, both at the reception and hearing.

As a member of the Congressional Committee, your job is to listen to the scientific experts, and the special interest groups, and come up with a solution that you feel is wise, both in terms of the laws protecting our environment, and in terms of the best interests of the people you represent, your constituents.

At the lobbying reception, listen to as many people as possible, and ask questions to make sure that you understand each group's position. Use the scientific experts as resources. Don't make any promises you can't keep.

INSTRUCTIONS FOR SCIENTIFIC EXPERTS

Your role is to be a resource of scientific information for the committee members. You should study your role and know it thoroughly. You may do additional research if you wish. Prepare a short (3 minute) presentation including scientific information you think the congressional committee should know about old growth forests so that they can make a wise decision.

CONGRESSIONAL HEARING - ROLE PACKET

The Wilderness Society

The Wilderness Society is a national conservation organization dedicated to the proper management and preservation of America's public lands. The Society wants to preserve the maximum amount possible of remaining old growth forests. The Society is also especially concerned that the remaining old growth be preserved in large tracts, sufficient to support wildlife such as the spotted owl. The Society does not support illegal tactics to save the forests, such as tree spiking.

"We are asking this committee to set aside sufficient old growth in large tracts sufficient to preserve the northern spotted owl and the old growth ecosystem.

"The northern spotted owl is an "indicator species." Because the owl takes so many acres of old growth to survive - as much as 5,000 acres of hunting range per pair of owls - any decline in its population is an early warning that the old-growth ecosystem is in trouble. For example, many years ago, canaries were used in coal mines to warn of poisonous air. When the canaries started to die, the miners knew it was time to get out. The spotted owl plays somewhat the same role for old growth forests. Unfortunately the owls are not doing too well, which triggers alarms for the ancient forest they inhabit.

"We are not to the point where we know so much that we can decide which species can live or die. If the spotted owl can survive, as many as 100 other forest species will also be able to survive.

"The ancient forests of the Pacific Northwest themselves are endangered. These are not just ordinary trees we are talking about. These are the last living remnants of the Middle Ages. They are world-class treasures. If we sacrificed them for jobs, it could be compared to blowing up medieval cathedrals - Chartres this week, Salisbury next week - to provide jobs. But in the end there'd be no more cathedrals and everyone would be out of work anyway.

"The vast ancient forests that once blanketed the Pacific Northwest are rapidly being reduced to only patches of old growth, many of which are already too small to support plant and animal species dependent on the old growth ecosystem.

"Once western Oregon and Washington contained 19 million acres of ancient forests. Logging has reduced this amount to only 2.3 million acres, just 12 percent of the original forest.

"About 15% of the Amazon rain forest has been destroyed. As serious as this loss is, it pales beside the loss of nearly 90 percent of western Oregon and Washington's old growth forest legacy. We are not so poor that we must destroy the last of America's ancient forests, nor so rich that we can afford to."

Washington Forest Action Committee

The Forest Action Committee is an organization of loggers and represents their interests. The members of this committee are all loggers themselves. The Committee wants to cut old growth trees in the national forests, as they have done for years.

"We ask Congress to limit the amount of old growth trees protected from logging to a minimum. In fact, we think there is already sufficient old growth in national parks and wilderness areas. We're against banning log exports. We aren't interested in any government handouts, all we want is to continue our livelihood. Don't insult us with low interest loans. All we want is a timber supply.

"We are the ones who will most be affected by this debate. We are angry, scared and most of all frustrated. We have long made a modest living from the commercial harvest of the trees in our national forests. Now we are being told that the public at large no longer wants us to cut these forests. We are tired of being the target of political battles and having to absorb 100% of the results of these battles.

"The old growth forest may be a fragile ecosystem, but no more fragile than a small, isolated timber town."

Earth First!

Earth First! is a militant environmental group. Their tactics include sitting in trees and communal "tree hugging" to prevent the trees from being cut down, and some members advocate sabotage against developers and loggers, including the spiking of trees. (This practice involves the driving of spikes into trees in a forest about to be logged to stop loggers from sawing them down. Loggers have been injured when cutting down spiked trees.)

"We want this committee to stop all cutting in old growth forests.

"Our democracy has always moved forward by people willing to break bad laws. It's as American as apple pie. We look back 25 years now, and we can't believe there was a time when black people couldn't go into a restaurant. No one asks about the ethics of breaking segregation laws now. But at the time, that was all you heard, about those black people breaking the law.

"In 25 years, people will look back and say, You mean they were cutting down the forests that keep us alive? Thank God there were people who stood up for their convictions and stopped it!

"We see the Sierra Club and the Wilderness Society as "couch potato" environmentalists. All they do is sit around and write letters."

Northwest Forest Resource Council

The Council is a coalition of ten timber industry associations in the Pacific Northwest. Members of the associations are timber companies based in cities, towns and communities in Oregon and Washington that depend on a strong and vital timber industry for their economic survival.

"We ask the committee to find there are already sufficient old growth stands set aside, and to limit any new set-asides to a minimum. Allow us to continue cutting old growth in our national forests until sufficient reforested timber is ready for cutting.

"The old growth forests of the Pacific Northwest are a valuable resource. They are the mainstay of the region's forest products industry that employs some 140,000 families and wage-earning people. It is an important ecological and recreational resource as well. Most important, it is a resource found in relative abundance in this region.

"According to data compiled by government agencies responsible for managing northwest forests, there are over 7.5 million acres of virgin old growth timber on the federal lands in Washington and Oregon. Little known is the fact that some 4.2 million acres (58%) of these native forests have already been preserved, never to be managed for multiple uses by man. This is an area equal in size to a swath of land two miles wide extending from Portland, Oregon to Washington, D.C. preserved forever. There will always be old growth forests in the Pacific Northwest.

"Less than half the national forest in the Northwest are available for timber production purposes. Old growth timber on these lands is scheduled to be harvested over the next 50 years. As it is harvested, new trees will be planted so that over time a managed forest capable of providing a sustained yield of forest products will result.

"Since reforesting was not commonly done until the last thirty years, there are not sufficient replanted trees for harvesting right now. We replant all trees that we cut, and will have plenty of second-growth trees to cut in 20 or 30 years. The old growth is critical to us now, to tide us over until the second-growth forests reach maturity."

Sierra Club

The Sierra Club, founded in 1892, is the oldest national organization dedicated to protecting natural resources and the environment. The Sierra Club wants to preserve the maximum amount possible of old growth forests and is giving this issue its highest priority. The Sierra Club does not support the use of illegal tactics, such as those used by Earth First!

"We support a ban on log exports as a short term solution to get logs to hungry local mills. We also support aid to logging-dependent communities to help them diversify. Whether the spotted owl or environmentalists existed, many people are going to be out of work in any event. We're convinced that, at the present rate of logging, the ancient forests will be gone in 20 years.

"Giant timber companies are advancing on our national forests with bulldozers, saws and axes, wantonly felling trees as never before. They're deforesting the U.S. at the fastest pace in history. And the U.S. Forest Service is helping them!

"The Forest Service is the government agency charged with protecting public forest lands and managing logging on those lands. It is responsible for preserving the biological diversity, wildlife habitat and precious watersheds of our national forests. The Forest Service supports the agenda of the timber industry 99% of the time.

"We have been managing our national forests as though they were outdoor warehouses of living trees, held in inventory until the lumber companies are ready to take delivery. Many of these trees are being shipped to Japan, while sawmill workers in the Pacific Northwest are losing jobs."

The Save Forks for the Future Coalition

This is a group of citizens, including loggers, sawmill owners and operators and truckers whose jobs depend on the timber industry. The views represented within this group include:

Jackie Ray, owner of Forks Lumber Supply. Jackie is wearing a hat that says either: "SAVE A LOGGER, KILL AN OWL" or "I love spotted owls... barbecued, fricasseed, baked, stir-fried." "These environmentalists from the city have no idea what the timber industry is all about. You're talking about billions of dollars of lost revenue, thousands of lives destroyed for a potential, a maybe, net gain of several hundred spotted owls. When it is your life being destroyed, that's pretty hard to understand.. If these people don't want logging, they should stop using wood products."

Sal Simpson, owner of Forks Logging Company. "I employed over 200 people a year ago. I've now had to cut my crew to 125, due to the cut-back in the harvest of old growth timber in national forests. These are people with families to feed and mortgages to pay. They have been making $12 to $20/hr. These are not the kind of people who are going to accept welfare or unemployment. They are proud, independent people who want to work in their chosen profession, not be retrained for other jobs."

Tom Mills, owner of the Mills Brothers Sawmill. "These log exports are killing us. My saws are set up to cut the large, old-growth logs we bought from the national forests out here on the Olympic Peninsula. I used to employ 40 people and do millions of dollars in sales. Now, I have 6 employees, and am hard pressed to pay them. If I can't buy logs, I'm going to have to close up shop soon. I support a ban on all log exports. It just doesn't make sense to send raw logs overseas to be milled when we can do it right here in Forks for less, and employ local people as well."

Gary Thomas, former logger, now correctional officer. "My grandfather and father were loggers, and I cut logs for 20 years, until last year, when I entered the training program at the local corrections center. There's just no future in logging. I'm making less, but at least I know there will always be inmates. Forks needs to look for other industry, such as recreation and tourism. I support more aid to logging communities so that they can diversify."

George Weyerhaeuser, Chief Executive Officer, Weyerhaeuser Co.[1]

Weyerhaeuser is a large timber company that owns vast tracts of timber and many mills. Weyerhaeuser currently exports much of its timber overseas.

"We strongly oppose a ban on log exports.

"There is a public misconception that we are running out of trees. In fact, there are more trees growing in the United States now than there were in 1920. Just last year, Washington's forestland owners planted over 40 million trees. At Weyerhaeuser, we harvest no more than 2 percent of our 1.6 million acres of Washington timber lands in any one year. We replant four to five seedlings for every tree we harvest. Washington law requires that forests be replanted within three years after logging.

"Congress and the public need to understand that there are two timber economies in Washington. The first is represented by people like those here today, from the Save Forks Coalition, and the Forest Action Committee. They depend on trees from public lands for their livelihoods, and are being hit hard by federal set-asides for wilderness and environmental regulation.

"The second is nearly twice the size of the first, and consists of thousands of small, private tree farmers, individual owners [such as Weyerhaeuser], and mills that are geared to grow and process second-growth timber. This group is in no danger of running out of raw materials, because we've been renewing it for decades. Our mills rely almost entirely on the second-growth logs grown on our own lands.

"Both young and old-growth forests have their advantages, and problems. Realistically, society needs both. Old growth clearly has special beauty and ecological value; young forests have unique economic and ecological value.

"We'll keep growing new, young-growth timber as long as companies like Weyerhaeuser can continue to invest in their forests with the confidence that they will have markets in which to sell their products when they mature. And, because domestic demand rises and falls dramatically over time, this means BOTH domestic AND foreign markets."

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[1] Excerpted from Weyerhaeuser's letter to the editor, Seattle Times, May 20, 1990.

Fran Forester, Forestry Researcher, University of Washington

The old growth forest of the Pacific Northwest is a unique ecosystem containing a diverse mix of trees, including the Douglas fir, western red cedar, western hemlock, and silver fir. I consider an old growth forest to be one containing trees at least 175 to 200 years old. (Some Douglas firs grow to be over 1000 years old).

True old growth forests are characterized by large, old living trees; a multi-layered canopy; large standing dead trees, called snags; and large dead trees on the ground and in streams. The dead trees are essential to the health of the forest, and are the basis of its productivity. The nutrients that the forest needs are not mainly in the soil but in the living and dead plant material itself. As leaves and branches fall, and as trees and plants die and decay, this material is recycled to the living forest. The forest literally feeds itself, wasting nothing.

The trees in a Pacific old growth rain forest support the greatest mass of living things (known as biomass) of any ecosystem on the planet. Where a tropical rain forest may contain 185 tons of plants per acre, a Pacific forest will contain 400 tons an acre. Some redwood forests contain as much as 1,800 tons an acre.

Gerry Ramirez, Forester

Forests, like human beings, have a natural life span. Once they reach maturity, at about 200 years, growth slows down, and most of their energy goes into sustaining themselves. Eventually, though it may take several centuries more, decay sets in, and the trees die and fall down.

While many professional foresters believe that these mature trees should be cut down and replaced with new, growing trees, my research has shown that the phase we call "post-mature" or old growth forest is the richest, most complex phase of the forest's life.

While old growth trees may be past their wood-producing prime, they are valuable for many other functions. Crooked trunks, broken tops and other marks of age provide food and shelter for many different types of animals. For example, thick bark is home to many insects, which are food for foraging birds such as the woodpecker and nuthatch.

Both fallen and standing dead trees in the old growth forest are extremely important in the old-growth forest ecosystem. A tree killed by fire, lightning, insects, or disease may remain standing for 200 years or more. Called "snags," they are colonized by many types of insects, birds, and mammals. The most valuable part of the snags is the cavities that develop in their branches and trunks. At least 45 vertebrate species, from the northern flying squirrel to the northern spotted owl nest or feed only in the cavities of old-growth trees. These animals eat the mosses, lichens, and insects that invade dead or dying trees, and they in turn are eaten by animals higher up the food chain - animals like black bears, pine martens, and bobcats, all of which take shelter in snags. Eagles, owls and hawks use the branches of a snag as lookout posts when they hunt for food. At least 39 bird species and 24 mammal species use snags for courtship, nesting, food, and other activities. Some animals hide nuts and seeds in the snag, saving them for later meals. Others may store dead prey in the snag's cavities. Still others will use the holes created by woodpeckers for homes.

Fallen logs, called "down woody material," are a reservoir for moisture. In dry weather, even after a fire, the high moisture content of fallen trees encourages fungi to grow. These fungi play an important role in helping tree seedlings to grow out of the downed trees, which are called "nurselogs." Also, as wood decays, concentrations of nitrogen, phosphorous, and other important nutrients build up in the rotting log. These nutrients are released very slowly back into the soil to be used by future generations of trees and other plants.

Fallen logs also help prevent erosion. In streams, they provide nutrients, help stabilize stream banks, and slow water flow by creating pools and waterfalls.

The traditional replanting of forests that contained many species with only one species of trees results in a monoculture. This simplified forest lacks all of the elements of the old growth ecosystem. The removal of ecological diversity and complexity affects the forest's ability to adapt to stress and change.

Danny Smith, Ecologist, City Watershed

While younger forests depend on natural rainfall, old growth forest can "make their own rain." The canopy (the multi-layered system of branches that shade the old growth forest and rise high above the forest floor) can condense water out of moist air, fog, and clouds, in some instances adding up to 35 inches to the annual rainfall. A single old growth tree may have sixty to seventy million needles, and a total of 43 thousand square feet of leaf surface. These needles are amazingly efficient at collecting moisture and nutrients from the atmosphere. For example, when forests were cut from around a watershed area in Oregon, scientists expected the water supply would increase in the reservoir. Instead, the supply dropped. It was found that almost a third of the water in the reservoir had never come from rain. Rather, the tall trees collect it from passing clouds and fog banks. When the trees were cut down, the moisture blew by without depositing the water.

Old growth trees also protect soil and wildlife from the extremes of weather. The dense canopy breaks up the impact of falling rain and snow, preventing erosion, landslides and floods. In the spring, when the snow melts, the cover of the dense forest slows down the snow-melt. For example, snow might remain in an old growth forest one or two months longer than in a clear cut area. This allows water to slowly fill reservoirs, rather than flood them at the first thaw, with much of the water being lost.

Pat Wild, Research Wildlife Biologist

Old growth forests provide the basis for a complex web of life that extends beyond our current understanding. The key to the old growth forest is its diversity, both in terms of the plant and animal species found. The canopy of an old growth forest ranges hundreds of feet above the forest floor and contains many layers. Each layer provides nesting and feeding sites for birds and small mammals. More than 1500 species of insects and other invertebrates may spend all or part of their life cycles in the canopy of an old growth Douglas fir forest. The red tree vole, for example, nests in the old growth trees, licks the moisture off the needles for water, and eats the needles for food, never needing to leave the forest canopy. New species continue to be identified.

The forest ecosystem is incredibly interdependent. When one species, such as the spotted owl, goes extinct, quite likely many other species go with it.

Maintaining this biological diversity is important for these reasons: 1) it will protect the forest from destruction, should disease or insect infestations strike a single species; 2) it allows greater flexibility to environmental changes, such as extreme cold, fire, or pollution; and 3) it creates a natural environment that includes interactions among species, setting the stage for future evolution.

Dr. Terry Thomas, Forester

Forests can still be logged and not destroyed if we just change our logging practices. I advocate what we call the "new forestry"-the growing of diverse forests, not just one species of tree. This means that clear-cutting would no longer be allowed. Mature trees would be left, along with snags. Downed logs would be allowed to remain on the ground. This would result in man-made clearings much like those left by wind and fire. The remaining debris would allow the forest to renew itself, from the rotting logs, organic litter, spores of mycorrhizal fungi, and areas of undisturbed soil.

This would cost more. Some also say that remaining trees would be subject to high winds, and might fall down, injuring loggers and foresters.

PROTECTING THE ENVIRONMENT

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 1/2

Use of Outside Resource Persons:

A representative from a local recycling agency would a good addition this class to explain what recycling is done in the local area.

Objectives:

1. Students will identify how individuals can act responsibly to protect the environment.

2. Students will identify specific ways they can lessen demand for wood products.

Procedures:

1. Ask students to name all the products they can think of that are made from wood. List these on the board.

Possible responses include houses (and many of their components including plywood), books, grocery bags, newspapers, writing paper, paper towels, toilet paper, furniture, boats, many toys, clothing (some clothing is made from wood fibers), older bridges, playground equipment, telephone poles, sign posts, firewood, piers, toothpicks, chopsticks, popsicle sticks, charcoal, boxes, stereo, TV and VCR boxes.

Of the timber that is cut, less than half is made into long-lived items, such as lumber or plywood. Fifty-two percent is burned as fuel or made into paper or fiber products, which are soon thrown away, to decompose or be burned.

2. Point out that many of these wood products are disposable. Ask students, individually, to write down how much of each of these disposable wood products they use each day.

A typical American consumes one 100-foot tree per year. Industry sources say that the average American uses 600 pounds of paper annually, compared to 13 pounds for the average Chinese. It takes two 170 foot Douglas firs 40 inches in diameter to build a three bedroom house.

3. Ask students to brainstorm ways that they could reduce their consumption of wood products.

Ideas include using less paper, specifically recycling grocery bags, newspapers and all paper products, buying products made from recycled paper whenever those are available, remodeling older homes rather than building new homes. Buying products made from recycled paper. Recycled printing and writing paper can be ordered from some local suppliers or:

Conservatree Paper Company
10 Lombard St., Suite 250
San Francisco, CA 94111
800-522-9200

Students could also organize a tree planting project. Often trees are provided for free.

4. Does your school recycle paper discarded on campus? If not, encourage students to start such a recycling project. Brainstorm ideas how to start a recycling program.

JUVENILE JUSTICE JURISDICTION ON INDIAN RESERVATIONS

Source:

Written by the University of Puget Sound Institute for Citizen Education in the Law

Historical Period: 1930's to present.

Class Period: 1

Use of Outside Resource Persons:

An attorney working for a Native American Indian Tribe would be especially useful to present the rules of jurisdiction and to debrief the activity.

Objectives:

1. Students will distinguish among tribal, state and federal courts.
2. Students will identify the importance of a nation's power to solve its own disputes.
2. Students will identify authority of three governments to handle selected cases.
3. Students will apply jurisdiction rules to hypotheticals.
4. Students will appreciate the separate nature of Native American government.

Materials:

Handout 1

Procedures:

1. Before the activity, have students review court jurisdiction in federal, state and tribal courts. Additionally, have students read about Native American Indians in textbook.

Background Information for Teacher

What follows is a technical description of the very complicated rules regarding jurisdiction over Native Americans in the tribal, state and federal courts. It is provided as background reading.

If an offense is committed on a tribal reservation, the decision which government has authority to prosecute the juvenile is very complicated.

When an offense is committed by a juvenile on a tribal reservation, the case will be handled by the U.S. Government, the State of Washington, AND/OR the tribal government. In many cases, more than one government has the right to prosecute the individual for the crime. Sometimes two governments prosecute the juvenile for the same offense and this is not a violation of the Constitution's double jeopardy clause.

Five factors determine which governments have jurisdiction (authority) to prosecute the case:

(1) Location of the offense
(2) Status of the land
(3) Race of the offender
(4) Race of the victim
(5) Degree of seriousness of the offense.

(1) Location of the Offense. The first issue which determines who has authority is which Indian reservation is involved. Reservations have different rules depending (a) upon their own constitution and (b) upon how a certain federal law (Public Law 280) applies to them.

Indian tribes have constitutions which describe what authority the tribe has over criminal and civil actions. The U.S. Government wrote many of these constitutions which were then adopted by the tribe. For example, the Puyallup Indian Tribe has a constitution written by the U.S. Department of Interior in 1937 which was then voted upon and accepted by the Puyallup tribe. It states that the authority of the Puyallup tribe over civil and criminal matters extends only to actions occurring on trust and restricted lands (which turns out to be less than 25% of the reservation.)

In 1953, the U.S. government passed Public Law 280 (18 U.S.C. 1162)[1]. This law gave permission to state governments to exercise criminal and civil jurisdiction on Indian reservations.

This federal law was later amended to require consent of the tribe before a state exercised its jurisdiction over areas where the state had not yet applied its authority.

In 1953, Washington State had looked at some reservations and applied complete civil and criminal authority to the trust areas (land that was given over by individuals or tribes to the U.S. Government to be held in trust). Later the state's authority to regulate some of the Indian reservations was given back. So, for example, the Quinalt and

[1] 18 U.S.C. 1162

the Colville tribes do not permit any state jurisdiction over criminal or civil actions.

When Public Law 280 applies, the state and the tribe have "concurrent" authority to regulate actions that occur on trust lands provided they fall within one of seven categories:

1. compulsory school attendance in public school
2. domestic relations
3. mental illness
4. juvenile delinquency
5. adoption
6. dependency
7. use of motor vehicle on public highways

(2) Status of the land. Indian land may be either held in trust or not held in trust. Being held in trust refers to a process in which some tribes and individual Indians handed over to the United States government the deeds to their property giving the United States government the power to act for the benefit of the tribe or the individual. Juvenile offenses committed upon these lands held in trust are treated differently than offenses committed upon lands that are not held in trust.

(3) The race of the offender and (4) race of the victim are the next important issues in determining which government may prosecute the juvenile.

If the victim is non-Indian, the case will be prosecuted by the federal government.

If an Indian victimizes an Indian, both tribal and federal courts may prosecute. The state government may also be able to prosecute if it falls into one of the seven areas of Public Law 280.

If the crime has no victim, the federal government may prosecute Indians under the General Crimes Act. However, it will not prosecute if the tribe has already prosecuted and punished the Indian.

If the crime is committed by a non-Indian against an Indian, the federal government may prosecute. The state may prosecute in addition if Public Law 280 applies. No tribe has jurisdiction to try a non-Indian.

Many tribal police are now being commissioned as deputy sheriffs so that they will be able to process non-Indians arrested on the reservation. Non-Indians will then be handed over to state authorities for prosecution in state courts.

(5) Degree of seriousness of the offense is the last criteria. Certain major crimes may only be prosecuted by the federal government.[2]

[2] Major Crimes Act, 18 U.S.C.A. 1153. The Major Crimes act was passed in its first form in 1883 after the U.S. Supreme Court ordered

These are 14 major offenses which only the federal government can prosecute when they occur on a reservation, including murder, manslaughter, kidnapping, maiming, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery and a few other felonies.

When both the state and the tribe have authority to prosecute, the decision about prosecution depends upon which government prosecutes first. If the state court prosecutes first, there will be no tribal prosecution. However, if the tribe punishes, the state may prosecute.

Since the U.S. Bill of Rights does not apply to Indians, the U.S. government passed the Indian Civil Rights Act of 1968. This law imposes on tribes a Bill of Rights similar to the U.S. Constitutional Bill of Rights. In that statute, it limits the authority of the tribes to impose criminal penalties to a maximum of 1 year in prison and $1,000 in fines.

2. The teacher should introduce the concept of "sovereignty" which means an independent government.

To exercise fully the powers of an independent government, a nation must be able to enforce its laws and resolve disputes through the exercise of judicial power. The extent to which Indian tribes have authority over disputes affecting their interests and the enforcement of their laws is an important measure of their independence, as it is with state and federal governments.

3. Inform students that Indian tribes have a unique relationship with the United States government.

Once they were a people who possessed full sovereignty over their lands. After the conquest by the Europeans, Indians' status was drastically altered to one of semi-independence.

Today, Indian tribes are greatly controlled by the U.S. government, but they have remained "a separate people, with the power of regulating their internal and social relations." According to federal law, the tribes keep all aspects of independence that have not been terminated by Congress and that are not "inconsistent with their status as a dependent tribe." A tribe has the power to determine tribal membership, to regulate domestic relations among its members and to write rules for the inheritance of property. In addition, a tribe has the authority to enforce its criminal laws against its own members.

Crow Dog to be released from prison because it found that the present federal laws and the 1868 Treaty with the Sioux did not give the federal courts jurisdiction over an Indian who had murdered another Indian on an Indian reservation.

The rules regarding criminal jurisdiction are quite confusing. Selected aspects of the rules are presented in the exercise which follows.

4. Pass out Handout 1 and present the rules to students that appear at the beginning of Handout 1. Have students work in small groups to decide whether or not the defendants are Indian or Non-Indian.

Application of the rules will help them decide. Students should give reasons for their answers. Debrief each group for its answers.

Answers to Handout 1

a. Robert and John are convicted of robbing a man of money in the parking lot of the smoke shop on a reservation.

_____ Robert is prosecuted by the federal government

_____ John is prosecuted by the state government.

Robert is a Native American because the federal government has exclusive authority to prosecute Native Americans for the 14 major crimes, including robbery.

John must not be a Native American because he was prosecuted by the state government. If he were Native American, the federal government could prosecute him for robbery.

_____ b. Mary adopted her daughter after a hearing in a tribal court.

Mary is a Native American because tribal courts have no jurisdiction over non-Indians.

_____ c. After Henry was found guilty of a juvenile offense in tribal court, the state juvenile court also found him guilty.

Henry must be a Native American because tribal courts have no jurisdiction over non-Indians.

_____ d. The greatest penalty that Jenny faced in her prosecution for selling crack cocaine to children was $1,000 fine and 1 year in jail.

Jenny must be in a tribal court since these courts cannot give a greater penalty for any crime than $1,000 or 1 year in jail. To be in tribal court, Jenny must be an Indian.

_____ e. Paul took White Bear's pick-up without permission and went driving. He crashed the pick-up. The tribal court has no authority to prosecute Paul.

Paul must be a non-Indian. When non-Indians victimize Indians, the federal government can prosecute unless Public Law 280 applies. Tribal courts have no jurisdiction over non-Indians.

IS THE DEFENDANT A NATIVE AMERICAN INDIAN OR NOT?

Directions: Circle "Indian" if the person is a Native American Indian (I) and circle "Non-Indian" if the person is not a Native American Indian. To decide, use the rules about which government -- federal, state, and tribal -- has authority to handle the case. Give reasons for your choice.

AUTHORITY OF TRIBAL, STATE AND FEDERAL GOVERNMENTS TO TRY INDIAN CASES
RULES FOR TRYING CRIMINAL CASES INVOLVING INDIANS OR INDIAN LANDS

Rule 1. The federal government is the only government that can prosecute Native American Indians for murder, manslaughter, kidnapping, maiming, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery and a few other felonies.

Rule 2. Non-Native Americans may only be prosecuted for these same major crimes by the state government.

Rule 3. If an Indian victimizes an Indian, both tribal and federal courts may prosecute. The state government may also have authority to handle the case if it falls into certain categories.

Rule 4. If the crime is committed by a non-Indian against an Indian, the federal government may prosecute. Sometimes the state may also prosecute.

Rule 5. If the crime is committed on a reservation but has no victim, the federal government may prosecute Indians. However, it will not prosecute if the tribe has already punished the Indian.

Rule 6. No tribe has jurisdiction to try a non-Indian for a criminal charge in a tribal court.

Rule 7. The U.S. Constitution's Bill of Rights does not apply to Indians. The Indian Civil Rights Act of 1968 imposes on Indians a Bill of Rights similar to the U.S. Constitution's. This law states that the greatest penalty a tribal court may give for any crime is 1 year in prison and $1,000 in fines.

a. Robert and John are convicted of robbing a man of money in the parking lot of the smoke shop on a reservation. Robert is prosecuted by the federal government and John is prosecuted by the state government.

Therefore, Robert is a(n) Indian Non-Indian. (Circle one and give your reasons.)

Therefore, John is a(n) Indian Non-Indian. (Circle one and give your reasons.)

b. Mary adopted her daughter after a hearing in a tribal court.

Therefore, Mary is a(n) Indian Non-Indian. (Circle one and give your reasons.)

c. After Henry was found guilty of a juvenile offense in tribal court, the state juvenile court also found him guilty.

Therefore, Henry is a(n) Indian Non-Indian. (Circle one and give your reasons.)

d. The greatest penalty that Jenny faced in her prosecution for selling crack cocaine to children was $1,000 fine and 1 year in jail.

Therefore, Jenny is a(n) Indian Non-Indian. (Circle one and give your reasons.)

e. Paul took White Bear's car without permission and went driving. The tribal court has no authority to prosecute Paul.

Therefore, Paul is a(n) Indian Non-Indian. (Circle one and give your reasons.)

THE GREAT AMERICAN PROPERTY QUIZ

Source:

Adapted by UPSICEL from Bill of Rights in Action Series on Property of the Constitutional Rights Foundation

Historical Period: 1890's to present.

Class Periods: 1

Use of Outside Resource Persons:

An attorney familiar with property law could assist in laying the foundation of property law.

Objectives:

1. Students will define property.
2. Students list an example of both physical property and "intangible" property.
3. Students will identify reasons for American property system.
4. Students will realize that different societies have different meanings for property.
5. Students will realize a stable basis for ownership of land is a necessary base for civilization.

Materials:

Handout 1

Procedures:

1. Enter the class and take a student's hat, coat, book bag or some personal item. Go to the front of the class and let the student know that you now own the item that was taken.

Make it clear that you intend to keep the item. When the student objects, give reasons why you deserve/need/want the item more than s/he. As all students' anger mounts, announce that today's class is about property, what it is, how the law recognizes property rights.

2. Brainstorm examples of property on the board, most or all of which will typically be of physical objects. Add to their list examples of intangible property (you don't have to use this term yet).

Suggested intangible property examples:

1. The trade secret of how to make Pepsi Cola
2. The right to use a certain business name
3. The right to cross another's property to get to your land
4. A patent on an invention
5. A copyright on a song or book
6. A franchise on a business
7. A promise to pay, once certain work is performed

3. Ask students why these items are different from the ones on the board.

The answer is that they are not physical, they are "intangible."

4. Brainstorm the definition of property:

Everything which is the subject of ownership. It includes not only ownership and possession but also the right of use and enjoyment for lawful purposes.

5. Refer students to the conflict over who owned the student item taken at the start of class.

Tell students that there are two underlying values to the American legal system of property law: **fairness** and **economic efficiency**.

Fairness: First the law tries to protect a person's expectation of ownership against others so that a stable, consistent system of ownership can be created. It isn't fair to have your (refer to item taken from student) or your land taken away by someone who is stronger or more powerful than you.

Economic efficiency. The law recognizes the value of having property used efficiently in an economic way. To achieve this goal, property changes hands in an open market. For example, suppose a farmer owns a piece of land that he plants with crops. Because farm prices are not good, the farmer cannot make much profit. If a company believes that it can make a higher profit on the land by building a fruit canning plant, it will bargain with the farmer to get the land. The farmer may make a profit in selling the land, and the company may make a profit in its fruit canning plant. The land, then, has reached an economically higher valued use under this market transaction.

Students should consider competing values to economic efficiency. For example, the need for open spaces in the state as growth occurs. King County recently paid farmers to continue to operate their farms as farms even though development as industry might have resulted in

greater economic efficiency. This example shows that economic efficiency may not always be in the people's best interest.

6. Inform students that property rights are created in different ways in different societies.

For example, the Basotho people in Africa do not own land. The King, who is their highest chief, owns the land in trust for the people. Members of the tribe are awarded land by the village chiefs to use, but if they let the land go unused for a certain time, the right to use the land is taken away and given to another.

Another example, the Semang Tribe of the Malay Peninsula believes that myths are owned by the families who possess the most intimate knowledge of them and are authorities in interpreting them. Dances are also considered property belonging to the inventor of the dance; the owner has the exclusive right to perform it in the village. If others use the dance, they must purchase the right to perform it. Magical power is considered personal property, too, among the Semang.

Native Americans in the Pacific Northwest had a property system based on family. A family had the right to fish or hunt in a particular place. If another family married into that family, the second family would then obtain some property right to hunt or fish in the places of the first family.

In individual families there may be rules about how "property" is created. For example, one person may have the "right" to decide what television station to watch at a particular time, or a person may have the "right" to sit in a particular chair.

7. Describe to students the role of history in influencing the development of our present property law. Ask students to identify as many ideas as they can think of why someone should have the right to own something else.

In American society, history as well as social values have influenced ideas about property and ownership. Different theories have prevailed at different periods of history.

For example, the Romans believed that they owned anything they seized. This belief led them to assert ownership over all the lands they occupied. But this occupation theory only makes sense if no one owns the property that is seized. Otherwise, it is not fair that those who are more powerful should control the property of those they dominate.

In the 10th Century, a Doctrine of Discovery developed in Western Europe that provided that the discovering power automatically got title to the land. The native occupants had some rights, which included the right to occupy the land which could be extinguished by purchasing the land or by conquering the people. The occupants lost the right to convey the land to anyone else except the discoverers. This doctrine of discovery was applied to the arrival of the Europeans to the North American continent.

A "natural rights" theory of property is another property theory. In this system, private property is considered part of the law of nature. But what is natural? Some of our early history reveals that some considered slavery justified and a natural part of the order of things.

The labor theory of ownership says that a thing belongs to whoever produces it. Accordingly, a table would belong to the carpenter who made it. But nothing is the result of individual effort alone. The carpenter did not make the tree that provided wood for the table, and the carpenter would have little interest in making tables unless there were people willing to buy them.

There is another alternative idea on the legal theory that says whatever is recognized as such by law is private property. But law, good economics and the most desirable results may not be served under such a system.

Finally, there is the social utility theory, which states that whatever society will sanction and protect is private property. But should all ownership depend upon the will of the majority of society?

History has had many effects on the development of property law, in addition to the theories discussed above. In fact, no other field of law is so heavily influenced by history in its reasoning process as property law. The historic "law of estates" underlies the American property system and dominates its operation today.

8. Inform students that the property laws developed in <u>Feudal England</u> still apply to property in America today.

The law of estates began in England in feudal times when men of independent means found it necessary to band together to protect themselves from the Norman invaders. Men became tenants by turning over their land in exchange for protection from the lord or ruler of the region. Gradually, the feudal system became highly structured. A man's position, both economically and socially, became defined by the way in which he held land. Rather than owning the land, the tenants were said to own estates in land. An estate is an interest in land measured by some period of time. For example, if you own a piece of land and have singular possession of it against all other claims, you will have one kind of estate. But, if you only possess the land for a period of 10 years, you will have a different estate.

This system of estates became very complicated. In feudal times, it was subdivided into many categories depending on whether the tenant was a knight, a priest, a tradesman, or a member of a business guild. Furthermore, the system was complicated by the legal protections that were available to safeguard these different estates.

Because of the system of **primogeniture** (or inheritance by the eldest son), property and personal possessions were distributed in different ways when a man died. His property or his estate was given to the oldest son; all the rest, the moveable personal property, called

chattels, went to the other children. Eventually, the law protected land differently from chattels.

From this, land took on the name **real property**. In lawsuits involving real property (land), the successful person always won the land itself. Land was considered of the greatest importance in social and economic circles. In "personal actions" for the recovery of chattels, the successful litigant often just received the monetary value of the items and not the items themselves. So, if people sued for cattle they claimed belonged to them, they might be awarded a dollar amount representing the value of the cattle, and not the cattle themselves.

Possession of the particular object (cattle in the example) was not thought to be very important. From these origins grew the English common law that dealt with property, both real and personal.

In English law, as in most cultures before and after, land became the mark of a stable society, the economic base of a permanent on-going civilization. In the drive to use property in the best and most efficient way to maximize social welfare, a complex system has developed. The system is further complicated because there are so many things that people can own: a coin, a copyright, a piece of land, air space, a theater ticket, and even a right to be free from noise and pollution from their neighbor.

9. Administer the quiz, Handout 1, and have students answer as best they can.

Some of the questions relate to material to be presented in later lessons. Administer the quiz at the end of the lesson to see what knowledge has been gained.

Answers to Handout 1

(Note to teacher: Subsequent property lessons (Lessons 7 and 15) provide fuller answers to this quiz.)

a. If you find money on the street, you are free to keep it. After all, "finders keepers" is the law.

TRUE, provided that you first turn it over to the police to make an attempt to locate the owner.

b. "Eminent domain" refers to how many acres are included in a piece of land.

FALSE. Eminent domain is the constitutional power of government to take land from private individuals who are entitled to be paid the fair market value. (For example, if the government wished to build a freeway where your house presently stands, it would take the land and pay the fair market value.)

c. In the law, property refers to not only an object or interest, but also to a legal relationship among people in regard to that object.

TRUE

d. The "law of estates" can be traced to feudal England.

TRUE

e. Possession and ownership of property are the same thing.

FALSE

f. A bailment takes place when you leave a stereo at a repair shop.

TRUE. (Bailment is described in the lesson, Finders Keepers.)

g. Zoning laws often involve the principle of "segregation of uses."

TRUE. (See the Lesson, Private Land, Public Good for more information on segregation of uses.)

h. "Real property" refers to any owned object which has three dimensions.

FALSE, it refers to land.

i. If you find an expensive piece of property on the floor of a small store where you are shopping, you are free to take it without saying anything to anyone.

FALSE, since it was found in a relatively private place, it belongs to the person who owns the store.

THE GREAT AMERICAN PROPERTY QUIZ

You know a lot about property already, right? See how well you do on the following questions. Some of them you should already know. Then after the lesson find out about the ones you just might miss.

a. If you find money on the street, you are free to keep it. After all, "finders keepers" is the law. T or F

b. "Eminent domain" refers to how many acres are included in a piece of land. T of F

c. In the law, property refers to not only an object or interest, but also to a legal relationship among people in regard to that object. T or F

d. The "law of estates" can be traced to feudal England. T or F

e. Possession and ownership of property are the same thing. T or F

f. A bailment takes place when you leave a stereo at a repair shop. T or F

g. Zoning laws often involve the principle of "segregation of uses." T or F

h. "Real property" refers to any owned object which has three dimensions. T or F

i. If you find an expensive piece of property on the floor of a small store where you are shopping, you are free to take it without saying anything to anyone. T or F

FINDERS KEEPERS:
WHO OWNS LOST, MISLAID AND ABANDONED PROPERTY?

Source:

Adapted by UPSICEL from Bill of Rights in Action Series of the Constitutional Rights Foundation on Property

Historical Period: Present

Class Periods: Less than 1

Use of Outside Resource Persons:

A representative of the county law enforcement might describe how the system of finding lost property in Washington actually works in practice. Additionally, a lawyer familiar with property law could define the different property types.

Objectives:

1. Students will distinguish between ownership and possession.
2. Students define lost, mislaid, abandoned, treasure trove and shipwreck property.
3. Students will identify reasons for rules on finding and keeping property.
4. Students will apply property rules to hypotheticals.
5. Students will learn Washington statute on finders' right to property.

Materials

Handout 1

Procedures:

1. Ask students if possession and ownership mean the same thing and ask them to explain. Have a student give an example of each.

For example, Diane owns a soccer ball which she got as a gift from her parents. She is going on a trip with her parents for three weeks during the school year and lends the ball to her best friend, Terry, to use for that three weeks. Mary owns and possesses the ball up until the time she loans it to Terry. Mary continues to own the ball, but Terry now possesses it. No one can rightfully demand of Terry to give up the ball. Terry's right to possess the ball during the three weeks is above any one else's claim to the ball (unless Mary returned early.)

2. Define ownership to mean that a person has title to the property. Define possession to mean a limited right that gives the person who possesses the property rights over everyone else but the true owner.

A landlord owns property; a tenant has possession--but not ownership.

3. Explain to students that finders fall between possessors and owners.

To determine whether a finder gets to keep property, the first decision to make is what type of property was found. Write on the board:

Lost
Abandoned
Mislaid
Treasure Trove
The Result of Shipwreck

4. Define the terms:

Lost property is that which is accidentally and involuntarily parted with by the owner. The owner is presumed to want the property, but to not know where it is. If a person finds lost property in a public place, generally he or she is entitled to keep it against all but the true owner. In many states, statutes are in force which require the finder to turn lost property over to the police, who must make a reasonable effort to locate the owner before the lost property becomes the finder's. However, if the property is found in a very private place, it belongs to the person who controls the place where it was found, not to the finder. The idea is that the owner may return for the property which was lost and will be better able to find it.

Washington State has a statute, RCW 63.21.010 which sets out the rules for finders of lost property. A person who finds lost property which is not unlawful to own and who does not know the owner must

(1) within 7 days of finding the property get an appraisal of the current market value by a person who buys and sells similar items or by a district court judge.

(2) within 7 days report find of property and surrender it if asked, along with a copy of the appraisal to the chief law enforcement officer where the object was found and give written notice of finder's intent to claim property if owner does not claim it under procedures of law.

(3) within 30 days of finding it, publish once for two weeks in a public newspaper of general circulation in county where property was found.

The owner has 60 days from the time the find is reported to law enforcement to satisfactorily establish the owner's right to the property. If the original owner doesn't claim the property, the finder must prove

that he or she published in the paper. If the property is valued at more than $25, the finder must pay $5 or 10% of the value whichever is greater to the government agency handling the property. If the finder doesn't do this within 90 days, it becomes the government's property.

If a finder fails to comply with the law (for example, by not reporting the find within 7 days), the finder forfeits all rights to the property and is liable to the original owner for the full value.

Abandoned property is that which the owner intentionally gives up with no intent to reclaim. This property belongs to the first finder who claims it.

Mislaid property is that which has been intentionally placed somewhere and then forgotten. This factor is determined many times on the basis of where, exactly, the property was found. For example, if a valuable ring were found tucked inside a knot hole in a wall, one could conclude that it had been hidden with the intent to retrieve it at some later date. Mislaid property goes to the owner of the premises (until the true owner comes), again on the belief that it will be easier for the true owner to recover it that way.

Treasure trove was originally defined as money, coin, gold, silver plate or bullion hidden in the earth. Historically, this distinction arose when the Romans, driven from England and Northern Europe, hid their treasure in the ground as they fled. Conquering generals and kings, knowing of the treasure, seized it for themselves, punishing those who did not hand over the loot. Thus, the law began drawing a distinction between treasure hidden with intent to return and reclaim it, which went to the king, and abandoned property, which went to the finder. Today, modern American law defines treasure trove more broadly.

Give students this example. Recently, in Ireland, a man with the help of a metal detector and some ancient maps found a bag containing a set of communion vessels near the ruins of a medieval monastery. The treasure, valued at about $4 million, was presumably hidden in a bog to protect it from marauding Irishmen or Viking invaders. The circumstances of how it was hidden were important. If the loot was intended for later recovery, it goes to the state under Irish law. But if it was abandoned, the rule of finders keepers applies and the lucky map reader keeps the treasure.

Shipwreck property is that which is lost at sea. The traditional rule is that this property belongs to the king, in order to repay the king for his protection of the seas from pirates and robbers. In many cases, the federal and state governments use this rule to claim recovered property from a shipwreck.

5. Explain bailment to students.

Bailment is the rightful possession of goods by one who is not the owner. A bailment arises when you leave an appliance for repair or check your coat or leave your car in an attended parking lot. In these

situations, you are a bailor. If you borrow your neighbor's ladder, or find lost goods, a bailment also exists, but here you are the bailee. Responsibilities of each party in bailment situations depends upon who benefits from the bailment.

The repairer of your appliances owes a greater duty of care than the finder of lost goods, because the repairer is getting a benefit from the transaction (payment when the job is finished), while the finder (depending on what is found) may not benefit at all. Statements on the back of claims checks for your car or coat do limit liability.

6. Pass out Handout 1 and have students work in small groups to answer.

Answers to Handout 1

a. You find a $50 bill near the concession stand at the baseball stadium.

This is lost property, found in a public place. Assuming no law to turn it over to the police the finder may keep it.

b. You lease a house that you intend to fix up and live in. While tearing out a wall, you find a box containing old $100 bills.

This is mislaid property on the basis of where it was found. The money belongs to the owner of the house.

c. While walking in an alley, you find an almost new lamp stuffed in a trash can.

This is abandoned property and is yours for the taking.

d. You find a $50 bill in the bank vault where you go to check the contents of your safe deposit box. People are let into the vault one at a time by a bank guard.

This is lost property in a private place which becomes the property of the bank.

e. You find valuable coins beneath the sand while you are at the beach digging for clams.

This is treasure trove which belongs to the finder.

f. You find a diamond ring under the sofa while at a party at a friend's house. Many people have been in and out of the party during the evening.

This is lost property in a private place and becomes the property of the friend in whose house the ring was found.

FINDERS KEEPERS

Directions: In the following examples, decide whether the property is lost, abandoned, mislaid, or treasure trove and 2) who has the right to keep the property against all but the true owner. (Assume that there is no law that requires the person to turn the property over to the police.)

a. You find a $50 bill near the concession stand at the baseball stadium.

b. You lease a house that you intend to fix up and live in. While tearing out a wall, you find a box containing old $100 bills.

c. While walking in an alley, you find an almost new lamp stuffed in a trash can.

d. You find a $50 bill in the bank vault where you go to check the contents of your safe deposit box. People are let into the vault one at a time by a bank guard.

e. You find valuable coins beneath the sand while you are at the beach digging for clams.

f. You find a diamond ring under the sofa while at a party at a friend's house. Many people have been in and out of the party during the evening.

NATIVE AMERICAN RELIGIOUS PRACTICES
A LETTER OF APOLOGY

PEYOTISM AND THE SUPREME COURT

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law

Historical Period: Before 1492 to present

Class Periods: 2-3

Use of Outside Resource Persons:

A member of Native American Church, an attorney working with a tribe, a church official from the nine Christian churches familiar with the history of the letter of apology could all add to the explanation and history of the Native Americans in the Pacific Northwest.

Objectives:

1. Students will identify three characteristics of Native American spiritual practices.

2. Students will describe at least three policies of the federal and state governments, and missionaries in the Pacific Northwest that were aimed at destroying the religious practices of Native American.

3. Students will analyze a letter of apology to determine current position of some Christian Churches regarding Native American spiritual practices.

4. Students will identify that the present policy of the federal government about Native Americans is "self-determination."

5. Students will do a case study to determine perspective of present U.S. Supreme Courts on Native American religious practices.

Materials:

Handouts 1, 2 and 3

Procedures:

1. Have students review information in their books on Native American Indians. (Alternatively, they may review a copy of Handout 1.)

Tell students that they are going to review a letter that was presented by a delegation of ten bishops and denominational leaders to a Native American on November 21, 1987, on the corner of Spring and First Streets in downtown Seattle. (This spot was chosen because in the 1860's, while the road was being dug up, a stone crypt was uncovered and a number of Duwamish Indian people identified the site as a burial ground.) A $1,000 gift of good faith was also presented at this time to be given to the Native American Rights Fund in Boulder, Colorado, founded by Native peoples to provide support for lawsuits for their legal and religious rights.

Since the letter was delivered in 1987, it has been disseminated around the world, including to over 200 Indian chiefs in the Amazon, to the U.S. Supreme Court in its deliberations on a Native American case, to the Kwanyama Aboriginal Council in Queensland, Australia, and many other places.

2. Pass out Handout 2 to the class and have students answer the questions in small groups.

Answers to Question - Handout 2

a. To whom is the letter written?

The tribal councils and traditional spiritual leaders of the Indian and Eskimo peoples of the Pacific Northwest. It was formally addressed to 26 federally recognized tribes in the states of Washington and Alaska.

b. Who wrote the letter?

Ten bishops and executives representing nine different religious bodies and denominations signed the letter. It came about because of a request from Jewell Praying Wolf James, a respected Lummi leader, to the Church Council of Greater Seattle. (The Lummi tribe are located in Washington State 40 miles south of Canada.) His idea grew after seeing a 1969 report from the Anglican Church of Canada, which acknowledged the problems of Canadian Indians and the role of missionaries, and called for solutions. The letter was actually drafted by a member of the Native American Task Force of the Church Council of Greater Seattle. It went through several drafts and was then adopted by key representatives of the churches in November 1987.

c. Why are the leaders of these Christian churches making an apology?

They claim their churches have participated over a long period of time in the destruction of traditional Native American spiritual practices. They claim they have been unconscious and insensitive and not assisted when the Indians have been victimized by unjust Federal policies and practices. They claim too that the churches reflected the rampant racism and prejudice of the dominant culture with which they too willingly identified.

d. Can you locate from your texts or other sources examples of how the Churches and the federal government helped to destroy Native American spiritual practices?

The missionaries to the Pacific Northwest were in agreement with the federal government's goal to "civilize" and domesticate the Indian and Native peoples. The potlatch (a ceremonial feast of the Indians of the northwest coast given for the display of wealth to show an individual's tribal position) was banned. Indian people, including religious leaders, were jailed. The Indian rituals and ceremonies were forbidden, and legal punishments established. On April 26, 1921, the Office of Indian Affairs released Circular No. 1665, which read:

> The sun dance, and all other similar dances and so called religious ceremonies, are considered "Indian offences" under existing regulations, and corrective penalties are provided. Regard such restrictions as applicable to any dance which involves the reckless giving away of property, frequent or prolonged periods of celebration, in fact any disorderly or plainly excessive performance that promotes superstitious cruelty, licentiousness, idleness, danger to health, and shiftless indifference to family welfare.

Two years after this rule of 1921, the Commissioner of Indian Affairs forbade Indians under the age of 50 from dances of any kind and directed federal employees "to educate public opinion against them."

The missionaries operated boarding schools in which Indian religious and cultural practices were not tolerated.

e. What do the leaders of the Christian churches promise to do in the future?

They will call upon the members of their churches to commit mutual support in the efforts of Native Americans to reclaim and protect the legacy of their own traditional spiritual teachings and they promise to help enforce the federal American Indian Religious Freedom Act. They promise specifically to affirm the rights of Indians to the same protections offered all religions under the Constitution; to assist in access to and protection of sacred sites and public lands for ceremonies; and the right to use of religious symbols for use in traditional ceremonies. They also promised to support Native Americans in righting previous wrongs, to protect Native Americans' efforts to enhance Native spiritual teachings; to encourage the members of the Christian churches to stand together with the Native Americans on these important religious issues; and to provide advocacy and mediation in negotiations with state and federal officials.

f. What does the American Indian Religious Freedom Act of 1978 provide?

This law made it the policy of the United States to protect and preserve for American Indians their right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo,

Aleut, and Native Hawaiians, including access to religious sites, use and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites.

g. Name six characteristics of Native American spiritual practices that are mentioned in the letter of apology.

1. There are spiritual leaders.

2. The practices include forgiveness and blessing.

3. The religion has ceremonies and rituals.

4. The ceremonies involve sacred sites and public lands.

5. Religious symbols include feathers, tobacco, sweet grass, bone and other items.

6. The Spirit who is recognized lives in both the cedar and Salmon People.

h. Do you know of any recent controversies in the Pacific Northwest regarding Indian religious freedom?

In July 1990, leaders of the Snoqualmie Tribe say Puget Sound Power and Light Co. is draining Snoqualmie Falls of its ancient spiritual powers, and claim that a company plan to divert more water around the falls to generate electricity will do more damage. Proposed development of a resort community near sacred burial grounds at Madrona Point on Orcas Island was blocked after a three-year fight; dismissal by the State Penitentiary at Monroe of a deacon who, on behalf of the Seattle Catholic Archdiocese, worked on a volunteer basis with Native American inmates and participated in religious ceremonies; question of the return of bones and human remains to Native lands from the Washington State museums; controversies at the Canadian and Mexican borders over bringing bones and animal parts (in medicine bags); in prisons and schools, participation in certain traditional rituals became the source of lawsuits. For example, the right to wear long hair, the prison's obligation to provide sweat lodges and to permit the use of peyote in ceremonies.

Mt. Baker National Forest Service is working with area tribes to locate, identify and protect sacred sites. Questions of roads, recreational use and logging operations are continually monitored and negotiated by the Service.

i. If you were a Native American, how would this letter make you feel?

This is an opinion question. Harold Culbertson, Sioux and Native American Task Force Chair for the Seattle Church Council is convinced that the final importance of the letter is in the church's speaking to its own members, no so much for the Native community. Ira Frank, president of the Native American Lutheran Association, claims that it has improved relations between tribal, religious and government groups. Kurt Russo, a spokesperson for the Lummi Cultural committee said the letter has had an even greater, wider reaching healing effect than he anticipated. In British Columbia, Indian spirit dancers cried out spontaneously at the reading of the letter in 1987. One dancer told Russo the cry was a sign of the healing that had taken place within him at the letter's reading. Jewell James, the Lummi who had requested the letter, said "It kind of restores faith in all the possibilities."

3. Introduce the recent Supreme Court case on religious practices of Native Americans by having students do the unmarked opinion case study, Handout 3. They should first read the facts and the teacher should make sure through questioning that students understand who is suing and what the issue is.

NOTE TO TEACHER: This activity is about the use of a hallucinogenic substance by native Americas as part of religious practices. Teachers should carefully instruct their students to understand that they are not promoting drug use.

As background for teachers, "Peyotism" is described in a California Supreme Court case, People v. Woody, in this way:

Peyote plays a central role in the ceremony and practice of the Native American Church, a religious organization of Indians. Although the church claims no official prerequisites to membership, no written membership rolls and no recorded theology, estimates of

its membership range from 30,000 to 250,000, the wide variance deriving from differing definitions of a "member." As the anthropologists have ascertained through conversations with members, the theology of the church combines certain Christian teaching with the belief that peyote embodies the Holy Spirit and that those who partake of peyote enter into direct contact with God.

Peyotism discloses a long history. A reference to the religious use of peyote in Mexico appears in Spanish historical sources as early as 1560. Peyotism spread from Mexico to the United States and Canada. American anthropologists describe it as well established in this country during the latter part of the nineteenth century. Today, Indians of many tribes practice peyotism. Despite the absence of recorded dogma, the several tribes follow surprisingly similar ritual and theology; the practices of Navajo members in Arizona practically parallel those of adherents in California, Montana, Oklahoma, Wisconsin, and Saskatchewan.

The "meeting," a ceremony marked by the sacramental use of peyote, composes the cornerstone of peyote religion. The meeting convenes in an enclosure and continues from sundown Saturday to sunrise Sunday. To give thanks for the past good fortune or find guidance for future conduct, a member will "sponsor" a meeting and supply to those who attend both the peyote and the next morning's breakfast. The "sponsor," usually but not always the "leader," takes charge of the meeting; he decides the order of events and the amount of peyote to be consumed. Although the individual leader exercises an absolute control of the meeting, anthropologists report a striking uniformity of its ritual.

A meeting connotes a solemn and special occasion. Whole families attend together, although children and young women participate only by their presence. Adherents don their finest clothing, usually suits for men and fancy dresses for the women, but sometimes ceremonial Indian costumes. At the meeting the members pray, sing and make ritual use of drum, fan, eagle bone, whistle, rattle and prayer cigarette, the symbolic emblems of their faith. The central event, of course, consists of the use of peyote in quantities sufficient to produce an hallucinatory state.

At an early but fixed stage in the ritual the members pass around a ceremonial bag of peyote buttons. Each adult may take four, the customary number, or take none. The participants chew the buttons, usually with some difficulty because of extreme bitterness; later, at a set time in the ceremony any member may ask for more peyote; occasionally a member may take as many as four more buttons. At sunrise on Sunday the ritual ends; after a brief outdoor prayer, the host and his family serve breakfast. Then the members depart. By morning the effects of the peyote disappear; the users suffer no aftereffects.

Although peyote serves as a sacramental symbol similar to bread and wine in certain Christian churches, it is more than a sacrament.

Peyote constitutes in itself an object of worship; prayers are directed to it much as prayers are devoted to the Holy Ghost. On the other hand, to use peyote for nonreligious purposes is sacrilegious. Members of the church regard peyote also as a "teacher" because it induces a feeling of brotherhood with other members; indeed, it enables the participant to experience the Deity. Finally, devotees treat peyote as a "protector." Much as a Catholic carries his medallion, an Indian soldier often wears around his neck a beautifully beaded pouch containing one large peyote button.

4. Check for understanding with students by clarifying who is bringing the lawsuit, who is being sued, what is the claim.

5. Then have students read opinions one and two and decide for themselves which opinion they agree with. Group students in small groups of five based on their selection of opinion one or two. Have each group come up with arguments that support their opinion and rank their arguments from strongest to least strong. Students may add additional arguments.

6. Debrief by having a student reporter from each group give its top reason to support opinion one or two. Go around each group until all the reasons are listed. Ask students which opinion they think the U.S. Supreme Court supported.

On April 17, 1990, the U.S. Supreme Court ruled for opinion two, in Employment Division, Department of Human Resources of Oregon v. Smith, 58 U.S.L.W. 4433 (1990).

AMERICAN INDIAN/ALASKA NATIVE - UNITED STATES HISTORY: A CHRONOLOGY[1]

Beginning

Self-determination:

Over million Natives lived in the area of what is now the United States.

For several thousand years, the area of what is today Washington state was inhabited by at least 75 distinct Indian peoples, each having its own history and origins.

1492

Colonial Period:

Indians assist European colonists.

Colonists exploit Indians through taking their resources and local products, forced labor, and importation of European life.

Colonists use the treaties to acquire land and regulate transactions. Some treaties required the employment of people to teach Indians.

1776

Early U.S. - Indian Relations:

The first treaty between the U.S. and an Indian nation is signed with the Delawares (1778).

Indians are needed as allies in wars with Europe.

Indian land is exchanged for services from the U.S. government.

A federal responsibility for Indian education is established.

Indians in the Pacific Northwest have brief and infrequent encounters with explorers and traders. In 1792, a small pox plague killed many of the Natives; by 1850, 80% of the Indians were dead.

Congress authorizes funds "to promote civilization among the savages." (1802)

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[1] Adapted by Robin Butterfield from American Indian/Alaska Native Education: Quality in the Classroom, Washington D.C. Human and Civil Rights, National Education Association, 1983, with updates by UPSICEL.

The Hudson Bay Company formed the Northwest Company to trade salmon, whale oil and other seafoods.

The Bureau of Indian Affairs is created in the War Department. (1824)

1830

The Removal Era:

Tribes living in the southeastern U.S. are coerced into moving west of the Mississippi River.

The assimilationist movement begins.

The Bureau of Indian Affairs is transferred to the Department of the Interior.

The Supreme Court recognized Indian tribes as "domestic dependent nations" within the United States. In an 1832 decision, the Court declared that such nations had a right to self-government (1831).

In 1848, Congress established the Oregon territory as part of the United States without consulting the Native Americans. The Act provided that Indian personal and property rights were not to be endangered until extinguished through treaties.

Oregon Donation Act was passed allowing new settlers to claim 640 acres for "a man and a wife" in homesteading. By 1852, there were over 2,000 new settlers in the Northwest.

1850

Reservations and Wars:

The Court of Claims is established (1855); broken treaty claims are excluded.

In 1853, Washington became a territory of the United States without consultation with the Indians. Five treaties were negotiated in Western Washington: Medicine Creek, Point Elliot, Point No Point, Makah and Quinalt River (1855-1859). Led by Leschi, the Medicine Creek Treaty Indians joined to wage the Northwest Indian War. After bitter fighting, the Indian nations yielded to a peace settlement in 1856. The treaties were renegotiated on Fox Island (1856). Washington was admitted to statehood with the condition that people of the state forever disclaim all right and title to Indian lands (1889).

Treaties are negotiated which secure land for settlers and establish reservations and limited assistance programs for Indians.

The Transcontinental Railroad is completed (1869).

The Allotment system is established under the General Allotment (Dawes) Act to give reservation land to Indian families and individuals and to allow lands not allotted to be sold to the U.S. and opened for homesteading (1887). The basic idea was to make Indians conform to the social and economic structure of rural America by giving them private property (40 to 160 acres). It was thought that if the Indians had their own piece of land, they would give up their tribal ways. Many of the Indians sold or lost land to the Anglos rather than work it themselves.

1890_____

Assimilation and Allotment:

Rations are withheld from Indian parents who refuse to keep their children in school (1892).

Federal educational services are limited to children of one-fourth or more Indian blood (1918).

Indian students in public schools, for the first time, outnumber those in federal schools (1920).

Reservations were turned over to different Christian denominations. They were church-operated for years. Every possible method was used to ensure that the Indian learned about the American way of life.

The Snyder Act authorizes the Bureau of Indian Affairs to establish and fund educational programs that benefit Indians (1921). This indicated that the objective of the Bureau of Indian Affairs was to provide for the general support and civilization of the Indians.

Congress grants citizenship to Indians (1924).

The Meriam Report is issued by the Brookings Institute criticizing federal Indian policies (1928).

Indian lawyers and activists move to protect reservations.

1930_____

Indian Reorganization Act:

The Indian Reorganization Act, also referred to as the Wheeler Howard Act, ends the allotment system, establishes an employment preference for Indians in the Bureau of Indian Affairs, and provides a mechanism for chartering and reorganizing tribal governments -- reversing the trend of breaking up tribes (1934).

The Johnson-O'Malley Act authorizes contracts with states, territories, political subdivisions, and nonprofit agencies for the education, medical attention, agricultural assistance, and social welfare of Indians. It eases the impact of tax-free Indian lands on a state's ability to provide services (1934).

The National Congress of American Indians is organized (1944).

1945

Termination Period:

Pressure builds in Congress to transfer trust land to non-Indian ownership and to terminate tribes from federal protection, especially those having valuable resources.

Two and one-half million acres are removed from protected status, and 12,000 Indians lose tribal affiliations and political relationships with the United States. Statutes are enacted terminating over 100 tribes, including the Klamaths and Menominees (1954-1962).

The Indian Claims Commission is created (1946).

Indians are included in the Federally Impacted Areas Act of 1950 and the School Facilities Contraction Act in 1958.

Indians in Washington staged "fish-in" protests. Survival of American Indians Association was formed to set up legal defense for Indian fishing rights movement. (1965).

The American Indian Historical Society is founded in San Francisco, California, to correct the treatment of Indians in textbooks and to publish materials about Indian history (1964).

1965

Self-Determination:

The termination policy is rejected.

Great Society programs are begun. The Economic Opportunity Act (1964) authorizes Head Start, Upward Bound, Job Corps, Vista, and the Indian Community Action Program. The Elementary and Secondary Act provides aid for disadvantaged youth (1965).

There is increased tribal participation in local government.

The Report of the Kennedy Subcommittee, Indian Education: A National Tragedy--A National Challenge, recommends increased Indian control of education, the creation of an exemplary federal school system, and the establishment of a National Indian Board of Education (1969).

The Alaska National Claims Settlement Act provides Alaska Natives title to surface lands and subsurface resources for 40 million acres and authorizes 12 Regional Corporations. Alaska Natives start to manage their own affairs and negotiate with the government and agencies for better services, including education (1971).

The National Tribal Chairman's Association is formed (1971).

The National Indian Education Association is founded in Minneapolis, Minnesota (1970).

Congress restored the Menominee tribe of Wisconsin to federal trust status (1972)

The Indian Education Act (Title IV of the Education Amendments of 1972) is enacted to meet the special needs of Indian students in public schools having ten or more Indian students; to establish a National Advisory Council on Indian Education; to train teachers of Indian children; to give priority funding to Indian tribes and organizations in the use of discretionary program money; and to begin work with Indian community colleges (1972; reauthorization in 1984).

The Indian Self-Determination and Assistance Act promotes "maximum Indian participation in the government and education of the Indian people" (1975).

The tribally controlled Community College Assistance Act provides grants for the operation and improvement of such colleges (1978).

The Education Amendment Act provides for standards for the basic education of Indian children in BIA schools (1978).

Congress passes the American Indian Religious Freedom Act (1978).

Supreme Court declares tribal governments have no authority over non-Indians. Before this, tribes had all authority not taken by Congress. New rule is that tribes have all rights "not inconsistent with their status as tribes."

The Supreme Court upheld the fishing rights claims of the Indian tribes of Washington state (1979).

The Passamaquoddy and Penobscot tribes of Maine received a settlement of their land claims after a long and difficult legal battle (1980).

U.S. Supreme Court awards money to Sioux for confiscation of Black Hills. U.S. Congress had cooperated in starving Sioux to get their land in 1871.

The U.S. Supreme Court rules that Forest Service may build a paved road and harvest timber on federal land, including an area that has historically been used by certain American Indians for religious rituals that depend upon privacy, silence and an undisturbed natural setting (1988).

The Puyallup tribe reaches an agreement on their land claims in the Puget Sound area (1989).

Indian tribes have no zoning authority on land belonging to the county and must complain to county and then to federal court if they object.

Native Americans with the assistance of William Randolph Hearst, Jr., defeat plans to develop Madrona Point on Orcas Islands for resort condominiums (1987-89).

Directions: Read the following letter and answer the questions that follow.

A PUBLIC DECLARATION TO THE TRIBAL COUNCILS AND TRADITIONAL SPIRITUAL LEADERS OF THE INDIAN AND ESKIMO PEOPLES OF THE PACIFIC NORTHWEST: C/O JEWELL PRAYING WOLF JAMES, LUMMI

Dear Brothers and Sisters,

This is a formal apology on behalf of our churches for their long-standing participation in the destruction of traditional Native American spiritual practices. We call upon our people for recognition of and respect for your traditional ways of life and for protection of your sacred places and ceremonial objects. We have frequently been unconscious and insensitive and not come to your aid when you have been victimized by unjust Federal policies and practices. In many other circumstances we reflected the rampant racism and prejudice of the dominant culture with which we too willingly identified. During this 200th Anniversary year of the United States Constitution we, as leaders of our churches in the Pacific Northwest, extend our apology. We ask for your forgiveness and blessing.

As the Creator continues to renew the earth, the plants, the animals and all living things, we call upon the people of our denominations and fellowships to a commitment of mutual support in your efforts to reclaim and protect the legacy of your own traditional spiritual teachings. To that end we pledge our support and assistance in upholding the American Indian Religious Freedom Act (P.L. 95-134, 1978) and within that legal precedent affirm the following:

1. The rights of the Native Peoples to practice and participate in traditional ceremonies and rituals with the same protection offered all religions under the Constitution

2. Access to and protection of sacred sites and public lands for ceremonial purposes

3. The use of religious symbols (feathers, tobacco, sweet grass, bone, etc.) for use in traditional ceremonies and rituals.

The spiritual power of the land and the ancient wisdom of your indigenous religions can be, we believe, great gifts to the Christian churches. We offer our commitment to support you in righting of previous wrongs; to protect your peoples' efforts to enhance Native spiritual teachings; to encourage the members of our churches to stand in solidarity with you on these important religious issues; to provide advocacy and mediation, when appropriate, for ongoing negotiations with State agencies and Federal officials regarding these matters.

May the promises of this day go on public record with all the congregations of our communions and be communicated to the Native American Peoples of the Pacific Northwest. May the God of Abraham and

Sarah, and the Spirit who lives in both the cedar and Salmon People, be honored and celebrated.

Sincerely,

The Rev. Thomas L. Blevins, Bishop, Pacific Northwest Synod - Lutheran Church in America

The Rev. Dr. Robert Bradford, Executive Minister, American Baptist Churches of the Northwest

The Rev. Robert Brock, N.W. Regional Christian Church

The Right Rev. Robert H. Cochrane, Bishop, Episcopal Diocese of Olympia

The Rev. W. James Halfaker, Conference Minister, Washington North Idaho Conference, United Church of Christ

The Most Rev. Raymond G. Hunthausen, Archbishop of Seattle, Roman Catholic Archdiocese of Seattle

The Rev. Elizabeth Knott, Synod Executive, Presbyterian Church Synod Alaska-Northwest

The Rev. Lowell Knutson, Bishop North Pacific District, American Lutheran Church

The Most Rev. Thomas Murphy, Coadjutor Archbishop, Roman Catholic Archdiocese of Seattle

The Rev. Melvin G. Talbert, Bishop, United Methodist Church - Pacific Northwest Conference

QUESTIONS:

a. To whom is the letter written?

b. Who wrote the letter?

c. Why are the leaders of these Christian churches making an apology?

d. Can you locate from your texts or other sources examples of how the Churches and the federal government helped to destroy Native American spiritual practices?

e. What do the leaders of the Christian churches promise to do in the future?

f. What does the American Indian Religious Freedom Act of 1978 provide?

g. Name six characteristics of Native American spiritual practices that are mentioned in the letter of apology.

h. Do you know of any recent controversies in the Pacific Northwest regarding Indian religious freedom?

i. If you were a Native American, how would this letter make you feel?

EMPLOYMENT DIVISION, DEPARTMENT OF HUMAN RESOURCES OF OREGON V. SMITH

PEYOTE CASE STUDY

Directions: Read the case study and decide which of the two opinions you agree with. In small groups, rank the arguments that support the opinion you selected from most important to least important. One member of your group will report back your reasons to the entire class.

Alfred Smith and Galen Black, both Native Americans, worked as drug counselors in Oregon. Their employer had a policy to fire employees who abuse alcohol or other drugs because it considers its employees role models for the persons they treat.

Alfred and Galen are sincere members of the Native American Church and attend weekly services. The Native American Church regards peyote as a sacrament. Peyote is a plant with a bitter taste that when eaten causes hallucinations. Its use was first documented in religious ceremonies in 1560 in Mexico. In the late 19th century, peyote was well established in the United States in Native American religious ceremonies. The Native American Church forbids the use of peyote outside of the religious ceremonies and promotes as its ethical code: brotherly love, care of family, self-reliance, and avoidance of alcohol.

Alfred and Galen were fired from their jobs when their employer learned that they used peyote as part of their Church ceremonies. It is a crime in Oregon for anyone to possess peyote, although Oregon was not going to file criminal charges against Alfred and Galen. Alfred and Galen then applied for unemployment compensation benefits from the State. However, the State denied their claim because they engaged in "misconduct" by using the peyote.

The two Native Americans filed a lawsuit, claiming that the constitutional right to free exercise of religion protected their religious use of peyote and therefore that they are entitled to the unemployment benefits.

23 other states (including the State of Washington) and the Federal government make an exception in their drug laws to permit peyote in religious ceremonies of the Native American Church.

OPINION ONE

Alfred and Galen have a constitutional right to use peyote as part of the religious ceremonies of the Native American Church. Therefore, denial of unemployment benefits violates their freedom of religious rights.

Peyote is a sacrament of the Native American Church and is regarded as vital to Alfred and Galen's ability to practice their religion.

The Freedom of Religion clause requires that when a state law conflicts with a religious practice, the state must have an extremely important reason (a compelling interest) to justify the law. The State's reason is not the war on drugs, but its interest in refusing to make an exception for the religious use of peyote. Even the Attorney General in Oregon admits that in the opinion of scientists and other experts religious use of peyote causes no permanent injury to the Indian.

The Federal Government and 23 other states have decided to make an exception to the drug laws for ceremonial use of peyote by Native Americans.

Alfred and Galen's use of peyote is similar to the use of wine in the Roman Catholic Church. During Prohibition (when alcohol was banned), the federal government make an exception for wine from its general ban on possession and use of alcohol. Religious use of peyote has had a positive effect. Many people have been strengthened through this religious ceremony.

In other states which do make an exception for peyote in religious ceremonies, there have not been a flood of claims for other exceptions.

The American Indian Religious Freedom Act will be a hollow promise if the unemployment benefits are denied.

OPINION TWO

Alfred and Galen do not have a constitutional right to use peyote. Oregon has the right to make use of peyote a crime and can deny unemployment benefits to people dismissed from their jobs because of their religious use of peyote.

The free exercise of religion clause of the First Amendment means that people have the right to believe whatever religious doctrine they desire. The government may regulate behavior. For example, the government can constitutionally make bigamy (having more than one wife) a crime and apply it to religions that command its members to practice bigamy.

Oregon has an important need to enforce drug laws consistently. Oregon has decided that use of drugs is harmful and dangerous, regardless of why the person uses the drugs. Society is also interested in preventing trafficking in drugs.

If Oregon had to make an exception for Native Americans soon it would be faced with a lot of claims for exceptions. This would make enforcement of its drug laws very difficult.

SETTLING DISPUTES OUTSIDE OF COURT

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law

Historical Period: **Present**

Class Periods: 2

Use of Outside Resource Persons:

A mediator or arbitrator affiliated with the local court system or with a state wide or private mediation or arbitration organization could assist greatly in debriefing the strategies. Additionally, a court clerk could describe the actual backlog of cases that exist in the local courts.

Objectives:

1. Students will list consequences of taking law into own hands.
2. Students will identify four methods of solving problems
3. Students will apply methods to variety of situations.
4. Students will appreciate the benefits of solving disputes legally, and of using alternatives to litigation for most disputes.

Materials:

Handouts 1 and 2

Procedures:

1. Ask students if any one wants to volunteer a dispute he or she has had recently. Ask how they solved the dispute.

2. Explain to students that many legal problems can be settled without going to court.

Usually court procedures are slow and expensive. If a person's dog barks all night so that a neighbor cannot sleep, the neighbor will usually complain to the owner before calling a lawyer. It would be difficult to live in a society if people asked lawyers to go to court every time there was a problem or a dispute.

However, it is often better for people to approach lawyers when a problem cannot be settled outside of court than to take the law into their own hands.

3. Ask students what would happen if everybody took the law into their own hands. Explain to students that there would be chaos in society.

The law does, however, allow self-defense if a person is defending him or herself or the family from an immediate attack on them or their property.

4. Pass out Handout #1 and divide students into five small groups with one assigned to each of the five problems. Before debriefing, read aloud each situation.

Answers to Handout 1

a. Steven, a storekeeper, sold a stove which did not work to Paul. When Paul demanded his money back Steven refused to give it to him. Instead of getting legal help, Paul burns down Steven's store "to pay him back for cheating people." Do you think that Paul did the right thing? What else could Paul have done to get his money back? Where could Paul have gotten legal help?

Paul's actions could result in the death or injury of innocent persons, as well as extensive property damage. Steven may or may not have cheated Paul. It may have been a manufacturer problem. Life-threatening actions should never be justified in property disputes. Paul had many options, including making written complaints to the store owner, stove manufacturer, the Better Business Bureau, the Attorney General's Office, media programs like Troubleshooters in the Seattle Times and suing in Small Claims Court. He could have tried mediation or arbitration.

b. Ahmed's dog keeps going onto Benny's property and attacking his chickens. Benny tells Ahmed to control his dog but Benny does nothing about it. Benny poisons Ahmed's dog. Do you think that Benny acted lawfully? What could Benny have done instead of killing the dog?

Benny could have proposed that Ahmed and he mediate the problem through a third person, he could have complained to the animal control department, or he could have sued his neighbor for lost chickens.

c. Sam does not like Peter, because Peter has taken away his girl friend. Sam calls the police on the informant line and reports that Peter sells drugs from his locker at school. Sam plants drugs in Peter's school locker, which the police find on the basis of the anonymous tip. Peter is convicted. Do you think that Sam is guilty of a crime? Even if Peter was a drug seller?

Sam is guilty of several crimes, including making a false report, possession of drugs himself, and obstruction of justice.

d. Members of one gang threaten to shoot people in a neighborhood if the neighbors copy down their license plate numbers to report them to the police. A group of neighbors reports this to

the police who tell them that there is nothing that can be done as there is no proof that the gang will actually shoot anyone. What should the neighbors do to protect themselves if the police cannot help them?

This is a difficult problem for society. Too few police officers and too many problems to patrol. The neighbors should form a group for protection, request brighter lights in their area from the electricity company, continue to report suspicious persons and behaviors to the police, watch out for each other, have their personal goods etched with an identification name or number.

e. Mary has been severely abused for several years by her father. One night, while her father is passed out after getting drunk, she takes a gun and kills him. Do you think Mary is guilty of a crime?

This is a very difficult question to answer. She is guilty of first or second degree murder, provided that she was not acting in self defense. Washington recognizes the "battered women's syndrome" in cases where an abused woman kills her husband or boyfriend when she reasonably believes that he presents an immediate threat of serious bodily injury or death to her or her children. The battered women's syndrome permits the judge or jury to consider what was reasonable for the woman to believe, given her experiences of abuse that may have distorted her thinking. It is possible for a woman suffering from this syndrome to perceive that such an immediate threat is presented when others not suffering from the syndrome do not see a threat presented.

This syndrome may also be applied to a case where a child has been abused severely by a parent. The judge or jury may find that based on the syndrome, Mary was acting in self-defense.

5. There are a number of ways that people can solve disputes without going to court and without taking the law into their own hands. Ask students what they are. The most common ways are by "negotiation," "arbitration," and "mediation."

6. Write <u>Negotiation</u> on the board and ask for a definition.

Negotiation means that the people in dispute talk to each other about their problem and try to solve it by coming up with a decision which is acceptable to all sides. Sometimes people cannot settle a dispute on their own and hire attorneys to negotiate for them. For example, people involved in car accidents sometimes hire attorneys to negotiate with insurance companies over payments for injuries or damage to their cars. People who hire attorneys to negotiate for them must approve any agreements made by the attorneys.

Sometimes attorneys begin court proceedings and then try to work out a "settlement" so that the case does not go to court. A settlement is an agreement between the parties to end a dispute. Most civil cases are settled this way, saving time and money. Poor people who cannot afford lawyers can ask legal aid clinics to negotiate for them.

7. Write Arbitration on the board and ask for a definition.

Arbitration takes place when both parties to a dispute agree to have a third party ("an arbitrator") listen to their arguments and work out a decision. The arbitrator acts like a judge and the parties usually agree to follow his or her decision. Arbitration is used widely for disputes between workers and employers. It is usually quicker and more informal than a court case. Labor unions and employers usually appoint lawyers to act as arbitrators for them.

Arbitration is now used in the Washington courts. Until just recently when arbitration became mandatory in certain types of cases, arbitration was generally used only by agreement between the disputing persons or where there was a special statute which authorized arbitration. These laws included landlord-tenant disputes, public works contracts and medical malpractice.

Other times, a contract between the persons contains an "arbitration clause" which requires binding arbitration in the event that a disagreement ever comes up.

8. Write Mediation on the board and ask for a definition.

Mediation happens when a third person acts as a "go-between" to persuade people arguing to settle their problem. For example, a parent who sees two children arguing over which TV program to watch acts as a mediator when persuading the children to agree on a way to share deciding which show to watch.

Mediation can be a successful way of resolving most disputes. When mediation is successful, both parties report feeling much more in control of their own lives and more like the situation was resolved amicably, unlike litigation which many times results in escalation of bitter feelings and a sense of powerlessness.

9. Explain to students that another reason to use alternatives to suing in court is that the courts are so crowded.

In the 1970's, the time between requesting a trial in a civil or domestic relations case and getting the trial was two to three years and growing longer.

On July 1, 1980, a new state statute went into effect which gave each of Washington's judicial districts the option to require mandatory arbitration of civil actions within the county by a vote of its superior court judges. On October 1, 1980, King County became the first county to implement a mandatory arbitration system, and it was followed in 1981 by Yakima County. By 1988, ten Washington judicial districts had adopted mandatory arbitration: Chelan/Douglas, Clark, King, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom and Yakima.

In areas with mandatory arbitration, disputing people must go through arbitration when:

* they file a lawsuit in a judicial district having mandatory arbitration;
* they are only seeking money damages;
* the amount they are seeking is not more than $35,000 in King, Kitsap, Spokane, Whatcom and Yakima Counties only or not more than $25,000 in the remaining areas; and
* the amount in dispute is not less than $15,000.

10. Tell students that a private company has now developed that hires former judges to handle people's cases as arbitrators.

People have complained that this process makes justice more available to the wealthy.

11. To review the various means of solving disputes, present students with this hypothetical and ask them how the problem could be negotiated, mediated, arbitrated, and litigated.

Last week you were walking down your street and the neighbor's dog was off his chain and ran out and bit you. You had to go to the hospital for a tetanus shot and feel your neighbor should pay for your medical expenses.

Negotiation - You would go to your neighbor and ask him or her to pay. This is an informal arrangement between the two parties. The neighbor may not agree, but if s/he does, it is an inexpensive solution which keeps the peace between neighbors.

Mediation - If the neighbor cannot agree through negotiation, the neighbor may be willing to work with a mediator to find a solution. This mediator may be a clergyman, or any other disinterested, agreed-upon person. The role of the mediator would be to help the two parties settle the issue. It is not binding on the parties, but it is inexpensive, quick and can lead to an amicable settlement.

Arbitration - The neighbors could agree to have a third person arbitrate the case and to give a decision that both agree to follow. Both parties will have to follow the ruling of the arbitrator, they may still appeal to the court of appeals. It is less expensive than going to court. For the cost of a tetanus shot, arbitration by a professional arbitrator would be out of the question. However, they could always agree to abide by the decision of an agreed upon third party, like a teacher, another neighbor, etc.

Litigation - File a complaint in small claims court and have the court enter a judgment. This can become expensive, time consuming and may create hard feelings between the neighbors. Once a court issues a judgment, it may also be difficult to get the judgment enforced.

11. Pass out Handout 2, and have students decide what is the best way to handle the dispute: negotiation, arbitration, mediation, or going to court.

Answers to Handout 2

a. A husband and wife had agreed at their divorce that their two children, ages 8 and 10, would live with the wife during the school year and with the husband during the summer and vacations. Six months later, the wife wants the children for Christmas vacation, and the husband refuses to consider it.

Mediation may be the best route to attempt to work out a solution. In Washington, Parenting Plans are required of every couple with children who dissolve their marriage. They must indicate in the Plan which form of dispute resolution they will use before going back to court. So, parents may choose negotiation, mediation, or arbitration as the way to solve any dispute that develops after they develop their Parenting Plan.

b. Ruben and Maria were going steady. Maria begged Ruben to get tickets to a heavy metal concert, even though Ruben did not like that kind of music. Ruben paid $50 for the tickets and now Maria has decided to break up with Ruben. She does not want to pay for the tickets.

Negotiation seems the best way to solve this dispute. If Ruben is able to sell the tickets to someone else, that may be the way to solve the problem.

c. Marian has just moved out of her first apartment. She has requested to receive a refund of her cleaning deposit since she cleaned it thoroughly before leaving. Her landlord claims that she will keep the cleaning deposit to cover the cost of the paint that the landlord had bought earlier at Marian's request to paint her bedroom. Marian had thought that she would paint her room a very bright "bubble gum" pink but she never used the paint after the landlord had paid for it. The paint is still in the cans at the apartment. The landlord claims the color is one that the landlord cannot use for the next tenants and that the paint is getting old in the cans.

Mediation is probably the best way to handle this dispute.

d. Todd and his sister both want to use the family car on Friday night for separate events which are very important to each one of them.

Negotiation should be the best way to proceed. If that is not successful, a parent may serve as mediator or arbitrator.

e. Jane is severely injured in an automobile accident. The insurance company of the driver wants to settle the case.

Jane should probably hire a lawyer to negotiate for her with the insurance company. With severe injuries that will have costs continuing in the future, it is best to be represented. If settlement is not achieved through negotiation, a lawsuit may be necessary.

f. Tammy is a 14 year old with AIDS who wants to attend public school. The school refuses to admit her.

A lawsuit is probably the best way to solve this problem. If the other side is absolutely firm in its position, and refuses to negotiate, suing in court may be the only way to get Tammy into school.

IF PEOPLE TOOK THE LAW INTO THEIR OWN HANDS

Directions: Consider what would happen to society if people took the law in their own hands in the following cases:

a. Steven, a storekeeper, sold a stove which did not work to Paul. When Paul demanded his money back Steven refused to give it to him. Instead of getting legal help, Paul burns down Steven's store "to pay him back for cheating people." Do you think that Paul did the right thing? What else could Paul have done to get is money back? Where could Paul have gotten legal help?

b. Ahmed's dog keeps going onto Benny's property and attacking his chickens. Benny tells Ahmed to control his dog but Benny does nothing about it. Benny poisons Ahmed's dog. Do you think that Benny acted lawfully? What could Benny have done instead of killing the dog?

c. Sam does not like Peter, because Peter has taken away his girl friend. Sam calls the police on the informant line and reports that Peter sells drugs from his locker at school. Sam plants drugs in Peter's school locker, which the police find on the basis of the anonymous tip. Peter is convicted. Do you think that Sam is guilty of a crime? Even if Peter was a drug seller?

d. Members of one gang threaten to shoot people in a neighborhood if the neighbors copy down their license plate numbers to report them to the police. A group of neighbors reports this to the police who tell them that there is nothing that can be done as there is no proof that the gang will actually shoot anyone. What should the neighbors do to protect themselves if the police cannot help them?

e. Mary has been severely abused for several years by her father. One night, while her father is passed out after getting drunk, she takes a gun and kills him. Do you think Mary is guilty of a crime?

HOW TO SOLVE THE DISPUTE

Directions: Decide what is the best method to settle each dispute. Consider negotiation, arbitration, mediation, going to court, and other methods. Give your reasons.

a. A husband and wife had agreed at their divorce that their two children, ages 8 and 10, would live with the wife during the school year and with the husband during the summer and vacations. Six months later, the wife wants the children for Christmas vacation, and the husband refuses to consider it.

b. Ruben and Maria were going steady. Maria begged Ruben to get tickets to a heavy metal concert, even though Ruben did not like that kind of music. Ruben paid $50 for the tickets and now Maria has decided to break up with Ruben the day of the concert. She does not want to go to the concert or to pay for the tickets.

c. Marian has just moved out of her first apartment. She has requested to receive a refund of her cleaning deposit since she cleaned it thoroughly before leaving. Her landlord claims that she will keep the cleaning deposit to cover the cost of the paint that the landlord had bought earlier at Marian's request to paint her bedroom. Marian had thought that she would paint her room a very bright "bubble gum" pink but she never used the paint after the landlord had paid for it. The paint is still in the cans at the apartment. The landlord claims the color is one that the landlord cannot use for the next tenants and that the paint is getting old in the cans.

d. Todd and his sister both want to use the family car on Friday night for separate events which are very important to each one of them.

e. Jane is severely injured in an automobile accident. The insurance company of the driver wants to settle the case.

f. Tammy is a 14 year old with AIDS who wants to attend public school. The school refuses to admit her.

INTERNATIONAL BOUNDARY DISPUTE-POINT ROBERTS, WASHINGTON

Source:

Constitutional Rights Foundation, International Law in a Global Age, Jan. 1982. Updated by University of Puget Sound Institute for Citizen Education in the Law.

Class Periods: 2-3

Use of Outside Resource Persons:

A professional negotiator (attorney or nonattorney) could debrief the simulation. An international law attorney could describe a current international dispute which students could also negotiate.

Objectives:

1. Students will demonstrate an understanding of the difference between negotiation and arbitration, and how each is used in international disputes.

2. Students will practice negotiation skills.

Materials:

International Law in a Global Age (ILGA)

Procedures:

1. Begin by asking how nations resolve disputes. List the responses on the board. Point out that nations use the same methods that individuals use.

War, taking dispute to the United Nations (possibly the World Court), trying to resolve by talking through leaders or ambassadors, or the help of leaders from other countries (negotiation, arbitration, mediation).

2. Explain the difference between negotiation and arbitration, and the function of each, based on the following. Begin by writing "negotiation" on one side of the board, and "arbitration" on the other side. Ask students for definitions.

Negotiation is the most informal means of settling a dispute. It is the process by which people (whether national leaders or individuals talk about their problem and try to find a solution acceptable to all. Sometimes individuals have a lawyer negotiate for them. Nations use professionals as well.

Arbitration is a more formal process, in which the parties agree to have a third party listen to both sides and then make a decision that they agree to be bound by.

3. How have these two methods been used in international conflict situations?

Diplomatic negotiation and arbitration are among the most time-honored of international conflict resolution techniques. Both have served the function of preventing armed hostilities from erupting or of limiting or ending hostilities once they have begun. Both have been used to settle disputes ranging from territorial to economic to political long before the threat of violence was imminent.

Negotiation: There has always been a legal obligation to attempt negotiation (international bargaining) before going to war. In recent times, negotiations have been legally and morally regarded as a necessary requirement before the use of force. This is true even if the chance for success is minimal. On a more practical side, negotiation also offers nations an inexpensive means for avoiding a destructive war.

As such, diplomatic negotiations are invariably the first method of conflict resolution tried and always precede arbitration or other binding methods. Traditionally, negotiations are carried out by the diplomatic representatives of the nations and follow established international protocol. However, with the advent of instantaneous international communications, some observers have pointed to decline in the importance of the representative nature of the process. Still, even if the head of state is more directly involved the basic methods remain the same. Compromise, world opinion, presentation and carefully chosen language continue as important factors in the process.

If negotiations are successful, a treaty or international agreement often results. These serve not only to resolve the matter at hand, but also regulate future relations between the nations involved.

Negotiations, of course, are not reserved for nation states. Other actors, including multinational corporations, regional governmental organizations, and subnational groups negotiate thousands of agreements each year. In fact, negotiation is a basic ingredient of almost every human interaction. Imagine the domestic impact if negotiation was not practiced by business people, politicians, lawyers and individuals.

Arbitration: Arbitration is sometimes called a judicial method of conflict resolution. This is because it involves settlement of disputes through a legal and formal process. For arbitration to take place both parties have to agree that: 1) a third party will hear the dispute and 2) the decision of the third party will be binding on the parties. Third parties can be neutral nations, commissions made up of representatives of various disinterested nations, or technical experts, especially if the dispute is of a technical nature.

Although arbitration is more formal than negotiation, it is more flexible than an international court hearing (adjudication). This is

because the parties determine the choice of the third party makeup and the parties agree that the decision is based on customs between them rather than on established international legal principles. These agreements are made in advance and called treaties of arbitration.

Unfortunately, the full potential of arbitration as a conflict resolution technique has never been realized in the international arena. Although there are many notable successes, the major barrier to wider use seems to be the reluctance of parties to a conflict to submit to the binding nature of arbitration.

4. What is the difference between negotiation and arbitration, as used in international disputes?

Negotiation is an informal method of resolving disputes, and would be the first method attempted in an international dispute. Arbitration is a formal resolution process, but allows the parties more control, in choosing the arbitrator, and the law to be applied.

5. What international disputes have been negotiated or arbitrated recently?

The Arabs and the Israelis are constantly negotiating about the conflict in the Mideast; Iran and Iraq negotiated an end to their war; Pakistan and India have negotiated about their conflict over Kashmir.

d. What examples of negotiation or arbitration can you think of in your school or community?

Often labor disputes are negotiated or arbitrated. In almost all lawsuits the attorneys attempt to negotiate a settlement. Many lawsuits are arbitrated as well. Neighbors negotiate solutions to problems from barking dogs to disputed property lines.

6. Have students read pp.83-84, from ILGA, which is about a hypothetical territorial dispute between Canada and the United States, over Point Roberts, which is in northern Washington State. Check for understanding by asking the following questions:

a. What transpired at Point Roberts between the time of the first and second articles?

The crisis worsened; Canadian troops occupied the area.

b. What reasons might each government have for and against ownership of Point Roberts?

For: expansion of tax base, defense purposes, natural resources.

Against: increased demands for public services and welfare, damaged relations between U.S. and Canada.

c. What reasons might the citizens of each country have for wanting their country to own Point Roberts?

Preference for type of government, tax rates, national identity.

d. What impact might the dispute have on international affairs?

It might damage the relationship of the two countries, interfere with alliances such as NATO.

e. What will happen if the two sides cannot come to a negotiated settlement?

The International Border Commission will arbitrate the matter.

7. Tell the class that you are now going to prepare for a simulated negotiation of this international dispute. Divide the class into the following six groups:

United States	Canada
Diplomats	Diplomats
Diplomatic Advisors (Negotiating Team)	Diplomatic Advisors (Negotiating Team)
Point Roberts' Residents	Point Roberts' Residents

A list of suggested roles for 30 students (15 U.S., 15 Canadian) appears on p. 84. Refer students to the list. Explain that the spokesperson will moderate the discussion groups and represent their groups in class discussion. The recorder will take notes during groups meetings so that the groups' opinion will be accurately presented at different meetings. You may also want to assign students to serve as moderator and a recorder for the entire class activity. (These students cannot serve as moderator or recorder in their discussion groups.)

8. Explain that each group must decide on a position concerning the dispute based on the viewpoint of the roles assigned. Remind students that while all groups have their own objectives in determining a solution, maintaining good relations between the two countries is very important.

9. Place the following negotiation schedule on the board and review it with the class.

A. Group meetings and development of group's position statement.

B. National meetings to develop one national position.

C. Diplomatic negotiations (talks between negotiating team).

D. National meetings to develop proposal for settlement.

E. Final round of negotiations.

10. Allow 20 minutes for the initial group meetings, and then 15 minutes for the national meetings. Circulate among the groups to monitor progress.

11. Organize the class for the first round of negotiations. Arrange the furniture so that 12 desks or chairs face the rest of the class, with the U.S. team on one side, the Moderator and Recorder in the middle, and the Canadian team on the other side. Instruct the Recorder to write the negotiating terms agreed to on the board. The Moderator makes sure that each team has the opportunity to present its position, uninterrupted, and times the presentations. (5 minutes for each side).

12. Announce that each negotiating team will now have 5 minutes to present its position to the rest of the class. Allow 3 minutes for the opposing side to react to the presentations.

13. Reconvene the national teams. Instruct the national groups to try to develop a proposal for settlement of the issue. Remind them that they may want to prioritize their goals, and perhaps give up some demands in the interest of achieving a settlement. If either country mentions the possibility of a vote or initiative to resolve the dispute, remind them to consider the following points:

a. How should the ballot question be worded?

b. Who should be allowed to vote? (U.S. citizens, Canadian citizens, Point Roberts citizens only?)

c. Who will supervise the election and count the ballots?

14. Conduct the final negotiations. Instruct the moderator to allow 3 minutes for each team to present its proposal. (Suggest that another member of the negotiating team make the presentation, so that more students are allowed to participate.) Finally, allow the teams 5 minutes to negotiate a final solution, if possible. If no agreement is reached, announce that the matter will be referred to the International Border Commission for arbitration.

15. Debrief by asking the following questions:

a. If a solution was reached: Do you agree with the settlement? Why or why not?

b. If no solution was reached: Why do you think no solution was reached?

c. Do you think arbitration would be effective in solving this dispute: Why or why not?

CRAZY LAWS

Source:

Written by the University of Puget Sound Institute for Citizen Education in the Law

Historical Period: Mid-19th to mid-20th century

Class Periods: 1

Use of Outside Resource Persons:

A federal, state, city or county legislator could participate by describing value conflicts and value choices in recent controversial legislation.

Objectives:

1. Students will examine selected laws to determine cultural traits.
2. Students will identify cultural concerns of the period when laws were written.

Materials:

Handout 1

Procedures:

1. Pass out Handout 1. Explain that the following laws were once passed by state legislatures, and by city councils and that some may even remain on the books. (The laws come from Dick Hyman's The Trenton Pickle Ordinance and Other Bonehead Legislation. No further research has been done to see which, if any, of these laws is still in effect.)

2. Ask the students to read the laws, and on their own consider what conditions they think led the lawmakers to pass them.

Information for Handout 1

a. In Nebraska, a motorist driving a car must send up warning red rockets and Roman candles at night when he approaches a horse. He must then throw a scenic tarpaulin (a big cover) over his car to conceal it from the horse. He must also take his machine apart and hide the parts in the grass if the tarpaulin does not soothe the horse.

This law must have been passed just after the first automobiles hit the roads of America at the beginning of the 20th century. Horses were more common than cars, and deserved more consideration, apparently.

b. In Massachusetts, it is a criminal offense to wear a costume while collecting a debt.

Perhaps creditors were using unfair collection methods to scare debtors into paying their debts.

c. An Alabama law said that a husband has the legal right to hit his wife with a stick. The stick must be no larger than the thumb.

This "rule of thumb" indicates a tolerance toward wife abuse and was the law in most states until the 1880's.

d. A Tennessee law said that a man cannot divorce his wife unless he leaves her ten pounds of dried beans, five pounds of dried apples, one side of meat and enough yarn to knot her own stockings for twelve months.

This law indicates a concern for the ability of the wife to support herself on her own, and makes minimal provisions for her well-being. It is certainly a long way from community property, though.

e. A Blythe, California city ordinance declares that a person must own at least two cows before he is permitted to wear cowboy boots in public.

Posing as a cowboy?

f. A teacher must swear that he or she has never taken part in a duel, either as a principal or as a second, before he or she is allowed to take a teaching post in Nevada.

Duelling must have been common, and was an indication of a tendency to resolve matters through violence rather than reason--not what we want to teach our children.

g. A Michigan Public Health law says the "Failure to provide individual drinking utensils at public drinking fountains is a misdemeanor."

Concern for spreading disease.

h. A Portland, Oregon ordinance forbids anyone to bathe in the rivers, lakes or creeks within its corporate limits without wearing a suitable dress, which shall cover the body from the neck to the knees.

Modesty of another era.

i. Washington state law says that a driver of a car not equipped with ash trays is liable for a $200 fine.

Concern for forest fires?

j. In Mazama, Washington, bartenders are subject to a fine if they listen in on customers' conversations.

A problem with nosy bartenders?

k. In Seattle, it is illegal to carry a concealed weapon that is longer than six feet.

?

3. Ask students how our laws today reflect our culture. What laws can they think of that best show our concerns in the 1990's?

The Washington law that revokes a minor's drivers license if s/he is caught using drugs or alcohol; all the various laws dealing with drugs and drug dealing including loitering; laws limiting cruising and loud car stereos; laws about growth management and zoning indicate our concern with population growth and how to manage it; laws about equal rights for women; environmental protection laws, etc.

CRAZY LAWS

Directions: The following laws once were passed by lawmakers in the various states mentioned. Read them and be prepared to discuss what conditions and/or concerns may have led to the passage of these laws?

a. **In Nebraska, a motorist driving a car must send up warning red rockets and Roman candles at night when he approaches a horse. He must then throw a scenic tarpaulin (a big cover) over his car to conceal it from the horse. He must also take his machine apart and hide the parts in the grass if the tarpaulin does not soothe the horse.**

b. **In Massachusetts, it is a criminal offense to wear a costume while collecting a debt.**

c. **An Alabama law said that a husband has the legal right to hit his wife with a stick. The stick must be no larger than the thumb.**

d. **A Tennessee law said that a man cannot divorce his wife unless he leaves her ten pounds of dried beans, five pounds of dried apples, one side of meat and enough yarn to knot her own stockings for twelve months.**

e. **A Blythe, California city ordinance declares that a person must own at least two cows before he is permitted to wear cowboy boots in public.**

f. **A teacher must swear that he or she has never taken part in a duel, either as a principal or as a second, before he or she is allowed to take a teaching post in Nevada.**

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i. **Washington state law says that a driver of a car not equipped with ash trays is liable to a $200 fine.**

j. **In Mazama, Washington, bartenders are subject to a fine if they listen in on customers' conversations.**

k. **In Seattle, it is illegal to carry a concealed weapon that is longer than six feet.**

LAW IN THE FUTURE: MOON 2010

Source:

Modified by UPSICEL from an adaptation by Bob Crane from Law in American History by James G. Lengel, Dr. Gerald Danzer, 1983, Scott, Foresman, publishers.

Historical Period: The future

Class periods: 3-4

Use of Outside Resource Persons:

An attorney familiar with international law or constitutional law could help set forth the principles here.

Objectives:

1. Students will identify the problems associated with applying U.S. laws and history to an international situation.

2. Students will draw on legal concepts from law and events in American History to design a legal system for a hypothetical "moon colony."

Materials:

Handouts 1, 2, 3 and 4

Procedures:

1. Have students read the Introduction, Handout 1.

2. Pass out six cases, Handout 2.

3. Review the answer sheet, Handout 3, with students. Go back over each situation and discuss the U.S. history event or law that has similarities to the moon case.

Some suggested discussion questions for Washington State History classes include:

1. How is the moon situation like and unlike the area of Washington State before it became a State?

2. What makes it possible for a group of people to organize a government?

Some suggested discussion questions for U.S. History classes include:

1. Puerto Rico is not part of the United States and yet the country belongs to the United States as the result of the Spanish American War of 1898. Puerto Ricans have some of the same rights as citizens of the United States, but they do not pay federal income taxes. Does this case apply?

2. In the 1960's and 70's students wore armbands to school protesting the War in Vietnam. One of these protests became an important case: Tinker v. Des Moines School District. The students were initially suspended from school, but the court ruled that their individual rights had been violated. Does this case apply?

3. Is the United Nations a body that can enforce its resolutions? Have they in Korea? Or in other world events?

4. Could we have put Native American Indians on trial for fighting the American cavalry during the 1800's when they were fighting for their own land and white men were the intruders?

5. When the country of Chile seized the Kennecott Copper Mine, did Chile pay Kennecott for it? Why? Why not? What did the United States of Kennecott do? Could they have done anything?

6. What about the Pilgrims, the Mayflower Compact, the American colonists, and the Declaration of Independence?

INTRODUCTION - MOON 2010

The year is 2010. It has been at least forty years since the United States' astronauts first walked on the moon. During that time, scientists have discovered that the moon is a productive, interesting place and, in some cases, the best place to do certain kids of research and manufacturing. After all, the moon is free from air, has much reduced gravity, has no atmosphere, and does not have the radio interference that we have on earth. Currently on the moon, scientists are measuring the earth's weather patterns, listening for radio signals from far galaxies, and producing drugs in a sterile environment. All of this is being accomplished in laboratories built on the moon.

Many thousands of people inhabit the moon and work in its labs and factories. They even live on the lunar surface. They come from all over the earth and many have been on the moon for at least ten years, while others have been there only a short time. These people consist of scientists and their families, maintenance people, technicians, and engineers.

The moon colony has been administered by NASA which stands for the National Aeronautics and Space Administration, an agency of the U.S. government. In the year 2000, the United States invited several countries, including the Soviet Union, to invest money in developing the moon colony. The Soviets had refused. NASA has made the rules, made living and working assignments for people, and arranged for the space shuttle to transport equipment and people back and forth between the earth and the moon. Most of the laboratories and equipment are owned by NASA, except for a few which are owned by private companies in Germany, Japan, Czechoslovakia, and the United States. Everything has run fairly smoothly until the year 2010. Now the problems begin.

MOON MADNESS

Directions: Six recent cases have caused severe problems for the moon colony. Write out the legal arguments that can be made by each side for each of these cases.

a. One of the American chemical companies claims that it does not have to pay certain taxes on products made on the moon. American tax laws, the company claims, cover only profits made in the United States or in foreign countries. Since the moon is neither, no tax is due.

b. An employee at one of the labs feels that the assignment of housing space is unfair, and she wishes to speak out against it. She claims a constitutional right to freedom of speech and demands that she be allowed to use the intra-colony television communication system to make her protest known to fellow moon residents.

c. A group from the Soviet Union demands that it be given laboratory space and transportation so that it can perform secret experiments. The Soviets claim this right under a 1967 United Nations treaty that declared the moon to be the common heritage of mankind.

d. A Czechoslovakian scientist who was caught stealing some anti-cancer drugs is imprisoned by his superiors. He demands that the NASA administrator grant him a jury trial on the moon "in the American style" or send him to America for a trial. The law in Czechoslovakia has a much higher penalty for this crime than does the United States. He also claims that he will not get a fair trial if he is sent back to Czechoslovakia.

e. The Group demands that 35 percent of the profits from the moon production be put into a fund which the developing nations can use for their own scientific work.

f. Some fifty long time moon colonists have been meeting regularly over the past few years. They have drawn up a constitution and a set of laws for a moon government based on democratic principles. They feel that the time has come for NASA to give up its control of the colony and turn the moon over to the colonists.

NASA'S DILEMMA
LEGAL ISSUES RAISED BY THE CASES

Each of these six cases raised interesting legal questions that are not easily answered. Let us look at each one, examining it from a legal point of view.

a. If the U.S. Government were to insist that American tax laws apply to everyone on the moon, including workers from foreign countries, then it may be exercising "sovereignty" over the moon. This means that the U.S. government is claiming that the moon is really a part of the United States. The chemical company knows that this claim of sovereignty would not stand up in court.

   However, if the tax only applies to American businesses, the United States would have the right to change the federal tax law and make American businesses on the moon pay taxes, the same way that the federal tax law presently allowed the U.S. government to tax American businesses for income made in foreign countries.

b. The lab employee is assuming that the same legal rights which apply in the United States also apply on the moon. Would this be true? Back in 1903, the United States Supreme Court ruled that all constitutional rights did not follow the flag when the United States was administering the Philippine Islands. How would a person on the moon be able to exercise the right to freedom of speech? (Since on the moon there are no parks or large gathering places, plus there is no air to carry the sound of her voice.) Must NASA allow her to use its communication system? And if this person is granted free speech rights, will that set a precedent? Will other moon residents expect NASA to grant them all the rights and privileges of U.S. citizenship?

c. The Soviet claim is based on solid ground. The United Nations resolution of 1967 did declare that the moon belongs to all of humankind and is not subject to any one nation's authority. If NASA refuses the Soviet request, it will look as if the United States is controlling the moon's real estate in violation of U.N. policy. On the other hand, to grant their request now would allow them to reap the benefits of the American investment without having taken any of the risk. It is not clear what rules apply here--the U.N. resolution, American law or common business sense.

d. The Czechoslovakian scientist has committed an act that would be considered a crime if it were done in any of the countries on earth. But it is not clear who should handle crimes on the moon, or how they should be handled or under what circumstances individuals can be forced to return to another country. If the U.S. Constitution does apply on the moon to non-Americans, then the Czechoslovakian has the full right of due process, just as he would if he were a foreigner on American soil. Granting this scientist a trial on the moon or returning him to the United States and refusing to return him for trial in his home country would no doubt anger the Czechoslovakian government.

e. Since the moon is a common resource, all the nations of the world should have a right to its products. The thirty-five percent tax would be a simple way to guarantee this sharing.

f. The moon colonists bring up an interesting point: Shouldn't they be allowed to rule themselves? Or should they? They probably could not exist for long without the supplies and transportation provided by NASA and the U.S. government. And most of the moon residents are still members of a political body back home on earth. They can vote for earth candidates by absentee ballot, so that they are still represented in their own countries. How are these people like and unlike the American colonists in the <u>early</u> 1770's?

CONSTITUTION OF THE MOON 2010

Preamble: From what authority to you derive your legal right to rule the moon? (Compare to Preamble to the U.S. Constitution.)

Article I: Where is the legal authority? Who makes the law? Who will be elected and how? Consider whether the government should have all powers or whether the Government should only have the powers that are listed in this section. Consider whether or not the three basic functions of government should be put together in one person or group or whether they should be divided, with checks and balances.

Article II: Who will enforce those laws? What power will they have? What is considered a crime on the moon? What is the punishment? Where will they be punished? How will the land and resources be divided?

Article III: Who will decide disputes among the inhabitants?

Article IV: What are the Bill of Rights of the moon? List at least twelve.

Article V: Who may commercially use the moon? How?

Article VI: Will the government of the moon tax its citizens? How will the moon government pay for its services? With whose money? Will they print their own?

Article VII: How will the laws of the moon integrate the laws of various countries on earth? Who decides?

IMMIGRANTS TO THE PACIFIC NORTHWEST AND WASHINGTON'S ANTI-DISCRIMINATION LAW - EMPLOYMENT

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law

Historical Period: Late nineteenth century

Class Periods: 2

Use of Outside Resource Persons:

A representative of the Washington State Human Right Commission could present current information and describe and current controveries in employment discrimination in Washington. Also, organizations representing immigrants and even immigrant family members could describe conditions facing them upon arrival in the United States.

on employment discrimination

Objectives:

1. Students will examine historical events documenting a long standing problem of discrimination against minorities in the Pacific Northwest.

2. Students will identify employee rights, including freedom from discrimination.

Materials:

Handouts 1, 2, and 3

Procedures:

1. Have the class read "A Shameful Chapter in Washington's Past," below.

2. Ask students the following questions to check for understanding of the material and to stimulate discussion of the controversial nature of these facts.

a. Why did the Chinese originally come to this country?

Many of the Chinese were originally recruited by American business to work on the railroads. Others were attracted by stories of finding gold.

b. What sort of jobs did they hold?

The Chinese usually held low-paying jobs, such as cooks, housecleaners, laundrymen.

c. Why did resentment build against the Chinese immigrants?

Jobs became scarce, and it was perceived that Chinese were taking jobs away from "Americans."

d. What did the two citizen groups want to do about the Chinese? Would you call it discrimination? What does discrimination mean?

Many Washingtonians responded by seeking to deport the Chinese, and by making life so miserable that many Chinese left voluntarily. Congress passed a law prohibiting Chinese from immigrating into this country. This was discrimination, in its most extreme form. Discrimination is unfair treatment or denial of normal privileges to someone because of their race, creed, age, nationality, sex, marital status, color, handicap or religion.

e. Were the Chinese responsible for the conditions that caused them to be discriminated against?

The general conditions that caused jobs to become scarce were beyond the control of the Chinese.

f. Can you think of any similar instances of discrimination today?

Unfortunately, there are many examples of discrimination in Washington today. A 1989 study of discrimination in housing by the State Human Rights Commission, for example, found that minorities were discriminated against when looking for housing in the Spokane area approximately one-half of the time. Washington has a strong anti-discrimination law, discussed below.

3. Review Washington's anti-discrimination law relating to employment, based on the following information: You may also give the students Handout 2, which is a repeat of this information. Write "law against discrimination" on the board. (There is also a federal law that applies in Washington that bans employment discrimination by employers of 25 or more employees.)

Washington's state law against discrimination prohibits discrimination in the areas of (1) employment, (2) public accommodation (which means hotels and restaurants), (3) housing and real estate, (4) insurance, and (5) credit. **List those categories on the board. Tell the class that they will focus on employment discrimination** - the part of the law that says that employers may not discriminate against employees or people applying for jobs. These laws only apply to employers who employ eight or more employees.

4. Tell the class that employers may not discriminate in hiring. List the following "protected classes" on the board and tell students that employers may not refuse to hire someone because of their (1) age, (2) sex, (unless the person could not perform the job because of their age or sex) (3) marital status (whether or not they are married, divorced or separated), (4) race, (5) creed, (6) color, (7) national origin or (8) sensory, mental or physical handicap, (unless the handicapped person could not physically perform the job.)

In advertising a job opening, employers must not express a preference for a person of a particular age, sex, marital status, race, color, national origin, or handicap. To illustrate this point, ask students if these ads would be illegal: Newspaper ads that say: "Cleaning Woman Needed," "Bell Boy or Bellman Opening," or "Single Gal Friday?" These all are illegal.

In certain unusual instances there is a "bona fide occupational qualification," (BFOQ), which means that for some reason only a person of a particular sex or age could fill the job. For example, only a woman could be a model for women's shoes, or for women's cosmetics. In that instance, an employer would be allowed to advertise for a woman for the job.

Unless a "BFOQ" exists, or there is an approved affirmative action plan or other exception, employers may not ask the following questions when taking job applications, or interviewing prospective employees or their references.

1. Employers may not ask about arrests, but may ask about convictions within the last 7 years, or if the person was released from prison within the last 7 years. Juveniles who have had their records sealed or destroyed may legally claim at a job interview that they have no juvenile record.

2. Employers may not ask about whether the applicant is married, or whether s/he has children or is pregnant.

3. Employers may not ask about type or condition of military discharge.

4. Employers may not ask about ancestry, national origin, or birthplace.

5. Employers may not ask an applicant to list all of the clubs, organizations and society s/he belongs to. An employer may inquire about memberships, just not ask for a list of all memberships.

6. A photograph cannot be required before hiring.

7. Employers may not inquire about an applicant's religion.

8. Employers may not inquire about persons with whom the applicant lives, or whether or not s/he owns or rents.

Employers are entitled to inquire about whether the job applicant is a U.S. citizen, or has authorization to work in the U.S. The Immigration and Control Act of 1986 made it unlawful for employers to knowingly hire illegal aliens, so employers must get this information from prospective employees.

Employers also may ask young applicants about their age, to determine whether they are old enough to work. Minors must be 14 years of age to work in Washington, and those under 16 may work no more than 3 hours a day on school days (between the hours of 7 am and 7 pm), and no more than 18 hours a week during the school year. Minors over 16 may not work past 9 pm on consecutive nights before school days. No minor may work more than 8 hours a day, or more than 5 days a week. Rules for agricultural work are different.

5. Tell students that employers may not discriminate in firing employees.

Employers may not fire someone because of their **age, sex, marital status** (whether or not they are married, divorced or separated), **race, creed, color, national origin** or sensory, mental or physical **handicap**. (These are the same protected classes.)

6. Finally, tell students that it is illegal for employers to discriminate against workers already on the job.

Employers may not pay or treat an employee differently from other employees because of their **age, sex, marital status** (whether or not they are married, divorced or separated), **race, creed, color, national origin** or sensory, mental or physical **handicap.**

This part of the law makes **sexual harassment** illegal. **Sexual harassment** includes sexual comments or jokes, unwelcome invitations to sexual activity, unwelcome touches, pinches, or hugs, pressure to engage in sexual activity to get the job, keep the job, or be promoted, or sexual assault on the job. If a person has to work in a hostile environment because of sexual conduct, that can also be sexual harassment.

7. Ask students to consider the following hypotheticals, and decide whether the Washington Law Against Discrimination has been violated.

a. Kemo, who is 15, is applying for a job at the Burger King. In the interview with the manager, he is asked his age, and whether he has ever been arrested.

The manager may properly ask Kemo about his age, to determine whether he is old enough to work. It is illegal, however, to ask about arrests, because an arrest, without more, is not an indication of guilt. The manager may ask if Kemo has been convicted of a crime within the last 7 years.

The manager may ask if Kemo has been convicted of a crime within the last 7 years.

b. Geraldine works for the Acme Widget Company. Her boss, Tom Jones, has tried to embrace her when they are alone, and makes suggestive sexual comments to her, such as "If you'd just be nice to me, you could really go far in this company." Geraldine refuses to go along with her boss, and he fires her.

This is illegal. Geraldine is the victim of sexual harassment on the job. She should report her treatment to the Washington State Human Rights Commission, or the federal Equal Employment Opportunity Commission. She may also file a lawsuit.

c. Carlene applies for a job at Collins Five and Dime. She is 18 and pregnant, and needs a job to support herself and her child, which is due in 7 months. She does not tell the manager she is pregnant, and she is hired. She is fired two months later, when her employer finds out she is pregnant.

This is illegal. An employer may not discriminate against a female employee because she is pregnant, unless the employer can show that she cannot adequately perform the job.

d. Andrew is 19, and is applying for a job at the Mini-Mart as a cashier. He pleaded guilty to shoplifting last year, and served a three-month sentence. When he tells the manager about this, the manager refuses to hire him.

This is legal. Since being convicted of a crime is not a protected class under the statute, an employer may refuse to hire someone simply because they have been convicted of a crime. In this case, since Andrew's conviction was for stealing, the manager of the Mini-Mart would have genuine concern for allowing Andrew to control the cash register. Also, the conviction is very recent.

8. Pass out Handout 3, Employment Application, and ask students to complete it as best they can. If possible, allow students overnight to complete their applications. Tell them to assume they are applying for a part-time job at Jack In The Box, for after school. Tell students that the next class they will role play a job interview. They should prepare questions they would ask as the prospective employer, and be prepared to answer the same questions, if they play the role of the job-seeker.

9. The next day, divide the class into pairs of students, or ask for two volunteers to role play the interview for the rest of the class. One student will play the role of the manager of the prospective employer, Jack In The Box, a fast food restaurant. The other student will play himself or herself, looking for a part-time job after school. Allow about 10 minutes for the interview.

10. After the role play, debrief by asking the following questions:

a. How did you feel about the role play and playing the role of the employer? How did it feel to play yourself, the job-seeker?

b. For job-seekers, did the employer ask you any questions that you thought were prohibited by the law against discrimination? If so, which questions were those, and what did you do?

c. Was the role play realistic? (You might ask here how many people have been to a job interview. If any have, ask them if it was anything like the role play?)

d. What did you learn from the role play? Would you be more confident about going to a job interview? What further preparations would you want to make?

A SHAMEFUL CHAPTER IN WASHINGTON'S PAST

The Chinese were one of the largest groups of immigrants to come to Washington in the latter half of the nineteenth century. Many of the Chinese were originally brought to this country to build railroads in California and throughout the West. Others were attracted by stories of the gold rush. The Burlingame Treaty, signed by the U.S. and China in 1868, allowed free immigration of Chinese people to the U.S. and of Americans to China, increasing the number of immigrants.

Most of the Chinese immigrants were men, who sent home money to their families in China. While they made high wages compared to what wages were in their homeland, the jobs that the Chinese immigrants took, for the most part, were low paying jobs that Americans did not want, such as laundering, housecleaning and cooking.

When jobs became scarce, however, resentment toward Chinese immigrants grew. Congress passed the Chinese Exclusion Act in 1882, prohibiting further immigration of Chinese people into the U.S. This law remained in effect until 1943.

About 700 Chinese lived in Tacoma in 1885. Mass meetings to stir up anti-Chinese sentiment were held by two citizen groups, the Committee of Fifteen and the Committee of Nine. The editor of The Tacoma Ledger wrote an editorial Oct. 3, 1885, declaring that "the Chinese must go" within a month.

On October 10, 1885, a mass meeting was held in a Tacoma opera house, followed by a torchlight parade. Many Chinese left Tacoma voluntarily. The Territorial Governor Watson Squire visited Tacoma, in an attempt to calm things down, but had little effect.

Finally, on the morning of Nov. 3, 1885, after another mass meeting and torchlight procession, a mob estimated to be 500 men descended on the homes and businesses of the Chinese and ordered them to pack all their belongings and place them in waiting wagons. The Chinese were then force-marched to Lakeview, just south of Tacoma, to be put on trains to California. The next day, the homes and businesses of the Chinese were burned. The mob denied responsibility for the fires.

Federal troops were sent in. Twenty-seven Tacomans were indicted, but none ever came to trial. Tacoma was not alone. Seattle was troubled by similar anti-Chinese sentiment and attempts were made to forcibly deport Chinese from Seattle. Later that year, the Legislature passed a law barring noncitizens from owning property in the Territory of Washington.

Read and consider the following questions.

a. Why did the Chinese originally come to this country?

b. What sort of jobs did they hold?

c. Why did resentment build against the Chinese immigrants?

d. What did the two citizens groups want to do about the Chinese? Would you call it discrimination? What does discrimination mean?

e. Were the Chinese responsible for the conditions that caused them to be discriminated against?

f. Can you think of any similar instances of discrimination today?

WASHINGTON'S ANTI-DISCRIMINATION LAW EMPLOYMENT

Washington's state law against discrimination prohibits discrimination in the areas of employment, public accommodation (which means hotels and restaurants), housing and real estate, insurance, and credit. We will focus on employment discrimination - the part of the law that says that employers may not discriminate against employees or people applying for jobs. These laws only apply to employers who employ eight or more employees.

Hiring

Employers may not refuse to hire someone because of their **age, sex, marital status** (whether or not they are married, divorced or separated), **race, creed, color, national origin** or sensory, mental or physical **handicap**, (unless the handicapped person could not physically perform the job).

In advertising for a job opening, employers must not express a preference for a person of a particular age, sex, marital status, race, color, national origin, or handicap.

In certain unusual instances there is a "bona fide occupational qualification," (BFOQ), which means that for some reason only a person of a particular sex, race or age could fill the job. For example, only a woman could be a model for women's shoes or underwear, or for women's cosmetics. In that instance, an employer would be allowed to advertise for a woman for the job.

Unless a "BFOQ" exists, or there is an approved affirmative action plan or other exception, employers may not ask the following questions when taking job applications, or interviewing prospective employees or their references.

1. Employers may not ask about arrests, but may ask about convictions within the last 7 years, or if the person was released from prison within the last 7 years. (Juveniles who have had their records sealed or destroyed may legally claim at a job interview that they have no criminal record.)

2. Employers may not ask about whether the applicant is married, or whether s/he has children or is pregnant.

3. Employers may not ask about type or condition of military discharge.

4. Employers may not ask about ancestry, national origin, or birthplace.

5. Employers may not ask an applicant to list all of the clubs, organizations and society s/he belongs to. An employer may

inquire about memberships, just not ask for a list of all memberships.

6. A photograph cannot be required before hiring.

7. Employers may not inquire about an applicant's religion.

8. Employers may not inquire about persons with whom the applicant lives, or whether or not s/he owns or rents.

Employers are entitled to inquire about whether the job applicant is a U.S. citizen, or has authorization to work in the U.S. The Immigration and Control Act of 1986 made it unlawful for employers to knowingly hire illegal aliens, so employers must get this information from prospective employees.

Employers also may ask young applicants about their age, to determine whether they are old enough to work. Minors must be 14 years of age to work in Washington, and those under 16 may work no more than 3 hours a day on school days (between the hours of 7 am and 7 pm), and no more than 18 hours a week during the school year. Minors over 16 may not work past 9 pm on consecutive nights before school days. No minor may work more than 8 hours a day, or more than 5 days a week.

Firing

Employers may not fire someone because of their **age, sex, marital status** (whether or not they are married, divorced or separated), **race, creed, color, national origin** or sensory, mental or physical **handicap**.

Discrimination on the Job

Workers are also protected from discrimination while they are on the job. Employers may not pay or treat an employee differently from other employees just because of their **age, sex, marital status** (whether or not they are married, divorced or separated), **race, creed, color, national origin** or sensory, mental or physical **handicap**.

This part of the law includes **sexual harassment**. **Sexual harassment** includes sexual comments or jokes, unwelcome invitations to sexual activity, unwelcome touches, pinches, or hugs, pressure to engage in sexual activity to get the job, keep the job, or be promoted, or sexual assault on the job.

Directions: Consider the following hypotheticals, and decide whether you think the Washington Anti-Discrimination Law has been violated. Why or why not?

a. **Kemo, who is 15, is applying for a job at the Burger King. In the interview with the manager, he is asked his age, and whether he has ever been arrested.**

b. **Geraldine works for the Acme Widget Company. Her boss, Tom Jones, has tried to embrace her when they are alone, and makes suggestive sexual comments to her, such as "If you'd just be nice to me, you could really go far in this company." Geraldine refuses to go along with her boss, and he fires her.**

c. **Carlene applies for a job at Collins Five and Dime. She is 18 and pregnant, and needs a job to support herself and her child, which is due in 7 months. She does not tell the manager she is pregnant, and she is hired. She is fired two months later, when her employer finds out she is pregnant.**

d. **Andrew is 19, and is applying for a job at the Mini-Mart as a cashier. He pleaded guilty to shoplifting last year, and served a three month sentence. When he tells the manager about this, the manager refused to hire him.**

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Employment Application

Jack In The Box hires only U.S. citizens and lawfully authorized alien workers.
The law prohibits discrimination because of race, color, religion, sex, age, national origin, and handicap.

Personal

Print or type all information:

DATE OF APPLICATION: _____, 19 | PHONE: ( ) _____
(AREA CODE) (TELEPHONE NO.)

NAME: _____ SOCIAL SECURITY NO.: _____
(LAST) (FIRST) (INITIAL)

ADDRESS: _____
(NUMBER) (STREET) (CITY) (STATE) (ZIP CODE)

HOW LONG HAVE YOU LIVED AT THE ABOVE ADDRESS? _____

ARE YOU OVER EIGHTEEN YEARS OF AGE? YES ☐ NO ☐ IF NOT, WHAT IS YOUR AGE? DRIVERS LICENSE: _____

PERSON TO BE CONTACTED IN CASE OF EMERGENCY: _____

ADDRESS: _____ TELEPHONE: ( ) _____
(AREA CODE)

Availability

WHAT LED YOU TO CONTACT US FOR EMPLOYMENT? _____

INTERESTED IN WHAT TYPE OF POSITION(S)? _____

TOTAL HOURS AVAILABLE PER WEEK. _____

HOURS AVAILABLE

	M	T	W	T	F	S	S
FROM							
TO							

DATE AVAILABLE FOR EMPLOYMENT: _____ WHAT TRANSPORTATION WILL YOU USE TO GET TO WORK? _____

Miscellaneous

HAVE YOU WORKED FOR THIS COMPANY PREVIOUSLY? YES ☐ NO ☐ IF YES, LOCATION: _____ DATE: _____

SUPERVISOR'S NAME: _____ DATE AND REASON FOR LEAVING: _____

DO YOU HAVE ANY ILLNESS, INJURY OR MENTAL CONDITIONS, WHICH MIGHT INTERFERE WITH PERFORMING CERTAIN KINDS OF WORK? YES ☐ NO ☐

IF YES, DESCRIBE IN FULL: _____

HAVE YOU EVER BEEN DENIED A DRIVER'S LICENSE, OR HAD YOUR LICENSE REVOKED OR SUSPENDED? YES ☐ NO ☐

IF YES, EXPLAIN: _____

HAVE YOU BEEN CONVICTED OF A FELONY OR RELEASED FROM PRISON WITHIN THE LAST 7 YEARS? YES ☐ NO ☐

IF YES, EXPLAIN IN FULL, INDICATING DATE, CHARGE, PLACE, ACTION TAKEN (FORFEITURE OF BAIL IS CONSIDERED CONVICTION) _____

NOTE A CONVICTION RECORD WILL NOT NECESSARILY BAR THE APPLICANT FROM EMPLOYMENT.

IF HIRED, DO YOU AGREE TO ABIDE BY THE SAFETY RULES OF THE COMPANY? YES ☐ NO ☐

CAN YOU PROVIDE PROOF OF CITIZENSHIP VISA OR ALIEN REGISTRATION NUMBER AFTER BEING HIRED? YES ☐ NO ☐

Military

DO YOU HAVE ANY MILITARY COMMITMENTS AT THIS TIME THAT COULD INTERFERE WITH YOUR DUTIES AS AN EMPLOYEE?

YES ☐ NO ☐ IF YES, PLEASE DESCRIBE _____

Education

	GRADE SCHOOL	HIGH SCHOOL	TRADE/TECHNICAL	COLLEGE
CIRCLE HIGHEST GRADE COMPLETED	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4

IF EDUCATION IS IN PROGRESS, GIVE NAME AND ADDRESS OF SCHOOL:

Work History

In order for this application to be considered you must account for all the time since leaving school, or the past 7 years, whichever is shorter.

NAME OF PRESENT EMPLOYER: | PHONE: ( )

ADDRESS (NUMBER / STREET / CITY / STATE / ZIP CODE)

DATES OF EMPLOYMENT FROM TO | HOURLY PAY STARTING ENDING

☐ FULL TIME ☐ PART TIME | SUPERVISOR'S NAME:

DESCRIBE YOUR DUTIES:

REASON FOR LEAVING:

PREVIOUS EMPLOYER: | PHONE: ( )

ADDRESS. (NUMBER / STREET / CITY / STATE / ZIP CODE)

DATES OF EMPLOYMENT: FROM TO | HOURLY PAY: STARTING ENDING

☐ FULL TIME ☐ PART TIME | SUPERVISOR'S NAME:

DESCRIBE YOUR DUTIES:

REASON FOR LEAVING:

Please read the following paragraph very carefully before signing this application.

I certify that to the best of my knowledge and belief the statements made by me in this application are correct and complete without omission of any kind whatsoever. I understand that any false information when applying for employment whether in this application or otherwise, may be cause for discharge at any time during employment. You are hereby authorized to investigate all the statements made in this application.

I further understand that if I am hired I will not have an employment contract and that my employment and compensation can be terminated with or without notice or cause at any time by the company or me.

APPLICANT'S SIGNATURE | DATE:

COMPANY USE ONLY — DO NOT WRITE BELOW THIS LINE

INTERVIEWER. | DATE:

COMMENTS

INTERVIEWER. | DATE:

COMMENTS.

DATE HIRED | RATE OF PAY PER HOUR. $ | SHIFT HIRED FOR:

FIRST DAY WORKED: | RESTAURANT NO. | POSITION HIRED FOR.

DEVELOPMENT OF CHILD LABOR LAWS

Source:

Developed by University of Puget Sound Institute for Citizen Education in the Law with some adaptation from Carol Lear from Law in U.S. History, Smith 1982, as presented in the Utah Law and U.S. Studies material.

Historical Period: 1890's to present.

Class Periods: 3

Use of Outside Resource Persons:

An inspector from the U.S. Department of Labor, Wage and Hour Division, Room 755, 1111 Third Avenue, Seattle WA 98101, 1-206-442-4482, or from the Department of Labor and Industries, Employment Standards Section, 406 Legion Way, Olympia, WA 98504, 1-206-753-6311, could give an overview of enforcement in Washington. The recent crackdowns in labor violations could be described.

For classes held in agricultural areas, a large scale farmer might describe his or her views on the child labor regulations; a migrant worker might describe his or her views, and a school official might also give his or her views.

Attorneys familiar with labor law might also assist with the history of child labor in Washington and the U.S.

Objectives:

1. Students will identify laws relating to child labor.
2. Students will identify that legal protections against child labor are the result of a long history of political struggle and social legislation.
3. Students will compare and discuss modern versions of child labor laws.
4. Students will identify present Washington law on child labor.

Materials:

Handouts 1, 2 and 3

Procedures:

1. Before the activity, have students read about child labor in their textbooks. You can also have students brainstorm a list of the

advantages and disadvantages of child labor during the period of industrialization.

2. Before class, cut apart the 18 learning stations on Handout 1, mount them on colored paper, and post them in random order around the classroom.

3. Distribute Handout 2. Explain to students that protective legislation against child labor took over 150 years to achieve. Read the instructions on Handout 2 with the class. You might give students an example of a summary of one of the learning stations to assist them in their task. Have students complete the learning station assignment.

4. Distribute Handout 3 to the class and ask them to answer true or false as to the child labor law in Washington. Debrief their answers with state law and question students whether or not they agree with the law.

Answers to Handout 3

a. It is a crime in Washington for employers to hire and parents/guardians to permit minors under the age of 14 to work in any store, shop, factory, mine or any inside employment not connected with farm or house work.

True, unless written consent of a superior court judge has been obtained prior to the employment.

b. 14 and 15 year olds may be employed no more than 3 hours on school days, no more than 18 yours a week during the school year.

True

c. 14 and 15 year olds cannot work before 7 a.m. or after 7 p.m. on school nights, nor after 9 p.m. during summer vacation.

True

d. 16 and 17 year olds may not work past 9 p.m. on consecutive nights before school days.

True

e. No minor may work more than 8 hours a day, or more than 5 days a week.

True

f. Minors employed past 8 p.m. in service occupations must be supervised by an adult.

True

g. Persons under 16 may not work in any manufacturing or processing operation, nor can they operate or clean power-driven food slicers or bakery-type mixers. They cannot cook, bake, work in freezers or load or unload goods from trucks, railroad cars or conveyors.

True

h. Minors may not work in mining, logging, roofing, excavation, meat processing. Nor can they work in occupations involving operation of power-driven wood working machines, power-driven bakery machines, power-driven paper-product machines or circular or band saws.

True

i. In 1989, 4,000 minors were injured on the job.

True. Over 4,000 worker compensation claims were made in 1989 for minors. The state's examination of 200 injury cases revealed that 48 percent of the employers were violating one or more laws -- such as failing to have a minor work permit or a parental/school permit, or working a kid in a dangerous occupation.

j. The state's Department of Labor and Industries will fine employers who have violated child labor laws.

False. The Department presently only has the power to refer the case to the county prosecutor for criminal prosecution, something which has not frequently been done. A bill has been submitted to the state legislature in the last few legislative sessions to change the law in order to give the state inspectors authority to fine employers, but this has been defeated. Federal inspectors enforcing the federal Fair Labor Standards Act do have the authority to fine employers.

k. Violations of child labor laws in Washington are uncommon.

False. The federal Department of Labor initiated a nationwide strike-force sweep of minors working in prohibited situations in March 1990. In that action, nine federal compliance officers found 66 violations between Tacoma and Everett

l. Minors through their parents may sue their employers for injuries received on the job.

False. The state uses the workers' compensation insurance program which prohibits lawsuits for worker injuries, since this insurance will pay the worker's medical expenses and time missed at work.

m. The majority of teen jobs are in the suburbs, burger-flipping and store-tending.

True

n. Jobs for teens teach positive skills.

Debated. Some argue that jobs teach youth responsibility, communications skills, and cooperation. They also point out that some teens can be very successful on the job who are not successful in school. The success on the job keeps them in school. They argue that work fosters self-reliance, gives job experience, encourages youth to budget their time and, parents know where the children are.

Others argue that low-paying jobs do not teach teens much that is positive. They say that youth do not get good jobs, there is no positive role modeling going on, and that the fast-food jobs are today's assembly lines, providing no room for initiative or creativity. In fact, some argue, teens learn unwholesome job skills: blind obedience and hatred for the boss.

o. America's competitiveness in the international market will decrease because students are too busy working to gain the academic skills necessary for today's increasingly technical jobs.

Debated. This is a viewpoint expressed by many. In Japan, students cannot have a job. Japanese students consistently outscore Americans on math and science. A recent federal study found only 6 percent of U.S. 17-year-olds could use algebra or geometry to solve problems.

p. Students use the money they earn from jobs most often to provide family support.

False. In a 1983 Washington study, Norward Brooks, now Seattle's comptroller, found that kids spent their money on, in descending order: clothes, entertainment, car expenses, and school supplies. In last place is family support, just 16% gave anything to their parents.

q. Students who work more than 20 hours a week are less capable in math, science, history, literature and reading than those who work fewer hours.

True. In a 1986 national study of 29,000 high school students, this was found to be the case.

r. Minors who work in agriculture are limited to the same number of work hours per day and per week as minors who work in restaurants and shops.

False. A controversial proposal by the State Department of Labor and Industries in March 1990 was adopted in June 1990. It:

* requires agricultural employers to get written permission from parents (and from schools during the school year) before hiring minors;

* prohibits people under 14 from working in the fields, except for those picking berries, bulbs, cucumbers and spinach. The minimum age for these pickers is 12 years. Those 12- and 13-year-olds can only work during non-school times.

* allows children ages 14 and 15 to work as long as three hours per day, and 21 hours per week when school is in session, and as long as eight hours a day and 40 hours per week when school is out. They could not start before 5 a.m.

* allows children who are 16 and 17 to work as long as four hours on school days and 28 hours a week when school is in session and as long as ten hours a day on nonschool days and 50 hours a week when school is not in session. For wheat, hay and pea harvests, that increases to 60 hours a week.

* prohibits minors under 16 from operating corn pickers or grain combines, work with pesticides, handle blasting agents or performing other dangerous tasks; and

* requires paid rest breaks and paid meal break.

* permits the state department to suspend an employer's permit to employ minors if conditions that could cause death or serious harm to minors are found and to fine farmers who violate the new regulations fines of up to $250.

Farmers in the Yakima valley have blasted these state rules. Hearings were held around the state in the Spring of 1990, and final rules were adopted in the summer 1990. The rules go into effect November 1, 1990, except for a section requiring the children in fields be given paid meal and rest breaks, effective August 1, 1990.

Inform students that to report violations:

* TO THE FEDERAL GOVERNMENT, they should call 442-4482, or write to the U.S. Department of Labor, Wage and Hour Division, Room 755, 1111 Third Avenue, Seattle WA 98101.

* TO THE STATE GOVERNMENT, they should call 753-6311 in Olympia, or write to the Department of Labor and Industries, Employment Standards Section, 406 Legion Way, Olympia, WA 98504.

In either case, they should include the name of the minor, the name and location of the employer, addresses and phone numbers if possible, and a brief description of the possible violation. It is not necessary to give a name when making a report.

LEARNING STATIONS

"CHATTELS OF THE FAMILY AND WARDS OF THE STATE" - COLONIAL AMERICA

American colonists carried English attitudes about children into the New World. The Colonies were not interested in protecting children from overwork or conditions dangerous to their health. Law required that a useful trade or skill be taught to children to prevent "sloth (laziness) and idleness wherein such young children are easily corrupted."

PAUPER (POOR) CHILDREN

In Virginia in 1619, workers were badly needed. Hundreds of English pauper (poor) children were kidnapped and brought to the Colonies to work. Work was a desirable alternative to allowing these children to be a burden to society. They were also a source of cheap labor.

SAMUEL SLATER'S FACTORY IN RHODE ISLAND

Samuel Slater was called "the father of American manufacturing." He manned the first factory in Pawtucket, Rhode Island in 1790 entirely with youngsters from 7 to 12 years of age. They worked 72 to 84 hours a week. Children could be paid much less than adults.

WORK DAY FOR CHILDREN

In 1825-1832, reports on child labor in states such as Pennsylvania and Massachusetts found children 6 to 17 years of age working 12 or 13 hours, six days a week. They made up two-fifths of the total number of workers in the states under study. Concerned about children's health, some states began passing laws between 1842-1867 limiting the work day for children under 12 years of age to 10 hour days. Children under 16 were limited to 60 hours a week. Pressure for these laws came from labor unions, which pointed out that child labor was keeping down wages for all laborers.

COMPULSORY SCHOOL ATTENDANCE, STATES' CONCERNS

Reformers concerned about child welfare realized that child labor was producing generations of adults who were illiterate and could not read the Bible. This concern resulted in a series of state laws relating to education. Connecticut passed a law requiring that reading, writing, and arithmetic be taught to all children while working in the factories. In 1836, Massachusetts passed a law saying that children under 15 could not be employed unless they had attended school for at least 3 months the preceding year.

COMPULSORY SCHOOL ATTENDANCE, THE KEY TO LIMITING CHILD LABOR

Many states concerned about child labor followed the example of Massachusetts, which passed a series of laws affecting children from 1873 to 1889. In 1873 the length of the school year was extended to 20 weeks for children 12 and under. In 1883 towns with more than 10,000 population were required to establish evening schools for children's education. In 1887 children under 13 were excluded from work in factories and other places. Other outdoor work such as farm work was forbidden unless the child had attended 20 weeks of school. In 1889 compulsory school attendance for 30 weeks was extended to children up to 14 years of age.

FIRST MINIMUM WAGE LAW

In 1912 Massachusetts passed the first minimum wage law for children and women. Fourteen states did the same. Children and women had historically received much lower pay than men for the same work. Textile industries routinely hired children and women for very low wages and work weeks of up to 84 hours. For example, in 1860 the average wage for men in Massachusetts was $5.00 per week, for women $1.75 to $2.00, and for children $1.00 to $2.00 per week.

CONGRESS BEGINS TO PASS CHILD LABOR LAWS

World War I revealed that of men drafted between the ages of 21 to 31, 20% could not read nor write. This was the highest illiteracy rate in all industrialized countries. As a result, Congress began to become interested in child labor laws and compulsory education on a national basis.

CHILD LABOR ACT OF 1916

This law, passed by Congress, tried to end child labor by banning the interstate sale of goods produced by children under 14 years of age working more than 10 hours per day. This was the first real attempt by the national government to control child labor.

HAMMER V. DAGENHART (1918) - SUPREME COURT DECISION

This decision said that the Child Labor Act of 1916 was unconstitutional. The reason the Court gave was that Congress was trying to regulate manufacturing rather than interstate commerce. The power to regulate manufacturing was not granted to Congress by the Constitution. The Court was more concerned with the power to regulate commerce than with the welfare of children.

CHILD LABOR TAX ACT (1919)

When the Child Labor Act was struck down by the Supreme Court, Congress tried again to pass a federal law to discourage the use of child labor. The Child Labor Tax Act placed a high tax on products made by industries which employed children. A 10% tax on the net profits of any company using child labor was intended to discourage them from hiring children.

BAILEY V. DREXEL FURNITURE CO. (1919) - SUPREME COURT DECISION

The Supreme Court struck down the second attempt by Congress to end child labor. The Court said the Child Labor Tax Act was unconstitutional because Congress was using its power to tax in order to discourage child labor. The Court said that it was up to the states to regulate these matters. Congress did not have the right to tell the states what to do concerning child labor.

AMENDMENT TO THE CONSTITUTION INTRODUCED (1924)

Congress was not willing to give in to the Supreme Court in the fight against child labor. As a result, Congress submitted to the states a constitutional amendment which would give Congress the power to "limit, regulate, and prohibit labor of persons under 18 years of age." By 1938 only 28 of the 48 states had ratified the amendment. It never was ratified but other laws made it unnecessary.

FAIR LABOR STANDARDS ACT OF 1938 (WAGES AND HOURS ACT)

The minimum work week was set at 44 hours per week during the first year of employment and by the third year had to be reduced to 40 hours per week. Minimum wages were increased to 40 cents per hour. One important part of the Act prohibited the shipment between states of goods produced in establishments where "oppressive" child labor was employed. Under the Act, the Children's Bureau was made responsible for setting regulations for child employment to prevent interference with schooling, health, and well-being.

UNITED STATES V. DARBY LUMBER COMPANY (1941)

The Fair Labor Standards Act was tested in this Supreme Court case and ruled to be constitutional. This decision overturned the Dagenhart Supreme Court decision of 1918. It also made the child labor amendment unnecessary. Child labor had legally become an area in which Congress could make laws.

FEDERAL FINES AGAINST EMPLOYERS WHO VIOLATE CHILD LABOR LAWS (1974--1990)

In 1974, the U.S. Congress set a fine of $1,000 as the maximum penalty for businesses that employ youngsters in dangerous jobs or for too many hours. In 1990, the Labor Secretary Elizabeth Dole proposed to Congress that the law be changed to increase the penalty from $1,000 to $10,000. Also, she proposed that prosecutors could seek jail terms for first-time willful violators of child labor laws. The present federal law permits jail terms only upon the second conviction.

FEDERAL MINIMUM WAGE LAW (1989)

In 1989, The U.S. Congress changed the federal minimum wage (then $3.35 per hour), providing for an increase to $3.80 in 1990 and $4.25 in 1991. In addition this law allows employers to pay a lower "training wage" for up to 90 days for certain workers under age 20. Not all jobs are covered by the minimum wage law.

A HISTORY OF THE STRUGGLE AGAINST CHILD LABOR

Directions: With your partner, go to each learning station and read the information. Try to summarize the important information at each station in one sentence and write it down, along with the title and date of the event on a worksheet. If there are words you do not understand, look them up. When you have visited all the stations, arrange your notes in chronological order on this page. When you have finished, you will have a history of the struggle against child labor.

	DATE	EVENT
1.		
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QUIZ ON CHILD LABOR

Directions: Answer whether or not you think the statement is "T" for True or "F" for False.

_____ a. It is a crime in Washington for employers to hire and parents/guardians to permit minors under the age of 14 to work in any store, shop, factory, mine or any inside employment not connected with farm or house work.

_____ b. 14 and 15 year olds may be employed no more than 3 hours on school days, no more than 18 yours a week during the school year.

_____ c. 14 and 15 year olds cannot work before 7 a.m. or after 7 p.m. on school nights, nor after 9 p.m. during summer vacation.

_____ d. 16 and 17 year olds may not work past 9 p.m. on consecutive nights before school days.

_____ e. No minor may work more than 8 hours a day, or more than 5 days a week.

_____ f. Minors employed past 8 p.m. in service occupations must be supervised by an adult.

_____ g. Persons under 16 may not work in any manufacturing or processing operation, nor can they operate or clean power-driven food slicers or bakery-type mixers. They cannot cook, bake, work in freezers or load or unload goods from trucks, railroad cars or conveyors.

_____ h. Minors may not work in mining, logging, roofing, excavation, meat processing. Nor can they work in occupations involving operation of power-driven wood working machines, power-driven bakery machines, power-driven paper-product machines or circular or band saws.

_____ i. In 1989, 4,000 minors were injured on the job.

_____ j. The state's Department of Labor and Industries will fine employers who have violated child labor laws.

_____ k. Violations of child labor laws in Washington are uncommon.

_____ l. Minors through their parents may sue their employers for injuries received on the job.

_____ m. The majority of teen jobs are in the suburbs, burger-flipping and store-tending.

_____ n. Jobs for teens teach positive skills.

_____ o. America's competitiveness in the international market will decrease because students are too busy working to gain the academic skills necessary for today's increasingly technical jobs.

_____ p. Students use the money they earn from jobs most often to provide family support.

_____ q. Students who work more than 20 hours a week are less capable in math, science, history, literature and reading than those who work fewer hours.

_____ r. Minors who work in agriculture are limited to the same number of work hours per day and per week as minors who work in restaurants and shops.

PRIVATE LAND, PUBLIC GOOD

Source:

Adapted by UPSICEL from Bill of Rights in Action Series on Property of the Constitutional Rights Foundation

Historical Period: Present.

Class Periods: 2

Use of Outside Resource Persons:

A member of the local city or county council could debrief the city council meeting simulation.

A representative from the government's land use planning office might make a presentation about current land use disputes in the area. A land use planner could bring a zoning map of the community to the school to discuss how the community is zoned.

Lawyers for developers and environmentalists might conduct a debate on a recent issue of land use in the state or community.

Materials:

Handouts 1, 2 and 3

Objectives:

1. Students will define zoning.
2. Students will give an example of zoning in their community.
3. Students will identify Constitutional considerations involved in land use.
4. Students will define eminent domain and "taking" and be able to apply concept of "taking" to situations.
5. Students will apply zoning considerations in mock legislative session.

Procedures:

1. Introduce the concept of zoning by asking students to give examples of any zoning they might know about.

2. Brainstorm definition of zoning:

Government system to control use of land in certain areas for the public's benefit.

3. List the goals for zoning on the board and have students give examples for each one.

Sample answers include:

ZONING GOALS	EXAMPLES
Aesthetic/Artistic Goals	Requirement that architecture reflect Swiss Alpine features in downtown commercial areas of North Bend and Leavenworth, WA
	Requirements that housing in historical area be Victorian
	Ban on development of wild and scenic rivers
Health Goals	Noise restrictions in hospital areas
Safety Goals	Requirements that heavy industry be located away from residential area
General Welfare	All adult entertainment places be located in one area, not in residential area
Protect Owners From Economic Loss	Requirement that heavy industry cannot locate in the middle of residential area

4. Write the term "segregated uses" on the board and ask for guess as to its meaning.

This means that areas of land are set apart, depending upon the use that is to be made. They are:

1. Single-family housing
2. Other housing units, such as duplexes, apartment houses
3. Three zones of Commercial use:
    a. convenience shopping (e.g., grocery store, drug store)
    b. regional shopping centers
    c. downtown commercial district
4. Industrial use
    a. Light industry
    b. Heavy industry

5. Ask students to think about their town or city and in small groups chart out where the different uses are located.

6. Write on board:

"Zoning and the Constitution.

1. **Police Powers**
2. **Due Process (5th and 14th Amendments)**
3. **Equal Protection (14th Amendment)**
4. **Just Compensation (5th Amendment)"**

7. Explain that government gets its authority to enact zoning from its police powers, provided that the laws are fair and do not discriminate against people.

For example, if the government changed the law so that no houses could have docks on the water front, but did not notify the homeowners they were thinking of making this change or give them a chance to speak out, this would violate due process.

Also, if the government passed a law that made absolutely no sense or had a ridiculous purpose (such as requiring that all homes in a certain area be built of glass), the law violates due process.

Equal protection means that people who are in a similar situation should be treated alike unless there is a valid reason for treating them differently.

For example, the government passed a law requiring apartment houses to provide off-street parking, but did not require off-street parking for hotels and boarding houses. This violated equal protection. Even though the purpose of the zoning law was a valid one, to reduce the number of cars parked on the street (to regulate congestion and traffic safety), the method was not a sensible way of carrying out that objective.

8. Tell students that the government cannot intentionally discriminate with zoning either.

Some zoning goals are invalid:

1. to keep newcomers from settling in a city or town. Cities cannot legally avoid the increased responsibilities and economic burden that growth brings.

2. to keep people of a certain racial group out of an area. A zoning law is not illegal just because it results in a racially unbalanced impact. Instead, discriminatory intent or purpose must be shown.

9. Refer students to the 5th Amendment a portion of which states that "nor shall private property be taken for public use without just compensation."

This applies to federal, state and local government.

For example, if the federal government wants to take your house and destroy it in order to build a freeway through your neighborhood, it has the right to do so, provided it pays you a fair amount of money. When the government takes property against the owner's will it is called the power of eminent domain.

Eminent domain differs from zoning, since eminent domain involves the taking of property, while zoning, in most cases, just regulates the use of property.

10. Ask students what it means for the government to "take" property.

A taking can occur in three ways:

1. The government can acquire the title to the property by buying it, as in the example of the freeway.
2. The government can take the property by physically invading the property without taking title. For example, if the government builds a dam that floods water permanently on a portion of your land, it must pay the price for that portion of the land.
3. The government zoning of the land is so extreme, that the owner loses the right to make any reasonable use of the land. For example, the Pennsylvania government passed a law that said there could be no mining that would interfere with the structural ground support of any house. The Coal Company claimed this zoning law was a taking by the government and that they had the right to be paid for the coal they could no longer dig. The court agreed that the zoning law was a taking by the government.

   The rule today is that while property may be regulated to a certain extent if regulation goes too far, it will be recognized as a taking.

   "We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving that desire by a shorter cut than the constitutional way of paying for the change." Supreme Court Justice Oliver Wendell Holmes.

   As long as the landowner has some reasonable economic value left in the property, the government regulation is not a taking.

11. Ask students what is just compensation.

The law is that the owner must be paid "fair market value" for the property taken. This is the price in cash that a willing seller and a willing buyer would normally agree upon for the exchange of the property, if there were no outside forces compelling either one to act. This does not mean the value of the property to the owner, who might place a sentimental or higher value on the property than other people, for

example, the place the owner was born and that the family had lived on for many generations. The government is not required to pay more than the ordinary buyer would, so it need not include in its purchase price the high cost of sentiment.

12. Describe a 1990 incident to students to show how eminent domain is used.

The city government of St. Paul, Minnesota wanted to get rid of an adult entertainment place within its city limits. So, it condemned the business under its power of eminent domain and paid the owner $3 million. It was agreed that the landowner would not reopen the business within the city limits. The landowner took his money and crossed the river to Minneapolis and opened a larger adult entertainment facility (naming it Deja Vu) using the money he had received from the St. Paul city government. Since the contract did not say anything about a different city, there was nothing the city could do to stop him.

13. Do the two case studies in small groups, Handouts 1 and 2.

Answers to Handout 1

a. Do you agree with Donald and Bonnie or with the city government? Is the zoning law a "taking" that requires the government to pay them for their loss in not being able to build the luxury condominiums? Give reasons for your answers.

Students should provide their reasons regarding which they think is more important -- the city's need to prevent over-development or the right of an owner to use property in any way he or she sees fit. The U.S. Supreme Court ruled for the city in Agins v. City of Tiburon, 199 S.Ct. 2138 (1980) that the zoning law was valid and that it did not amount to a taking. The city had a proper purpose of acting to preserve open land from over-development. Limiting development did not prevent the best use of the land and did not destroy any ownership by Bonnie and Donald.

A recent example happened in Washington. When Merrill English retired as a stockbroker in 1980, he bought property on the banks of the scenic Tucannon River in southeast Washington's Columbia County. It is such a spectacular landscape that both the federal and state governments have proposed claiming some of English's land as part of their programs to protect wild and scenic rivers. Under their programs, English would continue to own the land but he wouldn't be allowed to develop it or grow crops. No government agency has offered him money for his lost rights.

In 1990 he contacted a Senator from Pullman who agreed to sponsor a bill to protect his rights. The bill passed both houses of the state legislature only to be vetoed by the Governor. The Governor stated that English's bill would have turned a complex legal issue into an overly simplistic administrative nightmare, that it sent a very threatening message to agencies regarding regulation of land use for health, safety

and environmental protection. Finally, the Governor said the bill would have added another layer of bureaucracy.

Mr. English began a campaign in the Spring of 1990 to get an initiative passed that would require state and local governments to analyze how each proposed land-use restriction would affect property rights, whether each "taking" would meet constitutional tests and whether affected property owners should be paid.

Answer to Case Study 2

a. Who should win and why?

The California Supreme Court, in City of Santa Barbara v. Adamson, 1980, ruled that this zoning law was unconstitutional because it interfered with the state constitutional right of privacy. Describing the twelve people in the Adamson house as an alternative family, the court ruled that the zoning law violated the law. The alternative family could continue to live in one house.

In states that do not have a state constitutional right of privacy as broad as California's, the case may come out differently. In Belle Terre v. Boraas, 416 U.S. 1 (1974), the U.S. Supreme Court ruled in just the opposite way, applying the equal protection clause of the U.S. Constitution. In that case, six college students had leased a house from a landlord in an area zoned for single families. The village of Belle Terre had an ordinance which said that a family consisted of one or more persons related by marriage, blood, or adoption or not more than two unrelated persons living and cooking together in a single housekeeping unit and excluding boarding, lodging, fraternity and multiple dwelling houses. The local prosecutor began proceedings against the landlord.

The U.S. Supreme Court ruled that the restriction was a valid social and economic law, and that the right of privacy was not involved. The law had a rational relationship to a valid state goal, that of limiting the number of cars and people in the zoned neighborhood and to promote family and youth values.

13. Conduct a simulation: To Zone or Not to Zone. Pass out Handout 3 to students in small groups. Each small group is a City Council of your community. Their job is to consider five proposals for rules or exceptions (called variances) to existing rules. Each City Council should study and discuss each of the proposals outlined below and then take a vote on them. After this is done, a representative from each Council should announce his or her Council's action on Proposal No. 1. The class should discuss whether or not this proposal should be approved. Follow this procedure for other proposals, with a different Council making the initial recommendation.

CASE STUDY: THE CASE OF THE UNLUCKY LANDOWNERS

Donald and Bonnie Agins bought five acres of land overlooking the ocean in the City of Tiburon. When they originally bought the property, they intended to develop some of it for profit by building luxury condominiums. But six years after they bought it, the city passed a zoning ordinance to help Tiburon control growth in the area.

The law zoned the Agins' five acres as "open space." Although they could still develop the property, the Agins could not build more than five single family homes on the land. In addition, the Agins would have to submit a plan to the city for approval and put aside some of the land for public use.

Donald and Bonnie sued for $2 million. They argued that the zoning law resulted in a taking of their land. They claimed that the property had become worthless to them, and that they wanted just compensation.

The city government argued that the zoning restriction was a valid law and that it did not amount to a "taking." They claimed that merely limiting development did not prevent the best use of the land or take away ownership of the land.

a. Do you agree with Donald and Bonnie or with the city government? Is the zoning law a "taking" that requires the government to pay them for their loss in not being able to build the luxury condominiums? Give reasons for your answers.

CASE STUDY 2: THE CASE OF THE "ALTERNATIVE" FAMILY

A city adopted a zoning ordinance which limited the number of non-related people who could live together in one house. The ordinance was intended to preserve "a suitable environment for family life." People living within zones established as one-family, two-family, or multi-family were required to constitute a "family."

Beverly Adamson and eleven other adults who shared her 24-room house, thought of themselves as a family, although none were related by blood, marriage or adoption. Still, they shared expenses, chores and social events, ate meals together, and lived pretty much as any other family does.

Since the zoning ordinance prohibited any more than five non-related people from living together within the zone where Adamson's house was located, the City Attorney sued to have at least seven of the twelve move out. Beverly Adamson and her "family" decided to fight.

a. Who should win and why?

TO ZONE OR NOT TO ZONE

Over the last few years, the role of local zoning regulations has greatly expanded. This trend is the product of changes in our society -- in Constitutional law, the ecology movement and the economy.

In the 19th Century, courts laid down the rule that states could not use zoning or land use regulations for objectives that were primarily aesthetic. Today, zoning for historical preservation, environmental uniqueness, and open space and livability are permitted. In addition, local government is often involved in disputes over freedom of expression versus public morality and claimed racial, economic or age discrimination.

In this activity, you will have the chance to take on the role of City Council, considering various proposal that affect zoning. By doing so, you will find that the issues are not easy. The process requires a delicate balancing between individual interests and the public good. Opinions vary widely about what constitutes the public good.

Directions: Each small group will represent the City Council of your community. Today's business is to consider five proposals for rules or exceptions (variances) to existing rules. Each City Council should study and discuss all five proposals and then vote on them. Think about who will be injured and how much they will be injured. Think too about who will benefit and how much.

A representative from each Council should report its decision on Proposals 1 to 4.

PROPOSAL 1 Billboard Removal

To preserve the natural beauty of the "scenic highway," it is prohibited to erect any billboard or sign on private property within one mile on either side of the roadbed. All existing signs must be removed within 90 days of the passage of this measure.

PROPOSAL 2 Historical District Designation

To preserve the historic nature of the Perkins corner Battlefield area, it is hereby designated as an historic zone. All proposed modifications to existing buildings, land use changes or new structures on property contained within the area must be submitted to a review board for approval. (Note: The landowners affected include five farmers, eight owners of private residences, and a general store owner who wants to build a supermarket on her land.)

PROPOSAL 3 Pornographic Theater Abatement (Restriction)

A group of homeowners living directly outside the "Belweather" shopping district has proposed that no theater located with 1000 yards of a residence be allowed to exhibit an X-rated movie. Currently, five movie theaters show X-rated movies. Two of them would have to close down operations if the ordinance passes. Each does a very good business.

PROPOSAL 4 Architectural Park

To create an area within the City of Zonia for modern architecture, an "Architectural Park" will be zoned. All proposed building plans must be submitted to the Zonia Architectural Review Board to determine whether the design matches the "consistently high architectural standards" of other houses in the area. (Note: Two property owners already want to build structures in the area to be zoned which look like ancient Egyptian temples.)

SEARCH AND SEIZURE IN WASHINGTON

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law including a lesson designed by UPS Law Students Renee Alsept and Steve Mueller.

Historical Period: Present

Class Periods: 2-3

Use of Outside Resource Persons:

A police officer could describe how searches are carried out and could debrief the questioning of Officer Snowqualmie.

An attorney who practices in criminal law could assist in presenting the law on searches and seizures.

A magistrate (judge) could describe how he or she determines whether or not probable cause is present, and could bring in samples from the court. Additionally, the magistrate could comment on recent cases in the local area where evidence was thrown out because of faulty searches.

Objectives:

1. Students will list the U.S. Constitution and Washington State Constitution as sources for law regarding search and seizure.
2. Students will identify the competing values of police powers to enforce the law versus privacy interests of individuals underlying search and seizure law.
3. Students will identify legal requirements of searches with and without a warrant.
4. Students will define the exclusionary rule.
5. Students will recognize their own views on the balance between privacy and efficient police work.

Materials:

Handouts 1, 2, 3 and 4

Procedures:

1. Enter class and request that a particular student (with whom you have discussed this before class) remove his or her wallet and bring it up to the front of the class. Indicate to the entire class that you are going to demonstrate something by inventorying the entire

contents of the wallet in front of the class. (Alternatively, students could be ordered to remove their shoes and place them in the front of the room.)

The student should react negatively to the idea but submit to compulsion. Before the wallet is inventoried (or the shoes are removed), stop and ask the students what they are feeling. The anger, resentment, etc. that some of them may be feeling is due to a perceived invasion of privacy. Identify that today's lesson is about privacy and the ability of the government to interfere with an individual's privacy.

2. Draw a scale on the board with <u>privacy</u> on one side and <u>government enforcement of laws</u> on the other.

Tell students that the subject of search and seizure requires a balancing between the two.

3. Ask students what a "search" is.

Define it as a prying into hidden places for something that is concealed and does not include observing that which is open to view. Check for understanding by presenting these hypotheticals:

a. Is it a search when a police officer notices marijuana growing in Tom's front yard? (No, since it was open to view.)

b. Is it a search when a police officer listens to Mary's conversations by using an electronic device? (Yes, since the officer is prying into a hidden place.)

4. Ask students what a "seizure" is.

Define it as the taking of possession of property from its owner and the taking into custody of another, depriving him or her of freedom of movement. Check for understanding by presenting these hypotheticals:

a. A police officer cuts down what she suspects is a marijuana plant growing in Tom's front yard to take it to the lab for testing. Is this a seizure? (Yes, even though it was not a search since it was open to view, it is a seizure since it is taking into possession Tom's property where the officer has no legal right to be.)

b. Jane is arrested and taken to jail. (Yes, this is a seizure.)

5. Pass out Handout 1, and have students follow.

Explain that search and seizure law is governed by two Constitutions: the U.S. and Washington Constitutions. Have students in pairs underline the important words in the Fourth Amendment.

6. Put the underlined sentence on the board or overhead and explain that through court interpretations the Fourth Amendment bans unreasonable government searches and seizures of areas that fall within a legitimate expectation of privacy.

7. Define each of these phrases, giving examples:

Expectation of privacy means what individuals consider private. These expectations vary from person to person. One individual may feel comfortable having someone else look through their wallet while another may not want anyone looking inside.

Legitimate means what society is willing to protect. So a person may feel that the trash they set out on the street is private, but according to the U.S. Supreme Court, society is not willing to protect that expectation. Even though the trash may have bills, medical papers, personal letters, the U.S. Supreme Court has said that the expectation of privacy in the trash is not legitimate. Therefore the police may search through the trash which is in a public area without violating the federal constitution. (The Washington State Supreme Court is currently deciding the case of State v. Boland to determine whether the state constitution protects a privacy interest in trash put out in a public area for pick-up.)

The search must be conducted by the **government** and this includes anyone who is an agent of the government.

Whether or not a search is or is not **unreasonable** depends upon the facts of each case. As a general rule, searches with warrants are reasonable and searches without warrants are unreasonable unless they fall within one of the stated exceptions to the warrant requirement.

The Washington Constitution also provides for protection from police searches in Article 1, Section 7. Have students read the State Constitutional protection of privacy in Handout 1 and underline the important words.

Explain that in many cases, this right of privacy in the State Constitution gives people in Washington greater protection from searches and seizures than the Fourth Amendment to the U.S. Constitution. This means that police are more limited in what they can search in Washington. For example, the police have to put forward more information to a judge to convince the judge that the officer should be able to search based on an informant's tip. As another example, under the Fourth Amendment police can find out the phone numbers you dialed on your telephone without a search warrant, but the state constitution is violated when police obtain this information without a search warrant or subpoena.

8. Ask students who can issue search warrants in Washington.

Search warrants must be issued by a "magistrate," which includes judges from the supreme court, court of appeals, superior court and

district court, court commissioners, as well as all municipal officers who have the power of district court judges.

9. Inform students that Washington permits oral search warrants in which the person asking for the warrant makes a sworn statement over the telephone to the judge.

If satisfied that the sworn-to facts establish probable cause, the judge will issue an oral warrant. The judge must record these telephone calls.

10. Tell students that the Fourth Amendment requires that warrants issue "upon Probable Cause." Ask students what that means.

This means that magistrates considering whether or not to permit the search must have a sufficient amount of information before issuing the warrant. If the information is not enough to amount to probable cause, the magistrate must deny the request for a warrant.

11. Draw this line graph on the board to demonstrate probable cause.

Scale that measures how much information and what kind of information.

0 50% 100%

No Info	Hunch	Suspi-cion	Reas. Grds	Prob. Cause	Prepond. of Evid.	Clear & Convin-cing	Beyond Reas. Dbt.

10. Explain each entry on the chart.

No Information means that the officer doesn't know anything about the location of evidence linked to a crime.

Hunch means that the officer has a gut feeling that something is not right, but the officer cannot point to any specific facts; it is something like intuition.

Suspicion means that the officer knows a minor fact, or has some larger fact that came from an unknown or unreliable source that suggests that evidence may be located somewhere. For instance, an officer stops a person on the street to ask a question and the person quickly puts a hand in a pocket. Or, the officer may find a piece of paper on the street which says that a particular person is selling drugs.

Reasonable Grounds (also called Reasonable Belief and Reasonable Suspicion) means that the officer knows several minor facts or a larger fact, or a large fact from a source of unknown reliability that points to a particular person engaging in some criminal activity. For example, a

teacher standing outside a girls' lavatory smells cigarette smoke coming from the lavatory. The only two girls in the lavatory then leave together. The teacher has reasonable grounds, but not probable cause, to believe the girls have cigarettes in their purse (a violation of a school rule).

Probable Cause means that an officer has enough evidence to lead a reasonable person to believe that the items searched for are connected with criminal activity and will be found in the place to be searched. For example, an increase of 200 to 300 percent in power consumption within a building is not enough alone to establish probable cause to believe that a drug growing operation is underway inside. However, such an increase with other suspicious facts including an anonymous phone call claiming that people at a certain place are growing drugs is enough for probable cause and a search warrant.

Preponderance of the Evidence is the amount of evidence needed to be successful when suing in a civil case. It means that evidence must be "more likely than not," more than 50% in order to win.

Clear and Convincing Proof is a higher amount of proof required in order to win in certain civil cases, for instance when the rights of a parent are to be terminated.

Beyond a Reasonable Doubt is the highest amount of proof and is required to convict a person of a criminal charge.

11. Explain to students that searches conducted with a warrant in Washington must be done within a certain time: within ten days for most warrants and three days for search warrants for controlled substances.

However, execution of the warrants in Washington are not restricted to daytime hours.

12. Explain the knock and announce law in Washington.

The Knock and Announce law applies to officers executing both arrest and search warrants. Unless there is an emergency, police are required to identify themselves as police and that they are there to execute a warrant before entering private premises. Also they must give notice before they pass through doors inside a house.

If the occupants refuse to admit them, the police have the right to forcibly enter and conduct the search. Ask students what they think the purposes of the law are: to reduce the possibility for violence; to prevent physical destruction of property; and to protect privacy.

13. Explain that the officer taking property under the warrant is required to give to the person who was searched a copy of the warrant and a receipt for the property taken.

If no one is present for the search, the officer may post a copy of the warrant and receipt. The officer then makes an inventory of the

property in the presence of another (may be a police officer) and reports its findings.

14. Remind students of the rule that searches with a warrant are presumed to be reasonable (and therefore legal), while searches without a warrant are presumed to be unreasonable (and therefore illegal) unless they fall within a specific exception to the search warrant requirement.

15. Brainstorm with students the exceptions to the search warrant requirement in Washington.

After the brainstorm, pass out Handout 2. Go through each one, explaining any vocabulary words which students may not know.

Search Incident to a Lawful Arrest permits police to search a person and the area within the person's immediate control just after the person is arrested. The arrest which takes the person into custody must be lawful and the area searched must have a limited length and scope.

Immediately after a suspect has been arrested, handcuffed and placed in a patrol car, officers are allowed to search the vehicle for weapons or evidence which can be destroyed. However, if they find a locked container or glove box, they may not unlock or search them without a search warrant. This is the rule under the State Constitution.

Searches Conducted in Good Faith and Without Purpose of Finding Evidence permit officers to search without a warrant. For example, to help someone who has been injured, to find a bomb that is about to explode, to identify an unconscious person.

Plain View includes three searches (1) when an officer sees an item that is exposed to public view in a public place (also called open view); (2) when an officer enters into a constitutionally protected area (like a home) and sees a clearly exposed object; (3) when an officer standing in a place s/he has a right to be sees an object that is located inside a constitutionally protected area (like into living room through a front window from the sidewalk).

To be a plain view search, the police must have a right to be where they are, they must find the incriminating evidence accidentally, and they must immediately realize that the object they see is evidence.

The plain view doctrine has been extended to "plain hearing" and "plain smell." Plain hearing allows officers to listen to conversations taking place in private areas. So if officers can hear a conversation in a motel room next to the suspects, they have a right to listen. Police may seize an object based on its odor when its odor establishes probable cause. Police can seize marijuana based on its odor coming from a car.

Consent Searches require that the consent be voluntary, be given by a person with authority to consent and be limited to the scope of the consent given. A parent may consent to a search, whether or not the child is a minor, if the child is living with the parent. The defendant's

child, in some circumstances, may consent to the search of the parent's home.

Consent is sometimes given by statute. For example, a person driving a motor vehicle in Washington gives implied consent to a blood test if he or she is arrested for vehicular homicide.

Stop and Frisk allows an officer to forcibly stop a person when the officer has a reasonable suspicion of criminal activity. The officer may forcibly prevent the individual from leaving and may ask questions, however, the police cannot force the individual to answer. Failure to give information cannot form the basis of an arrest. Also, a pat down search may be done for weapons if the officer reasonably believes that this specific suspect is armed and presently dangerous.

When an officer makes a lawful investigative stop of a person in a vehicle and has objective reasons for believing that there may be a weapon in the vehicle, the officer may make a limited search of the passenger compartment for weapons within the reach of the suspect and any passengers.

Exigent Circumstances applies when police have probable cause but do not get a warrant because of the need for an immediate search or seizure. This might be because delay could result in loss of the evidence, escape of the suspect, or harm to the public or police.

Hot Pursuit is one of the exigent circumstances in which police can make a warrantless entry into the suspect's house. Hot pursuit occurs if police attempt to arrest the suspect in a public place, the suspect retreats into the home, and the police reasonably fear that delay will result in escape, injury or destruction of evidence.

Vehicles are subject to special search rules because there is less expectation of privacy in a vehicle and because they can move easily. Warrantless searches of vehicles and unlocked compartments are allowed immediately following the arrest of the occupant of the vehicle.

Unless there is a valid spot check program, police may only stop a motor vehicle to check for violations when they have a reasonable suspicion of unlawful activity. Washington Supreme Court ruled a checkpoint program to determine if drivers were intoxicated violated the federal and state constitutions.

Schools are considered a special environment in search and seizure law. Students can be searched with less than probable cause: when officials have a reasonable suspicion that a student has violated a school rule or law. To determine whether student searches are reasonable, the Washington court announced these criteria: the child's age, history and school record, the prevalence and seriousness of the problem in the school to which the search is directed, the need to make the search without delay and the reliability of the information used to justify the search.

There must be reasonable suspicion directed to each student who is searched. For example, a general concern about drugs will not justify searches of all students.

International Borders are another special environment. Routine brief questioning of travellers at permanent checkpoints to identify illegal aliens is permitted and searches based on reasonable suspicion are permitted.

Administrative Searches, for example, for housing or fire code violations do not require warrants when made in accordance with a comprehensive legislative plan.

16. Ask students what happens when a search is conducted that turns up evidence of a crime but that violated either the U.S. or Washington State Constitution. Explain that generally, the exclusionary rule applies. The exclusionary rule means that the evidence which was found in the illegal search will not be allowed in court to prove that the defendant committed the crime. Also, any evidence which the police were lead to as a result of the illegally seized evidence will be kept out of court.

For example, the police search Jake's home in what turns out to be an illegal search. The police take a notebook that indicates who the drug buyers are by name and address, including a woman named Daisy Tufts at a given address, who bought a pound of cocaine on the date the police searched and found the notebook. The police may not use this notebook against Jake or the information against Daisy Tufts in a criminal case against her, since they obtained the notebook and Daisy Tufts information as a direct result of their illegal search. If the police independently get information about Daisy, they may use the new evidence against her in court.

Some exceptions to the exclusionary rule have developed. For example, if the evidence would have been found anyway despite the illegal search, the evidence may be admitted. This is called the inevitable discovery exception.

17. Pass out Handout 3 and have students in small groups answer the questions.

Answers to Handout 3

a. What is the purpose of the law?

The purpose of the law is to help school officials in maintaining order and discipline and to protect students from exposure to illegal drugs, weapons and contraband.

b. Do students have a legitimate expectation of privacy in their school lockers? Give your reasons.

The statute specifically denies that such an expectation of privacy exists.

c. When can a school official search a student locker?

The School official can search all lockers at any time. Individual lockers still require reasonable suspicion. However, specific containers in the locker may not be opened unless there is reasonable suspicion that a student has violated the law or a school rule and evidence will be found in the container.

d. When can a school official search a student's bookbag?

The official must have reasonable suspicion that the student has some item in violation of a law or school rule. Additionally, the search must be conducted in a reasonable way to obtain the item and the search of the bookbag may not be excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction.

e. When can a school official require a student to undress to find hidden contraband?

The statute makes it clear that school officials may not conduct a strip search of students.

f. Do you agree with this statute? Give your reasons.

This calls for opinions. Students may suggest that the law may not be constitutional regarding the school lockers.

18. Explain to students that when a person is charged with a crime and the prosecutor plans to use evidence which the defendant claims was obtained illegally, there will be a suppression hearing held before the trial, without a jury, in which the judge will decide whether or not the evidence can be used at trial.

19. Role play a cross-examination of a police officer by the defendant's lawyers(s) in small groups.

Pass out the first page of Handout 4 to all students, read aloud the directions and then have students take turns reading aloud the Statement of Facts. Divide the class into groups of two or three and assign one to act as the police officer and one or two as lawyers. The officer should get one additional sheet, the "Secret Sheet of Facts for Officer Snowqualmie." At the end of 15 minutes of questioning, the point totals for each group should be reported to the class. As an assignment, or in class, a discussion could follow to determine whether or not, on the basis of the information obtained by the defense attorneys, the evidence should be suppressed.

If the defense counsel discovered that Officer Snowqualmie did not get Victor's consent or a warrant before searching, then the cocaine will be suppressed and not available to prove that Victor possessed/sold illegal drugs.

SEARCH AND SEIZURE LAW UNDER U.S. AND WASHINGTON CONSTITUTIONS

UNITED STATES CONSTITUTION, FOURTH AMENDMENT

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 seized.

a. Underline the important words above in the Constitution.

b. The Fourth Amendment bans

(1) unreasonable searches and seizures

by the government

(2) of areas that fall within a legitimate

(3) expectation of privacy.

WASHINGTON STATE CONSTITUTION
ARTICLE 1, SECTION 7

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

a. Underline the important words above in the Washington State Constitution.

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EXCEPTIONS TO THE SEARCH WARRANT REQUIREMENT

Search Incident to a Lawful Arrest permits search of the arrested person and the area with the person's immediate control, provided the custodial arrest is lawful and the area searched is restricted in time and place.

Immediately after a suspect has been arrested, handcuffed and placed in a patrol car, officers are allowed to search the vehicle for weapons or evidence which can be destroyed. However, if they find a locked container or glove box, they may not unlock or search them without a search warrant. This is the rule under the State Constitution.

Searches Conducted in Good Faith and Without Purpose of Finding Evidence permit officers to search without a warrant. For example, to help someone who has been injured, to find a bomb that is about to explode, to identify an unconscious person.

Plain View includes three searches (1) when an officer sees an item that is exposed to public view in a public place (also called open view); (2) when an officer enters lawfully into a constitutionally protected area (like a home) and sees a clearly exposed object; (3) when an officer standing in a place s/he has a right to be sees an object that is located inside a constitutionally protected area (like into living room through a front window from the sidewalk).

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for weapons if the officer reasonably believes that this specific suspect is armed and presently dangerous.

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There must be reasonable suspicion directed to each student who is searched. For example, a general concern about drugs will not justify searches of all students.

International Borders are another special environment. Routine brief questioning of travellers at permanent checkpoints to identify illegal aliens is permitted and searches based on reasonable suspicion are permitted.

Administrative Searches, for example, for housing or fire code violations do not require warrants when made in accordance with a comprehensive legislative plan.

THE STATE LAW ON SEARCHES IN SCHOOLS

Directions: In 1989, the Washington passed a law on school searches. Read what the law says and answer the questions which follow.

R.C.W. 28A.67 SCHOOL OFFICIAL SEARCHES OF STUDENT LOCKERS

The legislature finds that illegal drug activity and weapons in schools threaten the safety and welfare of school children and pose a severe threat to the state educational system. School officials need authority to maintain order and discipline in schools and to protect students from exposure to illegal drugs, weapons, and contraband. Searches of school-issued lockers and the contents of those lockers is a reasonable and necessary tool to protect the interests of the students of the state as a whole.

No right nor expectation of privacy exists for any student as to the use of any locker issued or assigned to a student by a school and the locker shall be subject to search for illegal drugs, weapons, and contraband as provided for by this statute.

A school principal, vice principal, or the principal's representative may search a student, the student's possessions, and the student's locker, if the principal, vice principal, or principal's representative has reasonable grounds to suspect that the search will yield evidence of the student's violation of the law or school rules.

Except for strip and body cavity searches, the scope of the search is proper if the search is conducted as follows:

(1) The methods used are reasonably related to the objectives of the search; and
(2) Is not excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction.

A principal or vice principal or anyone acting under their direction may not subject a student to a strip or body cavity search. In addition, the school principal, vice principal, or principal's representative may search all student lockers at any time without prior notice and without a reasonable suspicion that the search will yield evidence of any particular student's violation of the law or school rule.

If the school principal, vice principal, or principal's representative, as a result of the search, develops a reasonable suspicion that a certain container in any student locker contains evidence of a student's violation of the law or school rule, he or she may search the container if the search is conducted as described above.

Questions:

a. What is the purpose of the law?

b. Do students have a legitimate expectation of privacy in their school lockers? Give your reasons.

c. When can a school official search a student locker?

d. When can a school official search a student's bookbag?

e. When can a school official require a student to undress to find hidden contraband?

f. Do you agree with this statute? Give your reasons.

WHAT DOES THE OFFICER KNOW?[1]

Directions: One person will be the defense attorney and the other will be the police officer who arrested your client. If there are three of you, two will be attorneys. Each of you will read the statement of facts below. Only the police officer will read the "Secret Sheet of Facts."

The attorney(s) will then have fifteen minutes to question the officer, who is an "adversarial witness." (An adversarial witness is a witness who does not want to respond to your questions. Often, an adversarial witness has been called by the other side.)

The police officer's Secret Sheet of Facts contains five facts. The police officer does not want to tell these facts, but cannot lie and must answer the question. The attorney(s), of course, realize that the police officer will not tell everything she/he knows, but must try to ask the appropriate question. The police officer begins with 20 points - 4 points per fact. For every question from which the attorney learns facts from the officer, the officer must give up points. Sometimes the police officer will only give up a part of a fact. If this happens, the police officer must "honestly" decide how many points to give the attorney(s).

STATEMENT OF FACTS

Victor Enumclaw was arrested in his house after a pound of cocaine was found in his garage under the lawnmower. Officer Snowqualmie will testify on direct examination that:

a) She/he received information that Victor was dealing drugs out of his house;

b) On several occasions she/he has seen Victor on the street and he appeared intoxicated;

c) On the day of the arrest, she/he was watching Victor's house and saw him make several trips to the garage and that after each trip he met somebody on the street for a short conversation;

d) After Victor's third trip to the garage, Officer Snowqualmie walked over to the garage, talked to Victor briefly, and then walked into the garage and searched until the cocaine was found.

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[1] Developed by Steve Mueller and Renee Alsept, UPS Law Students and modified by UPSICEL.

SECRET SHEET OF FACTS FOR OFFICER SNOWQUALMIE ONLY

Directions: Officer Snowqualmie should keep track of the points. As the defense attorney(s) ask questions and the Officer gives up the answer, the Officer should write down how many points the attorney(s) won. At the end of the 15 minutes of questions, the total points earned by the attorneys should be filled in at the bottom.

Officer Snowqualmie would also testify if asked that:

POINTS VALUE	POINTS WON BY COUNSEL	
4	_____	a) The information she/he received came from an anonymous letter in handwriting she/he did not recognize;
4	_____	b) On the occasions Officer Snowqualmie thought Victor was intoxicated, she/he also smelled alcohol on Victor's breath;
4	_____	c) Even though Victor was going back and forth to the garage, Victor was never observed carrying anything nor did she/he see Victor pass anything to the people on the street;
4	_____	d) When Officer Snowqualmie talked to Victor, she/he asked to search the garage and Victor said nothing in response;
4	_____	e) When Officer Snowqualmie searched the garage, she/he did not have a warrant.
20	_____	TOTAL

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BILL OF RIGHTS FOR YOUTH

Source:

Adapted by University of Puget Sound Institute for Citizen Education in the Law from DCI/UNICEF Briefing Kit on the Convention on the Rights of the Child and from 103 Intercom, published by Global Perspectives in Education.

Historical Period: 1948 to present

Class Periods: 2

Use of Outside Resource Persons:

A representative of the United Nations Agency - Seattle could make a presentation on the Convention on the Rights of the Child and update what countries have ratified the convention.

A representative of children's services at the State Department of Social and Health Services could comment on the condition of children in the State of Washington.

Objectives:

1. Students will define "human rights."
2. Students will consider whether youth should have special rights, and if so, what they should be.
3. Student draft a Bill of Rights for Youth.
4. Students will compare their draft bill of rights with United Nations Convention on the Rights of the Child.

Materials:

Handouts 1 and 2

U.S. Constitution (optional)

Washington Constitution (optional)

Procedures:

1. Introduce the idea of "human rights" by brainstorming a definition:

Human rights are the fundamental freedoms and protections to which all human beings are entitled simply because they are human. Human rights are not created by law but are part of every person; they are not granted by the state or governments; a person is born with them.

Explain that human rights mean that all human being are born free and equal in dignity and rights, that they are endowed with reason and conscience and that they should act towards one another in a spirit of brotherhood.

2. Put on the overhead, or pass out Handout 1.

Explain that in 1948 these concepts were made part of the Universal Declaration of Human Rights. Have students rank these rights from most important to least important and give reasons for their answers. Debrief by getting student opinion. Ask students if they believe that these rights are provided in the United States, in Washington State. Students may examine the U.S. Constitution and the Washington Constitution to determine which of these rights are provided for.

This Declaration also affirms the need for special rights for children. Today's lesson will be to develop such a Bill of Rights for Children. Ask students why children should get special rights. The general rule is that children are given the same basic rights that apply to adults. However, because of their physical and mental immaturity, children are especially vulnerable, essentially dependent and developing human beings. They require special rights to protect them and to meet their unique needs. Because of their immaturity, children must postpone exercise of some civil rights until they become adults.

Students should consider at what age to provide these special rights. The U.N. Convention on the Rights of the Child defines a child as one under the age of 18 or one who has reached majority before that age under the laws of that country (for instance, in Washington State, persons under 18 may be emancipated through financial independence, military service, or marriage).

3. Explain to students that they will work later in the class in small groups to draft rights for children.

4. To help students focus on what kinds of rights might be important to consider, set up this framework of five topic areas on the board or overhead.

Civil Political Economic Social Cultural

Civil Rights are personal rights which exist between the individual and the government. Civil rights are limits on the government's power over the individual. The civil right to life means that the government should not kill the individual. Other examples of civil rights include freedom of speech, freedom from torture, right to a fair trial, the right to be presumed innocent until proved guilty, freedom of movement within one's own country and the right to leave and enter one's own country.

Ask if a parent prohibited a child from traveling, would the parent have violated the child's civil rights. (The answer is No.) Why? Because civil rights apply to governmental action and the parent is not the government.

Political rights are those rights of citizens to form and administer government, like the right to elect the government. By their nature children have no political rights.

With economic, social and cultural rights, the government is specifically required to create conditions suitable for enjoyment of political and civil rights. Nations have a duty to create favorable conditions. It is extremely important to have food, clothing, shelter and good health in order to lead a full life on earth. Civil rights such as freedom of religion, of movement and of expression are worthless if those who try to exercise them are poor, hungry and without good health: they will soon die and be unable to use these rights.

Economic rights have to do with money and government benefits.

Social rights have to do with health and relations to family members.

Cultural rights have to do with education, appropriate information, recreation and leisure, artistic and cultural experiences.

Some people also claim that there is another set of rights, called group or collective rights, which include the right of peoples to develop and maintain their culture within a larger community and a collective right to peace.

Under each right, students should think about the 3 P's: provision, protection and participation. In other words, the right to possess, receive or have access to certain things or services; the right to be shielded from certain acts and practices; and the right to do things, express oneself and have an effective voice in matters affecting one's life.

6. Pass out Handout 2 and have students read through the 18 problems listed on the sheet. Have students add other problems that they think children face that should be listed.

7. Assign students in groups of 5 to review a set of three problems (e.g., group 1 can review problems a - c; group 2 can review problems d - f, etc.) Each group should add at least one other problem to the list. Then in groups they should write out a right that would address each problem mentioned.

Explain that in 1989, the United Nations adopted the United Nations Convention on the Rights of the Child.

20 nations must ratify the Convention for it to become international law. As of June 1990, three countries had ratified the convention: Haiti, Ghana, and Vietnam. The United States has not yet ratified the Convention. Once the Convention becomes law, the nations which signed it agree to comply with this international law. This means that the government will review and revise laws that conflict with these rights, and will give children the right to sue in court to get these rights. Usually a monitoring device is included.

8. Pass out Handout 3 so that students may match what they developed with the Convention. Students are not expected to produce the same language but instead to state a concept to protect the problem described. They may be interested to see how the Convention addresses these same problems.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (SUMMARY)

All human beings have the right:

* **to life, liberty and the security of person**
* **to freedom from slavery and discrimination**
* **to a family and to marry**
* **to own property**
* **to a nationality and to participate in government**
* **to education, work, rest and leisure**
* **to an adequate standard of living and security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control**

RIGHTS OF THE CHILD

Directions: After reviewing each of the problems listed, you will be assigned in a small group to write out a right to respond to this problem. The first problem is done for you as an example. In addition, your group should develop one problem of children which is not mentioned here and develop a right to respond to that problem.

Problems:

a. Families and other adults have a duty to care for the child - yet child abuse and exploitation are increasing at an extremely fast rate. Over 1.9 million children were reported abused and neglected in North America in 1986--an increase of more than 50% since 1981.

Sample answer: The Government shall protect children from all forms of physical and mental abuse, neglect or exploitation, including sexual abuse, child prostitution and participation in child pornography, and all other forms of exploitation that hurt the child. The government shall provide preventive and treatment programs.

b. Drug-using mothers are giving birth to over 3,000 drug addicted babies every year.

c. More than 38,000 children die every day due to lack of food, shelter or health care.

d. Over 11 million children in the United States have no health insurance and lack adequate access to health care.

e. There are 13 million children living in poverty in the U.S.; an estimated half million children go to bed hungry.

f. An any given time in the U.S., there are two million couples trying to adopt a child. Yet while there are only 50,000 children available for adoption, there are as many as 276,000 children in foster care, some of whom spend up to six years in this situation.

g. The great demand for young healthy children for adoption has created a high priced, illegal traffic in children. Babies have been stolen from their parents in poor countries and sent to other countries to meet this demand.

i. There is growing concern over the number of children who are being abducted from the lawful custody of one parent by the other and taken out of the country. The parent abducting the child may seek a new custody hearing in the new country. Few countries have demonstrated their willingness to resolve these conflicts in the best interests of the child.

j. Disabled children are discriminated against everywhere.

k. Child prostitutes, readily available from among the growing number of street children, are forced into this type of slavery by poverty. They remain in demand throughout both the industrialized and developing worlds.

l. Over 100 million children throughout the world are forced to work under hazardous and often fatal conditions; many are employed under slave-like conditions for no pay.

m. Children forced to work are deprived of their education and leisure time and are often separated from their families.

n. 16- and 17 year-old children are being sent to death row in the United States.

o. Children detained in jail with adults are many times abused.

p. In the United States, children as young as 10 or 11 are being introduced to crack, a particularly addictive form of cocaine.

q. Children need time to play in order to develop properly.

r. In almost every society, there are examples of children who have peacefully assembled to make their views known being beaten or shot.

U.N. CONVENTION ON THE RIGHTS OF THE CHILD

The following statements are taken from the Articles of the U.N. Convention on the Rights of the Child. They are provided to demonstrate how the United Nations addressed the same problems that your group has worked with.

a. Families and other adults have a duty to care for the child - yet child abuse and exploitation are increasing at an extremely fast rate. Over 1.9 million children were reported abused and neglected in North America in 1986--an increase of more than 50% since 1981.

The Government shall protect children from all forms of physical and mental abuse, neglect or exploitation, including sexual abuse, child prostitution and participation in child pornography, and all other forms of exploitation that hurt the child. The government shall provide preventive and treatment programs.

b. Drug-using mothers are giving birth to over 3,000 drug addicted babies every year.

The government shall ensure that the child is protected from the illegal use of narcotics and psychotropic substances, and prevent the child from being used in the illegal production and trafficking of such substances.

c. More than 38,000 children die every day due to lack of food, shelter or health care.

Every child has the right to life, and the Government shall ensure to the maximum extend possible the survival and development of the child.

d. Over 11 million children in the United States have no health insurance and lack adequate access to health care.

The child has a right to the highest attainable standard of health and to medical and rehabilitation facilities. The government shall take appropriate measures to diminish infant and child mortality; ensure the provision of necessary medical assistance and health care; combat disease and malnutrition; ensure health care for expectant mothers; develop preventative health care and family planning education and services. The Government shall take measures to abolish traditional practices prejudicial to the health of children.

e. There are 13 million children living in poverty in the U.S.; an estimated half million children go to bed hungry.

Every child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. The child's parents or guardians have the primary responsibility to secure the

conditions of living necessary for the child's development; the State shall assist parents to implement this right and, in case of need, provide assistance with regard to nutrition, clothing and housing. The child has the right to benefit from social security.

f. An any given time in the U.S., there are two million couples trying to adopt a child. Yet while there are only 50,000 children available for adoption, there are as many as 276,000 children in foster care, some of whom spend up to six years in this situation.

A child temporarily or permanently deprived of his or her family environment, or who cannot be allowed to remain with the family in his or her own best interests, shall be entitled to special protection and assistance and alternative family care. The State shall facilitate and regulate the process of adoption and shall prevent the abduction, sale, and trafficking of children.

g. The great demand for young healthy children for adoption has created a high priced, illegal traffic in children. Babies have been stolen from their parents in poor countries and sent to other countries to meet this demand.

(Same answer as "f" above)

i. There is growing concern over the number of children who are being abducted from the lawful custody of one parent by the other and taken out of the country. The parent abducting the child may seek a new custody hearing in the new country. Few countries have demonstrated their willingness to resolve these conflicts in the best interests of the child.

The child has the right to leave or enter any country and to maintain regular contact for family reunification. The government shall try to combat the illicit transfer and non-return of children abroad.

j. Disabled children are discriminated against everywhere.

A mentally or physically disabled child has the right to a full and decent life in conditions which ensure dignity, promote self-reliance and facilitate active participation in the community. The government shall provide special care, free of charge, whenever possible to ensure that the disabled child receives education, training and services leading to the fullest possible social integration and individual development.

k. Child prostitutes, readily available from among the growing number of street children, are forced into this type of slavery by poverty. They remain in demand throughout both the industrialized and developing worlds.

(Same answer as "a" above)

l. Over 100 million children throughout the world are forced to work under hazardous and often fatal conditions; many are employed under slave-like conditions for no pay.

The child has a right to be protected from economic exploitation and from performing any work that may interfere with the child's education, be harmful to his or her health or physical, mental, spiritual, moral or social development. The government shall take legislative and administrative measures to provide for minimum ages for employment, regulation of hours and conditions of employment, and appropriate penalties for the effective enforcement of these regulations.

m. Children forced to work are deprived of their education and leisure time and are often separated from their families.

(Same answer as "l" above.)

n. 16 and 17 year-old children are being sent to death row in the United States.

The government shall ensure that children are protected from torture or other cruel, inhuman or degrading treatment; capital punishment or life imprisonment; and unlawful or arbitrary deprivation of liberty.

o. Children detained in jail with adults are many times abused.

Accused children have the right to be treated with dignity, presumed innocent until proven guilty in a prompt and fair trial and detained separately from adults. They have a right to legal or other assistance and to maintain contact with family. Alternatives to institutional care shall be made available.

p. In the United States, children as young as 10 or 11 are being introduced to crack, a particularly addictive form of cocaine.

(Same as answer "b" above.)

q. Children need time to play in order to develop properly.

The child has a right to rest and leisure, to engage in play and recreational activities and to participate freely in cultural life and the arts. The government shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

r. In almost every society, there are examples of children who have peacefully assembled to make their views known being beaten or shot.

The child has the right to express an opinion freely and have that opinion heard; to seek, receive and import information and ideas of all kinds, through any media; to freedom of association and peaceful assembly. The government recognizes the importance of the mass media

and shall ensure that the child has access to information from a diversity of national and international sources.

NO VEHICLES IN THE PARK

Source:

Adapted by University of Puget Sound Institute for Citizen Education in the Law from Street Law: A Course in Practical Law.

Historical Period: Present

Class Periods: 1

Use of Outside Resource Persons:

A member of the city or county council or a staff member could attend to assist in describing the work process of the council.

Objectives:

1. Students will identify the purpose and function of law.
2. Students will discover the intent of lawmakers.
3. Students will analyze practical applications of a law.
4. Students will appreciate that laws may be subject to different interpretations.

Materials:

Handout 1

Procedures:

1. Explain to students that they are all on the city council of the town of Beautifica and the city council makes laws, called ordinances, for their town. Discuss the five premises of laws and list them on the board:

1) Purpose and function of a law: "What is it designed to do?"

2) The meaning of intent: "What was the legislature trying to do in passing the law?" Intent is a state of mind existing at the time a person takes an action. Intent is the purpose for some action or what the person desired to do.

3) Practical application of the law: "How will the law be applied?"

4) Text of the law: "What does the law actually say?"

5) Different interpretations of the law: "How will the law be interpreted?"

2. Pass out copies of "No Vehicles in the Park." Read the story aloud as the class follows (or have students read sections.) After completing the story, tell the students that there have been requests for exceptions to the law. They must vote "yes" or "no" to decide if they will allow any exceptions to the law. The majority vote will decide the exception.

3. To begin, discuss the law in terms of the five premises. Review the definition of a vehicle: "Something on wheels that carries people or things."

4. Read each exception to the law and have the "council" vote on the exceptions. To get discussion started ask some of the questions related to each exception. Take a vote by having all for "yes," stand up and be counted, and then sit. Then have all for "no," stand up, be counted, and then sit.

Answers to Handout 1

a. John Smith lives on one side of the town and works on the other side. He will save 10 minutes if he drives through the park.

--Will you allow John to drive through the park? Why or why not?

--Is it important for John to be at work on time?

--Wouldn't it save energy and gas if he is allowed to go through the park?

--Suppose he will lose his job if he is late one more day and he overslept?

--What might happen if you allow only John to drive through the park?

b. There are many trash barrels in the park so that people may deposit all litter, thereby keeping the park clean. The sanitation department wants to drive their trucks in to collect the trash.

--Will you allow the sanitation department to drive through the park? Why or why not?

--Will people come to a dirty park?

--Isn't it unhealthy to allow trash to pile up in the park?

--How will that trash get removed if the sanitation trucks cannot come into the park?

--What other alternative trash control methods do you have?

c. An ambulance has a dying car accident victim in it and is racing to the hospital. The shortest route is through the park.

--Will you allow the ambulance to drive through the park? Why or why not?

--Suppose that, if the ambulance is not permitted to cut through the park, the patient will die?

--Does it make any difference if there are many emergencies in Beautifica so that ambulances would cut through the park on a frequent basis?

--If you decide to let emergency vehicles in the park, how do you define an emergency vehicle?

d. Two police cars are chasing a suspected bank robber. If one cuts through the park, she can get in front of the suspect's car and trap him between the patrol cars.

--Will you allow the police car to drive through the park? Why or why not?

--What if the robber had already shot an innocent bystander?

--Would it make any difference if this is the only opportunity for the police to catch him?

--Does the police car qualify as an emergency vehicle? Why or why not?

e. Some of the children who visit the park want to ride their bicycles there.

--Will you allow the children to ride their bicycles in the park? Why or why not?

--Would it matter that the children used their bicycles as transportation to the park? Why or why not?

--Would it matter if several children's bikes had been stolen from the bike rack at the entrance to the park?

--Would it matter if there was a special bike path in the park?

f. Some handicapped persons in motorized wheelchairs want to use the park.

--Will you allow persons in wheelchairs to use the park? Why or why not?

--How else would these persons be able to use the park?

g. Mr. Thomas wants to take his baby to the park in his jogger baby stroller. This stroller allows Mr. Thomas to jog or run quite fast at the same time he is pushing the stroller.

--Will you allow the jogger baby stroller in the park? Why or why not?

--What about other baby strollers?

--Wouldn't it be unfair to parents with infants and small children not to be able to bring strollers into the park?

h. A monument to the town's citizens who died in the Vietnam War is being built. A tank, donated by the government, is to be placed in the park as part of the monument.

--Will you allow the tank to be placed in the park? Why or why not?

--Is there anything wrong with monuments being put in parks?

--Do you think the fact that this monument is a vehicle should prevent it from being placed in the park to honor the town's citizens?

5. Ask the students whether or not the law creates more situations for problems and exceptions than no law at all. Have students discuss alternatives to laws or ways to rewrite this law.

NO VEHICLES IN THE PARK

The town of Beautifica has a lovely park in its center. The city council wishes to preserve the feeling of nature, undisturbed by city noise, traffic, pollution and crowding. It is a place where people can go and find grass, trees, flowers and quiet. In addition, there are playgrounds and picnic areas. In order to make.sure the park stays as it is, the city council passed a law, called an ordinance.

At all entrances to the park, the following sign has been posted:

"NO VEHICLES IN THE PARK"

The law seems clear, but some disputes have arisen over the interpretation of the law. The definition of vehicle is "something on wheels that carries people or things." You are on the city council. Decide if you will allow these exceptions and why.

WILL YOU ALLOW THESE EXCEPTIONS?

a. John Smith lives on one side of the town and works on the other side. He will save 10 minutes if he drives through the park.

b. There are many trash barrels in the park so that people may deposit all litter, thereby keeping the park clean. The sanitation department wants to drive their trucks in to collect the trash.

c. An ambulance has a dying car accident victim in it and is racing to the hospital. The shortest route is through the park.

d. Two police cars are chasing a suspected bank robber. If one cuts through the park, she can get in front of the suspect's car and trap him between the patrol cars.

e. Some of the children who visit the park want to ride their bicycles there.

f. Some handicapped persons in motorized wheelchairs want to use the park.

g. Mr. Thomas wants to take his baby to the park in his jogger baby stroller. This stroller allows Mr. Thomas to jog or run quite fast at the same time he is pushing the stroller.

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h. A monument to the town's citizens who died in the Vietnam War is being built. A tank, donated by the government, is to be placed in the park as part of the monument.

2087: A TIME FOR SECOND-DEGREE CITIZENSHIP

Source:

Adapted by University of Puget Sound Institute for Citizen Education in the Law from Bill of Rights in Action Series, Constitutional Rights Foundation, Winter 1987.

Historical Period: Future

Class Periods: 1

Use of Outside Resource Persons:

An attorney who works with immigration or a state employee who works with future predictions in the work force could assist in describing what the future population of Washington State will look like.

An immigrant family member might make a presentation about what it is like t arrive in America and "assimilate."

Objectives:

1. Students will debate the merits of creating second-degree citizenship.

2. Students will identify pluralistic nature of society in a present and future setting.

Materials:

Handouts 1 and 2

Procedures:

1. Pass out Handout 1 which gives background information to the activity in which students will consider Second-Degree Citizenship Amendment and its impact on American life and values.

2. After students have read the material, ask the following questions.

a Why did the United States pass the Immigration Act of 2076?

b. Why do the supporters of the proposed naturalization law of 2087 want to create two classes of citizens?

c. Do you think it is right for a nation to insist on preserving the traditions and culture of a once dominant group, or should these things be allowed to change with a changing population? Explain.

d. If you were directly related to the Pilgrims, how would you feel about the Second-Degree Citizenship Amendment?

e. If you were directly related to Africans forced to work as slaves in the United States, how would you feel about the Second-Degree Citizenship Amendment?

f. If you were a person who got your citizenship in 2085, how would you feel about the Second-Degree Citizenship Amendment?

g. If you were a Native American Indian, how would you feel about the Second-Degree Citizenship Amendment?

h. If you were an immigrant to the U.S. from Mexico, how would you feel about the Second-Degree Citizenship Amendment?

3. Pass out Handout 2 and have students review it and then assign them in small groups of four to answer the questions that follow.

2087: A TIME FOR SECOND-DEGREE CITIZENSHIP

Directions: Read this handout, and then answer the questions that follow. In Handout 2, you will work in small groups to consider a constitutional amendment to create second-degree citizenship.

The year is 2087. The United States is celebrating the tricentennial of the Constitution. But, since the last time Americans held such a celebration back in 1987, the world and the United States have changed a great deal. This description of the world and the United States 200 years from now is based on projections, informed assumptions from several sources and some fantasy. Some of the population trends identified in the article are already under way. They may or may not result in the problems forecasted in this hypothetical, futuristic speculation.

The Decline of the West

Starting in the 1970s, most western democratic nations began to experience a decline in birth rates. More specifically, married couples were not even replacing themselves with two children. Consequently, each succeeding generation produced even fewer offspring. In 1985, the western democracies had a combined population of 732 million persons. Today, in 2087, about 580 million people live in the west.

While the number of people in the west was declining, the rest of the world experienced a population boom. The Soviet Union and its industrialized satellites saw their populations increase from 390 million in 1985 to 520 million in 2087. (There was an attempt in the late 1980's and 1990's for the soviet satellites and the Soviet Union to break from communism to establish democratic governments, but this was repressed in the late 1990's with a brutal use of force.)

The poor "Third World" nations exploded with people during this time: from 3.6 billion (1985) to 9.5 billion (in 2087). The "population superpowers" of today are countries like China, India and Mexico.

Currently, in 2087, the Third World and Soviet bloc countries make up 95 percent of the world's population. The west, which had 15 percent of the world's people in 1985, now has only 5 percent in 2087. The U.S. share decreased from 5 percent to .02 percent during the same period of time.

For centuries the western nations dominated world economic development, technology and commerce. Moreover, western culture and values, such as political freedom, were admired by the rest of the world. Democracy became the shining model of government. But now, in 2087, these conditions have changed.

The western democracies, with their shrinking 5 percent of the world's population, have become like medieval castles, isolated and surrounded by the forces of poverty and despair. With their declining

populations and smaller tax bases, these nations are finding it difficult to maintain large enough armies and the sophisticated weapons systems necessary to defend their ways of life.

A Changing America

America's population reached its peak in 2030 with 290 million people. After that, the population decline experienced earlier by most western European nations began to occur here. Birth rates went down because of more women working, delayed marriage, an increase in divorces, fertility problems, and many other factors.

By 2050, the number of people in the United States had decreased by 5 million and continued falling, causing some serious economic problems. The demand for new houses and other types of construction diminished. Many manufacturing and retail firms went out of business. The American automobile industry disappeared entirely. With fewer workers in the labor force to pay taxes, Social Security and Medicare benefits had to be cut for large numbers of elderly people.

Over the next 20 years, the population decrease worsened. The U.S. lost a net total of 10 million people. America also apparently entered a period of permanently low economic growth.

In 2076, the tricentennial of the Declaration of Independence, the United States made a difficult and pivotal decision. Congress passed and the president signed a law that increased the number of immigrants legally allowed into the country each year from 450,000 to 1.5 million. Americans realized that without more people, the country would become progressively weaker, both economically and militarily.

The Immigration Act of 2076 has now been operating for more than 10 years. During this time most of the new immigrants have come from third World countries, mainly Latin America. They are hardworking and have revived the country, yet many are poorly educated, unskilled and unfamiliar with the way democracy works. Because the new immigrants have a higher birth rate than native Americans, the U.S. population is beginning to grow again.

The new immigration policy is starting to change the face of America. Hispanics have replaced Afro-Americans as the largest ethnic minority in the country. They now are a majority population group in several states, including California and Washington State. Nationwide, Americans of European ancestry account for little more than 50 percent of the population. If current trends continue, this group will shortly become a minority in American society.

The changing population of America has brought about some profound consequences. The recent immigrants seem very reluctant to give up their native languages and cultures. In some cities like Miami, San Francisco and Seattle where immigrants are highly concentrated, locally elected school boards have required classes to be taught only in Spanish or Chinese. Some city councils with a majority of newly naturalized citizens have demanded that more municipal jobs go to

immigrant workers. In Congress, bills have been introduced calling for ethnic festivals to be declared national holidays. Traditional American holidays, like Thanksgiving Day and even the Fourth of July, seem to be fading in importance. America in 2087 is rapidly becoming a nation of diverse language, cultures and traditions.

The Second-Degree Citizenship Law

In 2087, a newcomer to America may apply to become a naturalized citizen after living legally in the country for five years. To become a full citizen an immigrant must pass an English literacy test as well as an exam in American history and government; then he or she must take an oath of allegiance to the United States.

Concerned that the traditional way of life of the majority population is gradually disappearing with the changing population, some members of Congress have proposed a new naturalization amendment to the United States Constitution. Basically, the amendment would create two degrees of citizens. The first-degree citizen would include all current citizens, native and naturalized. They would continue to enjoy all the traditional rights and privileges of Americans. Second-degree citizens would consist of all immigrants entering the country after passage of this amendment. They would be guaranteed many rights, but denied others such as the right to vote.

The idea behind this proposed amendment isn't entirely new to American history. At the Constitutional Convention in 1787, George Mason from Virginia said he was all for "opening a wide door for immigrants," but he did not want to "let foreigners and adventurers make laws for and govern us." Supporters of the "Second-Degree Citizen Amendment" believe that it is necessary in order to preserve American traditions and political heritage established by the Founding Fathers at Philadelphia in 1787.

a. Why did the United States pass the Immigration Act of 2076?

b. Why do the supporters of the proposed naturalization law of 2087 want to create two classes of citizens?

c. Do you think it is right for a nation to insist on preserving the traditions and culture of a once dominant group, or should these things be allowed to change with a changing population? Explain.

d. If you were directly related to the Pilgrims, how would you feel about the Second-Degree Citizenship Amendment?

e. If you were directly related to Africans forced to work as slaves in the United States, how would you feel about the Second-Degree Citizenship Amendment?

f. If you were a person who got your citizenship in 2085, how would you feel about the Second-Degree Citizenship Amendment?

g. If you were a Native American Indian, how would you feel about the Second-Degree Citizenship Amendment?

h. If you were an immigrant to the U.S. from Mexico, how would you feel about the Second-Degree Citizenship Amendment?

THE SECOND DEGREE CITIZEN AMENDMENT

Directions: Below is a list of rights (A) that all adult immigrants will have upon legally entering the United States under the proposed "Second-Degree Citizen Amendment" of 2087. Below this list is another (B) including those rights that all new immigrants will be denied permanently.

A. Rights Guaranteed

1. No discrimination in employment
2. Union membership
3. Unemployment benefits
4. Social Security/Medicare
5. Welfare benefits
6. Public housing
7. Enlistment in the armed forces
8. Admission to public universities
9. Public schools for children
10. Ownership of property
11. No discrimination in public accommodations
12. All Constitutional rights except those listed under B

B. Rights Denied

1. Voting at all levels of government
2. Election to any public office
3. Appointment to any public office
4. Affirmative action in employment
5. Appointment to any U.S. military academy

Imagine that you have been appointed to serve on a special "Citizen's Advisory Group" by a member of the U.S. House of Representatives to help Congress decide whether to support or oppose the "Second-Degree Citizen Amendment." The purpose of your group is "to assess the impact the proposed amendment will have on the United

States and its traditions," by answering questions submitted by the Congressional Representative.

To complete your task, follow these steps:

1. Divide into groups of four students. One student will act as chairperson, one as recorder, another as spokesperson, and the fourth as writer. The writer will order and write up the recorder's notes for presentation by the spokesperson.

2. Review Handout 1 and the list of rights above.

3. Discuss and answer the following questions:

A. What effect might the proposed amendment have on:

(1) The U.S. economy

(2) America's traditional open attitude toward immigrants and naturalized citizens

(3) Social harmony between different ethnic groups in the United States

(4) The value system of the U.S. Constitution

(NOTE: Each group member must identify at least one effect for each category.)

B. If such an amendment were adopted, should any rights be dropped or added to either side of the lists? Why?

4. Develop a brief presentation on your findings for the spokesperson to give to the rest of the class.

5. After all the groups have given their presentations, discuss the following question: Is this Amendment a sound idea for America in the year 2087? Why or why not?

MINORS AND CONTRACTS

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law

Historical Period: Present

Class Periods: 1-2

Use of Outside Resource Persons:

A local prosecutor may assist in describing professional baseball contract law and minors. An attorney experienced in contract law could assist in the debriefing of the True/False Test.

Objectives:

1. Students will list and explain the elements of a contract.
2. Students will identify what contracts minors can and cannot legally cancel.
3. Students will list and explain the rules regarding minors and contracts.

Materials:

Signature Sheet (See Procedure #1)

Handout 1

Procedures:

1. Prior to class, take a sheet of paper and fold it in two. On the top half of the paper write: "In recognition of services performed, I owe (teacher's name) $500 to be paid immediately." Fold this back so that it is not visible to students.

2. Introduce today's class by indicating that it will be on contracts and that signatures have an important role to play in contracts. Ask for a volunteer, someone who has an unusual signature. Have the student write out his or her name on the bottom of the paper. After the students has signed it, unfold the paper and tell students that such and such student has just agreed to pay you $500.

3. Ask students if this is a valid contract, why or why not. (Tear the "contract" up in front of the student so that the student will not worry about it and thank the student for being a good sport.)

4. Introduce students to the principles of contract law. Explain that a contract is an agreement between two or more persons which creates an obligation to do or not to do a particular thing. There are four key elements to every contract.

Write these elements on the board:

OFFER ACCEPTANCE MUTUAL AGREEMENT CONSIDERATION

An offer is a proposal to do something or to pay some amount. The person making the offer must intend to enter into a contract now, must use definite language and must communicate the offer to the person who accepts it.

Check for understanding by using this hypothetical.

Roberto says to Maynard, "If I had $40, I'd buy that ticket from you to the Janet Jackson concert." Is Roberto making an offer to buy Maynard's ticket? Why or why not? No, because Roberto is not intending to enter into a contract now and his language is not definite. Ask students how Roberto's question could be made into an offer. If he said, "I'll give you $40 for your ticket to the Janet Jackson concert."

An acceptance is agreement in words or acts to the terms of an offer. The acceptance must be definite and cannot vary the terms of the offer in any significant way.

Check for understanding:

If Maynard said to Roberto, "The ticket is yours for $45," is this an acceptance? Why or why not? No, because Maynard did not agree to the term proposed by Roberto, he varied the amount of money required. Therefore Maynard has made a "counteroffer," which Roberto may or may not accept.

Mutual agreement means that all persons to the contract understood that they were talking about the same thing.

For example, if Maynard had two tickets to the Jackson concert, one for front row seating and one in the balcony, and he agreed to sell the one in the balcony for $45 while Roberto was offering to buy the one in the front row, this negotiation would lack mutual agreement and there would be no contract.

Consideration is what each person to a contract gives up or receives to create the contract -- something of value must be given for something else of value. Consideration may be a promise to do or pay something, or a promise not to do something that the person had a right to do.

For example, with Maynard and Roberto, what consideration is present? Roberto promises to pay money, Maynard promises to give up the ticket.

5. Explain to students that there are special laws regarding Minors and Contracts. We will review the rules in Washington State.

6. Pass out Handout 1, have students in pairs answer a - i.

Answers to Handout 1

a. Dan, who is 17 years old but looks like 20 years old, signs a contract for a $1,000 stereo system from Cascade Stereo. The contract requires him to put $300 down and pay $50 monthly. He puts his $300 down and after two weeks decides he wants out of the contract. Can he legally do this? Give your reasons.

Dan can disaffirm (cancel) this contract. He is entitled to get all the money back that he has paid and he is obligated to return to Cascade Stereo the stereo.

The fact that Dan looks older than 17 is not enough to change the outcome. However, if Dan had told Cascade Stereo that he was 18, then he would not be able to cancel his contract.

b. Terry, who is 16, enrolls in Garner Vocational School. She borrows $2,000 from a bank to go to school. The bank has a written statement from Garner's School that Terry is enrolled. Two months later, Terry wants to drop out of school and cancel her loan. Can she legally do this? Give your reasons.

Terry may not cancel her loan. Under Washington law, any written obligation signed by a minor sixteen or more years of age in consideration of an educational loan from any person is enforceable as if the minor were an adult. This applies only if, prior to making the educational loan, the educational institution has certified in writing to the person making the educational loan that the minor is enrolled, or has been accepted for enrollment in the educational institution. R.C.W. 26.30.020.

c. Juanita, who is 15, buys a life insurance policy, so that if she dies, her parents will receive $100,000. The contract requires her to pay $20 per month. She pays this every month until she is 17. Now she decides to cancel the contract and wants all her money back. Can she do this? Give your reasons.

Under Washington law, minors not less than 15 years of age at the nearest birthday may enter into a contract for life or disability insurance on their own life or body, for their own benefit or for the benefit of parents, spouse, child, sibling, or grandparent. The minor is not permitted to cancel the contract because of minority. However, the minor can be excused form any unperformed agreement to pay any premium. So Juanita can stop paying the monthly premiums, but she cannot recover the money already spent. R.C.W. 48.18.20.

d. Michael, age 16, is a star baseball player at his high school. A baseball scout for a professional baseball team approached Michael and proposed that Michael sign a contract to play for

the team he represents. To encourage Michael to sign, he gives Michael a new car. Michael signs the contract. Later, Michael realizes that this will deprive him of his amateur status. Michael now wishes to cancel the contract.

Under R.C.W. 67.04.110 et seq., this contract is void. In order for a contract between a minor and organized professional baseball to be valid, a special procedure must be followed. This applies to persons under the age of 18 years who have not graduated from high school. If the person becomes 18 during his senior year, he is still a minor until the end of the school year.

The prosecuting attorney of the county in which the minor's parents are living must approve the contract in writing before it is signed. The prosecutor must approve these contracts if the following facts are found:

(1) The minor has not been signed, approached or contacted, directly or indirectly, regarding a professional baseball contract except as approved by the prosecutor.

(2) The minor has been informed that approval of the contract may deprive him of his amateur status.

(3) The parent of the minor and the minor have consented.

(4) The prosecutor has concluded that the contract meets the legal requirements.

(5) The contract permits the minor to have at least five months available each year to continue his high school education.

The law also makes it a gross misdemeanor for any scout to enter into a contract with a minor or to give a gift to a minor to get the minor's promise to enter into a contract in violation of the law. This scout is guilty of a gross misdemeanor.

e. Jemi, who is 17, agrees with a married couple who are not able to have children to be artificially inseminated and to bear a child for the couple. The couple will pay all expenses of pregnancy, actual medical expenses and attorney's fees to draft a contract to establish that the child produced will belong to the married couple. Jemi signs such a contract, is impregnated and now changes her mind and wants out of the contract. Can she cancel the contract? Give your reasons.

Washington law (R.C.W. 26.26) provides that no person shall enter into such a contract with an unemancipated minor female. So the contract is invalid.

Even if Jemi were emancipated or were over 18, she still may challenge the custody of the child once it is born. The person with physical custody at the time of the dispute keeps the child until the superior court makes a legal award of custody.

f. Judy, who is 13, ran away from home and took her mother's credit card. She had no food or place to stay. She paid for a motel and some food with the credit card. Now, she wants to cancel these contracts. Can she cancel these contracts and get a refund? Give your reasons.

No, Judy is obligated to pay for these items because they are "necessaries," defined as food, clothing, shelter and medical care. Minors are bound by their contracts for food, shelter, clothing, and medical aid.

g. Toni buys a second hand car for his 17th birthday from Al's used car lot. Toni needs the car to get to his after school job. After 3 months of use, Toni decides he wants to cancel the contract, return the car and get his money back. Can he do that? Give your reasons.

Yes, Toni can do that. Students might have questioned whether or not a car is a necessary which would not permit cancellation. However, Washington State has decided that a car is not a necessary.

h. George at 17 buys a used car on credit, paying $50 each month for three years. When he turns 19, two years after signing the contract for the car, he decides to cancel the contract and get his money back. Can he do that? What are your reasons?

No, George cannot do that. The law requires that in order for minors to cancel contracts entered into when they were minors, they must cancel within a reasonable time after turning 18. One full year beyond the 18th birthday is an unreasonable time. George will have ratified the contract and he may not get out of it.

i. Miriam, who is 17, set up her own business making T-shirts. She took and filled many orders for sets of T-shirts. She now wants to cancel her contracts that she hasn't filled because she has spent the money on other things and doesn't have enough money to produce the T-shirts. Can she do that? Give your reasons.

No, Miriam cannot do that. Washington law (R.C.W. 26.28.040) prevents minors from cancelling their contracts when they have engaged in business as an adult and the other party had good reasons to believe the minor capable of contracting.

j. Mady and Tony are both minors who have a child together. They enter into several contracts for services and things for their child. Can they cancel these contracts? Give your reasons.

No, they may not cancel their contracts. Minor parents are bound by contracts they enter for their child.

7. Review the rules with students after the exercise.

In Washington, certain **but not all** contracts of minors (persons under 18) are voidable, meaning that minors can get out of their

contracts if they choose to do so. The minors cannot be forced to carry out the promises they made and may cancel or refuse to honor their contracts. Minors who cancel contracts must return all money and property received because of the contract that is still within their control at the time they turn 18.

8. Ask students why they think minors have the right to cancel their contracts.

The rule is designed to protect minors from being taken advantage of because of their age and lack of experience. However, minors will have an impossible time getting credit because of this rule. This is why most stores require a parent or other adult to co-sign any major contract. The adult co-signer is responsible for making payments if the minors don't honor their promises.

The person with whom the minor contracted cannot void (cancel) the contract simply because the other person is a minor.

9. Review with students that the special rights of minors to cancel their contracts do not apply to all contracts. Brainstorm the list of contracts that minors cannot cancel.

a. If a minor fails to disaffirm a contract within a reasonable time after reaching age 18, the contract cannot be cancelled.

b. Minors are bound for contracts they make for necessaries, such as food, clothing, medical attention, and housing. (A car is not a necessary.)

c. They are also bound for educational loans, provided the lender had written notice of enrollment.

d. Minors married to a legal adult (18 years or older) are considered adults.

e. Minors may enter into binding contracts for their child.

f. Minors may not cancel contracts when they have misrepresented their age to the other party or they have operated a business as an adult and the other party reasonably believed the minor was capable of contracting.

Additionally, minors may not enter into contracts for professional baseball teams without approval of the county prosecutor (and parent). Minors may not enter into contracts to bear children on behalf of others.

CAN THE MINOR CANCEL THIS CONTRACT

Directions: Read the situations that follow and decide whether or not the minor can cancel the contract. Give your reasons.

a. Dan, who is 17 years old but looks like 20 years old, signs a contract for a $1,000 stereo system from Cascade Stereo. The contract requires him to put $300 down and pay $50 monthly. He puts his $300 down and after two weeks decides he wants out of the contract. Can he legally do this? Give your reasons.

b. Terry, who is 16, enrolls in Garner Vocational School. She borrows $2,000 from a bank to go to school. The bank has a written statement from Garner's School that Terry is enrolled. Two months later, Terry wants to drop out of school and cancel her loan. Can she legally do this? Give your reasons.

c. Juanita, who is 15, buys an life insurance policy, so that if she dies, her parents will receive $100,000. The contract requires her to pay $20 per month. She pays this every month until she is 17. Now she decides to cancel the contract and wants all her money back. Can she do this? Give your reasons.

d. Michael, age 16, is a star baseball player at his high school. A baseball scout for a professional baseball team approached Michael and proposed that Michael sign a contract to play for the team he represents. To encourage Michael to sign, he gives Michael a new car. Michael signs the contract. Later, Michael realizes that this will deprive him of his amateur status. Michael now wishes to cancel the contract.

e. Jemi, who is 17, agrees with a married couple who are not able to have children to be artificially inseminated and to bear a child for the couple. The couple will pay all expenses of pregnancy, and actual medical expenses and attorney's fees to draft the contract to establish that the child produced will belong to the married couple. Jemi signs such a contract, is impregnated and now changes her mind and wants out of the contract. Can she cancel the contract? Give your reasons.

f. Judy, who is 13, ran away from home and took her mother's credit card. She had no food or place to stay. She paid for a motel and some food with the credit card. Now, she wants to cancel these contracts. Can she cancel these contracts and get a refund? Give your reasons.

g. Toni buys a second hand car for his 17th birthday from Al's used car lot. Toni needs the car to get to his after school job. After 3 months of use, Toni decides he wants to cancel the contract, return the car and get his money back. Can he do that? Give your reasons.

h. George at 17 buys a used car on credit, paying $50 each month for three years. When he turns 19, two years after signing the contract for the car, he decides to cancel the contract and get his money back. Can he do that? What are your reasons?

i. Miriam, who is 17, set up her own business making T-shirts. She took and filled many orders for sets of T-shirts. She now wants to cancel her contracts that she hasn't filled because she has spent the money on other things and doesn't have enough money to produce the T-shirts. Can she do that? Give your reasons.

j. Mady and Tony are both minors who have a child together. They enter into several contracts for services and things for their child. Can they cancel these contracts? Give your reasons.

HOW GOVERNMENT PROTECTS KIDS
WASHINGTON'S CHILD ABUSE LAWS

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 1

Use of Outside Resource Persons:

A representative from Child Protective Services, DSHS, would be a good resource person for this class.

Objectives:

1. Students will identify a current social problem and government's response to solve it.
2. Students will define child abusc.
3. Students will recognize child abuse, and learn what can be done about it.

Materials:

Handout 1

Procedures:

1. Introduce the class to the problem of child abuse.

Tell students a federal government report released to Congress in June 1990 declared that child abuse and neglect in the United States constitute a national emergency "so compelling that it dictates an immediate response." The report condemned the current system in the United States as failing to protect the nation's children. The number of reported cases of child abuse has soared to 2.4 million annually from about 60,000 in 1974, according to the report.

Child abuse, according to one study, is the fifth leading killer of children in the United States. A Washington state study shows that 45 children died in Washington from abuse or neglect between 1986 and 1988. In 1979, Pierce County had the highest reported rate of abuse and neglect per capita in the nation, according to a series of articles in the Tacoma News Tribune. Child abuse, like spouse abuse, affects all levels of society, but a recent federal study shows that poverty makes child abuse much more likely, when families are under stress. Substance abuse and mental health problems are also frequently associated with child abuse. Research indicates that most people who mistreat their children were themselves abused when they were children.

2. Write the words "child abuse" on the board and ask students for a definition. List components of students' definitions on the board, and come up with a definition as a group. Ask the students to focus on what they think should be considered child abuse. In other words, what sort of behavior toward children should be made unlawful?

The Washington State Legislature has defined child abuse as:.

> ...the injury, sexual abuse, sexual exploitation, or negligent treatment of a child by any person under circumstances which indicate that the child's health, welfare and safety is harmed thereby...[N]othing in this section shall be construed to prohibit the reasonable use of corporal punishment as a means of discipline.

3. Ask the class whether parents should be able to punish their children however they see fit. Why or why not? Explain that parents do not have a free hand in disciplining their children.

The state does not have the right to interfere with a parent's "child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare, and safety." It is, however, the policy of the state to "protect children from assault and abuse." The following actions are considered "unreasonable physical discipline" under the state child discipline law, and are treated as crimes:

> ...throwing, kicking, burning, or cutting a child; striking a child with a closed fist; shaking a child under the age of three; interfering with a child's breathing; threatening a child with a deadly weapon; or doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks. The age, size and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate.

It is also a crime in Washington for a parent or other person with physical custody of a child to "create a substantial risk of or cause bodily harm to a child by withholding any of the basic necessities of life." The basic necessities of life include food, shelter, clothing, and health care. If the parent cannot afford to provide these things, this may be a defense, if the parent made a reasonable effort to get assistance.

4. What can the State of Washington do about child abuse? Brainstorm with the class what alternatives are available to victims and perpetrators of child abuse. First, to whom should suspected child abuse be reported? List these on the board. [Alternatively, the class could be divided into legislative committees and charged with the task of deciding how to deal with the problem of child abuse.]

The State Department of Social and Health Services (DSHS) and local law enforcement agencies handle reports of child abuse. Anyone

who suspects someone is the victim of child abuse or a victim who is old enough to do so should report the abuse. Currently, there are certain persons who are required to report suspected abuse or neglect of a child to DSHS or law enforcement. These persons include professional school personnel (teachers, administrators, nurses, counselors), health care workers (doctors, nurses, dentists, etc.), psychologists and counselors, licensed child care providers, probation officers, and DSHS employees. Any other person may report, but is not required to do so.

DSHS or the law enforcement agency must investigate complaints of child abuse or neglect. Investigators may interview the children, outside the presence of their parents, and away from the home. In certain cases the child may be removed from the home, or the alleged offender may be required to leave.

If evidence of abuse is found, a court proceeding may be filed. This could be a dependency proceeding filed by DSHS, to remove the child from the home, and/or a criminal case against the alleged abuser. In some cases, the matter is resolved through the consent of the parties, without a court hearing. Counseling for the abuser, the non-abusing parent, and the abused child is often ordered by the court.

5. Distribute Handout 1 to the class, and discuss how the hypothetical situations would be resolved under Washington's child abuse laws. First, decide whether it is a case of child abuse, and if so, what should be done. The class could be divided into groups to discuss the hypotheticals, or they may be discussed with the class as a whole. If groups are used, each group should have 3 to 5 students.

6. Ask each group to report back to the entire class. Explore why different groups felt differently, if this is the case.

a. Jamie is 22, and the single mother of three children, all under ten years old. She leaves them home alone one day, while she goes to work, because the baby-sitter did not show up. She asks a neighbor to look in on them, who often takes of the children. The oldest child knocks over a heater, causing a fire, and almost burning the house down. The children narrowly escape, when the neighbor comes to the rescue. They all suffer from smoke inhalation and minor burns.

Jamie's failure to leave her children under proper supervision would be considered "negligent treatment" that endangered their health and safety.

b. When Arnold, who is 15, gets home 20 minutes late from a party, his father takes him into the basement, and spanks him on the buttocks 20 times with a paddle.

This would come down to whether this was "reasonable parental discipline." If the paddling leaves more than minor, temporary marks, it may be considered unreasonable.

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c. Teresa's parents are divorced, and Teresa, who is 13, lives with her Dad. One night, her Dad comes into her room, gets into bed with her and fondles her.

This would be sexual abuse.

d. George, a single parent with three kids, is barely able to pay all of his bills each month. He can't afford to buy new school clothes for his kids, and is able to feed them just one meal a day, although he always seems to find enough money for beer and wine.

George could be guilty of neglect. The standard here is whether he is making a reasonable effort to provide.

e. Karen's parents won't allow her to date or even spend the night with a girlfriend, even though she is 17.

This would probably not be considered child abuse, although it is probably too strict.

f. Timmy's parents will not take him to the doctor when he has a stomach ache and is vomiting blood, because they are Christian Scientists, and believe that he can be healed through prayer.

If Timmy dies or has severe health problems as a result of his parents' failure to take him to a doctor, this would probably be child abuse. This is similar to the Massachusetts case that was tried during the summer of 1990. (In that case, the child did not vomit blood.) The couple was found guilty of manslaughter when their 2 1/2 son died after they failed to seek medical treatment for him. An autopsy showed that he suffered from a bowel obstruction. A judge sentenced the couple to probation and ordered periodic medical examinations for their other three children.

IS THIS ABUSE?

Directions: Read the following cases and decide whether or you think the actions of the parent should be considered abuse or neglect. Explain your answer.

a. Jamie is 22, and the single mother of three children, all under ten years old. She leaves them home alone one day, while she goes to work, because the baby-sitter did not show up. She asks a neighbor, who often takes of the children, to look in on them, . The oldest child knocks over a heater, causing a fire and almost burning the house down. The children narrowly escape, when the neighbor comes to the rescue. They all suffer from smoke inhalation and minor burns.

b. When Arnold, who is 15, gets home 20 minutes late from a party, his father takes him into the basement, and spanks him on the buttocks 20 times with a paddle.

c. Teresa's parents are divorced, and Teresa, who is 13, lives with her Dad. One night, her Dad comes into her room, gets into bed with her and fondles her.

d. George, a single parent with three kids, is barely able to pay all of his bills each month. He can't afford to buy new school clothes for his kids, and is able to feed them just one meal a day, although he always seems to find enough money for beer and wine.

e. Karen's parents won't allow her to date or even spend the night with a girlfriend, even though she is 17.

f. Timmy's parents will not take him to the doctor when he has a stomach ache and is vomiting blood because they are Christian Scientists, and believe that he can be healed through prayer.

LIVING ON LESS THAN $200 A YEAR

Source:

International Law in a Global Age, Constitutional Rights Foundation, 1982, updated by University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 1

Use of Outside Resource Persons:

A statistician to discuss how statistics such as those used in this lesson would add an additional dimension to this lesson.

Objectives:

1. Students will compare nations by examining economic criteria.
2. Students will define "modernization" in terms of a comparison of nations.

Materials:

Sufficient copies of p.19, International Law in a Global Age, for each student

Handout 1

Procedures:

1. Write "poverty" on the board, and ask for a definition. How would you measure the wealth or poverty of a country?

Poverty is a lack or shortage of essential items needed for subsistence. Wealth or poverty of countries is usually measured by the average annual income per capita.

2. Pass out the reading from ILGA and ask students to read the article. Ask the following questions to check for understanding.

NOTE: If you do not have ILGA, you can still do the rest of the lesson. Skip to number 3.

a. Why does the author suggest we invade the typical American family's house and remove all furniture?

The author is trying to translate the conditions of some of the poorest people in the world into terms that Americans can understand.

b. Why have them move into the toolshed?

Because this is the type of housing that many third world people must live in.

c. What other changes must we make in their lives to illustrate the level of poverty in parts of the world?

We must remove most of the food, shut off the running water, turn off the electricity, take away most of their clothes, books and papers since they cannot read. There is only one school three miles away, no mail service or hospital nearby.

d. Can we do anything about world poverty?

3. Refer students to the chart in Handout 1, "Comparing Nations." Divide the class into groups of 3 to 5 students each, and ask them to examine the chart and answer the following questions.

a. Of the six countries, which one do you think is the most modern? Why? In what part of the world do you think it is located?

b. Which nation do you think is the least modern? Why? In what part of the world do you think it is located?

c. Rank the five countries in order from most modern (#1) to least modern (#6). Explain your reasoning.

d. What additional kinds of information about each country would help you assess its degree of modernization?

4. Ask the groups to report their responses. Discuss how the groups defined "modern." Did they view it in terms of wealth, number of doctors, energy consumption?

5. You may either tell the class the names of the countries, and let them guess which is which, or simply tell them that the six countries are:

A -- Ethiopia
B -- United States
C -- Saudi Arabia
D -- El Salvador
E -- India
F -- Switzerland

COMPARING NATIONS[1]

Country --per capita income in US $	% of pop. living in urban areas	annual growth rate of pop(1987-2000)	annual energy consump-tion per capita	life expect-ancy	pop. per physician
A $130	12%	3.1	21	47	77,360
B 18,530	74%	0.8	7,265	75	470
C 6,200	75%	3.8	3,292	63	690
D 860	44%	2.1	218	62	2,830
E 300	27%	1.8	208	58	2,520
F 21,300	61%	-.1	4,105	77	700

a. Of the six countries, which one do you think is the most modern? Why? In what part of the world do you think it is located?

b. Which nation do you think is the least modern? Why? In what part of the world do you think it is located?

[1] Information for chart from World Development Report 1989, World Bank.

c. Rank the five countries in order from most modern (#1) to least modern (#6). Explain your reasoning.

d. What additional kinds of information about each country would help you assess its degree of modernization.

CULTURAL PERSPECTIVES ON FAMILY AND MARRIAGE INDIA AND THE UNITED STATES

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law.

Class Periods: 1-2

Use of Outside Resource Persons:

A social worker who counsels battered women or a staff person from a battered women's shelter would make a good resource person to lead a class discussion about this issue.

Objectives:

1. Students will list similarities and differences between marriage in India and the United States.
2. Students will examine violence toward women in both societies.
3. Students will identify what values are reflected in the practices of both societies.

Materials:

Handouts 1, 2, and 3

Procedures:

1. Ask students to read "Cultural Perspectives on Family," pp. 30-31 in International Law in a Global Age, Constitutional Rights Foundation (1982). Ask students the questions following the reading, "Case Study on Marriage." (If you do not have this book, explain the Indian custom of dowry, explained below, and proceed to #2).

After "Selling the Bride" pp. 30-31, ask the following questions:

a. What is the purpose of the dowry? Why is it important in Indian marriage and life?

The practice of dowry is deeply rooted in the Hindu religion and Indian cultural traditions, which hold that by marrying off a daughter, a father unburdens himself of an economic liability. Therefore, he is obligated to compensate the bridegroom's family for agreeing to provide food and shelter to the bride for the rest of her life.

b. Do we have any customs that serve the same purpose as the Indian dowry?

The practice of giving wedding presents serves somewhat the same purpose as the dowry, except both sides give presents.

2. Have students read the story "A Modern Indian Marriage," Handout 1. Ask the following questions after the reading.

a. What similarities can you think of between the Indian marriage described and marriage in the United States? What differences can you think of? List these on the board in different columns as students name them.

Similarities: They met through a "personal ad"--this is becoming more common in the U.S.; there is a ceremony attended by both families; gifts are brought for the couple; a religious leader participates in the ceremony; there is food provided as part of the celebration; the bride and groom feed each other; symbols of fertility are used (banana tree and coconuts for the Indian couple; throwing rice on the newlyweds in the U.S.).

Differences: The wedding day is selected according to the horoscope (this can also happen in the U.S., but is not the common practice); priests ask for blessings of ancestors; offerings with fish; walking 7 times around the sacred fire; feeding sweets to young boy, and spending the night with mother-in-law; and finally, the entire ceremony takes three days. Joseph Campbell, the American scholar who studied ancient myths and rituals and their effect on our lives today said of the Indian marriage ritual versus American marriage: "[In the U.S.] you can stand up in front of a judge and in ten minutes get married. The marriage ceremony in India lasts three days. That couple is glued."

3. Ask students to complete the opinion poll in Handout 2.

<u>Information for Handout 2</u>

a. It is wise for parents to help their children to choose a husband or wife.

In India, (as well as many other countries such as China) it is still common for relatives and parents to choose a spouse for their children. With the rising divorce rate, some argue that our culture could use a new method of choosing a partner. Some may also favor a return to this tradition as an alternative to today's personal ads, video dating services and "meat markets" - the derogatory term applied to the bars and other settings to which singles flock in hopes of finding a mate.

b. If the husband and his family are going to support his wife for the rest of her life, it is fair to require the wife to contribute money or property to the marriage (called a dowry).

As stated above, the practice of dowry is deeply rooted in the Hindu religion and Indian cultural traditions, which hold that by

marrying off a daughter, a father unburdens himself of an economic liability, and therefore, is obligated to compensate the bridegroom's family for agreeing to provide food and shelter to the bride for the rest of her life.

The practice is closely related to Indian inheritance laws, which until 1956 did not entitle a daughter to any share of her parents' property. Even now, daughters do not necessarily inherit an equal share.

c. Marriage should be taken more seriously in our country.

Again, with the rising divorce rate, many would argue that we do not enter into marriage with the commitment that our parents once did.

d. Wives should obey their husbands.

In India, women are still widely regarded as inferior to men. In India, girls, especially Hindu girls, are taught to model themselves on Sita, the mythological wife of the legendary hero Rama, who followed her husband into the wilderness and never failed to do his bidding. In a traditional Hindu family, a girl is told from the very beginning that she has to win over the family that she is married into. Once she is married, she traditionally has nothing to do with her maternal family. She has to make a place for herself in the new family. From childhood a girl is told that once you go to live with your husband, you can come back only as a dead body. In fact, ancient Hindu tradition required wives to throw themselves on their husband's funeral pyres and die with them. (This practice, known as sati, has been outlawed, but there are still reported instances.) New wives are told: You must bear with everything. Don't complain. Don't come back. The prestige of her family depends on her staying with her husband.

e. Dowries should be outlawed in India.

The Indian Parliament outlawed dowries in 1986. The practice is still widespread, however. **Ask any students who agreed why they think dowries should be outlawed.**

The dowry, once a way a father could endow a Hindu daughter with material goods when she could not inherit property, has evolved into a reward paid to a man and his family to take a woman off her parents' hands.

A bizarre, but increasingly widespread practice relating to the dowry is taking place in India. All over India, where Hindu wives traditionally burned on their husbands' funeral pyres, brides in recent years have been dying in their husband's homes in fires that were called "accidents" until women's organizations began to demand an official accounting.

The fatalities of recently married women are often collectively known as" dowry deaths" or "bride burning." The term applies to situations where a husband and/or his family kills a wife for failing to

deliver on a request for additional dowry, or she kills herself to spare her father further hardship because of pressure to deliver additional dowry gifts. The term "dowry deaths" also applies to all kinds of domestic discord in a country where not only arranged, but also forced marriages are still the norm.

Asked recently in Parliament to quantify this phenomenon, which began to draw attention about a decade ago when the number of deaths in fires reported as "kitchen accidents" started rising in northern India, India's Home Affairs Minister, Palaniappan Chidambaram, said that registered cases of dowry deaths nationwide numbered 999 in 1985, 1,319 in 1986 and 1,786 in 1987. Women's groups say that total will be surpassed easily this year - and that in a country of 800 million people, most of whom do not report domestic violence, the real numbers are far higher.

f. What goes on within the family is not the business of outsiders.

This is obviously a matter of personal opinion, but if what is going on behind closed doors is illegal, it becomes the business of society.

4. Ask students if they think dowry deaths or a similar practice could happen in the United States. Why or why not?

5. Have students read the two newspaper accounts of family violence in Handout 3. Ask students the following questions:

a. What happened in the first account? How did the two women die? Define "sati."

One woman, Bai, was killed by her in-laws because she quarrelled with her mother-in-law and husband about his conduct and their demands for additional dowry. The second woman chose to commit suicide after her husband died by throwing herself on her husband's funeral pyre. This practice, known as "sati," was common in Hindu India until recent times. It is outlawed now, but there are still reported instances of it, as in this story.

b. What happened in the second account?

An abused wife was murdered by her husband.

c. What is the attitude toward women reflected in these two stories?

The Indian women are viewed as the property of their husbands, and their value is in how much they can bring to the marriage in dowry. In the second account, the American wife is not viewed that differently.

d. What values about women, family and marriage are reflected in these two stories? List these on the board.

Loyalty to family is highly valued in India. Greed plays a large part in the murder of Bai. Tradition is important to the woman Roop, who

chose to die on her husband's funeral pyre. Privacy was respected by the neighbor in the American story.

6. Ask students what can be done about bride burning or spouse abuse.

One obvious answer is to pass laws against it. In Washington State, we have laws that give special protections to victims of domestic violence. While the term "spouse abuse" is often used to refer to this problem, the laws protect individuals who are being abused whether the abuser is a spouse, former spouse, someone s/he lives with or used to live with, someone related by blood or marriage, or someone with whom she has a child. "Abuse" means that the person is threatening to hit her, hitting her, or restraining her freedom of movement. Although most victims of abuse are women, there are cases of women abusing their husbands.

A person who is being abused can seek help either through the criminal justice system or the civil legal system. If an attack is taking place, the best thing to do is to call the police. The police must take a report, inform the victim in writing of her rights as a domestic violence victim, and make sure she is not in continuing danger. The police should have information about shelters and other community resources to help abused spouses. The police must also offer or arrange for transportation to a hospital if necessary, or to a shelter or other safe place. It is not necessary to decide whether or not to press charges at the time that the police come to the home.

The police must also inform the victim that there is a state wide 24 hour toll-free hotline with information about shelter and alternatives to domestic violence. That number is

1-800-562-6025

The police must arrest the abuser if he or she is the spouse or former spouse of the victim, someone who lived with or used to live with the victim, someone related by blood or marriage, or someone who had a child with the victim and there is reason to believe that the abuser assaulted the victim within the last four hours, and that s/he was injured by the assault. Even if the abuser is arrested, s/he will probably be out of jail within a few hours. Since that is the case, the judge can issue a no-contact order if there is a danger of further harm to the injured party. The no-contact order commands the abuser not to contact the victim by phone or in person until the trial date. If the abuser violates the no-contact order by harassing or harming the victim, s/he can be arrested.

If the victim does not call the police at the time of the incident, s/he may report it later and ask to press charges at that time. The prosecuting attorney has the authority to decide whether or not to file charges against the abuser. If the prosecutor decides not to press charges, the victim is entitled notice, and has the right to request the filing of charges herself.

If charges are filed, only the prosecutor has the authority to drop them. The victim is a witness, and has no control over the case. It may take weeks, or even months for the case to come to trial. If the case does go to trial, and the abuser is found guilty, the judge can issue an order requiring that the abuser get counseling or alcoholism treatment, if there was alcohol involved. S/he can also be ordered to pay the victim for any medical expenses or property damaged. The judge may put the abuser on probation, and will extend the no-contact order if the victim is in fear of future abuse. The judge can also order jail time, which may be suspended.

Whether in India or the U.S., however, laws do not always solve the problem. In 1982, Indian Prime Minister Indira Gandhi, spoke of her frustration at the "dowry death" situation, saying, "We have got a lot of laws, but it is not so easy to implement them."

In India, the obstacles to law enforcement are intimidation of witnesses, police indifference and official collusion, according to women's rights groups there. **Ask students what the problems with enforcement of domestic violence laws in the United States are.**

Women are reluctant to seek legal help because they fear retaliation from the abuser, the abusers violate protection orders and no-contact orders (issued by the court to prohibit the abuser from contacting the victim) because there are not enough police officers to enforce them, courts are overcrowded and backlogged.

A MODERN INDIAN MARRIAGE

The bride, Rinku, is a professional woman, a reporter for an American newspaper in India. The groom, Debashish, was found through an ad placed by his family in the marriage columns of the Sunday papers. From then it was only a matter of weeks until the families' priests determined that Feb. 8 was an auspicious date for the marriage, according to the horoscopes and family traditions.

The big day began with each family holding a ceremony at its own house during which the family priest invoked the blessings of the family's ancestors on the new marriage, a linkage of past to present. Then, the women of the groom's family brought gifts of saris (traditional Indian dress for women), clothing and other symbols of welcome to the home of the bride, a ritual that was reversed later in the day when the young men of the bride's family went to fetch the groom to begin the marriage ceremony itself. Each offering was accompanied by a fish, either real or symbolic, in a reminder of that great source of sustenance for the Bengali people (the Bengali are one of the many ethnic groups that make up the Indian nation).

Later, the couple sat under the marriage canopy, built with the limbs of the banana tree and decorated with coconuts, symbols of richness and fertility. They walked seven times around the sacred fire, as couples have done since Vedic times thousands of years ago. As the rites ended, Rinku fed a sweet to a young boy who sat on her lap, invoking her society's emphasis on male children, and then she and Debashish gave sweets to each other in a common hope for the future shared by brides and grooms everywhere.

After the wedding ceremonies the couple stays one night at the bride's house, a night of teasing for the newlyweds, and especially the husband. "A last reminder from us married girls to take care of her," said a cousin as she plotted the night's pranks.

Then, at dusk the following night, the bride and groom go to the husband's home, where she is welcomed formally by her new family and acknowledges her place within the household. It is all done symbolically at a dinner that follows ancient custom. The groom first serves food to his wife, symbolizing his pledge to support and provide for her, and she serves the other members of the groom's family, symbolizing her entry into the new household. She then spends the first night in the house not with her new husband, but with her mother-in-law.

It is only a day later, after these rituals, that the marriage is consummated. (Consummated means that the couple has sexual intercourse).

OPINION POLL - MARRIAGE AND VALUES

Directions: Read the following statements, that all relate to marriage, and place the letter that most closely corresponds with your opinion in the left-hand blank. Strongly agree (SA), Agree (A), Undecided (U), Disagree (D), or Strongly Disagree (SD).

_____**a. It is wise for parents to help their children to choose a husband or wife.**

_____**b. If the husband and his family are going to support his wife for the rest of her life, it is fair to require the wife to contribute money or property to the marriage (called a dowry).**

_____**c. Marriage should be taken more seriously in this country.**

_____**d. Wives should obey their husbands.**

_____**e. Dowries should be outlawed in India.**

_____**f. What goes on within the family is not the business of outsiders.**

TWO PERSPECTIVES ON MARRIAGE AND VIOLENCE

The Burning Bride-Indian Style

On a hot and dusty day last month, 25-year-old Meera Bai was covered with kerosene and burned to death in a New Delhi suburb.

On the same day, thousands of celebrating Hindus (an Indian religious group) gathered in a small Rajasthan desert village to honor Roop Kanwar, 18, for climbing onto her late husband's cremation pyre to die in flames, rather than face life as a widow.

The two events happened about 100 miles apart on a map. They were different in many respects. One took place in a crowded housing project on the outskirts of the Indian capital. The other occurred in a village that has more camels than cars.

Police believe that Bai, the mother of three young children, was murdered -- set ablaze by her mother-in-law and husband in another of the terrible dowry deaths that are almost commonplace in urban India. Reports are that Bai brought $7500 in dowry when she married five years ago, but her mother-in-law demanded either more money or a refrigerator and motor scooter.

Kanwar's death was a suicide, seemingly voluntary. At least she walked under her own power to the sandalwood pyre and placed her dead husband's head in her lap before she was ignited in the centuries-old Indian tradition of sati.

Yet in both cases, young women were handed over to flames. They died, feminists say, as modern martyrs to the medieval rules of family life that still dominate the lives of many Hindu women.

Neighbors say that Bai, the mother of children aged 4, 3 and 18 months, lived for much of her life by the selfless Hindu code of marriage outlined in the ancient religious texts.

According to one of these texts, the 11th-Century "Padmapurana," even if a woman's husband "is offensive in his manners, is quarrelsome, debauched or immoral; if he is a drunkard or a gambler; if he raves like a lunatic, . . . whatever his defects may be, a wife should always look upon him as her god and should lavish on him all her attention and care. . . ."

"She never complained about her husband -- even when he was bad," said a middle-aged woman who lived across the street from Bai's apartment in the Dilshad Garden housing project. Bai's husband, an automotive mechanic named Tulsi Ram, had a reputation as a drunk.

But then, suddenly, Bai broke with the code. She quarreled with her mother-in-law and husband, to whom she had been married for five years. The next day, Sept. 16, she was dead.

Her husband and his family say her death was a suicide. Investigators from the Crimes Against Women Division of the Delhi police classified it as a "dowry killing," one of the homicides or "forced suicides" that take the lives of young women in India every year.

The Burning Bed-American Style

A Santa Ana man was arrested Tuesday after his wife was beaten to death with an empty champagne bottle. Joseph ___ initially told police that a neighbor had committed the crime.

"But then he changed his stories and told police officers that he had, in fact, killed his wife," a police officer said. "It was an extremely brutal attack." Police could not determine a motive for the slaying, but said it appeared they had drunk the champagne Monday evening and there were signs at the apartment that they had been drinking.

A neighbor said Helen ___ didn't work. "She was just home all the time, she was like Susie Homemaker," the neighbor said. "She was real quiet, but she was a real nice person when you talked to her. I heard them fighting a lot, and she always had bruises, a black eye, once a broken arm. She never complained about her husband, even after their fights, when I would try to get her to talk. She was always a good mother to their three kids. I never called the police or anything because I didn't think it was my place to interfere in their business. Now I wish I had."

Fran Smith, director of the Santa Ana battered women's shelter, said that Helen had been into the shelter at least 5 times over the last two years, with her three children. She had just recently returned home, after her husband had managed to find her, and had promised to change his ways.

CHINA AND MEDIATION

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law.

Class Periods: 1 or 2

Use of Outside Resource Persons:

Contact a local mediation service or agency that mediates disputes, and ask a mediator to help with the mediation role plays.

Objectives:

1. Students will study the mediation process and the reasons for its importance in China's legal system.

2. Students will list the differences between the mediation process, as practiced in the United States, and in China.

3. Students will identify the five steps in the mediation process.

4. Students will practice mediation skills.

Materials:

Handout 1
Copies of Handout 2, cut up, so that each role player has only his or her role

Procedures:

1. Have students review Handout 1, after reading the material on China in their textbooks, if relevant.

2. Write "Confucius" on the board, and ask students who was Confucius, and how did his teachings affect the Chinese legal system?

Confucius was a wise man who lived in the 5th and 6th centuries B.C. He believed that man would respond to positive motivation, rather than legally sanctioned threats of punishment. Confucian teachings also led to a strong sense of social control and respect for authority.

To illustrate the Confucian philosophy, ask students the following hypothetical: If you could steal that new ___ (watch, stereo, etc.) you've been saving up for, and no one would ever know that you had done it and you were assured you would not be punished, would you go ahead and steal it?

If the answer if "yes," ask students why. An answer will most likely be that they are more motivated to be "good" by the fear of punishment than a basic desire to obey the law. This is what Confucius sought to avoid.

Tell students that despite the negative attitude toward lawsuits, a legal system did develop in China, run by Magistrates, local officials who had the authority to investigate, prosecute and judge cases. Assistants to the magistrates became China's first lawyers. These officials were widely regarded as corrupt, and generally were encouraged by the state to curb the number of cases brought to their courts, since the central government viewed many lawsuits as a sign of disorder.[1] Laws were designed more to keep the power of these officials in check than to guarantee the rights of individuals.

China's legal system did not fare well under the Communist Party, which abolished the legal code when it came to power in 1949. New laws were written, but the legal system remained weak. During the Cultural Revolution (1966-1976) most law schools were closed, the private practice of law was abolished and lawyers were sent to work in communes to be "re-educated by the people." Since the end of the Cultural Revolution, the legal system has been reformed. Many of these reforms have been in response to economic pressures, as China has entered the world economic market.

3. Brainstorm the definition of "mediation."

Mediation is a process of dispute resolution in which an impartial third party helps the disputing parties resolve their differences. The mediator's job is to structure and facilitate, making sure that each side has a chance to talk and hear the other side's position. While the mediator may suggest solutions to the dispute, the primary goal of mediation is to assist the parties resolve the problem themselves. A mediator has no authority to impose a decision on the parties, and the parties cannot be forced to come to a solution.

Inform students that in China, mediation is the preferred method of resolving disputes.

4. Ask students why, from what they have read in the Handout, the Chinese people prefer mediation as a dispute resolution method?

China's legal system relies heavily on community participation. China has a long tradition of avoiding litigation, based on the Confucian belief that man should be guided by morality, not the fear of punishment. Also the courts were often corrupt and harsh. Today, Chinese law also requires that all courts and governmental agencies must attempt to mediate a solution to disputes brought to them prior to using more formal means.

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[1] Linda S. Wojtan, Intercom 100, December 1981.

The desire to maintain social harmony also contributes to the preference for mediation.

5. Introduce the concept of people's mediation committees.

Tell students that in China, most civil (as opposed to criminal), disputes are resolved by mediation. If, for example, a conflict arises between two neighbors concerning the use of a common courtyard, it would be referred to the people's mediation committee, whose goals are to investigate the cause of the dispute, educate the disputing parties about socialist principles, and resolve the conflict in a manner that benefits the community at large. The mediation committees are found in every district or village. The village leader is typically the head of the mediation committee, which is usually 3 to 5 persons, often retired workers, housewives or teachers. Committee members are usually paid a small amount by the local government, but some serve as volunteers. These committees hear many marital disputes, problems between neighbors, economic disputes, housing and other civil matters. Often, the committee will approach disputing citizens, who rarely refuse the committee's "invitation" to mediate the dispute.

There are over one million mediation committees in China, with over 6 million mediators. From 1982 to 1988, 50 million civil disputes were resolved by them, five to ten times the number of cases that went to court.[2] In rural areas, the proportion of disputes that are mediated is as much as 20 times the number of disputes that go to court. According to the China Daily, mediators also helped save 680,000 lives threatened by suicide or homicide during the same period, by bringing a peaceful resolution to a potentially violent dispute.

These are some actual disputes that were recently resolved by mediation committees in China:

Su-Lin, from a small village in southern China had a serious quarrel with her father-in-law. She was so upset about the quarrel that she declared that she was going to drown herself in a nearby river. Her husband, a farmer, was so angry about this he resolved to kill himself and his father. He poured gasoline all over his house and locked himself and his father inside. Several elderly and respected villagers rushed to the scene and, acting as mediators, managed to get the husband to let them inside. Eventually, through mediation, they managed to patch things up between the husband and wife.

A widow was turned out of her home by her parents-in-law, who wanted to rent the home to increase their income. The local mediation committee helped her obtain the right to stay or receive monetary compensation from her in-laws.

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2 China Daily, Xinhua General Overseas News Service, Oct. 10, 1989, Item NO. 1010052.

6. Ask students: Are there any advantages to the people's mediation committee approach to resolving disputes, and to mediation in general?

In China the mediation approach can resolve a dispute before it becomes a more serious problem. The mediators, or at least some of them, will likely know the disputants (which could also be a disadvantage), and in some cases will even seek out the disputants and suggest they submit their dispute to mediation. A panel of 3 to 5 persons will have the combined experience and knowledge of the group.

In general, mediation saves time and money, and has the potential to make both parties "winners." Also parties who have had a hand in solving their dispute will be more likely to abide by the agreement.

7. Inform students that China's mediation process differs somewhat from that in the United States.

In China, mediation committees established by the state mediate disputes. Also Chinese mediators take a more active role in proposing solutions to problems.

8. Announce to the class that they will now be People's Mediation Committees. Review the steps of the mediation process with the class. Divide the class into groups of five to seven students each. Assign a role-play to each group of students. Within each group, three to five students will be the Mediation Committee, and the other two students will be the disputants. You will need to cut up the role-play sheets, so that the mediation committee only has the top part of the sheet, and the disputants have only their role. Allow approximately 20 minutes for the mediation. Alternatively, one group of students could conduct the role-play before the rest of the class. Ask for volunteers.

As another alternative, the class could first conduct the role-play using the adversarial process, with the parties bringing their case to the Small Claims Court. They would then mediate the same dispute and compare the outcomes.

9. After the allotted time, bring the class back together and debrief with the following questions: First, go around and ask each group: How was the problem solved?

10. Then ask individuals in the groups to report:

a. How did you feel in your role?

b. Did your attitude change during the role play?

c. What did the mediator (or judge) do that you liked/didn't like?

d. Are you pleased with the outcome?

e. If the adversarial process was used, what were the biggest differences between the two methods?

CHINESE LAW AND CULTURE [1]

Chinese society is generally regarded as based on the rule of man, rather than law. Informal, community-based methods of resolving disputes are preferred over bringing a lawsuit in court. Thus, social harmony is preserved, but sometimes at the cost of the protection of the rights of the individual, as those rights are viewed in our society. In fact, in China, individual rights are generally viewed as less important than the community at large, and disputes among individuals are seen as disruptive to the community's collective goals and sense of well-being.

The current dispute resolution practices in China reflect a long tradition to avoid the courts, which were widely considered to be corrupt and harsh. This attitude toward the courts is partially based on the teachings of Confucius. Confucius was a Chinese wise man who lived sometime in the 5th and 6th centuries B.C. His teachings led to a belief that human law is imperfect in comparison to heavenly reason and human feelings. The Confucian philosophy preferred to promote good (legal) behavior through moral example rather than to deter bad (illegal) behavior through fear of punishment. The following statement by Confucius reflects his teachings about law and lawsuits:

> The people should be positively motivated by *li*, to do that which they ought; if they are intimidated by fear of punishment they will merely strive to avoid the punishment, but will not be made good. To render justice in lawsuits is all very well, but the important thing, Confucius said, is to bring about a condition in which there will be no lawsuits.[2]

China Today - Mediation

China's legal system relies heavily on community participation. Most civil (as opposed to criminal) disputes are resolved through mediation, at the local level. The preference for mediation reflects the long standing desire to avoid litigation (using the courts to resolve disputes) and social conflict.

These are some actual disputes that were recently resolved by mediation committees in China:

Su-Lin, from a small village in southern China had a serious quarrel with her father-in-law. She was so upset about the quarrel that she declared that she was going to drown herself in a nearby river. Her

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[1] Some information drawn from Linda S. Wojtan, Intercom 100, December 1981. Updated by University of Puget Sound Institute for Citizen Education in the Law.

[2] Confucius, *The Analects* 2.3, 12.13, quoted in Ross, *The Changing Profile of Dispute Resolution in Rural China: The Case of Zouping County, Shandong*, 26 **Stanford Journal of International Law** 15, 16 (1989).

husband, a farmer, was so angry about this he resolved to kill himself and his father. He poured gasoline all over his house and locked himself and his father inside. Several elderly and respected villagers rushed to the scene and, acting as mediators, managed to get the husband to let them inside. Eventually, through mediation, they managed to patch things up between the husband and wife.

A widow was turned out of her home by her parents-in-law, who wanted to rent the home to increase their income. The local mediation committee helped her obtain the right to stay or receive monetary compensation from her in-laws.

THE MEDIATION PROCESS

Mediation is also used as a dispute resolution method in the United States, and is gaining widespread acceptance, including here in Washington State. Mediators in the U.S. are usually community programs or private individuals or organizations, that charge for their services. Some of our courts employ mediators, who attempt to mediate cases brought to court, prior to setting the case for a trial. The Small Claims Court in Pierce County uses attorney mediators, who hear cases prior to setting them for trial.

What does the mediation process involve? In the U.S., mediation takes place when an impartial third person or persons assists the disputing parties to resolve their differences. In China, the mediation committees take a more active role in terms of proposing solutions to a problem than the usual mediator in the United States.

These are the steps in the mediation process:

1. Introductions. The goal here is to put the parties at ease, and explain the ground rules, including that the mediator is not a decision-maker, but only a facilitator.

2. Telling the story. Allow each side to state their side of the story, without interruptions from the other side.

3. Define the problem. The mediator lists the identified issues that need to be resolved. Sometimes at this point more information is needed from the parties, and the mediator should try to clarify the issues by asking the parties questions such as:
   "Tell me more about..."
   "Party 1, what did you hear Party 2 say about _____?"
   "What makes you think that?"

   Each party's views and issues should be summarized, and the mediator must make sure to check with each party to be sure the list of issues is correct. For example: "Party 1, I heard you say _____. Is that right? Did I miss anything?"

4. Identify possible solutions. Pick an issue, if there are several. Ask each party for possible solutions to that issue. It's a good idea to start with the easiest problems first. List the suggestions. If there are no suggestions, ask the parties to brainstorm all possible solutions, no matter how impractical they may seem. Once a list of solutions is drawn, ask each party to give their feelings about the possible solutions.

5. Revising and discussing solutions. The mediator revises the list of solutions, based on the expressed feeling of the parties, and attempts to find a solution both parties can agree to.

6. Reaching an agreement. The mediator helps the parties find a solution they both can live with. The agreement should be put in writing. An agreement should also be made about what will happen if either party breaks the agreement.

ROLE PLAY SITUATIONS

ROLE PLAY 1 - For the Mediation Committee:

Chung, a young worker and his neighbor Waverly, an elderly woman, are yelling at each other on the sidewalk in front of their apartment house.

CHUNG says:

I just paid 500 yuan (about $150) for this new boom box. I'll listen to it all night if I feel like it. Besides I don't get home from my work unit until after 11 p.m., and that is my only time to relax. She gets up at 6 a.m. and wakes me up every morning when I'm trying to sleep.

Waverly says:

These young people have no respect for their elders these days! He comes in after midnight and plays American music so loud even my long dead ancestors could not sleep! I have always gone to bed with the sun, and get up with the sun. That is my way.

ROLE PLAY 2 - For the Mediation Committee:

Ling, a self-employed furniture maker and Wu, his supplier, have come to you to help them resolve their dispute.

LING says:

I ordered 200 board feet of Korean pine from him. I particularly specified Korean pine, the only wood that is strong and durable enough for my tables and chairs. He sent defective, knotty, pine, that doesn't look like any Korean pine I ever received from my old supplier. I've already tried to contact him to place another order. I'm sending this junk back.

Wu says:

This wood is the quality I supply all my customers with. It is the finest Korean pine available in China today. He did not give me any specifications about what quality he needed. I sent him what I send everybody.

ANTARCTICA -- THE CASE OF THE PLANE CRASH

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 1

Use of Outside Resource Persons:

A judge or a lawyer who practices tort law would be a good resource person for this lesson.

Objectives:

1. Students will analyze the facts of a tort case about a plane crash in Antarctica, and apply law to those facts.

2. Students will analyze and compare opinions deciding a case, and decide which is better-reasoned.

3. Students will rank arguments in order of persuasiveness.

Materials:

Handouts 1 and 2

Procedures:

1. Ask students to read Handout 1, a case study about a plane crash that took place in Antarctica in 1979. Have students read the facts first, and then ask the following questions to check for understanding.

a. What happened in this case?

On November 28, 1979, a New Zealand airliner carrying 257 persons (237 passengers and 20 crew members) crashed into Mount Erebus, a 12,450 foot volcano in Antarctica, instantly killing all those aboard. The pilot was off course, and flying low in an attempt to allow the passengers to view the Antarctic landscape and McMurdo Station, an American research station near the volcano.

b. Who are the parties? What are they claiming?

The plaintiffs, who are bringing the lawsuit, are the families (technically, the heirs and beneficiaries of the estates) of 16 crew members killed in the plane crash. They are seeking money damages for the loss of their family members. They are claiming that air traffic controllers on duty at the time of the crash, who were employed by the

United States government, should have warned the pilot about the presence of the volcano, and not to fly so low in that vicinity.

The defendant is the United States government, which employed the air traffic controllers. The U.S. government can act only through its employees and agents. Since the air traffic controllers were acting "within the scope of their employment" at the time of the accident, the U.S. is liable under the legal theory of "vicarious liability," (which means indirectly responsible due the relationship between the parties, such as employer-employee, or principal and agent).

c. What is negligence?

Negligence is the failure to use due care, or conduct that creates an unreasonable risk of harm to someone else. Examples of negligence are driving too fast down a street crowded with pedestrians or a doctor forgetting to remove a sponge in her patient when performing surgery.

d. What is the Federal Tort Claims Act? Why is it important in this case and what is the "foreign country" exception to the Act?

The Federal Tort Claims Act is the federal law that allows someone to sue the United States to recover money damages from the government when they have been injured by the wrongful acts (or torts) of government employees acting within the scope of their employment.

It is important in this case because it is the law that allows the plaintiffs to sue the United States.

The Act has a provision that says the Act does not apply if the event the parties are suing about occurred in a foreign country. This is called the "foreign country" exception.

Background for teachers: Usually, the government cannot be sued by its citizens. Called "sovereign immunity" it is derived from English common law, and related to the divine right of kings, that "the King can do no wrong." The "government," as successor to the King, traditionally is not subject to be sued unless it has consented to allow suit. (A comparison can be drawn here to the immunity from suit given to ambassadors of foreign countries when in another country.)

e. What is the issue in this case? What are the positions of the plaintiffs and the defendants and why are they taking those positions?

The issue is whether the "foreign country" exception to the Federal Tort Claims Act will apply.

The plaintiffs claim that Antarctica is not a "foreign country" because they want the Federal Tort Claims Act to apply so they can sue the U.S. government.

The defendant wants to apply the "foreign country" exception to the Act, which would mean the Federal Tort Claims Act would not apply to

this case, and the lawsuit must be thrown out. (The plaintiffs could still sue Air New Zealand, in New Zealand.)

2. Pass out Handout 2, two opinions deciding the "foreign country" issue in the plane crash case. Ask students to select the opinion they agree with. Either in groups or individually, ask students to list the 2 most persuasive arguments in the opinion they agree with, and the 2 least persuasive. (These are edited versions of the two opinions.)

Arguments from Opinion A include: 1) Antarctica is not subject to the sovereign rule of any nation, and is therefore not a "country"; 2) the U.S. conducts such extensive activities there that it does not treat Antarctica as a foreign country; 3) the U.S. has assigned McMurdo a zip code; 4) the U.S. has many buildings and people there; 5) there is no law to apply and no one to enforce the law there.

Arguments from Opinion B include: 1) dictionary meaning of "country" is "region" not "sovereign state"; 2) Antarctica is not sovereignless, but disputed territory; 3) 7 countries make claims to Antarctica; 4) other countries have operations almost as extensive as the U.S.

3. After hearing from the groups, tell students that Opinion A is the majority opinion of the court, and Opinion B is the dissenting opinion (written by now U.S. Supreme Court Justice Antonin Scalia.) This case was decided by the District of Columbia Court of Appeals in 1984. Beattie v. United States, 756 F.2d 91 (1984).

As further background, you may wish to inform the class that the D.C. Court of Appeals decision discussed above affirmed the D.C. District Court (the federal trial court) decision that Antarctica is not a "foreign country" for purposes of the Federal Tort Claims Act. Since this was a "case of first impression" (it involved an issue that had not been decided before), the District Court "certified" (which means appealing to a higher court on just one point of law) the question to the D.C. Court of Appeals.

After the Court of Appeals affirmed the District Court's decision, the case was returned to the District Court for a trial. The trial court's decision is reported at 690 F.Supp 1068 (D.D.C. 1988). The trial court (a jury is not allowed in Federal Tort Claims Act cases) found that the air traffic controllers were not responsible for the crash, and that the negligence of Air New Zealand and the flight crew was solely responsible for the crash. The evidence showed that the air traffic controllers never really made radar contact with the airplane, and the pilot advised them that he was proceeding visually. Actually, the plane was way off course, and the crew did not make use of equipment on board to verify their location.

One expert at the trial hypothesized that the crew did not see the mountain because of "sector whiteout." Whiteout is an ocular illusion that occurs even when visibility is good, that eliminates the horizon line

from view, and prevents the viewer from seeing obstacles in front of him. Sector whiteout is a modified whiteout in which the viewer can distinguish the horizon line but still cannot see the obstruction in front of him.

PLANE CRASHES INTO VOLCANO!

On November 28, 1979, an Air New Zealand DC-10, carrying 237 sightseers and 20 crew members, crashed into Mount Erebus, an active volcano not far from U.S. and New Zealand scientific research stations in Antarctica. All those on board were killed instantly. The pilot was flying low to give passengers a view of the Antarctic landscape, and was heading toward McMurdo Station, to give passengers a view of the U.S. scientific station there. The plane was flying at an altitude of 1,500 feet when it crashed into the side of the 12,450 foot volcano.

The families of 16 of the crew members killed, who were New Zealand citizens, brought a lawsuit against the United States. They claimed that the United States and its air traffic controllers at McMurdo Naval Air Station were partially responsible for the accident, by not warning the pilot of the danger of flying low over the volcano.

This lawsuit is called a tort action. A tort action is a civil (as opposed to criminal) lawsuit, to recover for injuries caused by the wrongful act of another person. The federal law that allows someone to sue the United States in a civil action such as this one is called the Federal Tort Claims Act. Under this law, the United States has agreed to be held responsible for the negligent acts of government employees. Negligence is conduct that is careless or creates an unreasonable risk of harm to others.

The Federal Tort Claims Act, however, includes certain exceptions, one of which is that the Act does not apply if the incident occurred in a "foreign country." The lawyers for the U.S., who were defending the air traffic controllers, claimed that Antarctica is a "foreign country," and therefore the Federal Tort Claims Act does not apply in this case and the case should be thrown out.

The lawyers for the families of the crew members claimed that Antarctica is not a "foreign country," and therefore the Federal Tort Claims Act does apply.

a. What happened in this case?

b. Who are the parties? What are they claiming?

c. What is negligence?

d. What is the Federal Tort Claims Act? Why is it important in this case and what is the "foreign country" exception to the Act?

e. What is the issue in this case? What are the positions of the plaintiff and the defendants and why are they taking those positions?

WHICH OPINION DO YOU AGREE WITH?

Read the following opinions deciding whether Antarctica is a "foreign country," and decide which you agree with. In deciding, think about the reasons the author gives to support his/her conclusion. What arguments are the most persuasive? Least persuasive?

OPINION A

Antarctica has a very strange legal status. It is like the legal status of outer space. This large continent is unique on the surface of the earth in not being subject to the rule of any nation. Under the Antarctic Treaty of 1959, the signing nations agreed not to claim possession of the land in Antarctica, although their claims to rule Antarctica were not cancelled.

The United States currently operates three year-round stations, several summer camps and numerous tent cities in Antarctica. McMurdo Base, with its harbor, landing strips and helicopter pad, is America's largest station, with a summer population of up to 1100 persons and a winter population of approximately 140 persons. The McMurdo airfield supports frequent flights to and from New Zealand during the Antarctic summer. The airfield has two air traffic control facilities.

There are over 130 buildings there, ranging in size from a small radio shack to large, three-story structures, including facilities for research in marine and terrestrial biology, biomedicine, geology and geophysics, glaciology, meteorology and physics. McMurdo Station has been assigned a zip code by the United States Postal Service.

These extensive activities of the United States in Antarctica indicate that the U.S. does not treat this sovereignless land like a foreign country. Antarctica has no law to apply or government to enforce the law. Antarctica is not a "foreign country" because it is not a country at all. Therefore the Federal Tort Claims Act will apply to this lawsuit.

OPINION B

The Federal Tort Claims Act does not apply to a claim arising in Antarctica because Antarctica is a "foreign country." The dictionary meaning of "country" is not "sovereign state," but simply "region." The first definition of "foreign" is "situated outside a place or country." This seems to mean any location outside the territorial jurisdiction of the United States. Antarctica fits this definition.

It is inaccurate to describe Antarctica as a continent that has never been and is not now subject to the sovereignty of any nation. It is

more properly described as "an entire continent of disputed territory." The Antarctica Treaty of 1959 merely provided that the treaty does not prejudice any nation's claim in Antarctica, and that while the treaty is in effect, no activities will constitute a basis for asserting a claim in Antarctica and no new claims shall be asserted.

Seven countries - Argentina, Australia, Chile, France, New Zealand, Norway and the United Kingdom - have made formal claims (some of which are conflicting) to portions of the continent. Other countries, including the United States and the Soviet Union, have substantial bases for claims which they have not yet chosen to assert. New Zealand has asserted a claim on the land upon which McMurdo Station sits, called the "Ross Dependency."

The activities of the United States in Antarctica are not so extensive as to suggest that the U.S. does not treat Antarctica as a foreign country. There are more than 30 stations in Antarctica, only three of which are American. Numerous countries conduct Antarctic operations, and while the United States may have the largest program, those of other countries, especially the Soviet Union, rival those of the U.S. All of this leads to the conclusion that Antarctica must be treated as a foreign country.

ANTARCTICA -- WHO CARES?[1]

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 1

Use of Outside Resource Persons:

An international lawyers can explain principles relating to land claims in "discovered areas."

Objectives:

1. Students will identify reasons to study Antarctica.
2. Students will list at least four countries that have claimed territory in Antarctica.
3. Students will identify physical characteristics of Antarctica.
4. Students will develop an understanding of the scientific research being undertaken in Antarctica.

Materials:

Handouts 1 and 2

Procedures:

1. Begin by asking students why they should study about Antarctica? Tell them that Captain James Cook, the English explorer, said in 1775, after completing the first circumnavigation of the continent: "I make bold to declare that the world will derive no benefit from it." Do they think he was correct?

Antarctica has been called the barometer of mankind's use and abuse of the planet. It has been compared to outer space and the open seas. It is a critical location for scientific research leading to a better understanding of both Antarctica itself and the entire planet and solar system. The high, dry polar plateau is an ideal place to study the solar system. Large numbers of meteors are drawn by the magnetism of the South Pole. Ice cores extracted to depths of 3000 feet have allowed scientists to measure and analyze solar activity, climate and carbon dioxide over past millennia.

[1] An excellent resource for high school students on Antarctica is the Foreign Policy Association's Headline Series, Antarctica, the Continuing Experiment by Philip W. Quigg (1985).

If, as many scientists fear, the earth's atmosphere is warming due to the "greenhouse effect," the critical place to monitor the effect is Antarctica, where a rise of a few degrees of global temperature might start a melting of polar ice that would raise the sea level, possibly flooding coastal cities and other low-lying areas.

In 1984, a British survey team discovered a large hole in the ozone layer (a layer of the atmosphere which filters dangerous ultraviolet rays from the Earth) above Antarctica. According to the studies, a hole the size of the United States was opening every summer over Antarctica. Monitoring of this situation is of critical importance to us all.

The seas that surround Antarctica provide nutrients to the rest of the world's oceans. Two thirds of the world's seals, a million whales, over 80 million penguins, and millions of other seabirds inhabit the seas around Antarctica.

2. Pass out Handout 1, a test of students' present knowledge about Antarctica. Ask students to complete the test as best they can.

3. After students have completed the quiz, go over the information provided below. You may wish to administer the quiz again at the end of this lesson to see what knowledge has been gained.

a. Great Britain was the first to discover Antarctica.

False. No one knows for sure who discovered Antarctica. The French claim that Bouvet de Lozier discovered an island, later named for him, off the coast of the continent in 1739. The British claim that Captain James Cook circumnavigated the continent and discovered the island, South Georgia, off the coast of Antarctica, in 1774 or 1775. The British also claim that Englishman Edward Bransfield sighted the Antarctic mainland sometime between 1820-21. The Russians claim that Admiral Fabian von Bellinghausen first sighted the continental mainland sometime between 1819 and 1823. The United States claims that a seal hunter from New England, Nathaniel Palmer also found the mainland sometime around 1821. Britain Sir James Ross was the first to cross the Antarctic ice pack and actually reach the coast, in 1841.

b. Antarctica is a frozen sea bordered by ice-covered land masses.

False. Antarctica is an ice-covered continent (the fifth largest) surrounded by ocean.

c. Antarctica is a desert.

True. The annual precipitation (all snowfall) in Antarctica is only 4 to 5 inches. A desert is defined as a region with less than 10" annual rainfall. For comparison purposes, the annual rainfall in the Sahara desert is approximately 8", Gobi desert is approximately 10", and the Kalahari desert is approximately 10".

d. Antarctica contains over 75% of the earth's fresh water.

True, but it is all frozen. Antarctica's covering of ice and snow is two miles thick and in some places even three miles thick.

e. The oceans surrounding Antarctica contain one of the largest concentrations of mammals on earth.

True. In the area where the Southern Ocean with its cold waters meets warmer waters moving south - roughly at the 50th parallel of latitude - there is a rapid change in the water temperature, creating a belt called the Antarctic Convergence. This belt forms a barrier to species from warmer waters except whales, and makes the biological communities of the polar region unique. The waters of the Southern Ocean are incredibly rich in nutrients, and sustain 20 species of whales, and 8 species of seals, as well as 7 species of penguins with a total population of perhaps 75 million. In the 1800's, just after Antarctica was discovered, whale and seal hunters came in huge numbers, and just about decimated the seal population. The seal population is recovering, and in 1978 the Convention for the Conservation of Antarctic Seals, an international agreement to protect the seals went into effect.

Krill, a small shrimp-like crustacean, is the principal food of whales and other mammals in Antarctica. Some countries have begun to harvest the krill, which is rich in protein and minerals. Some predict that it will be a major source of food in the future, while others fear that removing too many krill will upset the ecological balance in the Southern Ocean.

f. The first person to reach the South Pole was a British explorer, Robert Falcon Scott.

False. Scott's story, however, is a truly tragic one in Antarctica's short history of human exploration. Scott originally set out for the geographical South Pole in 1902 but had to turn back before reaching his destination. Scott vowed to try again. He set out on a second expedition to the South Pole several years later, unaware that a Norwegian team, led by Roald Amundsen was also headed to the Pole from a different direction. On December 14, 1911, Amundsen and his party reached the geographical South Pole first. He left a message for Scott there, in a tent by the Norwegian flag he had erected at the Pole. Scott arrived on January 17, 1912, only to find Amundsen's note and flag. Scott wrote in his diary: "Great God! This is an awful place and terrible enough for us to have laboured to it without the reward of priority." Scott and his party died on the return journey. Their things were later found, including the diary, which provides a detailed account of their difficult, ultimately fatal journey.

g. Scientific research is the principal activity in Antarctica today.

True. Science has been a principal activity in Antarctica since the continent was first discovered. Scientists were along on almost all Antarctic expeditions from Captain Cook's onward. Among the very few possessions found with Scott and his party at their last camp, where they perished, were 37 pounds of rock specimens they had dragged with them.

Scientific research in Antarctica began in earnest with the International Geophysical Year (IGY), which ran from July 1, 1957 to December 31, 1958. A group of American scientists proposed the idea of a major international polar research effort, to study important questions about Antarctica, its effect on global weather, the ionosphere, and the dynamics of the Southern Ocean. During the IGY, 12 nations operated 60 stations in the Antarctic.

Today, most of the IGY participants still conduct research in Antarctica. Other nations are also involved as well. Research there is expensive: at the U.S. stations, for every $1 spent on research, $9 is spent on the logistics of operating in Antarctica's inhospitable environment.

Science and the devotion to it have led to a cooperative atmosphere in Antarctica that is unique among nations.

h. Eskimos inhabited Antarctica before the first explorers came there.

False. No people inhabited this frozen continent until recently, when scientific expeditions set up stations to study the Antarctic. Chile and Argentina have come closest to "inhabiting" Antarctica, by setting up communities, with some families and even schools, in an attempt to support their claims to sovereignty.

i. How many nations claim parts of Antarctica as their sovereign territory?

Seven. Pass out Handout 2, a diagram of Antarctica showing the claims made. Of the 12 nations that participated in the IGY, 7 had previously claimed their sovereignty over pie-shaped segments of Antarctica. These nations are Argentina, Australia, Great Britain, Chile, France, New Zealand, and Norway. The claims of Britain, Chile and Argentina overlap. The other IGY nations, which are Belgium, Japan, South Africa, the Soviet Union and the United States have not made territorial claims, and refuse to recognize the claims of the others.

ANTARCTICA QUIZ

Read the following statements and indicate whether you think they are True or False. Question "i" calls for a number.

_____a. Great Britain was the first to discover Antarctica.

_____b. Antarctica is a frozen sea bordered by ice-covered land masses.

_____c. Antarctica is a desert.

_____d. Antarctica contains over 75% of the earth's fresh water.

_____e. The oceans surrounding Antarctica contain one of the largest concentrations of mammals on earth.

_____f. The first person to reach the South Pole was a British explorer, Robert Falcon Scott.

_____g. Scientific research is the principal activity in Antarctica today.

_____h. Eskimos inhabited Antarctica before the first explorers came there.

_____i. How many nations claim parts of Antarctica as their sovereign territory?

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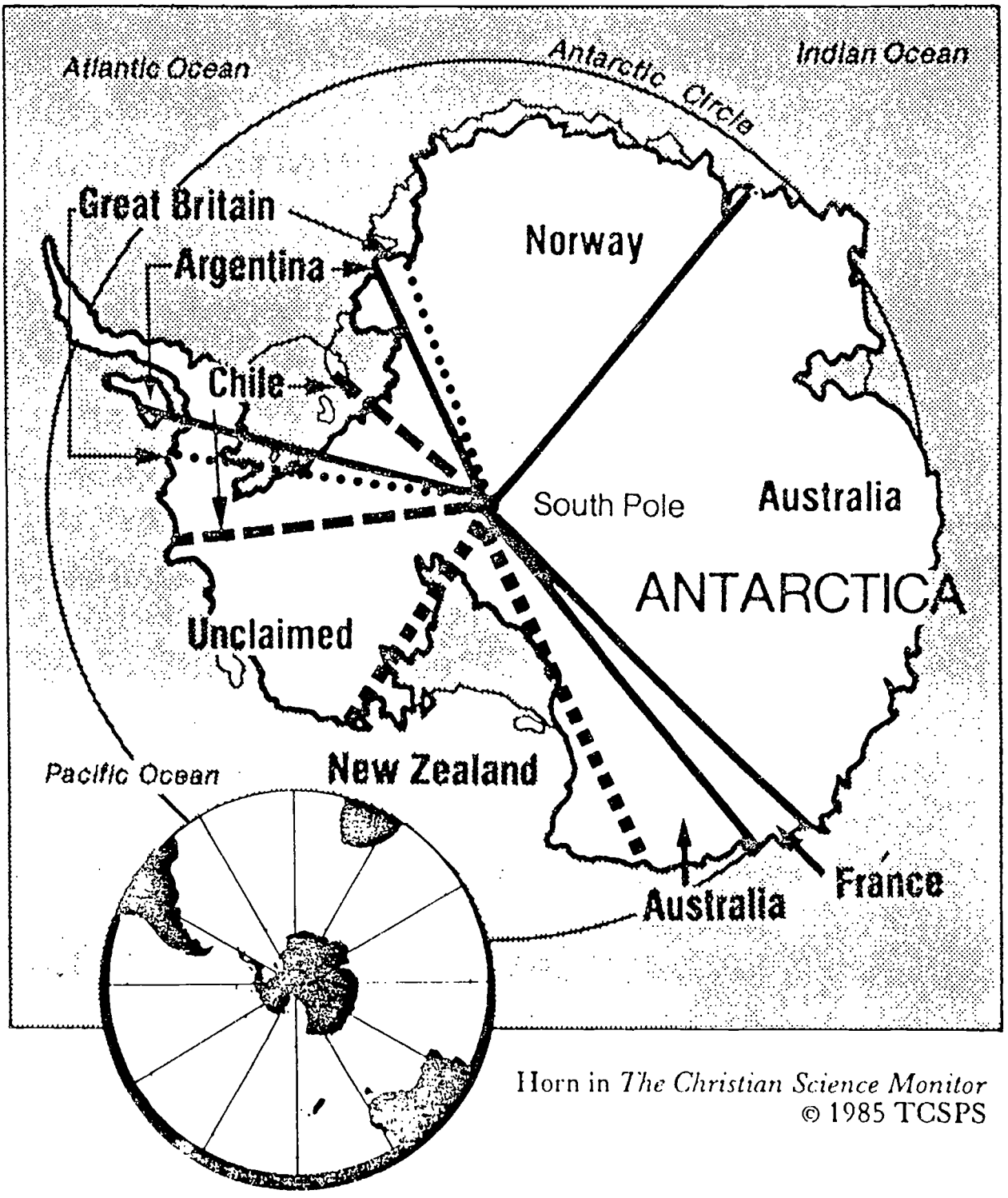
ANTARCTICA -- MAP OF CLAIMS

Seven countries, from Norway to Argentina, lay claim to parts of Antarctica. Three countries, Britain, Chile and Argentina, have overlapping claims.



Horn in *The Christian Science Monitor*

THE ANTARCTIC TREATY

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 1

Use of Outside Resource Persons:

A lawyer practicing in international law can explain the bases for the various claims of right to Antarctica and the treaty making process. The lawyer could debrief a simulated treaty negotiation.

Objectives:

1. Students will identify four methods countries use to claim new territory.

2. Students will identify potential problems in sharing Antarctica as a scientific resource among nations, and negotiate solutions to those problems.

Materials:

Handout 1, Antarctic Treaty

Procedures:

1. Begin by asking students to brainstorm how countries go about claiming new territory. For example, how did England, France and Spain originally lay claim to North America? List responses on the board, and then ask for examples of each.

Students might answer

1) discovery and exploration, - Cabot "discovered" parts of North America and claimed them for England;

2) physical occupation, - British settlers occupied New England and claimed it for England;

3) war or by force, - Great Britain took the Falkland Islands by force from Argentina, when a territorial dispute arose there;

4) taking over adjacent land (called "contiguity," "proximity" or "propinquity."), - Chile and Argentina claim parts of Antarctica under this theory, saying that the parts of Antarctica contiguous to their nations should belong them;

5) historic right - claiming by succession, such as Canada claiming land originally claimed by England. Other principles of sovereignty claims that students probably will not mention, but that have been asserted in Antarctica are:

6) geological affinity - the concept that the mountains of Antarctica are structurally a continuation of the Andes, and therefore are a natural extension of Argentina and Chile;

7) the sector principle - this is the source of the "sliced pie" look of Antarctica, and is based on drawing a line along the meridian to the pole from the spot along the coast where the nation staked its claim, and back out to the coast; and

8) symbolic acts, such as raising flags (e.g. the United States astronauts placing the U.S. flag on the moon) or brass plaques, setting up post offices, and even establishing scientific stations.

2. Tell students that nations claiming land in Antarctica have based their claims on all of the above and that only one is recognized in international law. Ask students to guess which that is.

Effective occupation is the only way of asserting a territorial claim that is universally recognized in international law. It is not clear how long a nation must occupy an area before it can assert a claim for sovereignty. Examples range from 39 to 200 years.

Many of the scientific stations have been occupied continuously (with occupants varying on a rotating basis) since the International Geophysical Year (IGY) in 1957-58. Chile and Argentina maintain bases inhabited by families with children, in an attempt to support their territorial claims.

3. With all these conflicting claims, ask students how they think they should be handled? Brainstorm a list of potential problems. Tell students that it is 1959, and the International Geophysical Year has just ended. Brainstorm what the 12 IGY nations' concerns are about the future of Antarctica. Write responses on the board, including all those listed below.

Responses include 1) the possibility of war between nations claiming the same territory; 2) the use of Antarctica as a military base by various nations; 3) the possibility of Antarctica as a site for nuclear testing or 4) the disposal of nuclear waste; 5) how to deal with those nations that had participated in the IGY, but had not made territorial claims if they now chose to do so; 6) how to continue peaceful scientific research in Antarctica; 7) how to preserve the resources within the continent, both marine and mineral; 8) how to deal with other nations that did not participate in the IGY; and 9) how to preserve the cooperative spirit among nations that existed during the IGY.

4. Divide the class into twelve groups, representing the twelve nations operating stations during the IGY.

"Claimant states" are
Argentina
Australia
Britain,
Chile
France
New Zealand
Norway

"Non-Claimant" states are
Belgium
Japan
South Africa
Soviet Union
United States

If there are not enough students to have at least 3 students in each group, combine Australia and New Zealand into one group, and Japan and Belgium. Tell students their eventual goal is to come up with an agreement, governing their relationship within the Antarctic. (For a more in-depth study, students could be given a few days to do further research about their country and its position on Antarctica.)

5. Ask each group representing a nation to list their nation's particular concerns, and then prioritize them. Ask them to come up with possible solutions to their major concerns. Ask each group to select a spokesperson.

6. Bring the class back together and call on each group to report their major concerns, and proposed solutions. Then call a summit, composed of one representative from each nation (the spokesperson). Ask the representatives to negotiate a treaty, before the rest of the class, addressing at least 5 of the major concerns expressed by the countries involved.

The actual treaty was negotiated in the period from June 1958 to December 1, 1959. Over 60 meetings were held to prepare an agenda and reach agreement on major points before the formal conference was called, in Washington, D.C., in October 1959. The treaty was signed six weeks later.

7. Write up the major points of the treaty on the board or an overhead projector. Then pass out Handout 1, a copy of the Antarctic Treaty (abridged and edited somewhat), an amazingly simple document for such a complex problem. Give students time to review the Treaty and compare it with what they came up with. Discuss the differences with the class. There may well be issues addressed by the students that are ignored by the actual treaty. Resource issues were not included in the original treaty, but have been addressed in later treaties, and the Law of the Sea Treaty (which has still not been ratified by the U.S.).

8. Since the treaty was originally signed, at least 6 other nations have become "Consultative Parties" under the treaty, which means that they can make decisions, and have the same rights and responsibilities as the original 12 nations. At least 16 other nations are called acceding parties, and have agreed to abide by the treaty,

but have not participated in sufficient scientific research to qualify for consultative status. To obtain consultative (decisionmaking) status, a nation must conduct "substantial scientific research activity there, such as the establishment of a scientific station or the dispatch of a scientific expedition."

9. Ask students what they think the future holds for Antarctica?

Since 1983, Antarctica has been the subject of debate in the United Nations, due to the concern of certain "third world" nations that Antarctica is being used to benefit only the rich, industrialized nations of the world. Malaysia led the debate in the U.N., and has taken the position that Antarctica and its resources are the "common heritage of mankind." These nations have criticized the decision-making process of the consultative parties as secretive, and particularly object to the membership of South Africa in this "exclusive club." They favor putting Antarctica under the administration of the U.N. The Consultative Parties strongly oppose this

Some environmental groups fear that these nations see Antarctica as: 1) a source of marine and mineral wealth, of which they would be entitled to a share; 2) food for the third world through harvesting of krill, which environmentalists view as damaging to the Antarctic ecosystem and 3) even as a source of fresh water for parched areas of the world, by moving blocks of ice, which could upset the ecosystem (so far the economic and technological problems of transporting enormous icebergs over vast distances have proved insurmountable). Environmentalists propose making Antarctica a world park, immune from any kind of development.

Various international agreements have been reached regarding the Antarctica environment. The Convention on the Conservation of Antarctic Marine Living Resources, concluded in 1980, addressed the conservation of the Antarctic marine ecosystem. The Agreed Measures for the Conservation of Antarctic Fauna and Flora were adopted in 1964, and the Convention for the Conservation of Antarctic Seals was adopted in 1972, and went into force in 1978.

10. Finally, inform the class that the Antarctic Treaty, which was ratified in 1961 will have its 30th anniversary in 1991. Article XII 2.(a) provides that after the expiration of thirty years, any of the contracting parties may request a conference to review the operation of the Treaty. As an alternative activity, the class could research today's viewpoints of the various nations involved, as well as the third world nations, and environmentalists, and hold a simulation of the 1991 conference.

THE ANTARCTIC TREATY

[This is a slightly edited version of the Treaty]

Signed at Washington December 1, 1959
Entered into force June 23, 1961

The Governments of Argentina, Australia, Belgium, Chile, the French Republic, Japan, New Zealand, Norway the Union of South Africa, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America,

Recognizing that it is in the interest of all mankind that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord;

Acknowledging the substantial contributions to scientific knowledge resulting from international cooperation in scientific investigation in Antarctica ;

Convinced that the establishment of a firm foundation for the continuation and development of such cooperation on the basis of freedom of scientific investigation in Antarctica as applied during the International Geophysical Year accords with the interests of science and the progress of all mankind;

Convinced also that a treaty ensuring the use of Antarctica for peaceful purposes only and the continuance of international harmony in Antarctica will further the purposes and principles embodied in the Charter of the United Nations;

Have agreed as follows:

Article I

1. Antarctica shall be used for peaceful purposes only. There shall be prohibited...any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons.

2. The present Treaty shall not prevent the use of military personnel or equipment for scientific research or for any other peaceful purposes.

Article II

Freedom of scientific investigation in Antarctica and cooperation toward that end, as applied during the International Geophysical Year, shall continue, subject to the provision of the present Treaty.

Article III

1. In order to promote international cooperation in scientific investigation in Antarctica, the Contracting Parties [the original 12 parties signing the treaty] agree that, to the greatest extent feasible and practicable;

(a) information regarding plans for scientific programs in Antarctica shall be exchanged to permit maximum economy and efficiency of operations;

(b) scientific personnel shall be exchanged in Antarctica between expeditions and stations;

(c) scientific observations and results from Antarctica shall be exchanged and made freely available.

2. Every encouragement shall be given to the establishment of cooperative working relations with the U.N. and other international organizations having a scientific or technical interest in Antarctica.

Article IV

1. Nothing contained in the present Treaty shall be interpreted as:

(a) a renunciation by an party of previously asserted rights of or claims to territorial sovereignty in Antarctica [i.e. the 7 nations claiming territory do not give up those claims];

(b) a renunciation or diminution by any party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica , or otherwise [i.e. the other nations are not giving up their right to make a claim];

(c) prejudicing the position of any party as regards its recognition or non-recognition of any other state's right of claim or basis of claim to territorial sovereignty in Antarctica, [i.e. no one is agreeing to recognize the claims of any of the other nations].

2. No acts or activities taking place while the present treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present treaty is in force. [All claims are put aside during the time the treaty is in effect].

Article V

Any nuclear explosion in Antarctica and the disposal there of radioactive waste material shall be prohibited.

Article VI

The provision of the present treaty shall apply to the area south of 60 degrees South Latitude, including all ice shelves, but nothing shall prejudice or affect the rights of any state with regard to the high seas within that area.

Article VII

1. In order to promote the objectives and ensure the observance of the provisions of the treaty, each party whose representative are entitled to participate in the meetings referred to in Article IX [the 12 original parties meet every 2 years] shall have the right to carry out any inspection, and have complete freedom of access at any time to any or all areas of Antarctica.

2. All areas of Antarctica, including all stations, and equipment within those areas, and all ships and aircraft shall be open at all times to inspection.

3. Each party will give notice of advance of all expedition, all stations, and any military personnel or equipment used in Antarctica.

Article IX

(Deals with jurisdiction--observers and scientific personnel are subject to the jurisdiction of their own nation while in Antarctica.)

Article X

1. Representatives of the parties shall meet regularly for the purpose of exchanging information, consulting together on matters of common interest, including use of Antarctica for peaceful purposes only, facilitation of scientific research and cooperation, and preservation and conservation of living resources in Antarctica. [The parties have met every two years.]

2. Each party which becomes a party by accession shall be entitled to appoint representatives to participate in the meetings, during such time as that party demonstrates its interest in Antarctica by conducting substantial scientific research activity there, such as the establishment of a scientific station or the dispatch of a scientific expedition. [This means that a nation may participate in the meetings only if it has made an investment in scientific research in Antarctica.]

Article XI

Each of the parties agrees to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity in Antarctica contrary to the principles or purposes of this treaty.

Article XI

1. If any dispute arises between two or more of the parties concerning the interpretation or application of this treaty, those parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

2. Any dispute not so resolved shall, with the consent of all parties to the dispute, be referred to the International Court of Justice for settlement, but failure to reach agreement on reference to the International Court shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means listed above.

Article XII

1. (a) The treaty may be modified or amended at any time by unanimous agreement of the parties entitled to participate in meetings in Article IX. Any modification will enter into force when ratified by all contracting parties.

(b) If a party does not ratify within two years of the entry into force of the modification, that party will be deemed to have withdrawn from the treaty.

2. If after the expiration of thirty years from the date of entry into force of the present treaty, any of the parties whose representatives are entitled to participate in the meetings [the original 12 plus those who have made sufficient investment in scientific research] so requests, a conference of all the parties shall be held as soon as practicable to review the operation of the treaty.

Article XIII

The present treaty shall be subject to ratification by the signatory states (the original 12). It shall be open for accession [acceptance of the treaty terms by other nations] by any state which is a member of the United Nations, or by any other state which may be invited to accede to the treaty with the consent of all the parties.

UNDERSTANDING CONCEPTS OF POWER

Source:

Reprinted from Teaching Today's Constitution, Social Studies Schools Service written by Margaret Fisher, 1986.

Historical Period: 1787 to present.

Class Period: 1

Use of Outside Resource Persons:

An attorney familiar with constitutional law could assist in this lesson.

Objectives:

1. Students will distinguish between the merits of a limited and unlimited government.
2. Students will list powers that should not be granted to governments.
3. Students will identify any current governmental powers that they believe should be limited.

Materials:

Handout 1

Copy of the U.S. Constitution

Procedures:

1. As background, brainstorm with students a definition of democracy.

Dictionary definition: a form of government in which the sovereign power resides in and is exercised by the citizens, either directly or indirectly through a system of representation.

2. Ask students whether they think a democratic government should be able to do anything that the majority thinks is right, or whether there should be some limits placed on the government. Make sure that students answer the following questions based on should rather than what is in fact permissible in the United States. What limits should exist regarding each hypothetical government action listed in Handout 1?

3. Explain that the basis of our national government reflects the thinking of the founders that the government of the United States

be one of limited powers. That means that the government can only do those things that the people give it the power to do.

4. Divide students into groups of 5 each. Present Handout 1 to each group and assign one group to do actions a-e, another group to do f-j, etc. Have students decide whether the government should be able to do each action (as discussed before). For each activity they want to prevent the government from doing, ask the students to draft language to prevent the government from acting. They should be careful that the language they write does not restrain the government from acting where the group believes the government should be free to act.

5. Have groups report back.

Discuss their opinions and then explain how our present Constitution permits or forbids the government from doing each of these things. Refer to a copy of the Constitution for each item.

Answers to Handout 1 (The answers are student opinions, what is presented here is how the U.S. Constitution responds to this government action.)

a. The government should be able to make everyone in the country practice a certain religion.

The Establishment Clause of the First Amendment prevents the government from establishing a religion; the Free Exercise Clause of the First Amendment allows people to practice their individual religions. Restricting prayer in schools is an example of not allowing establishment of religion by government.

b. The government should be able to require governmental permission to travel.

The right to travel is one of the privileges and immunities protected in the Constitution and is a fundamental right not explicitly mentioned but protected. Travel to foreign countries, in some instances, may be forbidden for national security or other reasons.

c. The government should be able to confiscate any books and ban news coverage of any topic that disagrees with government policy.

The First Amendment freedom of speech and the right of a free press apply here. The government, in some instances, may be able to stop the publication of "top secret" documents for security reasons.

d. The government should be able to use whippings to punish people who have disobeyed the laws.

The Eighth Amendment prohibits "cruel and unusual punishment." While whippings once were not considered cruel and unusual punishment for a crime, present standards of human decency

now prohibit whippings as cruel and unusual. Jackson v. Bishop, 404 F. 2d 571 (8th Cir. 1968). Note that in certain states corporal punishment is allowed in schools, though students may not be abused or hurt physically.

e. The government should be able to require that persons only work at jobs the government assigns to them.

The due process clause, freedom of contract, and the right of privacy generally prevent this type of government action. However, those in the military and those who have been convicted of crimes may be forced to work certain jobs.

f. The government should be able to decide who of the citizens may have children and who may not.

Although it is not specifically mentioned, having children has been ruled to be a fundamental right protected by the Constitution.

g. The government should be able to keep people in prison indefinitely without charging them with a crime.

The Fifth Amendment requires that there be a presentment or indictment for capital and infamous crimes. The due process clause prevents the taking of life, liberty, or property without due process of law. The Sixth Amendment requires that in all criminal prosecutions, the accused shall have a speedy and public trial. The right to habeas corpus of the Constitution was included to release those improperly held in prison.

h. The government should be able to deport people whose philosophy disagrees with that of the government.

The First Amendment prevents this action, though many people who are not citizens are deported for other reasons.

i. The government should be able to let the states with the most people or the most land make economic policy for the country.

The legislature is established by Article I, which sets forth the power of the states to send elected representatives to enact laws. The Senate gives an equal number of representatives to all states; the House of Representatives gives greater representation to the states with a larger population.

j. The government should be able to deny passports to citizens who pose a threat to national security.

The Immigration Clause of Article I allows the government to do this under certain circumstances.

k. The government should be able to torture people to force them to confess to crimes.

The Fifth Amendment right to be free from self-incrimination prevents this. Torture is also cruel and unusual punishment under the Constitution, a violation of the Civil Rights Act, and an assault.

l. The government should be able to search the homes of citizens any time it wants to.

The Fourth Amendment prevents unreasonable searches; searches of homes usually require search warrants.

m. The government should be able to require that all citizens wear the same clothes and have similar hair styles.

The right to privacy and the right of free speech both prevent this, though those in prison are sometimes denied these rights.

n. The government should be able to put people in mental hospitals if they become a burden to their families.

Due process prevents this and a hearing usually must be held to determine whether the person poses an immediate danger to self or others or is gravely disabled. However, juveniles do not have a right to their own lawyer at state expense in such cases.

o. The government should be able to require that all women marry at age 21.

The right of privacy and the fundamental right to marry or not to marry prevent this.

p. The President should be able to change any judge's ruling that disagrees with the President's view.

The separation of powers set forth in Articles I, II, and II prevents the executive from invalidating the actions of the judiciary. In some countries, including South Africa and Great Britain, the legislature is supreme and can do this.

q. The President should be able to disband the government when the President determines that national security requires it.

Articles I and II set out the authority of the President and legislature to act in times of national crisis, but disbanding the government is not an action the President can legally take.

r. The government should be able to take children away from their parents permanently if the parents become unemployed.

The fundamental right to have and raise children can only be limited when the government has a compelling reason, such as abuse or neglect. Lack of a job is not a compelling reason.

s. The government should be able to decide which people you can be friends with.

The right of association is a fundamental right in the First Amendment of the Constitution. It prevents the government from interfering with associations unless a compelling interest is present.

t. The Supreme Court should be able to overturn laws of Congress and the states when they violate the Constitution.

While not specifically stated in the Constitution, the Supreme Court has ruled in an early case, Marbury v. Madison, 1 Cranch 137, 2 L.Ed 60 (U.S. 1833), that the court has the power, derived from its power to decide cases, to declare acts of Congress unconstitutional and therefore to make the authoritative decisions on constitutional law. State laws may also be held invalid by the courts. This is called "judicial review."

u. The people of a state should be able to vote what conditions will be permissible in state prisons.

The Eighth Amendment establishes a minimum level of treatment for those convicted of crimes. The majority may not reduce that level through the initiative or legislative process. This principle of protecting the minority from the tyranny of the majority runs through the Constitution.

v. A state should be able to prohibit nuclear waste disposal facilities within its borders, even if the nation as a whole determines that the best site for such a disposal is in that state.

The federal government preempts or overrides the right of states in the areas where it is authorized to act. Here the commerce clause of Article I applies, and, unless other legal arguments could be made, the federal government would be supreme over the states.

w. The government should be able to require that all African-Americans in the country move to one state.

This would violate the fundamental right to travel and the equal protection guarantees of the Fifth and Fourteenth Amendment. However, in the time of slavery, it was considered and advocated, even by some opponents of slavery.

x. The government should be able to give a free education to all persons under 16 except Italians.

This violates the equal protection clauses of the Fifth and Fourteenth Amendments. A compelling reason would have to be shown to exclude Italians.

y. The government should be able to make you defend yourself against a crime without a lawyer because you don't have enough money to hire one.

The right to counsel of the Sixth Amendment prevents this. However, this was the law for many years and in some states you can still be tried and fined (though not jailed) without a lawyer.

z. The government should have an obligation to provide adequate food, clothing, medical care, and housing for all its citizens.

The Constitution does not require this. States and the Federal Government choose through statutes to provide food (through the food stamp program), aid to families with dependent children, medicaid and public housing to people meeting certain poverty line income levels. The government is not legally obligated to do this.

WHO SHOULD HAVE THE POWER?

Directions:

I. Decide whether the government should be able to do each of the following actions, as discussed before.

II. Where the group decides to limit the government's power, write a short paragraph that would effectively prevent the government from taking such actions, but that would not interfere with needed government actions.

a. The government should be able to make everyone in the country practice a certain religion.

b. The government should be able to require governmental permission to travel.

c. The government should be able to confiscate any books and ban news coverage of any topic that disagrees with government policy.

d. The government should be able to use whippings to punish people who have disobeyed the laws.

e. The government should be able to require that persons only work at jobs the government assigns to them.

f. The government should be able to decide who of the citizens may have children and who may not.

g. The government should be able to keep people in prison indefinitely without charging them with a crime.

h. The government should be able to deport people whose philosophy disagrees with that of the government.

i. The government should be able to let the states with the most people or the most land make econo[illegible]c policy for the country.

j. The government should be able to deny passports to citizens who pose a threat to national security.

k. The government should be able to torture people to force them to confess to crimes.

l. The government should be able to search the homes of citizens any times it wants to.

m. The government should be able to require that all citizens wear the same clothes and have similar hair styles.

n. The government should be able to put people in mental hospitals if they become a burden to their families.

o. The government should be able to require that all women marry at age 21.

p. The President should be able to change any judge's ruling that disagrees with the President's view.

q. The President should be able to disband the government when the President determines that national security requires it.

r. The government should be able to take children away from their parents permanently if the parents become unemployed.

s. The government should be able to decide which people you can be friends with.

t. The Supreme Court should be able to overturn laws of Congress and the states when they violate the Constitution.

u. The people of a state should be able to vote what conditions will be permissible in state prisons.

v. A state should be able to prohibit nuclear waste disposal facilities within its borders, even if the nation as a whole determines that the best site for such a disposal is in that state.

w. The government should be able to require that all African-Americans in the country move to one state.

x. The government should be able to give a free education to all persons under 16 except Italians.

y. The government should be able to make you defend yourself against a crime without a lawyer because you don't have enough money to hire one.

z. The government should have an obligation to provide adequate food, clothing, medical care, and housing for all its citizens.

THE CONSTITUTION: CONSENSUS AND COMPROMISE

Source:

Developed by Kent Lott, for the Utah Law-Related and Citizenship Education Project

Historical Period: 1787 to 1791

Class Periods: 2-3

Use of Outside Resource Persons:

A member of a Historical Society dealing with the Constitution, a history professor from an institution of higher education, or a constitutional lawyer could lay out the viewpoints of the Federalists and Anti-Federalists on various controversies.

Objectives:

1. Students will list the points of consensus among the delegates to the Constitutional Convention

2. Students will contrast and compare the philosophies of the Federalists and the Anti-Federalists.

3. Students will explain in writing how the two political viewpoints were moderated and adjusted so that agreement could be reached on at least one of the several major disagreements in the Constitutional Convention.

Materials:

Handouts 1, 2, 3 and 4

Procedures:

1. Pass out Handout 1 and have students answer the ten true-false questions.

2. Review the following:

A. Confederation
- **1. organization**
- **2. weakness**

B. Federalism
- **1. government on two or more levels (national, state, local)**
- **2. strong central government**

3. Review the true-false questions using them as an introduction to the Constitutional Convention period of history.

4. Have the students read Handout 2 on consensus and compromise. Then discuss and list on the board the areas that the delegates had virtual agreement upon:

A. A new central government was essential.
B. The new government had to have the power necessary to cope with the nation's economic and social problems.
C. Dedication to the concept of sovereignty and limited government.
D. Wisdom of representative government.
E. The principles of separation of powers and checks and balances.

5. Have the students read aloud in class Handout 3 on conservatism and liberalism, asking questions and defining terms as necessary. The discussion following should include a listing on the board how the Federalists (Conservatives) and the Anti-Federalist (Liberals) would differ on the following issues:

A. Where the power should lie
B. The view of humankind
C. The attitude toward change
D. The proper role of government.

As additional help, the students should read the excerpt from the article by Morris.

6. Homework: the students should read from the text the section on compromises of the Constitution.

7. Students should read the comparison of Hamilton's and Jefferson's viewpoints on the proper role of government.

8. Review of yesterday's lesson:

A. Consensus of the delegates
B. Disagreements of the delegates
C. Basic beliefs of the Federalists and Anti-Federalists.

9. Check for understanding of the homework assignment. Identify the compromises of the Constitution (the Great Compromise, the Electoral Compromise, the Commerce Compromise, and the 3/5 Compromise). The teacher should select one of the compromises (preferably the Great or Electoral Compromise) and in some detail illustrate how that compromise reflects the adjustment of the original position of the two parties. Students could also Role play a negotiating session.

10. Homework: The students should respond in writing to one of the following three essay questions:

A. Which philosophical viewpoint do you think most prevailed at the Constitutional Convention? Why?
B. Choose one of the compromises of the Constitution and discuss how it is a compromise on the part of each political

party. (Federalist and Anti-Federalist.)
C. I personally prefer the liberal/conservative (Federalist/Anti-Federalist) viewpoint of government because....

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THE CONSTITUTIONAL CONVENTION

Directions: Answer true or false for each statement.

_____**a. The delegates to the Philadelphia convention met with the express purpose of writing a new form of government.**

_____**b. Unanimity and agreement prevailed during most of the Constitutional Convention.**

_____**c. The Constitutional Convention was held at Philadelphia during the summer of 1776.**

_____**d. George Washington was president of the Constitutional Convention.**

_____**e. Sessions of the Constitutional Convention were started by the offering of prayer.**

_____**f. The Constitution of the United States created a federal form of government.**

_____**g. The following statement from Roger Sherman, a delegate from Connecticut, would support the argument for greater democracy in the Constitution:**

"The people immediately should have as little to do as may be about the government. They want information and are constantly liable to be misled."

_____**h. In the Constitutional dialogue many of the arguments were over the large state versus small state issue.**

_____**i. The delegates to the Constitutional convention were pledged to the strictest secrecy concerning their proceedings.**

_____**j. The publication of the Constitution for ratification started one of the great political and ideological debates in American history.**

COMPROMISE[1]

Directions: Read the following and be prepared to answer questions.

The Constitution, as it was drafted at Philadelphia, has often been described as a "bundle of compromises." The description is an apt one--if it is properly understood.

By no means all, or even most, of what went into the document resulted from compromises among the delegates. The Founding Fathers were, in fact, in close agreement on many of the basic issues they faced. Virtually all of them were convinced that a new central government was essential. All felt that the government had to have the powers necessary to cope with the nation's economic and social problems. They were dedicated, too, to the concepts of popular sovereignty and of limited government. None of them questioned for a moment the wisdom of representative government. The principles of separation of powers and checks and balances were accepted by the delegates almost as a matter of course.

Many disputes did occur, and the compromises by which they were resolved often were reached only after hours and days or even weeks of intense debate. But the point here is that the differences were not over the most fundamental of questions. Rather, the differences were over such vital but lesser questions as the details of the composition of Congress, the manner by which the President should be chosen, and the specific limits that should be placed upon such grants as the taxing power and the commerce power.

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[1] Frank A. Magruder, revised by William A. McClenaghan, Magruder's American Government, 1980, Allyn and Bacon, 1980, pp. 53-54.

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CONSERVATISM[2]

As a political attitude, conservatism implies the desire to conserve or to maintain the existing order, the status quo. Conservatives are generally opposed to radical political, social, and economic reforms. The word radical is important in the preceding sentence because the impression should not be given that conservatives by definition oppose any kind of change merely for the sake of opposition. The true conservative values the experience of the past, which he or she views as the accumulation of wisdom, moral principles, and tradition. By the same token, he or she opposes any kind of change which is based solely on theory--in other words, something that has not proved its worth in actual practice. In the American tradition, the genuine conservative could be called a pragmatist--one who, after he or she has made certain that something works well, accepts it, often time grudgingly to be sure.

Modern political conservatism has its roots in the eighteenth century when it emerged in reaction to the political and social influences of the French Revolution. (Modern economic conservatism emerged as a result of the Industrial Revolution in the middle of the nineteenth century.) The leading figure in the development of modern political conservatism, the one to whom conservatives turn for inspiration and ideas, was the British political leader and philosopher, Edmund Burke. His speeches in Parliament together with his writings serve as the fountainhead of conservatism's political principles. Apprehensive about the influence of the French Revolution on the staid and tradition-bound English society, Burke used all his oratorical and writing skills to oppose it. Burke and his followers argued that England's traditional institutions such as the monarchy, the aristocracy, and the church were a bulwark against the revolutionary influences from across the Channel. Therefore, the power of these institutions should be maintained for the good of the realm.

In the United States there have been no established institutions such as a state church, a monarchy and a rigid aristocracy to defend. Thus American conservatism, following the attitudes of men like Alexander Hamilton, turned its attention to the fundamental question "Who governs?" or more precisely, "Who should govern?" Were the people, the average men, capable of governing themselves, or should an elite group, by reason of their education, background, and financial success, govern? The basic question was whether majority rule was possible. Hamilton and his supporters argued against majority rule, while Jefferson and his followers insisted on the full implementation of the principles enunciated in the Declaration of Independence, declaring that all men are free and equal and that they have certain rights that cannot be taken away, including the right of self-government.

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2 Jon Anthony Yinger and George K. Zaharopoulos, United States Government and Politics, Chandler Publishing, 1969, pp. 31-32.

Conservatism has changed significantly in the past fifty years. At least in the United States, conservatives are no longer concerned with the philosophical question "Who governs?" (although the query "How much government?" is raised). Today's conservatives are primarily concerned with economic questions and the role of the individual in a mechanized, highly complex society. Present-day conservatives oppose expansion of the "welfare state," but they have shown some willingness to accept moderate changes and reforms.

LIBERALISM[3]

While conservatism desires the preservation of the status quo, which is viewed as almost sacred because it involves the accumulation of experience, liberalism accepts little as sacred merely because it is old and established. As a political philosophy, liberalism stresses a belief in inevitable progress and improvement while maintaining faith in the basic goodness and perfectibility of man. Unlike radicalism, which demands sweeping changes, liberalism depends on steady, methodical, rational change.

Like conservatism, liberalism has its roots in the past. It developed in Europe in the latter part of the eighteenth and early part of the nineteenth century as an expression of dissatisfaction with the existing order. It gained momentum as a result of the American and French Revolutions and, because it reflected the interests of a growing middle class of merchants, artisans, and professional men, it soon became a formidable political force. The liberalism of this period, often termed with classic liberalism, called for such things as noninterference of government in business, the extension of the vote, and other political liberties such as freedom of the press and the separation of church and state. Later on during the nineteenth century, liberals took up such unpopular causes as the issues of slavery and imperialism, both of which are viewed as infringing upon the rights and liberties of individuals.

From Europe and Great Britain, liberalism was transplanted to the United States, where its most faithful and articulate exponent was Thomas Jefferson. His influence on the American political system cannot be overemphasized, with its strong attachment to the rights and liberties of the individual and the firm belief in the goodness of man. The Jeffersonian ideal has been firmly implanted in the American political tradition. In this regard, all Americans can be considered Jeffersonian to a great extent.

Modern liberals no longer insist that the state should not interfere in economic affairs and that the individual alone should determine his future and destiny. This change occurred following the Industrial Revolution. These developments brought about conditions making possible the rise of Marxism. Marx argued that classic liberalism was conservatism of a different color; in fact, it was even worse because it

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3 Ibid, p. 34-35.

allowed for the exploitation of one class by another. Marx called for revolutionary changes in the economic structure which would affect the social and political structures as well. Thus the liberal attitudes reevaluated in light of the threat from revolutionary Marxism. Liberals now thought it appropriate for the government to guarantee the welfare of all individuals and to prevent any group in society from gaining undue influence over any other group. Such a policy would make the Marxist prediction of class struggles unlikely to come true.

By the beginning of the twentieth century, this new liberal attitude reached the United States and found expression in the Populist movement and later in Theodore Roosevelt's Progressive Party and in Woodrow Wilson's administration. It was further extended during Franklin D. Roosevelt's New Deal. Such measures as a guaranteed minimum wage, improved working conditions, progressive taxation, as well as other welfare measures such as social security, unemployment insurance, and now medical care for the aged are examples of liberal influences on the American political and economic system.

Liberalism stresses political, civil and religious liberties. Liberals, therefore, have been unequivocally opposed to both Communism and Fascism, although there are some who mistakenly believe that liberalism is one step removed from Communism. There are, nevertheless, radical liberals who, like conservative extremists, use the name of liberalism to attain their purposes that are usually not at all related to genuine liberalism. These radicals -- whether of the right or of the left -- reject existing institutions and demand sweeping political and economic change.

CREATING AND RATIFYING THE CONSTITUTION BY RICHARD B. MORRIS

The publication of the Constitution precipitated one of the great political and ideological debates in American history. Anti-Federalists soon mounted a formidable campaign against the Constitution -- using all the available newspapers, pamphlets, and mass meetings. Under the pseudonym of "Agrippa," James Winthrop of Massachusetts attacked on two fronts. The Constitution gave too much power to the central government and left too little to the states; it also would create a permanent aristocracy. From Virginia, Richard Henry Lee, in his widely read "Letters of the Federal Farmer to the Republican," charged that "the change now proposed is a transfer of power from the many to the few." In New York, Melancton Smith warned that the Constitution would create an "aristocratic tyranny" that must soon terminate in "despotism."

The Anti-Federalists challenged the practicality of the notion that a federal republic could govern so vast an extent of territory, found fault with the kind of dual sovereignty the Constitution envisioned, and condemned its omission of a bill of rights. More extreme critics charged that the Constitution had been framed by a "dark conclave" of "monarchy men," bold conspirators who sought not only an elective king and a standing army but "an aristocratic Congress of the wellborn."

More specific points of substance and mechanics were to be scored by their side in the state ratifying conventions that lay ahead. In essence, the Anti-Federalists revealed themselves to be parochial men (generally living isolated from the arteries of trade) and debtors of varying degrees and backgrounds. The Anti-Federalists were concerned about individual liberty, which they believed rested on republican virtue and the primacy of the states. They presumed that they alone spoke for the common man. However, despite certain well-founded objections they raised to the Constitution, they had no alternative plan.

Contrariwise, the Federalists had not only constructed a plan but commanded prestige and experience in politics on a high level, points which would score heavily in a society still deferential to elitist governance. Still, they took nothing for granted but defended their plan with vigor, notably in a series of letters to New York newspapers published between 27 October, 1787 and 28 May, 1788 and then brought out in book form in June of 1788 to influence the ratification of the Constitution in New York. Writing under the pseudonym of "Publius," the contributors were: Alexander Hamilton, author of fifty-one letters; James Madison, credited with twenty-nine; and John Jay who wrote five, along with his persuasive "Address to the People of the State of New York." The principal task of The Federalist was to demonstrate that rejection of the Constitution would create a vacuum of power, a return to the irresolute and impotent Confederation. Its authors felt obliged to demonstrate that a republican federalism would provide energetic government while preserving personal liberties and taking into account the separate and different interests of the thirteen various states. Such devices as checks and balances, courts composed of judges

holding office during good behavior, and representation of the people in the national legislatures by deputies of their own selection would "tend to the amelioration of popular systems of civil government."

"Publius" assured his readers that the government they were debating was federal rather than national, although an office such as the presidency combined both federal and national features as was true of the amending process. Madison sought to reassure the country that the federal principle would guarantee to the people of a widespread republic that "a coalition of interests, parties, and sects which it embraces, a coalition of a majority of the whole society, could seldom take place on any other principle than those of justice and the general good," while safeguarding minority rights.

The federal Convention had submitted the Constitution directly to the people through ratifying conventions. Under Article VII of the proposed Constitution it would go into effect once nine states had ratified it. The Drafters of the Constitution, seeking speedy ratification, preferred the single-chambered, specially elected state ratifying conventions to the state legislature, which would in most cases have required the agreement of two houses. The deeper significance of the choice for ratification by means of popularly elected conventions, however, lay in its harmony with the Founders' desire to ground the Constitution on the authority of the people.

The nationalist strategy worked smoothly at the start. The small states, once reassured by the crucial Connecticut Compromise, which gave them an advantage beyond their numbers of wealth, fell quickly into line. The battles, it grew evident, would be waged in the large states.

The great drama of ratification reached its climax in twenty-three sweltering June days in Richmond. "Virginia's New Academy on Shockoe Hill and in some five weeks of June and July at the old courthouse in Poughkeepsie, New York. The Virginia convention opened with the forces evenly divided. In New York, the Anti-Federalists outnumbered the proponents of the Constitution by more than two to one. Both conventions witnessed great debates. Richmond pitted Patrick Henry and George Mason for the Anti-Federalists against James Madison and his allies for the ratification forces. Henry's opposition came as no surprise, as he had originally refused to go to Philadelphia because, as he put it, he "smelt a rat." Madison, however, defended the new government brilliantly; and by a vote of eighty-nine to seventy-nine, the Virginia convention ratified the Constitution unconditionally, with amendments recommended for the consideration of Congress.

Although New Hampshire, the ninth state, ratified the Constitution four days ahead of Virginia, thereby putting the charter into effect, a great battle remained for the admission of New York. Without that key state the nation would have lacked geographical unity, and the significance of New York City, both as the nation's temporary capital and a major commercial center, was not lost on either side. In this case, the victory of the Federalists was a tribute to leadership and the art of persuasion in overcoming great odds. That informed leadership was provided by Alexander Hamilton and John Jay.

JEFFERSON AND HAMILTON[4]

The political philosophies of Alexander Hamilton and Thomas Jefferson were among the most influential and formative during the early years of the American republic. Both men made enduring contributions to American political thought and to the structures of the political system as we know them today. Yet, at almost every point, they differed: on the nature of man, on liberty and how best to protect it, on power of good government and how best to preserve it, on power and how best to distribute it.

When Hamilton and Jefferson encountered each other as members of President Washington's Cabinet--Hamilton as secretary of the Treasury, and Jefferson as secretary of State--they clashed sharply. A feud developed between them over the assumption to government office, among other issues. Partially as a result of their feud, both men resigned from the Cabinet.

Jefferson envisioned a United States consisting of a free farmer class--a country of small towns and villages devoted primarily to agricultural pursuits, unencumbered by large cities, industrial enterprise, and special manufacturing or commercial interests. Jefferson based his political views on his faith in the decency and reasonableness of the common man. Men should be free of government interference in their economic, social and spiritual lives so that they may enjoy life, liberty, and happiness. He said that the best government is that which governs the least. According to Jefferson, men should also be entrusted with control of their own affairs through local government. Jefferson strongly favored local government over national government.

Hamilton did not share Jefferson's vision of an America essentially and forever agrarian. To Hamilton commerce, manufacturing, and diversified economic interests were essential to a nation's progress. Hamilton had no faith in the common man. On the contrary, Hamilton believed that masses of people were neither sensible nor reasonable but prone to turbulence and mob rule. For such men Hamilton did not advocate a full participatory democracy. He was convinced that this form of government would surely lead to anarchy. Instead he favored a republican form of government, strongly federal in character, led by an aristocratic elite. At one point Hamilton went so far as to advocate the election of the President to a life term. This, combined with his well-known admiration of the British monarchy, brought charges that Hamilton desired to create a monarchy in the United States.

Although the differences between Hamilton and Jefferson were so deep, they should not be allowed to obscure the fact that neither was an extremist. Both wanted good government. Both feared tyranny: Jefferson feared the tyranny of an aristocracy; Hamilton feared the tyranny of a democracy.

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4 Jefferson and Hamilton. Scholastic Book Services.

Both men desired unity in American, and the turbulent times in which they lived lent urgency to this concern. The American Revolution, while it had achieved independence for the former colonies, had not united them or the American people. Factional and regional interests still prevailed. Many colonists, indeed most, had not participated in the war. Some -- the Loyalists or Tories -- had remained loyal to Great Britain. Moreover, the first government of independent America under the Articles of Confederation, was not that of a strong, united nation, but merely a league of sovereign states. The second government, set up under the present United States Constitution, was an "experiment" in union. Later on, the Constitution came to be regarded by some, especially in the South, as little more than a pact or contract that could be nullified whenever any individual state felt that its union with other states was to its disadvantage.

While both Hamilton and Jefferson desired unity in the new nation, they differed sharply on how best to ensure it. Hamilton, convinced that men concern themselves first and foremost with their "own selfish interests," and that primarily political loyalties are to their localities and state rather than to the nation as a whole, wished to curb the powers to the states, leaving them free to exercise all authority not specifically assigned to the federal government by the Constitution.

Hamilton and Jefferson were able and shrewd contributors to the growth of the American republic. They, along with other American thinkers and politicians of this early period, raised a basic question: How should America be governed? This question raised another -- one which had always been evident -- Who should rule? Both Hamilton and Jefferson agreed that the people should rule. They disagreed as to the extent to which the people should rule. The unifying agent for the country would be the Constitution -- a written law by which every institution and individual should abide. Hamilton and Jefferson both accepted and respected the Constitution as the Supreme Law of the land. But arguments over constitutional interpretation stirred political divisiveness. Jefferson and his followers believed that the Constitution would be most adequate to its unifying task if interpreted strictly so that the government would not go beyond those powers specifically granted to it by the Constitution. Hamilton and his followers contended that the Constitution could best serve the nation if it were to provide the government with sufficient latitude to act with boldness and strength.

CLAIM YOUR POWERS GAME

Source:

Adapted with permission from lesson written by Law in a Changing Society, Austin, Texas by University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 1

Use of Outside Resource Persons:

A member of one of the three branches of government (or all three branches) could explain more fully what power that branch has.

Objectives:

1. Students will define and apply the concept of separation of powers in the federal government.

2. Students will identify which branch of the federal government has the power to solve particular problems.

Materials:

Handouts 1 and 2
Answer Sheet (for the teacher)
Copies of the U.S. Constitution
Three reversible signs (See Procedure 1)

Procedures:

1. Prior to class, prepare three reversible signs with the words "CLAIM" and "DO NOT CLAIM" written on opposite sides. Signs could be mounted on dowels or yardsticks to facilitate their use.

2. Tell the class that you will be playing a game. Introduce the activity by having students read in their texts about the separation of powers and checks and balances.

3. Divide the class into three groups representing the executive, legislative and judicial branches of government. Give each group one of the three signs, with the words "CLAIM" and "DO NOT CLAIM" on opposite sides.

4. Provide each student with a copy of the Constitution. Explain that the purpose of the game is to develop an understanding of the Constitution and separation of powers.

5. Tell the students that you will read aloud a series of situations, each of which involves a power of one or more branches of

government. (If you wish, you may pass out Handout 2, the situation sheet).

6. After you read each situation, the groups will have one minute to discuss the problem and decide whether their branch of government has the power to solve it. They can refer to Articles I, II, and III, IV, V or VI of the Constitution.

7. At the end of one minute, read the situation again, then instruct the groups to hold up their signs, displaying the "CLAIM" or "DO NOT CLAIM" side.

8. Then ask each group to explain the reasons for its decision, with supporting language from the Constitution.

9. Before starting the game, pass out the Scoring Sheet (Handout 1). Review the scoring process with the class.

In some cases, due to overlapping powers, more than one answer may be correct. In drafting the situations, an effort was made to avoid this, but creative students will probably come with arguments for why their branch should claim a power. Give points for all correct answers. On the answer sheet, alternative answers are in parentheses.

10. Allow 10 minutes for the groups to review the appropriate article from the Constitution (primarily focusing on Article I-Legislative, Article II-Executive, Article III-Judicial) for their group before beginning the game. All groups should review Articles IV and V.

11. Begin the game. At the conclusion of each round, announce the score for each group. (See Answer Sheet). Groups may tally their own scores, or one student could be responsible for tracking the scores of all groups. At the end of the activity, announce the winning group.

Answers to Questions - Handout 2

a. A bill is being considered to reform the tax structure.

The legislative branch should claim this power, under Article I, section 8. (The executive branch could also claim this power, if the president proposed the legislation.)

b. The Internal Revenue Service is bringing a case against Leona Helmsley, to collect unpaid taxes.

Both the executive and the judicial branch should claim this power. Under article II, section 1, the president has the power to enforce the laws of the United States. The IRS is an agency that is under the Department of the Treasury, part of the executive branch of government.

Under article III, section 2, the judicial branch has the power to hear cases in which the U.S. is a party. (The legislative branch could

also claim this power, since the law she is being prosecuted under was passed by Congress.)

c. A new ambassador to Romania is needed.

The executive and legislative branches should claim this power. Under article II, section 2, the president appoints ambassadors, with the advice and consent of the Senate.

d. All diplomatic officials serving in Libya are recalled.

The executive branch should claim this power. Under article II, section 2, clause 2, the president appoints, and by implication, controls all ambassadors and other diplomats of the U.S. government.

e. The state of Arizona is suing California over water rights.

The judicial branch should claim this power. Under article III, section 2, clause 1, the federal judiciary is empowered to hear all controversies between two or more states.

f. There is a vacancy on the U.S. Supreme Court and a new justice must be appointed.

The executive and legislative branches should claim this power. Under article II, section 2, clause 1, the president has the power to nominate judges of the Supreme Court, with the advice and consent of the Senate.

g. The army wants more money for tanks.

The executive and legislative branches should claim this power. The legislative branch has the direct power, under article I, section 8, clauses 12 and 13, to raise and support armies, and to provide and maintain a navy. Under article II, section 2, clause 1, the president is the Commander in Chief of the army, and therefore has ultimate control of the armed forces.

h. A case has arisen over a collision in Puget Sound between an oil tanker and a freighter.

The judicial branch should claim this power. Under article III, section 2, the judiciary has the power to hear all cases of "admiralty and maritime jurisdiction." Admiralty and maritime jurisdiction means any incident that takes place on navigable waters, which includes the sea, ocean, great lakes and navigable rivers.

i. Ralph has been charged with a federal crime of transporting stolen automobiles from Oregon to Idaho.

The judiciary would claim this power, under article III, section 2, clause 1, giving the judiciary the power to hear cases arising under the laws of the United States.

If the executive claims this power, that would also be correct, since the executive has the power to enforce the laws. The FBI would probably arrest Ralph. (The legislative branch could also claim this power, since the federal law under which he is being prosecuted was passed by Congress.)

j. If President Nixon had not resigned in 1974, he might have been impeached.

The legislative should claim this power. Under article I, section 2, clause 5, the House has the sole power to impeach, and under article II, section 3, clause 6, the Senate has the sole power to try all impeachments.

k. The Sierra Club is suing the United States Forest Service, an agency of the United States on behalf of the northern spotted owl, under the Endangered Species Act, a federal law.

The federal judiciary would claim this power, under article III, section 2, clause 1, which gives the federal courts jurisdiction of cases brought under laws of the U.S., and of cases against the U.S. (The legislative branch could claim this power, since it passed the law.)

l. A state of the union message is being prepared.

The executive should claim this power, under article II, section 3.

m. A bill is being vetoed.

The executive should claim this power, under article I, section 7, clause 2. (The legislative could claim this power, since they passed the law.)

n. A law is declared null and void.

The judiciary should claim this power. While the power to declare laws unconstitutional is not explicitly stated in the Constitution, article III, section 2 sets out the Court's jurisdiction. Justice Marshall, in Marbury v. Madison first asserted the power of judicial review.

o. War is declared on Spacelandia.

The legislative branch should claim this power. Under article I, section 11, Congress has the power to declare war.

p. An amendment to the Constitution has been proposed.

The legislative branch should claim this power, under article V. (The executive branch could also claim this power, since the President can propose an amendment.)

q. A treaty with a foreign country to control the spread of missiles is being negotiated.

Both the executive and legislative branches should claim this power. The President has the power, under article II, section 2, clause 2 to make treaties, with the advice and consent of the Senate.

r. President Nixon was ordered to hand over tapes of conversations held in the Oval Office.

The judicial branch should claim this power. Under article III, section 2, clause 1, the judiciary has the power to hear all cases arising under laws of the United States.

s. There is a land dispute between two Native American tribes who claim that the land was given to each of them under separate treaties.

The judicial branch should claim this power. Under article III, section 2, clause 1, the judiciary has the power to hear all cases arising under treaties made by the United States.

12. Debrief the lesson by reviewing the purpose of separation of powers and checks and balances in a constitutional government. Point out that there is overlap in the powers assigned to each branch. Ask students why this overlap occurs:

1. The powers given to each branch are not entirely defined.

2. The Constitution specifically gave some branches the same power, called concurrent powers.

3. Even where the Constitution did not give concurrent powers, the exercise of delegated powers involves some of the powers given to other branches.

ANSWER SHEET

SITUATION	JUDICIAL		EXECUTIVE		LEGISLATIVE	
	C	NC	C	NC	C	NC
a.		1	(1)	1	1	
b.	1		1			1
c.		1	1		1	
d.		1	1			1
e.	1			1		1
f.		1	1		1	
g.		1	1		1	
h.	1			1		1
i.	1			1	(1)	1
j.		1	(1)	1		1
k.	1			1		1
l.		1	1			1
m.		1	1		(1)	1
n.	1			1		1
o.		1		1	1	
p.		1	1	(1)	1	
q.		1	1		1	
r.	1			1		1
s.	1			1		1

1. One point is given for correctly claiming and justifying your power.

2. One point will be given for correctly not claiming a power.

3. No points will be given for incorrectly claiming or not claiming a power.

SCORING SHEET

SITUATION	JUDICIAL		EXECUTIVE		LEGISLATIVE	
	C	NC	C	NC	C	NC
a.						
b.						
c.						
d.						
e.						
f.						
g.						
h.						
i.						
j.						
k.						
l.						
m.						
n.						
o.						
p.						
q.						
r.						
s.						

1. One point is given for correctly claiming and justifying your power.

2. One point will be given for correctly not claiming a power.

3. No points will be given for incorrectly claiming or not claiming a power.

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CLAIM YOUR POWERS SITUATION SHEET

a. A bill is being considered to reform the tax structure.

b. The Internal Revenue Service is bringing a case against Leona Helmsley, to collect unpaid taxes.

c. A new ambassador to Romania is needed.

d. All diplomatic officials serving in Libya are recalled.

e. The state of Arizona is suing California over water rights.

f. There is a vacancy on the U.S. Supreme Court and a new justice must be appointed.

g. The army wants more money for tanks.

h. A case has arisen over a collision in Puget Sound between an oil tanker and a freighter.

i. Ralph has been charged with a federal crime of transporting stolen automobiles from Oregon to Idaho.

j. If President Nixon had not resigned in 1974, he might have been impeached.

k. The Sierra Club is suing the United States Forest Service, an agency of the United States on behalf of the northern spotted owl, under the Endangered Species Act, a federal law.

l. A state of the union message is being prepared.

m. A bill is being vetoed.

n. A law is declared null and void.

o. War is declared on Spacelandia.

p. An amendment to the Constitution has been proposed.

q. A treaty with a foreign country to control the spread of missiles is being negotiated.

r. President Nixon was ordered to hand over tapes of conversations held in the Oval Office.

s. There is a land dispute between two Native American tribes who claim that the land was given to each of them under separate treaties.

A VISITOR FROM OUTER SPACE

Source:

The concept for this lesson was originally created by New Mexico Law-Related Education, a program of the New Mexico Bar Foundation and is used with their permission. Adapted by the University of Puget Sound Institute for Citizen Education in the Law.

Class Periods: 1 to 2

Use of Outside Resource Persons:

A speaker from the American Civil Liberties Union would be a good resource for this lesson.

Objectives:

1. Students will identify and examine the values underlying our constitutional rights.

2. Students will list and prioritize guarantees of individual rights in the Bill of Rights.

Materials:

Handout 1, A Visitor from Outer Space

Procedures:

1. Distribute Handout 1, and read it along with class.

2. Divide the class into groups of three to five students. Ask each group to prioritize the list of rights in Handout 1, by placing the number 1-10 beside each right.

3. List the rights on the board, with a space beside each to write how each group decided. Allow each group to report how it prioritized the ten rights, and keep a tally on the board. Allow sufficient discussion of each right so that the students begin to understand the interrelationship among the protections in the Bill of Rights. Encourage students to cite reasons for their decisions, and examples. Alternatively, students could work individually.

4. Debrief the activity by asking the following questions:

a. Which rights represent our liberties as citizens?

The rights to bear arms, freedom of speech, freedom of the press, freedom of religion, peaceful assembly and privacy.

b. Which rights guarantee that the government must treat its citizens fairly?

Right to legal counsel, protection from cruel and unusual punishment, jury trial, protection from self-incrimination.

c. Does the Constitution explicitly mention the right to privacy? How do we derive this right?

The Constitution does not explicitly mention the right to privacy. The right was fully recognized in the 1965 U.S. Supreme Court opinion by Justice William O. Douglas, Griswold v. Connecticut. In that case the Director of the Connecticut Planned Parenthood League was convicted of giving information about contraceptives to married persons under a state law prohibiting any persons from using or assisting someone to use a "drug, medicinal article, or instrument for the purpose of preventing contraception." Justice Douglas stated that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance." In other words, to fully enjoy the specifically enumerated guarantees in the Bill of Rights, other rights must be recognized.

For example, the Third Amendment's guarantee to be free from quartering of soldiers in private homes implies a right of privacy, as does the Fourth Amendment's right to be secure from unreasonable searches and seizures.

d. How does the Bill of Rights limit the actions of those people who run our government?

We are protected from unreasonable searches and seizures by the government, from intrusion into our private affairs, etc.

e. Do citizens have rights others than those listed in the Bill of Rights?

Refer students to the Ninth Amendment. Some of the rights recognized by the U.S. Supreme Court that are not specifically mentioned in the Constitution: right of privacy, discussed above, right to travel, and freedom of association.

g. What would be the risks to our society if we should be willing to surrender any of our rights?

The flag burning dispute is a good example to discuss in relation to this question. If we are willing to allow an amendment to the constitution to forbid flag burning, what risk does this pose to our society?

h. Why should we protect the Bill of Rights?

VISITOR FROM OUTER SPACE

It is some time in the future. You are living a quiet, prosperous life with your family. One evening you are watching television when a special bulletin appears on the screen. You immediately recognize that this is not the normal type of program interruption. What you see on the screen is a very different and strange creature. The only thing that is familiar about the creature is that it speaks English.

The creature tells you that he and his people have taken control of all the communications networks in the United States. He commands everyone to pay close attention. You switch the channel; but just as he said, he is on every station.

He begins to speak loudly and authoritatively. This is what he says:

My name is STHGIR. I am from the planet NOTTUTITSNOC in another galaxy. My people are beings far superior to those on this planet, Earth.

Just as we have the ability to take control of your communication systems, we can also take control of your lives. We do not want a war, but we do want to control certain things so that we may live in peace and harmony with you.

We have observed your laws and your government and have found too many freedoms for your citizens. Therefore, we are conducting a survey to arrive at a decision which will be satisfactory to both of our peoples.

As I have said, we do not want to take everything away from you; but we cannot allow you to continue as you have in the past. I am giving you a list of some of the rights which you now have according to your Constitution. You are to rank your rights from one to ten, the order in which you would surrender them to us. A ranking of one is a right you would give up last, and a ranking of ten is a right you would surrender first.

After you have completed your ranking, you will receive further instructions. Remember, a ranking of one is a right you value most highly, and would give up last. A ranking of ten is a right you would give up first.

_____Right to bear arms

_____Right to freedom of speech

_____Right to legal counsel

_____Right to protection from cruel and unusual punishment

_____Right to freedom of the press

_____Right to a jury trial

_____Right to freedom of religion

_____Right to peaceful assembly

_____Right to protection from self-incrimination

_____Right to privacy

PRELUDE TO THE TRAIL OF TEARS: WORCESTER V. GEORGIA (1832)

Source:

Adapted by UPSICEL from Law in U.S. History, New Mexico Law-Related Education, edited by Melinda Smith

Historical Period: 1830's

Class Periods: 1-2 depending upon whether case is done as simulation or case study.

A representative of a Native American tribe can comment on the impact of allotment on Native Americans in the area. A constitutional attorney can assist with debriefing the simulation.

Use of Outside Resource Persons:

A judge could explain the limits on judicial power. A Native American attorney or tribal representative could explain the impact of allotment on the tribes.

Objectives:

1. Students will examine legal, political, and cultural issues involved in Indian resettlement in the 1800's.
2. Students will identify the status of Indian tribes in relation to federal and state governments.
3. Students will enhance critical thinking skills.

Materials:

Handouts 1 through 6

Procedures:

1. Set the stage for students' consideration of the Indian resettlement movement. Students may review their textbooks or the teacher may provide overview.

2. Brainstorm with students a list of reasons why Indians might want to stay on their lands and another list of reasons why white settlers might want the Indians removed.

3. Pass out Handout 1. Have students read and discuss the Handout, comparing the reasons for and against resettlement provided in the materials with the lists they generated.

4. Pass out Handout 2. Have students read and then conduct a simulated Supreme Court hearing. To conduct the simulation, pass out Handout 4 and review steps in a Supreme Court hearing.

5. Assign seven students to take the roles of the Supreme Court justices. Cut apart the role profiles of the justices on Handout 5 and distribute. Have justices read roles and prepare questions to ask attorneys. Assign one student to be the court officer.

6. Divide the rest of the class into groups of two or three. Have half of the groups prepare arguments for Worcester and the other half prepare arguments for Georgia; allow 15 minutes. Depending on students' level, either distribute Handout 6 to the students or use it to assist groups in preparing their arguments. Tell students that only one group of attorneys from each side will be selected to argue before the Supreme Court.

7. Select one group from each side to argue before the court. You may ask for volunteers, select groups at your discretion, or assign a number to each group and have a drawing to select the groups.

8. Conduct the hearing. After arguments, have the court deliberate fish-bowl style or allow them to recess.

9. Have the court deliver its decision.

10. Ask groups who did not argue to the court if they would make any additional arguments not made.

11. Ask students as a class to vote on how they think the real Supreme Court decided the case.

12. Pass out Handout 3. Read and compare the actual decision with the students' decision. Discuss the aftermath of the historical decision and the questions in Handout 1.

INDIAN RESETTLEMENT

As the frontier moved west, white settlers wanted to expand into territory that was the ancestral land of many Indian tribes. During the administration of Andrew Jackson, the government supported the policy of resettlement. They persuaded many tribes to give up their claims to their land and move into areas set aside by Congress as "Indian territory." In 1830 Congress passed the Indian Resettlement Act, which provided for the removal of Indians to territory west of the Mississippi River. While Jackson was President, the government negotiated 94 treaties to end Indian title to land in the existing states.

Many tribes resisted this policy. Wars were fought as a result. The Sac and Fox Indians in Wisconsin and Illinois reoccupied their lands after having been forced to move west of the Mississippi. They were defeated. The Seminole Indians refused to sign a treaty to give up their lands. They, too, fought and lost a bitter war to remain on their land.

The Cherokees of Georgia were another tribe that resisted. They did not want to give up their way of life. The Cherokee governed themselves under a written constitution. Their agriculture was prospering. They developed a written language and published a widely read newspaper in Cherokee. They had their own schools. They did not want to sign a resettlement treaty.

Cherokee leaders explained their point of view in the following statement, which appeared on August 21, 1830 in the "Riles Weekly Register":

> We wish to remain on the land of our fathers. We have a perfect and original right to remain without interruption...If we are compelled to leave our country, we see nothing but ruin before us. The country west of the Arkansas territory is unknown to us. From what we can learn...the inviting parts of it...are preoccupied by various Indian nations, to which it has been assigned. They would regard us as intruders, and look upon us with an evil eye. The far greater part of that region is, beyond all controversy, badly supplied with wood and water; and no Indian tribe can live as agriculturalists without these articles. All our neighbors, in case of our removal, though crowded into our near vicinity, would speak a language totally different from ours, and practice different customs. The original possessors of that region are now wandering savages lurking for prey in the neighborhood. They have always been at war, and would be easily tempted to turn their arms against peaceful emigrants. Were the country to which we are urged be much better than it is represented to be, and were it free from the objections we have made to it, still it is not the land of our birth, nor of our affections. It contains neither the scenes of our childhood, nor the graves of our fathers.

Questions for Discussion

a. What arguments did the Cherokee leaders give against resettlement? Are they convincing?

b. Jackson and others who supported resettlement justified their point of view with the argument that Indians would be better off in territory far away from whites. Then they could have the choice to keep their own way of life or adapt to the ways of whites. Do you think this was a convincing argument in the case of the Cherokees, who had already taken on many of the white culture's ways?

c. Do you think the resettlement policy was justified for tribes that had not adapted to the white culture or that were warring against whites?

d. Gold was discovered in Georgia. How might this have affected the white settlers' attitude toward resettlement?

WORCESTER V. GEORGIA (1832)

During this period of Indian resettlement, the question of whether Indians had a right to their land came to a head in the case of Worcester v. Georgia.

The federal government had signed treaties with many Indian tribes, including the Cherokees of Georgia, which recognized tribes as sovereign nations and recognized their right to keep their ancestral lands. However, states like Georgia wanted to control Indian lands and supported Indian resettlement.

In 1831 Samuel Worcester, a Christian minister from Vermont, went to Cherokee territory in Georgia to preach and to translate the Bible into the Cherokee language. The Georgia legislature had passed a state law that required any white person going onto Indian lands to get a license. Georgia lawmakers wanted to keep out people who might stir up the Cherokees against the state.

Georgia officials arrested Worcester for not having a license, saying he had broken the state law. Worcester was brought to trial in a Georgia court, found guilty, and sentenced to four years in prison. Worcester thought the Georgia court was wrong and appealed his case to the U.S. Supreme Court.

Worcester argued that the state of Georgia had no power to make laws concerning the Cherokee tribe. He said that his visit to Cherokee land had been allowed under federal law because the United States had made treaties with the Cherokees that recognized them as an independent nation. The treaties were federal law, and they were higher than state law.

The Supreme Court had to decide whether the state law went against the provisions of the Constitution. Article VI of the Constitution says:

> ...this Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States shall be the supreme law of the land, and the judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary not withstanding...

Questions for Discussion

a. According to Article VI, which law is higher, state or federal law? Are treaties considered federal law?

b. Restate the reasoning in Worcester's argument. Is it convincing?

c. How would you decide the case--in favor of Georgia and the state law requiring a license, or in favor of Worcester and the federal treaty which is above state law?

DECISION: WORCESTER V. GEORGIA

The Supreme Court decided in favor of Worcester. John Marshall, the Chief Justice, wrote the opinion of the court. It said that the Cherokee nation was an independent community, established by federal treaty. Only the federal government could deal with the Cherokee nation. The state of Georgia could not pass laws affecting the Cherokee.

Aftermath

The Supreme Court had made an important decision on the legal status of Indian tribes. What the Supreme Court says should be the law of the land, but the court has no power to enforce the law. It is up to the President to do that.

However, President Jackson did not agree with the court's decision. He is reported to have said, "John Marshall has made his decision; now let him enforce it."

The state of Georgia wanted the Cherokees out and sent in the state militia to force them out of their homes. Jackson did nothing to stop it. The Cherokees were marched to Indian territory in what is now the state of Oklahoma.

Many thousands suffered and died on this march, which became known as the "trail of tears."

In his farewell address to Congress in 1837, Jackson said the following:

> The States which had so long been retarded in their improvement by the Indian tribes residing in the midst of them are...relieved of the evil; and this unhappy race--the original dwellers in our land--are now placed in a situation where we may well hope that they will share in the blessings of civilization and be saved from that degradation and destruction to which they were rapidly hastening while they remained in the States.

NOTE: Since this decision, there have been other Supreme Court decision which permit State regulation of Indian activities off-reservation for conservation and development reasons. Additionally, Congress has given states the authority to regulate Indian affairs in some areas, for example, in certain criminal justice issues and school attendance.

Questions for Discussion

a. What are the political and legal consequences of the executive branch's refusal to carry out a ruling of the judiciary?

b. To what part of Jackson's farewell address do you think the Cherokees would object most?

INSTRUCTIONS FOR SUPREME COURT SIMULATION

Courtroom Layout

Chief Justice
Justice Justice Justice Marshall Justice Justice Justice

Attorneys for Worcester	Attorneys for Georgia

1. Opening of the court by the court officer. Court officer orders all to stand until Justices enter and are seated and calls the court to order by saying: "Oyez, oyez, oyez. All persons having business before the Honorable Supreme Court of the United States are invited to draw near and give their attention, for the court is now sitting."

2. Chief Justice asks: "Are all persons connected with this case prepared for the hearing? Are the attorneys for Worcester present? Are the attorneys for Georgia present?

3. Arguments for Worcester. Chief Justice asks Worcester's attorneys to give their arguments (five to ten minutes).

4. Arguments for Georgia. Chief Justice asks Georgia's attorneys to give their arguments (five to ten minutes).

5. Rebuttal. Chief Justice gives Worcester an opportunity for rebuttal (three to five minutes). At any time during the hearing, the Justices may question attorneys. After the rebuttal, they may further question attorneys.

6. Deliberation by Justices. Justices will discuss arguments and make a decision. There may be majority and dissenting opinions. The Chief Justice should write down key reasons for the majority decision and a spokesperson for the dissent (if there is one) should do the same.

7. Statement of opinion by Justices. The Chief Justice will deliver the majority opinion and spokesperson for the dissent will deliver that opinion.

ROLE PROFILES FOR SUPREME COURT SIMULATION WORCESTER V. GEORGIA (1832)

SUPREME COURT JUSTICES

John Marshall, Chief Justice
Henry Baldwin
John McLean
Smith Thompson
Gabriel Duval
Joseph Storey
William Johnson

JOHN MARSHALL, CHIEF JUSTICE

John Adams, who appointed Marshall to the Supreme Court, said: "My gift of John Marshall to the people of the United States was the proudest act of my life." Marshall was responsible for establishing the court as the tribunal of final review and introducing the doctrine of judicial review to the American constitutional system. He wrote more than 500 decisions during his long term on the bench. He had been a leader of the Federalist Party before joining the Supreme Court When he died in 1835, the Liberty Bell cracked when it was tolling during the mourning period.

HENRY BALDWIN

From Connecticut, he was appointed to the Supreme Court by Andrew Jackson. He had an erratic career on the bench. Early in his career, he supported Marshall's liberal interpretation of the Constitution, but later he refused to embrace either strict or broad construction of the Constitution. He did not get along well with other members of the court and was not trusted by them.

JOHN MCLEAN

From New Jersey, he was appointed to the court by Andrew Jackson. His most famous opinion was his dissent in Dred Scott v. Sanford, in which he ruled that freed slaves were indeed citizens and had a right to bring lawsuits before federal courts. His views were eventually reflected in the Fourteenth Amendment. Because of his presidential ambitions, he flirted with both political parties.

SMITH THOMPSON

Before being appointed to the Supreme Court by Monroe, he was Secretary of the Navy. He began to pull away from the strong nationalism of Chief Justice Marshall to support the rights of states. His most notable opinion was in Kendell v. U.S. (1838), in which he argued against President Jackson that the executive branch was not exempt from judicial control.

GABRIEL DUVALL

He was the first comptroller of the treasury under Jefferson before his appointment to the Court by James Madison. During his 23 years on the bench, he generally voted with John Marshall.

JOSEPH STOREY

He was from Massachusetts and was appointed to the court by James Madison. He was a supporter of higher learning for women and helped establish Harvard Law School. He rarely disagreed with the strong nationalism of Marshall. An 1816 opinion Storey wrote established the appellate supremacy of the Supreme Court over state courts in civil cases involving federal statutes and treaties.

WILLIAM JOHNSON

He was the most independent Justice on the Marshall court and fought against the powerful Marshall. He was called the first great court dissenter and eventually succeeded in establishing dissenting opinions as accepted court practice.

SAMPLE ARGUMENTS FOR SUPREME COURT SIMULATION

Arguments for Worcester

The Cherokee nation was recognized by a treaty between the tribe and the federal government. Since Article VI states that treaties shall be the supreme law of the land, the Cherokee treaty should be considered to be above state law.

The State of Georgia therefore cannot pass laws that affect the Cherokee nation in any way.

Therefore, the state law requiring a license for a visitor on Cherokee lands goes against Article VI of the Constitution. The law should be ruled unconstitutional and Reverend Worchester's conviction reversed.

Argument for Georgia

Since the Cherokee nation is within the borders of Georgia, the state has an interest in maintaining peaceful relations between the tribe and the state. The license requirement is simply a means of insuring the peace. It does not interfere with the internal affairs of the Cherokee nation.

The State of Georgia has the authority to pass laws such as the license requirement. Nowhere in the Constitution are states prohibited from passing such laws. Amendment X also states that the "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States...."

SLAVERY AND THE LAW: FROM INDENTURED SERVITUDE TO DRED SCOTT

Source:

Adapted by UPSICEL from Law in U.S. History, New Mexico Law-Related Education Project, edited by Melinda Smith

Historical Period: Pre-colonial period to 1850's

Class Periods: 1-2

Use of Outside Resource Persons:

A representative of an African-American organization -- for example, the Loren Miller Bar Association, the National Association for the Advancement of Colored People -- may assist in presenting the history of African-Americans in the United States.

Objectives:

1. Students will identify the roots of slavery in colonial America.
2. Students will identify the legal status of African-Americans from the colonial period to the Civil War.
3. Students will increase awareness of legal necessity for the Thirteenth and Fourteenth Amendments.

Materials:

Handout 1

Procedures:

1. Distribute Handout 1 and have students read the introductory materials and case. Discuss the questions.

2. Distribute Handout 2. Read the case asking students to identify the important facts, issues and arguments in the case. Discuss the questions.

3. Conduct a simulation of the case. To do so, follow these directions.

a. Divide the class into groups of three. Within each group, assign one student to be a Supreme Court justice, one the attorney for Dred Scott, and one the attorney for Sanford.

b. Explain that Dred Scott was the plaintiff when he first filed his lawsuit in Missouri and when he filed his lawsuit in a federal trial court. However, after he lost his case, and he appealed, he became the appellant and the defendant, Sanford, became the appellee.

c. Allow five minutes for the attorneys to prepare. You may distribute Handout 3 to all students to assist them in their preparation, or may use it only as a guide in the discussion preceding the simulation. Scott's attorneys should argue first, followed by Sanford's attorneys. The justice will then deliberate and render a decision.

d. Have the groups enact the simulation simultaneously. (Make sure groups are spaced far enough apart to minimize distractions.)

e. Ask the justices to announce their decisions and give their reasoning. Record the decisions on the board.

f. Distribute Handout 4. Read and discuss the Supreme Court decision, examining how it is similar or different from the student justices' opinions. Ask students why the case became "another cause of the Civil War."

4. As a follow-up, have students write "letters to the editor" describing their views on the Scott decision.

FROM INDENTURED SERVITUDE TO SLAVERY

During the colonial period, even before the Mayflower landed at Plymouth Rock, black Africans were brought to the "New World." For more than 200 years, hundreds of thousands of Africans were purchased by slave traders and brought to America by force. At first, they became indentured servants, which means that they worked for an owner for a number of years and then were set free.

Some African-American indentured servants earned their freedom and became owners of land in the early colonies. A few owned hundreds of acres of land and had servants of their own. Many indentured African-Americans, however, became slaves. Some African-Americans were being held by their owners for life as early as 1640. They were not able to win their freedom in the courts. Others were forced to served added time because of laws they had broken. This was done as a punishment for running away from their masters.

Two cases, which span a period of almost 200 years, show how the courts interpreted the status of two African-American men--John Punch and the well known Dred Scott.

The Case of John Punch and James Gregory (1640)

John Punch and James Gregory were servants of Hugh Gwyn. Punch was an African-American; James Gregory was a white "Scotchman." They worked on their master's plantation in Virginia. In the summer of 1640 they ran away together to Maryland. Their master wanted to capture them and sell them in Maryland. He had no use for servants who ran away. They might run away again.

The colonial government of Virginia said no to Hugh Gwyn's plan to sell them in Maryland. It ordered Gwyn to go to Maryland, capture his servants, and bring them back to Virginia. The government wanted to punish these runaways and make examples of them. Runaway servants were a big problem in colonial Virginia.

The General Court of Virginia heard the cases of John Punch and James Gregory. The court ruled that both were guilty. It ordered 30 lashes for each man. Each had time added to his term of indenture. James Gregory had to serve his master one extra year. He also had to serve the colony for three years when he had finished serving his master. His punishment was harsh. Four years of extra service was a lot. But the punishment of John Punch, the African-American servant, was much worse. He was sentenced to serve his master for life!

Questions for Discussion

a. Why do you think John Punch was punished more severely than James Gregory? Was his offense any worse than Gregory's?

b. Why was it possible for colonial courts to punish African-Americans more harshly than whites? Would it be possible today in America? In Washington State? Why?

c. How did cases like that of John Punch help bring about slavery in America?

Freedom for Americans--Except African-Americans

John Punch was made a slave by the court of Virginia. He became his master's property for life. Cases like that of John Punch show how people were changed from indentured servants to slaves. Soon the laws of Virginia began making all African-Americans slaves. After 1670, all new African-Americans brought to the colony by ship were made slaves. After 1682, all new African-Americans--even those who came by land--became slaves in Virginia.

Such slave laws spread throughout the colonies. Slavery was common by the time of the American Revolution. Southern landowners and businessmen made money by buying, shipping, and selling slaves. The men who signed the Declaration of Independence all knew about slavery. In fact, some of them owned slaves. Others were against slavery.

The man chosen to write the Declaration of Independence in 1776 was Thomas Jefferson of Virginia. He later became our third President. In the Declaration, he wrote that all men have the right to be free. But the Founding Fathers did not believe this applied to slaves.

Jefferson was one who owned slaves. He had some doubts about slavery, however. He felt the slave trade was wrong. But the Declaration of Independence, a proud statement of freedom, did not speak out against slavery. It said nothing against a white man's owning a African-American.

In 1787, the U.S. Constitution went even further. The new nation's basic set of laws did not mention "slaves" or "slavery" by name, but the subject came up in three places. Each time, the Constitution accepted the idea of slavery.

In the mid-1800's, slavery became an issue that was to lead to civil war. One slave, Dred Scott, took his fight against slavery all the way to the Supreme Court.

DRED SCOTT V. SANFORD (1857)

Dred Scott was a slightly built, rather sickly African-American slave who "belonged" to Dr. Emerson, a U.S. Army doctor stationed in Missouri. In 1834 Dr. Emerson was transferred to a military post in Illinois, where slavery was against state law. Dr. Emerson took Dred Scott with him, and they lived there two years. Then, Dr. Emerson was transferred to Fort Snelling in what is now Minnesota, that was north of the line where Congress in 1820 had said slavery was illegal. Almost three years later, Dr. Emerson went back to Missouri, taking Dred Scott with him.

In 1846, Scott sued for his freedom in a Missouri state court, saying that he thought his life for several years in a free state or free territory made him a free man and a citizen. He won his case, but the Missouri Supreme Court changed the decision and said he was still a slave. By this time Dr. Emerson had died, and friends of Dred Scott who hated slavery decided to help Scott and also strike a blow against slavery. They arranged for Scott to be sold to John Sanford, a citizen of the state of New York and a person who hated slavery.

Thus, Scott sued his new owner in a federal trial court, using as his reason his living in a free state and free territory. Dred Scott lost. He then asked the U.S. Supreme Court to take the case. By the time all the legal work was over, it was 1857, and the Civil War was only three years away. The nation was already torn apart over the issues that led to the war. Slavery was one of those issues. The Dred Scott case became one of the most famous decisions of the Supreme Court because of the times.

Dred Scott's lawyers argued that residence in a free state or a free territory freed any slave and that once freed, an ex-slave automatically became a citizen. This was important because if Scott was not a citizen, he had no right to sue in federal court. The argument of those who supported slavery was that Dred Scott was "property" and that the Fifth Amendment said that property could not be taken away from a person without due process of law. To them, this meant that Congress had no right to pass the Missouri Compromise because, by prohibiting slavery, it took away a man's property (his slaves). They also argued that Dred Scott had no real right to sue in federal court because the Negroes in American were never intended to be citizens. They were able to point out that the Constitution even recognized the fact of slavery in three separate places and that the Constitution had not been amended.

What do you think?

Questions for Discussion

a. Can you find three references to slavery in the Constitution? Check Article I, Section 2, Clause 3; Article I, Section 9, Clause 1; and Article IV, Section 2, Clause 3. Do any of these references help in deciding the case?

b. Do you think Dred Scott was a citizen of Missouri? Of the United States?

c. What do you think citizenship means?

d. What questions must the Supreme Court answer to decide this case?

e. In what way is this case an example of Justice Brennan's observation "that the Supreme Court is called upon to face the dominant social, political, economic, and even philosophical issues that confront the nation"?

ARGUMENTS FOR APPELLANT AND APPELLEE

Issue 1: Is Dred Scott a citizen of the United States?

Argument for Appellant, Dred Scott:

a. Scott lived in Illinois, a state that prohibited slavery.

b. Scott lived in Fort Snelling, in the territory where Congress had prohibited slavery by the Missouri Compromise of 1820. He lived in this territory as a free man.

c. When Scott returned to live in Missouri, he returned a free man. Because he was a free man, the Constitution of that state made him a citizen of Missouri.

d. If Scott was a citizen of Missouri, he was a citizen of the United States.

Argument for Appellee, John Sanford:

a. In the Declaration of Independence, the phrase "all men are created equal" did not apply to slaves because they were considered property.

b. Article I, Section 9, Clause 1 of the Constitution of the United States gives the people the right to import slaves until 1808.

c. Article IV, Section 2, Clause 3 of the Constitution says that the states pledge to deliver runaway slaves.

d. Because of these clauses, the Constitution recognizes slaves to be property and not members of the political community.

e. Furthermore, Article I, Section 8, Clause 4 of the Constitution says that Congress has the power to make rules for naturalization. Therefore, Congress, not the states, decides who shall be citizens of the United States.

f. Because of the Declaration of Independence, the Constitution, and the power of Congress to decide citizenship, Dred Scott is not a citizen of the United States.

Issue 2: Does Scott have the right to sue in federal court?

Argument for Plaintiff, Dred Scott:

a. Scott is a citizen of Missouri.

b. Sanford is a citizen of New York.

c. Article III, Section 3, Clause 1 of the Constitution says that the courts of the United States shall hear cases "between citizens of different states."

d. Because of the clause in the Constitution, Scott has a right to sue Sanford in the courts of the United States.

Argument for Appellee, John Sanford:

a. Only citizens of the United States may sue in its courts.

b. "Citizen" in the Constitution was not meant to apply to slaves.

c. Dred Scott is not a citizen and cannot sue in federal court.

Issue 3: Does the Constitution of the United States give Congress the power to make laws, like the Missouri Compromise of 1820, that prohibit slavery in the territories?

Argument for Appellant, Dred Scott:

a. Article IV, Section 3, Clause 2 of the Constitution says that Congress has the power to "dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

b. This clause gives Congress the power to acquire territory and to govern that territory until it becomes a state.

c. The Constitution does not say what power Congress may have over people or property in that territory.

d. Therefore, Congress may pass laws like the Missouri Compromise of 1820.

Argument for Appellee, John Sanford:

a. Article IV, Section 3, Clauses 1 and 2 of the Constitution give Congress the power to keep territories until such time as they can become self-governing and can enter the union as states.

b. Territories are not the same as colonies. Territories may some day become states. Congress may not rule territories as if they were colonies.

c. Amendment V to the Constitution says that no person "shall be deprived of...property without due process of law." Slaves are property.

d. Congress may not take a person's property without due process. The Missouri Compromise deprives people of their property without due process. In passing laws like the Missouri Compromise, Congress is imposing its will on territories, something the Constitution did not intend. The Missouri Compromise is, therefore, unconstitutional.

DECISION: DRED SCOTT V. SANFORD

In 1857, the Supreme Court ruled that Scott was still a slave; that is, property, not a citizen of the United States. Therefore, he did not have the right to sue for his freedom in the federal courts. Insofar as the Missouri Compromise deprived slave owners of their property when they traveled into areas where slavery was prohibited, the Compromise was an unconstitutional violation of the Fifth Amendment. Congress had no power to ban slavery in the territories of the United States. The court said:

> An act of Congress which deprives a citizen of his liberty or property, without due process of law, merely because he came himself or brought his property into a particular territory of the United States, and who had committed no offense against the laws, could hardly be dignified with the name of due process of law.

The Chief Justice emphasized that the Constitution had recognized slavery. He was joined by two other justices in the view that slaves "had no rights or privileges but such as those who held the power and the government might choose to grant them."

Many people had hoped that the Supreme Court would settle the slavery issue with its ruling in this case. Of course, it did not. Public reaction to the decision was stormy. The Dred Scott case was not a solution to the slavery controversy; instead, it was another cause of the Civil War.

SEPARATE BUT EQUAL: FROM "JIM CROW" TO PLESSY V. FERGUSON (1896)

Source:

Adapted by UPSICEL from Law in U.S. History, New Mexico Law-Related Education Project, edited by Melinda Smith

Historical Period: Reconstruction with Some Present Applications

Class Periods: 2

Use of Outside Resource Persons:

A representative of an African-American organization -- for example, the Loren Miller Bar Association, the National Association for the Advancement of Colored People -- may assist in presenting the history of African-Americans in the United States.

Objectives:

1. Students will identify the meaning and interpretation of the Thirteenth, Fourteenth, and Fifteenth Amendments.

2. Students will increase their awareness of social realities of oppression and segregation of African-Americans in the South after the Civil War.

3. Students will increase ability to analyze political cartoons.

Materials:

Handouts 1, 2, 3, 4, 5, and 6

Procedures:

1. Pass out Handout 1 and have students read the three amendments and list the guarantees afforded African-Americans in each of them.

2. Read and discuss the information preceding the cartoon. Then have students analyze the cartoon and discuss the questions.

3. Ask students to read Handout 2 as homework or in class.

This handout presents an in-depth analysis of the meaning and interpretation of the Fourteenth Amendment in the years after the Civil War. It is recommended that an attorney be invited to the class to discuss the substance of the materials.

4. Update the students with a present view of the application of the Fourteenth Amendment.

Explain that equal protection requires that people who are in the same circumstances be treated alike by the government under the law unless there is a sufficient justification for different treatment.

Ask students whether a law that gives women longer sentences than men for the same offense would violate the equal protection clause. Yes, it does. However, it was common even as late as 1978 to have separate criminal sentencing laws for women and men in the same state.

Review with students too that the Fourteenth Amendment only applies to state action. Actions by individuals are not covered by the Fourteenth Amendment.

Ask students about this example. Sammy decides that he does not like African-Americans and that he will not permit any African-Americans to enter his home. Tom, a African-American salesman, is denied entrance to Sammy's home because Sammy does not like African-Americans. Has Sammy violated the man's rights to equal protection? The answer is no, because Sammy is acting as a private individual without state action.

Put these terms on the board:

1. Strict Scrutiny Test

    a. Suspect Class or Fundamental Right

    b. Compelling Reason

2. Substantial Relationship Test

    a. Women, Illegal Aliens

    b. Important Government Objective

3. Rational Relationship Test

    a. No Suspect Class or Fundamental Right and no Women, Illegal Aliens or Illegitimate Children

    b. Any Legitimate Government Interest

Define **suspect class** to include race, alienage (whether or not the person is a citizen), and nationality. This means that if a state law treats people differently because of their race, alienage, or nationality, a suspect class is involved. **Fundamental rights** are all the rights directly or indirectly provided by the Constitution. They include the right to marry, the right to procreate, the right of poor people to get access to appeals when appeals are given as a right, right to privacy including the right to an abortion through the second trimester, the right to interstate travel, the right to vote and others. In order for the state government to

treat suspect classes differently or provide different treatment regarding fundamental rights there must be a compelling state interest, a very hard justification for the government to prove.

Give this example: prison officials find that gang activity in the prison has resulted in several killings within the prison. So, the prison administrator decides to house all African-Americans in one area of the prison. Does this prison administrator's decision involve Equal Protection? Yes, it does. Her decision is a state governmental action that treats African-Americans different from other racial groups. In order for this decision to stand, the prison must prove a compelling governmental interest in the segregation. This decision would violate equal protection. The administrator would be free to segregate identified prison gang members, but not to segregate all African-Americans.

Explain the **Substantial Relationship Test** which applies to the **Middle Tier**. Certain groups, including women, illegal aliens, and illegitimate children, cannot be treated differently under state law unless the government has an important reason for the different treatment. The government's justification does not have to be as strong as that which it would have to prove if a fundamental right or suspect class were involved. Cost and administrative convenience are not good enough reason to justify different treatment.

Give a jail example. In one county jail, there are over 500 male inmates, but only 10 to 15 women inmates. Male inmates who have reached a certain level of good behavior have the opportunity to work outside in a work release program. They are gone for nine hours and are able to earn $.35/hour. Because of the few number of women involved, no work release program is available. Does this involve the equal protection clause? If so, does the government have a good reason not to provide the work release program? The answer is that the government's failure to provide males and females with comparable programs violates the 14th Amendment. The government's cry that it would cost too much for the women's program or be administratively too difficult to handle are not accepted defenses. The government has two options: offer the women a similar work release program or drop the work release program for the men.

Explain **rational basis test** which applies to **reasonable classification**. If the state's action does not involve a suspect class/fundamental right or the Middle Tier, then the state may treat groups differently, provided the law has a proper purpose and there is a rational basis for different treatment.

Ask students if a tax on blue-eyed persons would be reasonable. No, it would not and would be unconstitutional.

4. Pass out Handout 3. Using the case study method, have students analyze the facts, issues and arguments of the case. Discuss the questions following the case. (Teachers have the option of conducting a simulation as described below.)

a. Explain to students that they will participate in a court simulation in which the constitutional issues of the Plessy case will be argued. They will be divided into groups of three. One student in the group will play the role of attorney for Plessy, one the attorney for Ferguson, and one the judge. The attorneys will develop arguments for their sides and present them to the judge. The judge will make a decision in the case. The groups will conduct their simulations simultaneously.

b. Divide the class into groups and assign roles. Distribute Handout 5 to students representing Plessy and Handout 6 to students representing Ferguson. Allow attorneys time to analyze materials and prepare arguments.

c. While attorneys are preparing, meet with judges and instruct them to reread the case and prepare questions to ask the attorneys. Explain that they should conduct their simulation as follows:

(i) Allow attorney for Plessy five minutes to present argument.

(ii) Allow attorney for Ferguson five minutes to present argument.

(iii) Allow one-minute rebuttal by Plessy's attorney.

(iv) Judge may interrupt during arguments to ask questions during proceedings.

(v) Judge will deliberate and deliver a decision along with reasons to support that decision.

d. Conduct the simulations. Make sure groups are spaced so as to not distract each other.

e. Call on each judge for his or her decision and reasoning. Record decisions on the board.

f. Distribute Handout 4 and read the decision with the class. How do the decision and reasoning differ from or resemble those of the student judges? What were the results of the decision?

THE RISE OF SEGREGATION[1]

After the Civil War, the Thirteenth, Fourteenth, and Fifteenth Amendments gave citizenship to four million African-Americans. What rights did these constitutional amendments guarantee?

THIRTEENTH AMENDMENT (1865)

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

FOURTEENTH AMENDMENT (1868)

...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FIFTEENTH AMENDMENT (1870)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Even though the constitutional amendments were the new "law of the land," they did not bring freedom to African-Americans. After the war, government troops had been sent to the South to keep order and protect the rights of freed slaves. After the last soldiers were withdrawn from the South in 1877, white Southerners soon began to regain control of their states. Slowly, all African-Americans were forced out of state governments. Their right to vote was taken away. Most of their new rights became nothing but words on a piece of paper.

The Southern states passed a number of laws called "Jim Crow" laws. These laws were meant to segregate, or keep separate, African-Americans from white people. They required that public places--such as schools and hotels--set up "separate but equal" sections for African-Americans and whites.

In the late 1800's, African-Americans were free, but they weren't treated equally. Look at the cartoon below. It appeared in a New York magazine in 1875.

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[1] Adapted from Law in a New Land (Boston: Houghton-Mifflin Col., 1972). Used with permission.

"Shall we call home our troops?"

Questions for Discussion

a. Look at each figure in the cartoon. What people do each of the figures stand for?

b. Considering what you have just read about "Jim Crow" laws, what prediction do you think the cartoon makes?

c. What attitude does the cartoon reflect about African-Americans in the South?

d. Do you think the cartoon is accurate?

FOURTEENTH AMENDMENT: THE RISE AND FALL OF HOPE[2]

After the Civil War (1861-1865), the young nation underwent a boom of growth that changed her into a powerful and complex giant. On continent-spanning rails, she opened the West. Free land, the Industrial Revolution, the rise of Big Business brought waves of immigrants flooding to her shores. Her cities mushroomed. She experienced strikes, labor violence, political corruption, rising national income, and periods of financial panic. Amid all this turmoil, America failed to heal the bitter wounds left by the war between North and South. And the forgotten ex-slaves, freed in war, witnessed in peacetime the forces of segregation washing away many of their new liberties.

For four million ex-slaves, the postwar era began on a note of high hope. The Fourteenth Amendment held out a promise of full citizenship. It defined "citizens of the United States" in a way that included African-Americans--thus nullifying the Dred Scott decision on the point.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.
> --Fourteenth Amendment, U.S. Constitution (1868)

Privileges and Immunities

Next, the Fourteenth Amendment prohibited any state from interfering with the "privileges or immunities" of U.S. citizens. What did this mean? To the amendment's sponsor, Rep. John A. Bingham of Ohio, the "Privileges and Immunities Clause" referred to the liberties guaranteed under the Bill of Rights. In Barron v. Baltimore (1833), the Supreme Court had ruled that the first ten amendments to the Constitution protected citizens against interference by the federal government only. Bingham, strongly opposed to such a narrow ruling, insisted that the Fourteenth Amendment protected Bill of Rights liberties against state interference as well.

For example, county police break into your home without a search warrant because they have an anonymous tip that you have stolen goods hidden in your home. The Bill of Rights does not protect you since it only prevents federal government agents from conducting unreasonable searches and seizures. The intent of the sponsor of the Fourteenth Amendment was to make the Bill of Rights' Fourth Amendment on

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2 From Vital Issues of the Constitution (Boston: Houghton-Mifflin Co., 1975). Used with permission.

searches (and the other nine Amendments) apply to state and local (including county) government agents.

Five years after the Fourteenth Amendment was adopted, the Supreme Court rejected Bingham's idea that the Fourteenth Amendment made the Bill of Rights apply to state government actions. The Slaughter-House Cases (1873) involved a Louisiana statute confining all livestock-slaughtering business in New Orleans to one corporation in one small section of the city. Other butchers complained that the law was a monopoly taking away their businesses. It deprived them of their "privileges or immunities" as U.S. citizens. The Supreme Court answered no. The butchers' rights were state, not federal, privileges and immunities. Besides, the butcher's claim did not involve race. The Fourteenth Amendment, the Court ruled, was designed chiefly to protect citizenship rights of ex-slaves.

Down through the years, in a number of separate cases, the Supreme Court eventually expanded coverage of the Fourteenth Amendment to include all persons--and protect most of the Bill of Rights' "fundamental liberties" against invasion by the states. But for many years after the Slaughter-House Cases, the Amendment was narrowly restricted to African-Americans.

The Power Clauses: Due Process of Law and Equal Protection

Two other passages have loomed as the vital power clauses of the Fourteenth Amendment. The "Due Process Clause," applying Fifth Amendment liberties to the states, bars a state from taking any person's "life, liberty or property without due process of law." Due process meant that the government must act fairly before taking away some protected right or interest. This includes requiring the government to take proper steps, which may include a hearing, the right to an attorney, the right to confront witnesses or which may include something less, depending upon the value of what is in jeopardy of being taken.

For example, if the state wishes to cancel your fishing license, they do not have to give you a hearing, pay for your attorney, the process is much simpler. However, if you are facing the death penalty, the process that is due to you is great. In the first example, the government taking away your fishing license is a much lesser loss than taking your life.

The other clause, the "Equal Protection Clause," prohibits a state from denying any citizen "equal protection of the laws." For the African-Americans, here was the heart of the Fourteenth Amendment, the potential keystone upon which would rest their historic quest for equal rights.

Background of Equal Protection

The Fourteenth Amendment provides the first clear reference to equal rights anywhere in the Constitution. True, the Declaration of Independence in 1776 had proclaimed as a fundamental American principle "that all men are created equal." Of course, this did not imply that all persons were equal in intelligence, skills, or strength. It simply

meant that all persons should be treated equally by the government. The concept of equality before the law, however, was not spelled out in the original Constitution. They had to wait for the Equal Protection Clause.

> "Equal protection of the laws" places all upon a footing of legal equality and gives the same protection to all for the preservation of life, liberty and property, and the pursuit of happiness.
> --Justice Swayne, The Slaughter-House Cases (1873)

Advent of Segregation

The Supreme Court decided the Civil Rights Cases of 1883. These decisions made clear that the Fourteenth Amendment did not apply to actions by individuals. State action was required for the Fourteenth Amendment to apply. This further restriction of the Fourteenth Amendment reflected the mood of the times. The federal government was tiring of the "Negro question." White men in the South were donning the hood and robe of the Ku Klux Klan; by night they were riding to whip and hang and terrorize African-Americans from asserting their civil rights.

Eventually white voters recaptured political control of state governments across the South. And in 1877 the United States withdrew the last of its Reconstruction troops. Encouraged by the Supreme Court's position in the Civil Rights Cases, Southern states began passing laws rigidly segregating the races. The freed persons increasingly found themselves legally restricted to separate schools, housing, and public facilities. Then, in 1896, came the Plessy case. It puts America's highest judicial stamp of approval on second-class citizenship for African-Americans. The case, indeed, was the culmination of decades of dashed hopes. And its doctrine, "separate but equal," would prevail for another half-century.

SEPARATE BUT EQUAL: PLESSY V. FERGUSON (1896)

Homer Plessy was a citizen of the United States and a resident of the state of Louisiana. Plessy was of mixed descent; he was 7/8ths white and 1/8th African-American. On June 7, 1892, he purchased a first-class ticket on the East Louisiana Railway from New Orleans to Covington, Louisiana. The train made the trip from New Orleans north around Lake Ponchartrain to Covington.

Homer Plessy walked to the waiting train. Some cars were marked "FOR COLOREDS ONLY" others "FOR WHITES ONLY." Plessy went to the car "for whites only," entered, and took a seat.

The General Assembly of the State of Louisiana had passed a law in 1890 requiring in-state trains to provide "separate but equal" coaches for members of the "white race" and members of the " colored race." The law stated:

Louisiana Statute 1890, No. 111, p. 152

Section I: That all railway companies carrying passengers in their coaches in the State, shall provide equal but separate accommodations for the white and colored races by providing two or more passenger coaches for each train, or by dividing the passenger coaches by a partition so as to secure separate accommodations: Provided that this section shall not be construed to apply to street railroads. No persons shall be admitted to occupy seats in coaches, other than the ones assigned to them on account of the race they belong to.

Section II: That the officers of such passenger trains shall have the power and are hereby required to assign each passenger to the coach or compartment used for the race to which such passenger belongs; Any passenger insisting on going into a coach or compartment to which by race he does not belong, shall be liable to a fine of twenty-five dollars, or in lieu thereof to imprisonment for a period of not more than twenty days in the parish (county) prison....And should any passenger refuse to occupy the coach or compartment to which he or she is assigned by the officer of such railway, said officer shall have power to refuse to carry such passenger on his train, and for such refusal neither he nor the railway company which he represents shall be liable for damages in any way in the courts of this State.

When the conductor arrived, Plessy was ordered to leave and to take a seat in the section of the train for African-Americans. Plessy refused to comply with the demands of the conductor. A police officer was summoned, and Plessy was forcibly removed from the train. Plessy was taken to jail to answer a charge of having violated Louisiana law.

Plessy filed for a writ of prohibition against the Honorable John H. Ferguson, judge of the Criminal District Court for the Parish of Orleans. The writ of prohibition was to stop Judge Ferguson from enforcing the law because that law was in conflict with the Fourteenth Amendment to

the U.S. Constitution and was, therefore, null and void. Because the Fourteenth Amendment had made him a citizen, Plessy claimed that he was entitled to the privileges and immunities of citizens and to equal protection of the laws.

Because this was an important legal question, the case had to be heard by the Supreme Court of Louisiana. There the lawyers for the state argued that the Fourteenth Amendment was intended to protect political rights such as voting or holding public office. Seating on a train was not a political right; therefore, the state, by law, could separate the races as long as equal rights were provided for both races. The Supreme Court of Louisiana denied the writ of prohibition and ordered Plessy to stand trial.

Homer Plessy then took his case to the Supreme Court of the United States.

Questions for Discussion

a. What is segregation? Have you seen segregation in practice? Give examples.

b. What is meant by "separate but equal"? Explain. Do you think that the segregated railway cars of Homer Plessy's day were really equal? Can anything that is segregated ever be truly equal? Why or why not?

c. What does "equal protection of the laws" mean? Who has a right to "equal protection of the laws"? Look at the Fourteenth Amendment on Handout 2.

d. How do you think the U.S. Supreme Court ruled in Homer Plessy's case? Why?

DECISION: PLESSY V. FERGUSON

The Supreme Court ruled in favor of the State of Louisiana. The court said that it was not the intention of the Fourteenth Amendment to "abolish distinctions based upon color, or to enforce social, as distinguished from political equality." According to the court, the State of Louisiana could make laws that took into account the customs and traditions of the people and the need to keep public peace and order. The court said that if the two races were ever to meet "on terms of social equality, it must be the result of natural affinities...and a voluntary consent of individuals," not a result of law.

Only one Justice disagreed. In his famous dissent, John Marshall Harlan said that "in the eye of the law, there is in this country no superior, dominant ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens...."

Justice Harlan warned that this decision would be used to segregate all aspects of life in many states. He was right. "Separate but equal" laws hit African-Americans in every part of their lives. They kept African-Americans out of the best schools and libraries. They put African-Americans in the back of public buses. These laws made African-Americans sit in separate waiting rooms in train stations. They even made African-Americans use separate drinking fountains.

It would take another half century before the "separate but equal" doctrine would be reversed in the law.

ARGUMENTS FOR PETITIONER, HOMER PLESSY

1. Privileges and Immunities

The Fourteenth Amendment made former slaves and their descendants citizens of the United States and of the state where they reside. As a citizen, Homer Plessy is entitled to the privileges and immunities that other citizens enjoy. Traveling freely without being told where to sit is just one privilege citizens enjoy. The Louisiana law violates this privilege.

2. Equal Protection of the Law

The Louisiana law is unconstitutional because it violates the Fourteenth Amendment's "equal protection" clause. A law that causes people to be treated differently solely on the basis of race fails to apply the force of law equally to all citizens.

3. Social and Political Equality

One purpose for the Fourteenth Amendment was to provide equal treatment of former slaves. This equal treatment is not limited to voting rights or to holding public office. It includes social equality as well. When the law forces people to sit apart on trains, there can be no social equality. Separate cannot be equal.

4. Laws Must Benefit the Community

If separate cars on a train are permitted, what is to stop the law from requiring African-Americans to walk on one side of the street or to sit on one side of a courtroom? A railroad is a public highway. True, the company that owns the railroad is private, but its work is public. The use of that railroad is intended to benefit the entire community. No public facility is meant to serve only one part of a community.

ARGUMENTS FOR RESPONDENT, HON. JOHN H. FERGUSON

1. Political, Not Social Equality

The sole purpose of the Fourteenth Amendment was to insure political equality--voting rights, holding public office. Choosing a seat on a train is not a political right. Social equality cannot be promoted by law. If the two races are to meet as social equals, it must be because they want it on a voluntary basis.

2. Laws Reflect Customs and Traditions

The legislature of a state may pass laws that promote the customs and traditions of the people it was elected to serve. It may also pass laws that preserve peace and order. It has long been the custom in Louisiana to keep the races apart. The people of that state desire it as one means of preserving peace and order. Therefore, the legislature is operating within its legal boundaries.

3. Previous Supreme Court Decisions Uphold Separation

The Supreme Court of the United States has generally upheld other laws that separate the races. Boston has been permitted to establish separate schools for children of different ages, sexes, and colors. A similar law has been passed by Congress for the schools in the District of Columbia. Laws forbidding interracial marriages have also been upheld by the Supreme Court.

4. Laws Do Not Promote Inferiority of Races

State laws that permit or require the separation of the races do not mean that one race is inferior. If African-Americans feel inferior, it is because they choose to feel that way.

THE GETTYSBURG ADDRESS

Source:

Developed by Eldon M. Toman and printed in Law and U.S. Studies of the Utah Law-Related and Citizen Education Project

Historical Period: Civil War 1863

Class Periods: 3

Use of Outside Resource Persons:

A historian or constitutional lawyer may debrief these exercises.

Objectives:

1. Students will identify the Gettysburg Address as an example of excellence in English prose and as a focal event in the history of the nation.

2. Students will identify the Gettysburg Address with the "living" of their generation and evaluate whether Lincoln's statement has an ongoing, universal application.

Materials:

Handouts 1 through 6

Procedures:

1. Set the stage for this speech by a review of the history of the Battle of Gettysburg.

2. Ask each student to select one of the written activities to do from Handout 3.

3. Have students read the newspaper article, Handout 2.

4. Read the document, Handout 1, - or have a student recite the speech. Carefully review the text and language in this classic speech.

5. Select from the discussion questions in Handout 5 those you consider most relevant and guide your class in an analysis of the speech.

6. Document activity. Provide each student with a copy of the Contemporary Newspaper Reports, Handout 6. Read and discuss these with the class. Note: Questions are inserted for your convenience.

7. Administer the test, Handout 4, as a summary and evaluation of the project. Note the list of references.

THE GETTYSBURG ADDRESS
NOVEMBER 19, 1863

Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.

Now we are engaged in a great civil war, testing whether that nation or any nation so conceived and so dedicated, can long endure. We are met on a great battle-field of that war. We have come to dedicate a portion of that field, as a final resting place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.

But in a larger sense, we can not dedicate -- we can not consecrate -- we cannot hallow -- this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note, nor long remember what we say here, but it can never forget what they did here. It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us -- that from these honored dead we take increased devotion to that cause for which they have the last full measure of devotion -- that we here highly resolve that these dead shall not have died in vain -- that this nation, under God, shall have a new birth of freedom -- and that government of the people, by the people, for the people, shall not perish from the earth.

NEWSPAPER ARTICLE: DESERET NEWS, MAY 19, 1985
"AFTERTHOUGHT" BECAME METAPHOR FOR ELOQUENCE
by Sandra Dawn Brimhall

In the spring of 1863, Gettysburg was a small, peaceful community situated in southern Pennsylvania. It is doubtful the inhabitants of the town or even the nation's leaders dreamed that in a few short months Gettysburg would become the site of one of the Civil War's bloodiest and most critical battles or that such a battle would be immortalized in a three-minute speech by Abraham Lincoln.

The Battle of Gettysburg was fought during the first three days of July in 1863. Neither the Union nor the Confederate Army wanted to fight at Gettysburg, but fate stepped in and took command. The triumph of the Union forces was a turning point for the war and General Robert E. Lee's hope for an invasion of the North was destroyed. Both sides sustained heavy losses, the North lost 23,000 while the South lost 28,000.

Five months after the battle, on November 19, 1863, 12,000-15,000 people gathered at Gettysburg for the dedication of the Soldiers' National Cemetery. They included family and friends of the dead, President Lincoln and some members of his cabinet, governors of northern states, civil and military officers and principal speaker Edward Everett.

Everett was one of the most distinguished American orators. Born in 1794, he had served as a U.S. senator, governor of Massachusetts, secretary of state, minister to Great Britain and as a Phi Beta Kappa post, professor and president of Harvard.

Lincoln's invitation to speak at the dedication had been an afterthought. His detractors had questioned his ability to speak on such a solemn occasion and there were those who felt, that with the weight of the war on his shoulders, he would not have the time to prepare an address.

It was true that Lincoln's many and heavy responsibilities left him with little time to prepare his remarks for Gettysburg. The armies of Grant and Meade needed his immediate attention, he was in the midst of preparing his annual address for Congress, and there were internal cabinet conflicts. Many of Lincoln's past supporters believed he was finished politically. He was also plagued with family problems. One of his sons, Tad, was desperately ill and his wife, recalling the earlier death of another son, was frantic. Lincoln himself was not well. Immediately after returning from Gettysburg, he broke out with a mild form of smallpox.

Yet, in spite of these many problems, Lincoln felt it was imperative he go to Gettysburg. He needed the support of the state governors and an improved public image. The opportunity to speak at Gettysburg

would allow him to honor those who had died for the Union cause and to reiterate the reasons for fighting the war.

Contrary to popular belief, Lincoln did not write the Gettysburg Address on the back of an envelope on a train en route to Gettysburg but wrote most of it in Washington, adding some finishing touches after his arrival in Gettysburg.

When he was asked by a friend, Noah Brooks, to describe his speech, he replied, "Short, short, short." He told other acquaintances the speech was not satisfactory to him and he was afraid it would not do him credit or meet the public's expectations.

The address by Edward Everett lasted over two hours and was spoken entirely from memory.

When Lincoln delivered the Gettysburg Address, he was on his feet less than three minutes. At the conclusion of his remarks, there was polite applause and some of those present later commented the applause was more in honor of the President than his speech.

At the time, Lincoln did not feel his speech had been a success. The lack of what he perceived to be a favorable response from the audience may have been due to several factors. By the time Lincoln spoke, the audience was weary from inadequate accommodations, transportation and Everett's long address. Lincoln ended his speech just as many thought he was beginning, and after Everett's long oration, Lincoln's short address may have seemed like hardly a speech at all.

Nationwide response to Lincoln's remarks varied from praise to scorn and even complete indifference. The largest newspapers in the country, Greeley's Tribune and Bennett's Herald made no reference to the address.

The Chicago Tribune wrote, "The dedicatory remarks of President Lincoln will live among the annals of man," while the Chicago Times countered that the address contained "silly, flat and dishwater utterances."

Both the Patriot and the Union of Harrisburg denounced the speech as a "...panorama that was more for the benefit of his party than for the glory of the nation and the honor of the dead," and they added, "We pass over the silly remarks of the President, for the credit of the nation. We are willing that the veil of oblivion shall be dropped over them and they shall no more be repeated or thought of."

The Evening Bulletin of Philadelphia arrived at a different conclusion that, "The President's brief speech of dedication is most happily expressed. It is warm, earnest, unaffected and touching. Thousands who would not read the elaborate oration of Mr. Everett will read the President's few words and not many will do it without a moistening of the eye and a swelling of the heart.

After printing the text of the speech, the Cincinnati Gazette added, "This was the right thing in the right place, and a perfect thing in every respect."

Lincoln was most gratified by the letter he received from Everett the day after the dedication which states, "I should be glad, if I could flatter myself that I came as near to the central idea of the occasion in two hours as you did in two minutes."

The Gettysburg Address also received unrestrained praise from Ralph Waldo Emerson who, in one of his essays, noted it was one of the best specimens of American eloquence.

Modern critics regard it as a literary masterpiece and as a work in which the statesman and the artist were fused. There is no doubt it is the most conspicuous event in Lincoln's career. Americans know the name of "Gettysburg" today not because of a military victory but because of Lincoln's speech.

One of the greatest tributes to the Gettysburg Address was given by Lord Curzon, Earl of Keleston and Chancellor of Oxford when he addressed Cambridge scholars on Nov. 6, 1913. He said, in part,

> The Gettysburg Address was uttered by a man who had been a country farmer and a district lawyer before he became a statesman. But they are among the glories and treasures of mankind...It was a truthful recital of the eve ts which lay behind the gathering at Gettysburg, and an interpretation of the spirit of the occasion...Above all, it was a declaration of America's fundamental principles. It truthfully represented the spirit of that for which man fought, not only at Gettysburg, but at Runnymeade, at Bunker Hill and the plains of Flanders. The long, hard-fought battle for the liberation of humanity has been a struggle for the rights and welfare of humanity.

This Memorial Day, as we honor the dead from our nation's wars, it would behoove us to recall the words of Abraham Lincoln, that now "it is for us the living to be dedicated here, to the unfinished work they who fought have thus far so nobly advanced; that this nation, under God, shall have a new birth of freedom -- and that government of the people, by the people, for the people, shall not perish from the earth."

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AN EXERCISE ON THE "GETTYSBURG ADDRESS"

Directions: Written assignment - Do one of the following:

A. A set of class notes on the discussions relating to the "Gettysburg Address."

B. Imagine you are a reporter from one of the newspapers mentioned in the material on the "Gettysburg Address." Your assignment is to write a story on the dedication of the Gettysburg Cemetery on November 19, 1863. Write your story and send it to your editor.

C. Write an answer to each of the discussion questions.

Readings

1. The Document, Handout 1.

2. "'Afterthought' Became Metaphor for Eloquence," the Deseret News, May 22, 1985, Handout 2.

3. Carl Sandburg, Abraham Lincoln: The War Years II, Harcourt, Brace and Co., 1939, pp. 452-477.

4. Richard Hofstadter, Great Issues in American History, Vintage Books, 1958, p. 406.

5. A high school United States History text.

TEST ON THE GETTYSBURG ADDRESS

True or False

1. In the first sentence of the Gettysburg Address Lincoln quotes from the U.S. Constitution. True False

2. In Lincoln's view the Gettysburg Cemetery had been dedicated by the men who had fought there. True False

3. Government of the people, by the people, and for the people is a definition of democracy. True False

4. Lincoln viewed the Civil War as a test of the ability of the United States to endure. True False

5. Dedicating the Gettysburg Cemetery was fitting and proper. True False

6. What was done at Gettysburg on November 19, 1863 was not long remembered. True False

7. The living generation have a responsibility to see that men and women who die for their country do not die in vain. True False

8. In Lincoln's view preserving the Union was the purpose of the Civil War. True False

9. By Nov. 1863, Lincoln was committed to emancipation (freeing) of the slaves. True False

10. The featured speaker at Gettysburg on Nov. 19, 1863 was not Abraham Lincoln. True False

11. Lincoln did not personally feel satisfied with his speech at Gettysburg. True False

12. A northern paper owned and supported by democrats would tend to be critical of Lincoln whatever he did. True False

13. Saving the Union and emancipating the slaves were basic issues for which Union soldiers died at Gettysburg. True False

DISCUSSION QUESTIONS

Directions: In an open discussion with your students or in small groups with selected questions to individual groups analyze the following questions.

1. Who was the principal speaker at the dedication of the Gettysburg Soldiers' National Cemetery?

2. Despite many public and personal problems, Lincoln felt it imperative to go to Gettysburg. Why?

3. How did Lincoln describe his speech to Noah Brooks?

4. With what national holiday would you associate the Gettysburg Address?

5. How many soldiers were killed at the Battle of Gettysburg? This number is close to the number of Americans killed in the Korean War and the number of Americans killed in the Vietnam War. Give some reasons why the number killed in just one Civil War battle could be so high.

6. What document does Lincoln refer to in the first statement in the "Gettysburg Address?"

7. What does the fact that dedicated is used five times in this short speech suggest?

8. In your view, what is the "unfinished work...so nobly advanced" by the dead at Gettysburg? Or what was the cause for which these dead gave their "last full measure of devotion"? What do you suppose Lincoln had in mind as "a new birth of freedom"?

9. What would you say was Lincoln's definition of democracy?

10. Is freedom worth the price of a human life?

11. Does the Gettysburg Address imply that a soldier should be willing to give his life for his country?

12. Does this document suggest that our country has the right to expect the sacrifice of our lives, if necessary, in the defense of our national interest? In time of war?

13. The following are a list of causes. What would you be willing to do to promote these causes? Consider each one individually. It should be pointed out that the sacrifice of one's life is not required in order for one to promote a good cause. For purposes of discussion make your own list. It may be important to have commitment to something, something which reaches beyond self.

a. To promote freedom from fear and freedom from want.

b. To secure the right to vote for women, African-Americans, 18-year olds.

c. To preserve the First Amendment Rights.

d. To elect the right person to a political office.

e. To guarantee the right of labor groups to organize, bargain collectively and to strike.

f. To legally restrict abortion.

g. To ensure safe abortions are available on demand.

g. To protect the environment.

h. To stop scientific research on animals.

15. For depth review the exchange between Lincoln and Horace Greeley on emancipation of the slaves in August 1862. See the reference in Great Issues in American History.

Discuss whether Lincoln was committed to the emancipation of the slaves as a basic purpose of the Civil War.

a. Was Lincoln an abolitionist?

b. When did he become an abolitionist?

c. What is the date of the Emancipation Proclamation?

CONTEMPORARY NEWSPAPER REPORTS OF THE GETTYSBURG ADDRESS

Directions: These newspaper accounts of the Gettysburg Address are taken from Carl Sandburg's, Abraham Lincoln, Vol. II, the War Years, pp. 452-477. The date of the Gettysburg Address was November 19, 1863. These newspaper reports were all within the month following the address. Notice the variety of opinion expressed. As you evaluate the point of view of each publication, try to understand why the author says what he says. Questions are occasionally inserted between the accounts to assist in your interpretation.

Ward Hill Lamon, a friend of Lincoln's, records that just after giving the Gettysburg Address Lincoln said, "Lamon, that speech won't scour. It is a flat failure and the people are disappointed." Was Lincoln so inadequate in evaluating the things he did? Is it possible that he was testing his friend to get his reaction to the speech?

A. The Harrisburg Patriot and Union reported the Gettysburg Address as follows:

> The President succeeded on this occasion because he acted without sense and without constraint in a panorama that was gotten up more for the benefit of his party than for the glory of the nation and the honor of the dead....We pass over the silly remarks of the President; for the credit of the nation we are willing that the veil of oblivion shall be dropped over them and that they shall no more be repeated or thought of.

What about the Gettysburg Address could be interpreted as "silly"?

B. The Chicago Times made this report:

> Mr. Lincoln did most foully traduce the motives of the men who were slain at Gettysburg in his reference to "a new birth of freedom." They gave their lives to maintain the old government, and the only Constitution and Union. He had perverted history, misstated the cause for which they died, and with ignorant rudeness insulted the memory of the dead. Readers will not have failed to observe the exceeding bad taste which characterized the remarks of the President and Secretary of State at the dedication of the soldiers' cemetery at Gettysburg. The cheek of every American must tingle with shame as he reads the silly, flat and dishwatery utterances of the man who has to be pointed out to intelligent foreigners as the President of the United States. And neither he nor Seward could refrain, even on that solemn occasion, from spouting their odious abolition doctrines.
>
> In the pronouncement of a funeral sermon Mr. Lincoln had intruded an offensive exhibition of boorishness and vulgarity, had alluded to tribal differences that an Indian orator

eulogizing dead warriors would have omitted which he knew would excite unnecessarily the bitter prejudices of his hearers. Is Mr. Lincoln less refined than a savage?

Why would a northern newspaper from Lincoln's own State make such a critical, negative description of the Gettysburg Address?

What does the article reveal about some American attitudes toward the Native American Indians?

C. From the Richmond Examiner:

The dramatic exhibition at Gettysburg is in thorough keeping with Yankee character, suited to the usual dignity of their chosen chief. Stage play, studied attitudes, and effective points were carefully elaborated and presented to the world as the honest outpourings of a nation's heart. In spite of shoddy contracts, of universal corruption, and cruel thirst for southern blood, these people have ideas...have read of them in books...and determined accordingly to have a grand imitation of them....Mr. Everett was equal to the occasion. He "took down his Thucydides" and fancied himself a Pericles commemorating the illustrious dead. The music, the eloquence, the bottled tears and heretically sealed grief, prepared for the occasion, were all properly brought out in honor of the heroes, whom they crimp in Ireland, inveigle in Germany, or hunt down in the streets of New York.

So far the play was strictly classic. To suit the general public, however, a little admixture of the more irregular romantic drama was allowed. A vein of comedy was permitted to mingle with the deep pathos of the piece. This singular novelty and deviation from classic propriety, was heightened by assigning this part to the chief personage. Kings are usually made to speak in the magniloquent language supposed to be suited to their elevated position. On the present occasion Lincoln acted the clown.

Where is Richmond?

What kind of response would you expect from a paper in the Confederate South?

D. From the Chicago Tribune in a sentence:

The dedicatory remarks of President Lincoln will live among the annals of man.

E. From the Cincinnati Gazette, after the text of the Gettysburg Address, they added:

That this was the right thing in the right place, and a perfect things in every respect, was the universal encomium.

F. The London Times wrote that:

> The ceremony was rendered ludicrous by some of the sallies of that poor President Lincoln....Anything more dull and commonplace would not be easy to produce.

G. Count Gurowski, the only man ever mentioned by Lincoln to Lamon as his possible assassin, wrote in a diary,

> Lincoln spoke, with one eye to a future platform and to re-election.

H. Lincoln had spoken of an idea, a proposition, a concept, worth dying for, which brought from a Richmond newspaper a countering question and answer, "For what are we fighting? An abstraction."

I. The Philadelphia Evening Bulletin said thousands who would not read the elaborate oration of Mr. Everett would read the President's few words "and not many will do it without a moistening of the eye and a swelling of the heart."

J. The Detroit Advertiser and Tribune said Mr. Everett had nobly told the story of the battle,

> But he who wants to take in the very spirit of the day, catch the unstudied pathos that animates a sincere but simple-mined man, will turn from the stately periods of the professed orator to the brief speech of the President.

K. The Providence Journal reminded readers of the saying that the hardest thing in the world is to make a good five-minute speech:

> We know not where to look for a more admirable speech than the brief one which the President made at the close of Mr. Everett's oration.... Could the most elaborate and splendid oration be more beautiful, more touching, more inspiring, than those thrilling words of the President? They had in our humble judgment the charm and power of the very highest eloquence.

L. The Springfield Republican had veered from its first opinion that Lincoln was honest but a "Simple Susan." Its comment ran:

> Surpassingly fine as Mr. Everett's oration was in the Gettysburg consecration, the rhetorical honors of the occasion were won by President Lincoln. His little speech is a perfect gem; deep in feeling, compact in thought and expression, and tasteful and elegant in every word and comma. Then it has the merit of unexpectedness in its verbal perfection and beauty. We had grown so accustomed to homely and imperfect phrase in his production that we had come to think it was the law of his utterance. But this shows he can talk handsomely as well as act sensibly. Turn back and read it over, it will repay study as a model speech.. Strong feelings and a large brain were its parents--a little painstaking its accoucheur (deliverer).

M. From Harper's Weekly:

> The few words of the President were from the heart to the heart. They can not be read, even, without kindling emotion. "The world will little note nor long remember what we say here, but it can never forget what they did here." It was as simple and felicitous and earnest a word as was ever spoken....Among the Governors present was Horatio Seymour. He came to honor the dead of Gettysburg. But when they were dying he stood in New York sneeringly asking where was the victory promised for the Fourth of July? These men were winning that victory, and dying for us all; and now he mourns, ex officio, over their graves.

N. Everett's opinion of the speech he heard Lincoln deliver was written in a note to Lincoln the next day and was more than mere courtesy:

> I should be glad if I could flatter myself that I came as near to the central idea of the occasion in two hours as you did in two minutes.

Lincoln's immediate reply was:

> In our respective parts yesterday, you could not have been excused to make a short address, nor I a long one. I am pleased to know, in your judgment, the little I did say was not entirely a failure.

CONSTITUTIONAL ISSUES THROUGH DOCUMENTS
EX PARTE MILLIGAN

Source:

Adapted by UPSICEL from Teaching with Documents, Using Primary Sources from the National Archives, 1989.

Historical Period: 1862-65

Class Periods: 1

A judge, attorney or historian could explain the use of habeas corpus and its role in present American law.

Objectives:

1. Students will distinguish fact from opinion.
2. Students will identify how Supreme Court decisions shape the Constitution.
3. Students will analyze a historical document.
4. Students will define habeas corpus.
3. Students will identify the Constitutional provision for habeas corpus.
4. Students will analyze the historical reasons that President Lincoln suspended the writ of habeas corpus in 1862.

Materials:

Handouts 1 and 2

Copy of the U.S. Constitution

Procedures:

1. Write the words "habeas corpus" on the board and ask students what the term means.

Explain that it is a Latin term that means "You (shall) have the body (in court)." It represents one of the oldest civil liberties in the English-speaking world. Addressed to the jailer of a prisoner by a judge, the court orders the jailer to produce the prisoner and explain to the judge why the prisoner is being held. If the judge finds that the prisoner is being unlawfully detained, the judge may order the prisoner's release. Habeas corpus has served over the centuries as a protection for citizens against arbitrary detainment and has allowed the judiciary to intervene

to protect individuals from arbitrary use of legislative and executive power.

2. Ask students to look in the U.S. Constitution and locate the civil right of habeas corpus.

Students should identify Article I, section 9, clause 2 of the Constitution. It should be noted that this is one of a few individual rights that are included in the body of the Constitution and not added as an amendment. Ask students what significance this has (the importance of this right).

3. Read aloud with students the Constitutional provision:

"The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety might require it."

4. Pass out Handout 1 to students and have them read the document. With students in groups of five, assign a recorder to write down a list of questions that the group members raise after reading the document.

5. Instruct the group members to decide if the questions on their list can be answered with a fact (+) or by a supporting opinion (*). Explain the difference between a fact and opinion. Have them place an appropriate mark next to each question.

6. Instruct the groups to choose their two best fact questions and their two best supporting opinion questions.

7. As the groups report, record their questions on the board.

8. Pass out Handout 2 and have students determine if their questions can be answered from the Handout. For extra credit, students can do research to answer their questions.

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A LETTER FROM MR. MILLIGAN

Indianapolis 28 Dec. 1864

Hon. E. M. Stanton Sec. War.

Dear Sir I have been condemned to die without evidence. Please examine the facts and advise the President do this much for an old acquaintance and friend—

Yours very truly

L. P. Milligan

DID PRESIDENT LINCOLN HAVE THE RIGHT TO SUSPEND HABEAS CORPUS?

During the Civil War President Lincoln found it necessary to proclaim, in September of 1862, that "all persons...guilty of any disloyal practice shall be subject to martial law and liable to trial and punishment by Courts Martial or Military missions." This meant that in regions of the country where the civil courts were in operation, trial by the military was substituted and the writ of habeas corpus was suspended.

In October 1864, Lambdin P. Milligan and two others were tried in a military court in Indiana and found guilty of conspiring with the Confederate States of America to set up a "Northwestern Confederacy." The military court sentenced all three to hang the following May.

Milligan maintained that he was innocent of the charges and that he had been framed by a political opponent in Indiana. Because he had been tried in a military court where the rules of evidence, procedure and appeal are different, Milligan's only recourse was to appeal for a Presidential pardon. Two weeks after he was sentenced, Milligan wrote to his former friend Edwin Stanton, who was now Lincoln's Secretary of War, creating the letter in Handout 1. These two had taken their bar examinations together some thirty years before but were now as much enemies as any two opposing soldiers on the field of battle. As far as is known, Stanton never replied to this letter.

The war ended in April 1865, bringing an end to the suspension of the writ of habeas corpus. In early May, shortly before Milligan's scheduled execution, his lawyers filed a petition for a writ of habeas corpus at the U.S. Circuit Court in Indianapolis. The lawyers argued that a military court has no right to try a citizen if a civil court is in operation. Supreme Court Justice Davis, sitting as a member of the Circuit Court, felt the lawyers' request to be an issue requiring a decision by the Supreme Court. But Milligan and his fellow conspirators were sentenced to hang before any of this could come to pass. Justice Davis wrote a moving letter to President Andrew Johnson asking him to stay (delay) the execution until the Supreme Court could hear the case.

President Johnson complied, reluctantly, to Justice Davis's request, first by staying the execution until June and later by commuting (reducing) the sentence to life in prison. The order to commute the sentence was delivered to Edwin Stanton with instructions not to tell the prisoners until just before their scheduled execution that they were to live. Believing that even the Constitution could not save him, Milligan spent what he thought were his last days arranging his own funeral and writing an address, which he expected to deliver before he was hanged.

In due course the Supreme Court considered the case and ruled in favor of Milligan's claim that a citizen's right to a trial in a civil court could not be revoked even if war produced situations in which the privilege of the writ of habeas corpus might be revoked. Justice Davis,

writing for the majority, argued that the case went to the very heart of what it meant to be a free people. He wrote into his decision a reminder that one of the grievances against King George III in the Declaration of Independence was that he had "rendered the military power independent of and superior to the civil power." He went on to say, "No graver question was ever considered by this court, nor one which more clearly concerns the rights of the whole people; for it is the birthright of every American citizen when charged with a crime, to be tried and punished according to the law." On April 12, 1866, Milligan and his fellow prisoners were released from custody by order of the U.S. Supreme Court.

The Civil War was a crisis that stretched the Constitution, but this Supreme Court decision defined just how far it could be stretched by drawing a clear line between the government's need for security and the rights of individual citizens. As Professor Allan Nevins observed, "The heart of this decision is the heart of the difference between the United States of America and Nazi Germany or Communist Russia."

THE IMPEACHMENT TRIAL OF ANDREW JOHNSON

Source:

Adapted by UPSICEL from Law in U.S. History, New Mexico Law-Related Education Project, edited by Melinda Smith

Historical Period: Reconstruction

Class Periods: 4-6

Use of Outside Resource Persons:

A constitutional attorney could assist with setting out the steps of the trial and also critiquing students' performances.

Objectives:

1. Students will identify impeachment procedures as outlined in the Constitution.
2. Students will identify political climate during Reconstruction that resulted in the impeachment of Andrew Johnson.
3. Students will define separation of powers and the role of each branch of government.
4. Students will identify the potential for conflict among the three branches of government.

Materials:

Handouts 1, 2, 3, 4, 5, and 6

Name tags for each role player

Procedures:

DAY 1

1. Pass out the packet of Handouts to students. Review the background information of Handout 1. Teachers might want to review provisions for impeachment in the Constitution, making sure all students understand the Tenure of Office Act.

2. Explain that students will enact the impeachment trial of Andrew Johnson. Read through the role descriptions on Handout 2. Select students or have students volunteer to take roles. Note that historically, all the roles of attorneys and witnesses are males. Females may still be assigned to play these parts. The remainder of the class will play the senators. (In order to motivate students to

take various roles, teachers might assign a sliding scale of extra credit points for participation in the activity.)

3. Briefly summarize steps in the impeachment trial (See Handout 3) so that students have a general idea of the end product of their preparation.

4. As homework (or in class if time remains), have students read the handouts that pertain to their roles.

DAY 2

5. Have students form the following groups to begin case preparation:

a. Prosecution attorneys and witnesses

b. Defense attorneys and their witnesses

c. Senators

d. Chief Justice and Sergeant-at-Arms

Have groups reread and discuss the material pertinent to their roles.

6. Work with each group during case preparation. Assist each group as follows.

Instruct the prosecution to discuss its case and bring out all the facts and arguments in its favor and against it. Have prosecution attorneys review their tasks on Handout 3 and divide the tasks among themselves. Instruct attorneys who are doing direct examination to work with their witnesses to prepare questions and responses. Instruct witnesses to learn their testimony.

Work with defense the same as with prosecution.

Have senators review materials. Explain that they will listen to testimony and take notes. Each senator will then write a one-paragraph decision on the case after the trial. Each will be asked by the Chief Justice to present his/her opinion. Since the senators will have less to do during preparation than other groups, they could be assigned individual or group research projects on topics related to Reconstruction legislation, to be discussed after the trial. They could also be assigned as "understudies" for each of the witnesses and prepare these roles as indicated.

Chief Justice and Sergeant-at-Arms should carefully review the steps in the mock trial and prepare their roles. Both could also be assigned to do research on Salmon Chase.

DAY 3

7. Continue case preparation (or have students complete as homework).

DAY 4

8. Conduct the trial. As homework, have senators write their decisions.

DAY 5

9. Reconvene the trial to have SENATORS deliver their decisions. Compare the result with the actual outcome of the impeachment trial. May 1868 - The balloting resulted in 35 votes for conviction, 19 against. The count was one vote short of the two-thirds majority necessary for conviction.

10. Debrief the trial. Ask students to assess what was valuable about the experience and evaluate performances. Discuss the issue of separation of powers. If research projects were assigned, have students discuss their findings.

11. As a possible follow-up, have students write a one-page paper on one of the following topics:

Briefly explain why Andrew Johnson was impeached, touching on the significance of the following: Tenure of Office Act, Radical Republicans, Reconstruction.

If Andrew Johnson had been convicted, would there have been any significant changes? Give your opinion based on what you learned from the arguments during trial.

BACKGROUND AND CHRONOLOGY

BACKGROUND

Abraham Lincoln was shot on April 14, 1865. He died the next day, leaving the Presidency and the conclusion of the Civil War in the hands of his Vice President, Andrew Johnson. A Tennessee Democrat refusing to secede with his state, Johnson served Lincoln well early during the Civil War as a Southern unionist acting as military governor in the defeated parts of Tennessee. He was rewarded for his efforts by being nominated and elected as the Republican candidate for Vice President.

He shared Lincoln's ideas for Reconstruction, a plan whereby the South would be brought back into the Union as quickly as possible, in a way that would bring hatreds to an end. It was one thing for Lincoln to try to "bind up the nation's wounds with malice toward none and charity for all," but it was quite another for a Southerner to try it. Distrusted because of his Southern background and his fiery temper, the new President quickly made enemies.

The Radical Republicans who dominated the Senate and the House wanted to punish the South for the war, rather than welcome them back into the Union. When they discovered Johnson's intent to follow Lincoln's policies, they soon came into open conflict. As a result, the Radical Republicans attempted to reduce the power of the presidency, arguing that the President failed to force the South to admit defeat and give a new place to the freed African-Americans.

They argued that unless the South was coerced, it would resume a society much like pre-Civil War days. The African-Americans would remain slaves in fact if not in name.

Thus, the issue of how the South should be reconstructed brought the President and Congress to the collision course that led to the impeachment of the President and the testing of our governmental system of separation of powers.

The conflict began when Congress passed a new Freedman's Bureau Bill, which was intended to punish former masters. Johnson vetoed the bill and Congress lacked votes to override the veto. Johnson then vetoed every important Reconstruction Act thereafter, firmly believing them to be unconstitutional and clearly intended to treat the South as conquered territory.

Congress responded by overriding each presidential veto. Then Congress turned its attention to the "obstructionist," as it called the President. Congress passed a series of acts to restrict the power of the presidency. The Army Appropriation Act attempted to take away the President's constitutional power as Commander-in-Chief of the Army by requiring all army orders to be issued through the General of the Army.

The Third Reconstruction Act transferred the presidential power of appointment and removal of officials to the General of the Army.

The Tenure of Office Act required that the Senate approve all appointments of executive officials made by the President. Specifically, the Tenure of Office Act provided that (1) when the Senate is not in session, the President can remove an official and fill a vacancy with an interim appointment. When the Senate reconvenes, it must be notified of the appointment within 20 days. The Senate must approve the appointment. If the Senate does not approve the appointment, the appointee must leave office and be replaced by the former official; and (2) when the Senate is in session, the President cannot remove an official unless the Senate approves the replacement. These are some of the ways in which Congress tried to reduce the constitutional powers of the presidency.

Johnson was determined to fight this attack through to the bitter end, knowing it could destroy him and/or the office of the presidency. He felt that important constitutional questions had to be resolved. Therefore, he decided to test the constitutionality of the Tenure of Office Act. Johnson dismissed his secretary of war and appointed a new secretary, who was not approved by Congress. In response, the House immediately adopted a resolution that the President "be impeached of high crimes and misdemeanors in office," for violation of the Tenure of Office Act.

Under the Constitution, a President may be impeached for "treason, bribery or other high crimes and misdemeanors." The issues arising from this case involve these questions: Was Johnson indeed guilty of violating the act? Is a possible violation of the Tenure of Office Act grounds for impeachment? Is an "impeachable offense" anything which Congress wishes to define as a high crime or misdemeanor? If this is so, doesn't this place a President in constant jeopardy of displeasing Congress? How would this affect the separation of powers?

CHRONOLOGY

August 1867 - Johnson wanted to get rid of Edwin Stanton, Secretary of War and a Lincoln appointee. Stanton was the only ally of the Radical Republicans in the Cabinet. He fired him and appointed General U.S. Grant. The appointment was an interim appointment, since Congress was not in session. When the Senate reconvened, it would not approve the appointment. Grant then resigned. The President had not yet violated the act.

February 1868 - Johnson removed Stanton again and appointed Adjutant General Lorenzo Thomas as secretary of war. This time, the Senate was in session and regarded the President's action as a violation of the Tenure of Office Act. The Senate refused to approve Thomas. Thomas was arrested and placed in a District of Columbia jail cell. Shortly after, lawyer Walter Cox tried to obtain a writ of habeas corpus but discovered that Thomas had been released.

February 24, 1868 - The House voted 128 to 47 to impeach the President.

March 2-3, 1968 - The House voted on 11 articles of impeachment.

March 30, 1868 - The impeachment trial began before the Senate.

ROLES FOR IMPEACHMENT TRIAL

Attorneys for the Prosecution (called Managers) - Appointed by the House of Representatives to prosecute the case before the Senate, they were all opponents of the President and had worked hard to find impeachable charges against him.

Thaddeus Stevens - The longtime House leader of the Radical Republicans, he was a vindictive man who felt that the South must be punished for the war. He was not well, but lent intelligence and dedication to his cause.

Benjamin Butler - A hard-nosed Radical Republican, he had fought for the North in the Civil War and had gone back to his Massachusetts law practice before returning to Congress. He is described as the "legal razzle dazzle of a Perry Mason with a tongue dipped in nitric acid."

John A. Bingham - An able member of the House, he too was a Radical Republican.

Attorneys for the Defense - These men either volunteered or were asked to serve President Johnson as his legal counsel. They provided their services to the President without compensation. All were among the best legal minds in the country.

Henry Stanberry - Stanberry resigned the Cabinet position as attorney general to act in the defense of the impeached President. He felt he could not act as attorney general without people's saying that the taxpayers' money was being used for the President's defense. He was the most capable of attorneys.

Benjamin R. Curtis - Another very capable lawyer, he was an ex-justice of the U.S. Supreme Court.

William Evarts - Another very able attorney, he was the acknowledged leader of the New York bar.

Witnesses for the Prosecution

George W. Karsner - A robust braggart, he was determined to get to know Adjutant General Lorenzo because they were both from Delaware. In talking with Thomas about his appointment as secretary of war, he heard comments from Thomas about the presidential intent which were helpful to the Managers' case.

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Ed Farwell - A newspaperman covering the President's speeches made in St. Louis and Cleveland, he is the author of a newspaper article to be read as evidence of how the President acted toward questions about Congress. The article suggests that the President made derogatory remarks about the honor of Congress as well as the intelligence of its members. The article can be written by the student taking this role, using the sample articles (see Handout 6) as guides, or the articles provided can be used.

Colonel William H. Emory - As the commander of the District of Washington, he was responsible for the military safety of the capital. When the President asked him to strengthen forces in the region, he failed to follow the orders, even though constitutionally the President is the Commander-in-Chief of the armed forces. When asked why, he pointed out that he could accept orders from no one but General Grant. This was in response to the Army Appropriation Act of 1867, which required that all army orders be issued through the General of the Army. He is to testify to the angry reactions of the President, implying that Johnson intended to use the army to become a dictator.

Witnesses for the Defense

Adjutant General Lorenzo Thomas - Even though slow and ponderous, Thomas would not allow himself to be "bullied" by the prosecution. He was secretary of war for only 24 hours, after which he was removed because of lack of congressional approval. Thomas was arrested and placed in a cell in a District of Columbia jail. Very shortly after, he was released without further hearing.

Walter Cox - Cox was a Washington lawyer called in to press for a writ of habeas corpus after Thomas was arrested. Cox wanted the case to go to court for eventual testing of the constitutionality of the Tenure of Office Act. Cox should play the role as though a recognized authority on constitutional law. This will enable him to speculate as to the possible fate of the governmental system of separation of powers if the President is found guilty.

Gideon Welles, Secretary of the Navy - As the only Cabinet member to testify, he was in a position to tell about some of the Cabinet meetings in which the Tenure of Office Act was discussed. He was able to testify that Edwin Stanton actually helped write the justification of the President's veto of the Tenure of Office Act.

Chief Justice of the Supreme Court, Salmon P. Chase - The Chief Justice presides over impeachment trials. He conducts the trial, determining whether objections made should be sustained or overruled. Chase was a former senator from Ohio who wanted to be President. An ardent abolitionist, he served in Lincoln's first Cabinet as secretary of the treasury. He became a challenger to Lincoln in the election of 1865. When Lincoln was elected to a second term, he appointed Chase as chief justice upon the death of Taney. Thought to support Radical Republican positions against Johnson, it came as a surprise when he remained fair and judicious in the impeachment proceedings.

Sergeant-at-Arms - He/she gives the statement that opens the impeachment trial, gives the oath to each witness, and helps maintain order and dignity in the proceedings.

Senators - Those not assigned to other roles will act as senators. Senators listen to testimony, prepare individually written verdicts, and deliver them following the trial.

STEPS IN MOCK IMPEACHMENT TRIAL

Sergeant-at-Arms:	Everyone, please rise. (Chief Justice enters and takes his place.) Hear ye! Hear ye! All persons are commanded to keep silence while the Senate is sitting for the trial of the Articles of Impeachment by the House of Representatives against Andrew Johnson, President of the United States. Please be seated.
Chief Justice:	We are in this trial to determine the innocence or guilt of Andrew Johnson, President of the United States, of the impeachment charges brought by the House of Representatives. Will you please read the charges so made?
Sergeant-at-Arms:	Andrew Johnson, President of the United States, has violated the Tenure of Office Act with full cognizance of his actions. He removed Edwin Stanton as secretary of war while the Senate was in session and appointed Adjutant General Lorenzo Thomas as secretary of war. Both of these actions are clear violations of said act. The President of the United States, Andrew Johnson, did willfully malign the Congress of the United States in three public addresses. The statements made in these addresses were so indecent and unbecoming to the office of the presidency that he has brought to his office contempt, ridicule, and disgrace.
Chief Justice:	Have you served the President, Andrew Johnson, with a summons requesting his presence at this trial?
Sergeant-at-Arms:	I have so done, Your Honor.
Chief Justice:	Counselors for the prosecution, are you ready to present your case?
Prosecution:	We are, Your Honor.
Chief Justice:	Counselors for the defense, are you ready to present your case?
Defense:	We are, Your Honor.

Chief Justice: You may be seated. (Addressing the Senate) We are in this trial to determine the innocence or guilt of the impeachment charges brought by the House of Representatives against Andrew Johnson, President of the United States. I need not recount to you the gravity of this trial. It is the first such trial in the history to decide impeachment charges made against a President of the United States. The Constitution specifies clearly that one cannot be convicted of impeachment charges except for treason, bribery, high crimes, or misdemeanors. You must determine if the charges so brought are consistent with the constitutional definition of what is an impeachable offense.

Even though this is not a court of law, the Constitution acknowledges the necessity for those who will be deciding the innocence or guilt of charges made against an official of the United States government to take an oath or affirmation. Therefore, will the Senate please rise? (The Chief Justice rises with the Senate and holds up his right hand.) Please indicate your agreement by saying "I do." Do you swear or affirm that in all things appertaining to the trial of the impeachment of Andrew Johnson, President of the United States, that you will do impartial justice to the Constitution and the laws, so help you God?" You may be seated. Does the prosecution wish to give an opening statement?

Prosecution: (The prosecution explains what it intends to prove through testimony of the witnesses.)

Chief Justice: (The defense explains how it will defend charges through testimony of witnesses.)

Chief Justice: The prosecution may present its case. Call your first witness.

Prosecution: The prosecution wishes to call its first witness _____. (The witness is questioned to bring out important information to support the prosecution's case.

Chief Justice: Does the defense wish to cross-examine the witness? (The defense questions the witness to bring out information to hurt the prosecution's case. Prosecution calls the other two witnesses and defense cross-examines them in turn.)

Chief Justice: The defense may present its case. (The defense calls each witness and the prosecution cross-examines them in turn.)

Chief Justice: Does the prosecution wish to make a closing argument? (Prosecution reviews testimony and argues its case.)

Does the defense wish to make a closing argument? (Defense reviews testimony and argues its case.)

Does the prosecution wish to make a rebuttal argument? (Prosecution may respond to arguments made by defense.)

The trial of the Articles of Impeachment charges by the House of Representatives against Andrew Johnson, President of the United States, is now recessed until tomorrow, at which time a vote will be taken of each senator present. Two-thirds majority of the members present is required for conviction.

NEXT DAY

Sergeant-at-Arms: Will everyone please rise for the Chief Justice of the United States?

Chief Justice: Have the members of the Senate arrived at a decision? (To each member of the Senate) Senator _____, how say you? Is the respondent Andrew Johnson, President of the United States, guilty or not guilty as charged?

The Senate having found the President (guilty or not guilty), these proceedings are now at an end. Adjourned.

TASKS FOR ATTORNEYS

Prosecution

1. Opening Statement
2. Direct examination of Karsner
3. Direct examination of Farwell
4. Direct examination of Emory
5. Cross-examination of Thomas
6. Cross-examination of Cox
7. Cross-examination of Welles
8. Closing argument
9. Rebuttal argument

Defense

1. Opening Statement
2. Cross-examination of Karsner
3. Cross-examination of Farwell
4. Cross-examination of Emory
5. Direct examination of Thomas
6. Direct examination of Cox
7. Direct examination of Welles
8. Closing argument

ARGUMENTS FOR PROSECUTION (MANAGERS) AND DEFENSE

Prosecution

1. The President breaks the law because he thinks the law is unconstitutional. Is the President "above the law"? Is the President a court of law to decide the constitutionality of the Tenure of Office Act? Has he taken the powers of the third branch of government unto himself? If so, then he has the power to sit in judgment of all acts of Congress. He then can substitute his will to enforce or nullify any law he has interpreted as constitutional or not. We would no longer be a government of laws but a government of one man.

2. The defense thinks that just because Stanton was not actually removed, the President could not be guilty of violating the Tenure of Office Act! A President who has even attempted to commit a crime should not be allowed to retain his office simply because he did not succeed. Is it not reason enough that if a man who is President, entrusted with such responsibility and power, attempts to violate the law? Should he not be feared for what he may accomplish if he succeeds in the future? To keep his office merely because he did not succeed in his attempt at breaking the law or because the charges against him were not sufficient to find him guilty is to sidestep the issue of intent. If he knowingly attempted to break the law, then he has committed a high crime or misdemeanor.

3. There is certainly clear provision in Article II, Section 2 of the Constitution that the Senate is to have a major role in the selection and approval of all major appointments. The Tenure of Office Act is not contrary to the provisions of the Constitution. It merely clarifies the Constitution's intent. An appointee retains his office until the Senate approves the next appointee. The President clearly keeps his power of appointment with no threat to it, as the defense claims.

4. The President has no right to "be above the law" if he feels a law is unconstitutional. The Constitution does not allow him to make laws. He cannot repeal laws nor suspend or alter them. He can only execute or carry them out. That is his constitutional obligation. He can only wait patiently for the testing of the constitutionality by the federal court system for its final decision. Until then, he must obey and execute the letter of the law.

5. The President's verbal abuse of Congress reflects his contempt for Congress and his belief that he is superior to the laws of this country.

Defense

1. The President cannot be convicted for his order to remove Stanton because the Senate had refused to give its consent to Johnson's new appointee. No law had been violated by Johnson's attempted removal of Stanton. That there was an attempt to remove, there is no question. But how can Johnson be found guilty of removing Mr. Stanton from his office when there was no removal at all?

2. When a president knows that a law is clearly unconstitutional (particularly when he has vetoed it and Congress has passed it over his veto), then he has a right--independent of Congress or the Supreme Court--to refuse to enforce it. He has taken an oath to uphold the Constitution. He has the executive power vested in him by the Constitution to exercise his best judgment in situations in which he is placed. If he exercises that judgment honestly and faithfully, free from corrupt motives, then his actions must be judged by the electorate and not by his enemies in Congress.

3. If the President is found guilty for violating the Tenure of Office Act, then he is being removed from office for a possible "mistake in judgment," not a "high crime and misdemeanor." He is being removed for trying to preserve the power of the presidency and the separation of powers so clearly defined in the Constitution. If he is found guilty, then every President after him will be at the mercy of Congress. If he does not politically please Congress, it can pass laws to further reduce this power and impeach, convict, and remove him from office. The Tenure of Office Act was an attempt to reduce the constitutional powers of the President. Johnson is fighting to preserve and uphold the Constitution, according to his solemn oath. He is being tried for impeachment charges that are politically motivated. If Congress succeeds, the President will henceforth exist as a dependent extension of the legislative branch. When this happens, we will have parliamentary rule in this country, modeled after the British government from which we revolted. Our Constitution and unique form of government will have been subverted and destroyed.

WITNESS STATEMENTS

Witnesses for the Prosecution

George W. Karsner - I am from the great state of Delaware. I came to Washington, D.C., to see the mail people about a contract for the delivery in my home town of New Castle. Really nice place, New Castle. I figured that since General Lorenzo Thomas was a native Delawarean, and a new secretary of war, I just ought to pop in and tell him "Howdy" from the folks back home and congratulate him. Besides, for such a small state we got to stick together and get to know one another when the opportunity arises. So I called on him on February 21, 1868.

By golly, if he didn't invite me to go along with him to the White House reception being held that afternoon by the President. Of course I wasn't going to pass up a chance to meet the President, even though he isn't from Delaware.

While we were waiting in the reception line, we began discussing what Thomas would do if Stanton refused to leave the War Department. General Thomas said that he would probably have to call upon General Grant to send in some troops to remove Stanton. I said, "I guess you really want to get rid of Stanton, to use the army, I mean." I asked General Thomas if he didn't think that kind of placed the President outside of the law, that Tenure of Office Act, if you used the army like that. He said, "That's the way the President wants it and that's the way I want it." So I said, "General, never forget--the eyes of Delaware are upon you."

Ed Farwell - I am a newspaperman assigned to travel with the President when he is going outside of Washington. I covered his speeches in 1866 and wrote particularly good articles for my paper on the speeches he gave in Cleveland and St. Louis. It is hard to get down every word, but with my shorthand I got most of it. It was surely clear he didn't much care for Congress, nor did he respect them, kinda like he felt above them or something. (Attorneys for the prosecution should introduce into evidence the articles, either those on Handout 6 or ones written by the student playing Farwell. Farwell should read articles into the record.)

Colonel William H. Emory - I am in command of the District of Washington, so I have control over the army attachment stationed here. In September 1867, the President called me to the White House and asked me about the strength of the troops. I reported the location of each post and the commanding officer of each post, as best as I could remember. He was really agitated and kept asking me if we shouldn't have more troops in Washington. I said that the city must have at all times a brigade of infantry, a battery of artillery, and a squadron of cavalry. We had that.

The President called me to the White House again on February 22, 1868. He wanted to know if I had followed his instructions and ordered more troops in the capital. I told him that there were fewer troops than

there had been in September. I told him because of the Army Appropriation Act I couldn't accept orders from anybody but General Grant, not even the President. He got even angrier and asked if I didn't recognize him as Commander-in-Chief as the Constitution provided in Article II. The President seemed to want an army under his command. "And why in peacetime?" I asked myself.

Witnesses for the Defense

Adjutant General Lorenzo Thomas - I was called into the President's office early in February. President Johnson asked me if I had the courage to help him test the constitutionality of the Tenure of Office Act by being appointed secretary of war, even though Stanton's resignation had not been offered or approved by the Senate. The President said he firmly believed that the Tenure of Office Act was unconstitutional and would be found to be so if we could get it into the court system. He asked me, "Can you remain firm in your commitment to stay in the office, no matter what happens?"

I told him that I was a brave man and he could count on me. He pointed out that he had appointed General Grant in August 1867, thinking that he would remain firm, but that General Grant resigned when the Senate asked him to do so. Grant had been appointed while the Senate was in recess. Johnson said that it would take a very courageous man at this point and that he had naturally thought of me. I told him that I was his man and would gladly accept the appointment. He reminded me that the Senate was in session.

On February 20, I was summoned to the White House, where the appointment was made. The President gave me a letter to deliver to the War Department, informing Stanton that he was dismissed. I took along an assistant adjutant general, General Williams, as a witness. Stanton cordially greeted me and I then handed him his letter, which was the President's order that he was removed from the office of secretary of war. I left briefly to have a copy made for General Grant, General of the Army. When I returned, Stanton handed me a letter. (Attorneys for the defense should introduce into evidence the letter on Handout 6. Thomas should read the letter into the record.)

I returned to the White House, where the President asked me to await further instructions. I later met a man from my home state of Delaware. He seemed like a fine fellow, so I asked him to accompany me to a reception at the White House, where we had a very nice afternoon.

The next morning, February 21, I was awakened by a knock on my door at 8:00 a.m. It was the U.S. Marshall for the District of Columbia, two assistant marshalls, and a constable, who then put me under arrest. And before I had my breakfast! I asked to be first taken to the White House so I could inform the President. The President assured me he would provide lawyers and any bail that was necessary. He seemed to be genuinely delighted.

I was then taken to the District Municipal Court, arraigned before Judge Carter on a complaint signed by Stanton accusing me of "willfully

and maliciously trying to take possession of the secretary of war's office." I pled not guilty and bail was set at $5,000 which was promptly paid. After I had been in a cell but a short time, I was released.

I discovered later that the President had not wanted bail to be posted but rather wanted to have a writ of habeas corpus drawn up, which would have immediately required an appearance before a judge. As it was, it didn't work out that way.

Walter Cox - I am a Washington lawyer with expertise in constitutional law. I was retained by the President to defend General Thomas after Stanton had him arrested. I had asked the judge to put General Thomas in a cell so that a writ of habeas corpus could be drawn up. It was our intention immediately to go to trial to bring into question the constitutionality of the Tenure of Office Act. Thomas was put in a cell, but the judge was clearly told not to detain Thomas. Thomas was released on bail; there was no trial or hearing.

My opinion as a constitutional expert is that the Tenure of Office Act is unconstitutional. The appointment powers of the President are clearly undermined by this act. Article II, Section 2 of the Constitution says, "...and he shall nominate, and with the advice and consent of the Senate, shall appoint ambassadors..., judges of the Supreme Court, and all Officers of the United States...." It then goes on to suggest that Congress may by law vest appointive powers in the President alone for certain named offices including "Heads of Departments."

In Section 2 it is suggested that the President rely on the "opinions of these principal officers of the executive department." The Cabinet must help, not hinder, the orderly functioning of the executive branch. A President cannot rely on the opinions of his department heads if they are at cross-purposes with him. The President must have the right to dismiss any officer who is obstructing the proper functions of his responsibilities and find another officer with whom he can work. The Senate has the right to approve or give its consent, but it does not have the power to remove the right from the President to dismiss unruly officers of his Cabinet.

If the Tenure of Office Act is allowed to exist, it will surely change the nature of our government. The executive branch will be subject to the political whims of the legislative branch. Whenever a President's political or governmental policies conflict with those of the Congress, Congress can simply pass a law to limit the power of the President. If laws like these are not tested by the judicial branch, they will be allowed to stand as law. The President could then be impeached, convicted, and removed from office. And for what? For disagreeing with Congress. The Presidency becomes an extension of the legislative branch. The separation of powers and the system of checks and balances will come to an end. The Constitution will be dead.

Gideon Welles, Secretary of Navy - I was appointed by President Lincoln to serve as secretary of the navy at the same time that Stanton was appointed secretary of war. Last February 21, Johnson called a Cabinet meeting. He announced that Thomas had delivered the removal papers to Stanton. The Cabinet members all agreed that Stanton had to go. It had been impossible for the President to work with him.

When Congress passed the Tenure of Office Act, it was sent to the President for his signature or veto. After reading the act to us, he asked us for our advice. All Cabinet members, including Stanton, agreed that it was unconstitutional, and we advised Johnson to veto it. Johnson reminded us that he was no lawyer and wanted help in writing the veto message. Attorney General Stanberry would normally have written it, but he was busy with a number of cases then before the Supreme Court. The Cabinet then chose two of the best lawyers among us to write the veto. They agreed to do so by basing the veto message on the unconstitutionality of the act. The men who wrote the veto were Secretary of State William Seward and Secretary of War Edwin M. Stanton.

EXHIBIT A-1

THE PLAIN DEALER May 5, 1867

PRESIDENT SPEAKS OF DICTATORSHIP

Cleveland, Ohio
Edward Farwell, Reporting

The President arrived in Cleveland Monday morning at approximately 8:30 a.m. He then attended a press conference which lasted without a break from 9:15 a.m. until 1:30 p.m.

In the press conference, the President stated, "Since the Tenure of Office Act passed in March, Congress has been taking any means to take away my power." When asked, "Will you veto acts to limit your power," he answered, "Yes." He was then asked, "So, in other words you are starting a dictatorship against the Congress of the United States?" He answered, "If I really wanted to be a dictator, all I'd have to do is call on the army."

Most of the people attending the conference couldn't believe the President's response. The conference ended, and the President headed back to Washington, D.C.

EXHIBIT A-2

THE ST. LOUIS JOURNAL July 18, 1867

PRESIDENT SLANDERS CONGRESS; RAGES OVER TENURE ACT
St. Louis, Missouri
Edward Farwell, Reporting

On Monday, July 17th, the President arrived at the Ambassador Hilton in St. Louis. He then stood on the patio and answered reporters' questions. When the question of the Tenure Act came up as being constitutional, he became furious. "I believe the Tenure Acts is unconstitutional and is degrading to the office of the presidency of the United States. I will not allow the radicals of this nation to diminish the power of the presidency so low as a piece of dirt, and I refuse to hold this position with such radical movements going on.

After the questioning, the President returned to his room for a brief rest and then went for a prime rib dinner at the Crystal Room of the Hilton. After dinner he returned to his room for the night.

The following morning he awoke and ate breakfast in his room, then started for the train still in a furious rage at the reporters' questioning of the Tenure Act the previous day.

(Articles written by Los Alamos High School students, N.M.)

EXHIBIT B

War Department
Feb. 21, 1868

Major General Lorenzo Thomas, Adjutant General

Sir: I am informed that you presume to issue orders as secretary of war ad interim. Such conduct and orders are illegal, and you are hereby commanded to abstain from issuing any orders other than in your capacity as Adjutant General of the Army.

Your obedient servant,
Edwin M. Stanton
Secretary of War

THE ELECTORAL COLLEGE SYSTEM

Source:

Adapted by UPSICEL from Law and U.S. Studies, Utah Law-Related and Citizenship Education Project, written by Eldon M. Tolman.

Historical Period: A topical study of the election of the President of the United States

Class Periods: 3-4

Use of Outside Resource Persons:

An elector from the last Presidential election representing the Congressional District in which the schools is located could report on his or her experiences being selected and voting. The League of Women's Voters may also have speakers on the Electoral College. A constitutional lawyer or historian could debate reforms proposed for the Electoral College System.

Objectives:

1. Students will list the steps for electing the President.
2. Students will identify the role of political parties in the election of the President.
3. Students will evaluate the need for reform in the Electoral College system.

Materials:

Handouts 1 and 2

Copy of the U.S. Constitution

Timer or clock with second hand

Award for winner of Jeopardy game, optional

Procedures:

1. Pass out Handout 1 and have students read. Inform students that they will later play a game of Jeopardy on the information contained in Handouts 1 and 2 and their class work.

2. Pass out Handout 2, and in small groups have students determine the answers to the questions.

Answers to Handout 2

a. In the election of 1824, how many electoral votes were needed to win the election?

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b. Based on the number of electoral votes cast in 1824, who was the winner of the election?

No one won the election based on electoral votes.

c. How was the President chosen in 1824?

When there is not a majority of electoral votes, the House of Representatives chooses the President from the three candidates with the highest number of votes, each Representative having one vote.

d. Who won the election of 1824?

The selection was among John Quincy Adams, Andrew Jackson and William H. Crawford. Since Crawford was seriously ill, the actual choice was between Jackson and Adams. Clay, as speaker of the House, was in a strategic position to determine the outcome. Even though Andrew Jackson had the highest number of popular and electoral votes, the House of Representatives chose John Quincy Adams as President. Adams then appointed Clay secretary of state, which fueled rumors that a "corrupt bargain" had been made between Adams and Clay.

e. In the election of 1876, who got the most votes from the people? Was this the winner? Why or why not?

Samuel Tilden got the most votes from the people but Rutherford Hayes won the most electoral votes, a majority, and therefore was the winner.

f. Find another example of a Presidential candidate winning the election but not winning the most votes from the people.

In the election of 1888, Benjamin Harrison won the election with a majority of electoral votes while Grover Cleveland got more direct votes from the people.

g. According to the Census Bureau's Voting Characteristics of 1988, it is true to say that the more education one has, the more likely one is to register and vote.

True.

h. What group is most likely to vote: white, African-American, Hispanic, according to the Voting Characteristics of 1988?

Whites have the highest voting percentage at 59.1, with African-Americans at 51.5 and Hispanics at 28.8 percent.

i. According to the Voting Characteristics of 1988, it is true to say that the younger you are the more likely you are to vote.

False. Just the opposite is true. The group of 65 and over have the highest voting percentage followed by the 45 to 64 year olds, followed by the 25 to 44 year olds and lastly by the 18 to 24 year olds.

j. Compare the results of voting in the 1984 and 1988 Presidential elections. Which election had a higher voter turnout?

The election of 1984 had a higher turnout in every category.

3. To play the Jeopardy game, divide the class by rows into teams. Students can move their chairs closer together to confer. Draw the following chart on the board or have a prepared overhead transparency with the four topic areas, and the point values underneath. Also put a score sheet on the board, by writing Team A, Team B, etc. for each team.

CONSTITUTION	ELECTIONS	WASHINGTON	ELECTORS
10	10	10	10
20	20	20	20
30	30	30	30
40	40	40	40
50	50	50	50

a. Explain to students that this game is based on the TV game of Jeopardy but is not exactly the same. First of all, students will score points in teams (not as individuals) by correctly answering questions (rather than making up questions to answers provided).

b. Some lottery arrangement will determine which team gets to begin.

c. The starting team has the right to select any of the four topic areas for any point value, e.g., Washington for 50. The question associated with the point value gets harder, the more points the question is worth. Therefore, the 10-point questions are easiest and the 50-point questions the hardest. The team has 30 seconds to select a topic and point value. Once the team has selected, the instructor will read the question from the following list which is matched to the topic and point value.

e. At this point any class member of any team may raise a hand to answer the question. It does not have to be answered by the team that selected the question. It is crucial that the instructor fairly identify the order in which a hand is raised. Perhaps a student could be selected to assist with the game.

f. The team that has been identified as the first to raise a hand has 15 seconds to decide on an answer. Students may consult any written materials and with any members of their team.

g. If the team is correct, the score sheet on the board should get the point value put under their team's name.

h. If the team is not correct or does not respond within 15 seconds, the team loses the amount of points for that question. Any of the other teams may raise a hand to answer the question within 15 seconds, gaining or losing points depending upon whether or not they are correct. If the question remains unanswered, with no team raising a hand, the instructor provides the answer.

i. The team correctly answering the prior question selects the next topic area at a particular point value. If the prior question went unanswered or was answered incorrectly, the team picking the prior question selects again.

j. Once a topic for a particular point value has been asked, the instructor erases that point value from the board (or puts an "X" through the item on the transparency).

k. During the course of the game, a selection of a question may result in the "Daily Double Question." Only the team selecting what turns out to be the daily double question has the right to answer the question. If successful they get double the point value.

l. At the end of all the 20 squares of point values, the instructor totals each team's score (alternatively, at the end of 40 minutes). At this point each team decides how much it wishes to risk in answering the Final Jeopardy Question. Students may risk zero to all of their points. If they answer the question correctly they earn the amount risked, if they are wrong, they lose the amount risked.

m. Students write down on a piece of paper the amount risked with the name of their team and hand it to the instructor. The instructor then asks all teams the Final Jeopardy Question. The teams have 30 seconds to answer in writing. Their final answer is placed in writing with the person in the front seat of each row. Each team reports from the paper what the team's answer is, and the instructor reveals the point value at risk.

n. The winning team is the team with the highest point total.

o. If an award is available, it would be presented now.

QUESTIONS AND ANSWERS FOR JEOPARDY GAME

CONSTITUTION

10 points What section of the Constitution provides that the President and Vice President shall be elected by Electors?

Article II, Section I, Paragraph 2.

20 points What Amendment provides that the President and Vice President shall be separate in the candidacy for each position?

12th Amendment.

30 points In what way does the Constitution determine how many electors each state will have?

Each state gets the number of Electors equal to the number of Senators and Representatives.

40 points. Where are political parties mentioned in the Constitution?

Nowhere.

50 points. How many votes does each House of Representative member get if the election is decided in the House?

All the Representatives from each state combine together to cast one vote.

ELECTIONS

10 points How many times in history has the election of the President been decided by a vote in the House of Representatives?

2 times.

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20 points In what two election years was the President chosen by the House of Representatives?

1800 and 1824.

30 points How many times in American history has a President been elected who did not have the largest popular vote?

Three times.

40 points List two of the three election years that a President was elected who did not have the largest popular vote.

Students should list two of these three dates: 1824, 1876, and 1888.

50 points DAILY DOUBLE QUESTION Why were there 261 electoral votes in 1824 and 538 electoral votes in 1988?

Special instructions for the daily double question. Only the team that selected this question has a chance to answer and to earn twice the points, i.e. 100 points. Students have 30 seconds to answer.

The number of electoral votes depends upon the number of electors which in turn depends upon the number of Senators and Representatives in the U.S. Congress. As the number of states increased (adding two Senators per state) and the populations increased, more electors were created.

The Constitution provides for a census of the population every 10 years in order to give a basis for apportionment of representatives among the states. This apportionment largely determines the number of electoral votes allotted to each state. The total number of Representatives has been fixed at 435 since the apportionment based on the 1910 census.

WASHINGTON

10 points True or False. In the 1988 Presidential election, electors in Washington received $5 per day and $.10 per mile travel pay to cast their electoral votes.

True.

20 points True or False. No elector in Washington has ever cast a vote for a Presidential candidate other than the candidate winning the election in the state.

False. In the 1976 election, a Washington elector cast an electoral vote for Reagan even though President Ford had won in Washington. As a result, a law was passed in 1977 (believed to be unconstitutional, but not yet tested) that fines an elector $1,000 for voting against the state's winning candidate.

30 points How many electors does Washington State have?

10 electors, since Washington has 8 Representatives and 2 Senators. There is one elector for each congressional district and two selected from the state at large. In the 1980 election, Washington only had 9 electors, representing 2 Senators and 7 Representatives.

40 points True or False. In Washington, electors to the Electoral College are chosen at the state party convention.

True.

50 points Where do the electors in Washington cast their ballots for President?

The electors vote in Olympia in the Governor's conference room.

ELECTORS

10 points True or false, the process for "appointing" Presidential electors may vary from State to State.

True.

20 points True or False. The term "Electoral College" is not found in the Constitution.

True. Article II, Section I, Paragraph 2 talks about electors, but not an "Electoral College."

30 points True or False. The Constitution does not provide for the popular election of the President or anyone else.

False. While the Constitution does not provide for the direct popular election of the President, it does provide for the popular election of the U.S. Senators and Representatives.

40 points What is the one Constitutional requirement for electors in regard to their vote?

At least one of the persons for whom each elector votes (one for President and one for Vice President) shall not be an inhabitant of that elector's home state.

50 points If there were 538 members of the Electoral College in 1988, how many Senators and how many Representatives were there in 1988? (Hint, the 23rd Amendment to the Constitution provides that the District of Columbia is entitled to electors, even though they are not a state. In 1988, the District of Columbia voted for 3 electors.)

100 Senators (two from each state), 435 Representatives, and 3 District of Columbia electors total 538.

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FINAL JEOPARDY QUESTION

When all 25 squares have been used up (alternatively when 40 minutes has passed), the teams are then ready for the final jeopardy question. Each team, knowing its point total, is free to bet as many or as few points as they wish. All teams will be eligible to play.

If there is not a majority of electoral votes for Vice-President, who decides who will be Vice President?

Under the 12th Amendment, if there is no majority of total electoral votes for Vice-President, the winner is determined by the U.S. Senate from the top two candidates, each Senator having one vote. (Students need only identify "the Senate" to correctly answer the question.)

FACT SHEET ON ELECTORAL COLLEGE

1. The Constitution provides that the President and the Vice President are elected by Electors, each State having the number of Electors equal to the number of Senators and Representatives in Congress. (Article II, Section I, Paragraph 2.)

2. To be elected, a President must receive a majority of the total Electoral Vote. If no candidate receives a majority, the election is decided in the House of Representatives, with each State having one vote.

3. Electors are appointed "in such a manner as the legislature thereof may direct" in each State.

4. The 12th Amendment provides that the President and Vice President shall be separate in the candidacy for each position.

5. Twice in our history the election of the President has been decided by a vote in the House of Representatives: in 1800 and in 1824.

6. Three times in our history a President was elected who did not have the largest popular vote: in 1824, 1876 and 1888.

7. Whereas initially Electors were appointed by State legislatures, gradually, State by State, the process changed and Electors were elected in popular elections.

8. Historically, political parties quickly gained control of who would become Presidential candidates.

9. Today political parties control the appointment of Electors through state party conventions, and the selection of Presidential nominees is a part of the national convention of each party. Delegates to national conventions are elected in primary elections in some states, and in state party conventions in those states whose primary elections are after the national convention.

10. All the Electoral Votes from a given State are cast for one candidate because of the process by which the party system dominates our elections.

11. For many years polls have shown that a large majority of the American people favor a change in the Electoral College system. Some ways of amending the system are as follows:

a. To eliminate the Electoral College system and rely on the popular vote to elect the President. Critics of this position argue that a direct popular vote may result in a winner who did not win a majority of votes or states. Also, they claim that small states or states with a small population would be overwhelmed by urban centers, and that a direct-vote system would encourage more splinter candidates.

b. To split the Electoral Vote in proportion to the popular vote.

c. To divide the States into Electoral Districts each having one Electoral Vote.

d. To require that an Elector cast his or her vote in a way consistent with the popular vote.

12. Washington State has 10 electors who are elected at the state party convention. There is one elector for each congressional district and two selected from the state at large.

13. Delegates are bound only by conscience to vote for the Presidential and Vice Presidential candidates who have won the votes in the State's election. After an elector voted for Reagan in 1976 when Gerald Ford had won the state of Washington, the Washington legislature passed a law in 1977 that fined an elector $1,000 for voting for a candidate other than the one who won. This law is believed to be unconstitutional but it has not been applied to date so it has not been tested.

14. Electors travel to Olympia to cast their electoral votes in Washington. They receive $5 per day plus $.10 per mile travel pay.

"Just as a hapless voter I've got to say it's rather interesting that I didn't really vote in the Primary, I voted for some party delegate. I didn't really vote in the Election, I voted for some party Elector, and if this thing gets thrown into the House, I have the specter of the President of the United States being selected on the basis of a partisan party vote in the House of Representatives. All this under a Constitution that no where recognizes the existence of political parties." Arthur Miller

SELECTED NOTES ON SEVERAL PRESIDENTIAL ELECTIONS

The Election of 1988

	Popular Vote	Electoral Vote
George Bush	48,881,221	426
Michael Dukakis	41,805,422	112
	90,686,643	538

57.4% of voting age voted in the country.

The total Popular Vote in Washington was 1,837,351, with Bush getting 903,835 and Dukakis getting 933,516.

54.59 percent of the voting age population voted in the 1988 election in Washington State.

All 10 electoral College Votes went to Dukakis.

The Election of 1984

	Popular Vote	Electoral Vote
Ronald Reagan	54,455,074	525
Walter Mondale	37,577,137	13
	92,652,793[1]	538

59.9% of voting age voted as a total in the country.

The total Popular Vote in Washington was 1,850,022 votes: 798,352 for Walter Mondale and 1,051,670 for Ronald Reagan.

58.09 percent of the voting age population voted in the 1984 election in Washington State.

All 10 Electoral Votes in Washington went to Reagan.

[1] There were additional popular votes for other candidates not listed here.

The Election of 1980

	Popular Vote	Electoral Vote
Ronald Reagan	43,904,153	489
Jimmy Carter	35,483,883	49
John Anderson,	5,720,060	
Clark	921,299	
Total	86,515,221[2]	538

52.6% of voting age voted.

The total Popular Vote in Washington was 1,515,437: 650,193 for Jimmy Carter and 865,244 for Ronald Reagan.

At this time Washington had 9 electoral votes, all of which went to Ronald Reagan.

The Election of 1960

	Popular Vote	Electoral Vote
John Kennedy, Democrat	34,221,344	303
Richard M. Nixon, Republican	34,106,671	219
Senator Harry F. Byrd Democrat (Unpledged electors from Alabama and Mississippi)		15
Totals	68,828,960[3]	537

62.8% of the voters participated in this election.

Kennedy wins with a plurality of 114,673 votes more than Nixon.

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2 See footnote 1.

3 See footnote 1.

The Election of 1888

	Popular Vote	Electoral Vote
Benjamin Harrison	5,443,892	233
Grover Cleveland	5,534,488	168
	11,383,320[4]	401

SAMPLE OF THE ELECTION OF 1888

State	POPULAR VOTE HARRISON	CLEVELAND
NEW YORK	648,759	635,757
OHIO	416,054	396,455
ILLINOIS	370,473	348,278
ALABAMA	56,197	117,320
GEORGIA	40,496	100,400
KENTUCKY	155,134	183,800
Total	1,685,113	1,782,010

State	ELECTORAL VOTE HARRISON	CLEVELAND
NEW YORK	36	0
OHIO	23	0
ILLINOIS	22	0
ALABAMA	0	10
GEORGIA	0	12
KENTUCKY	0	13
Total	81	35

The Election of 1876

	Popular Vote	Electoral Vote
Samuel Tilden	4,288,546	184
Rutherford Hayes	4,034,311	185
Peter Cooper, Greenback party	75,973	
	8,413,101	369

[4] See footnote 1.

The Election of 1860

	Popular Vote	Electoral Vote
Abraham Lincoln	1,865,908	180
S.A. Douglas	1,380,202	12
J.C. Brechinridge	848,019	72
John Bell	590,901	39
	4,685,561	303

The Election of 1824

	Popular Vote	Electoral Vote
John Q. Adams	114,023	84
Andrew Jackson	152,901	99
W.H. Crawford	46,979	41
Henry Clay	47,217	37
	361,110	261

Characteristics of the Voting-Age Population: November 1988
(Source U.S. Bureau of the Census)

	Number of Persons (Thousands)	Percent Registered	Percent Voted
Total, 18 yrs and over	178,098	66.6	57.4
Characteristic			
White	152,848	67.9	59.1
African-American	19,692	64.5	51.5
Hispanic[5]	12,893	35.5	28.8
Male	84,531	65.2	56.4
Female	93,568	67.8	58.3
18 to 24 years	25,569	48.2	36.1
25 to 44 years	77,863	63.0	53.9
45 to 64 years	45,862	75.5	67.8
65 years and over	28,804	78.4	68.8
Northeast	37,874	64.8	57.4
Midwest	43,309	72.5	62.9
South	60,725	65.6	54.5
West	36,190	63.0	55.6
Years of School Completed:			
Elementary: 0-8 yrs	19,145	47.5	36.7
High School: 1-3 yrs	21,052	52.8	41.3
High School: 4 yrs	70,003	64.6	54.7
College: 1-3 yrs	34,264	73.5	64.5
College: 4 yrs +	33,604	83.1	77.6

[5] Hispanics may be of any race.

Characteristics of the Voting-Age Population: November 1984
(Source U.S. Bureau of the Census)

	Number of Persons (Thousands)	Percent Registered	Percent Voted
Total, 18 yrs and over	169,963	68.3	59.9
Characteristic			
White	146,761	69.6	61.4
African-American	18,432	66.3	55.8
Hispanic[6]	9,471	40.1	32.6
Male	80,327	67.3	59.0
Female	89,636	69.3	60.8
18 to 24 years	27,976	51.3	40.8
25 to 44 years	71,023	66.6	58.4
45 to 64 years	44,307	76.6	69.8
65 years and over	26,658	76.9	67.7
Northeast	36,868	66.6	59.7
Midwest	42,136	74.6	65.7
South	57,587	66.9	56.8
West	33,372	64.7	58.5
Years of School Completed:			
Elementary: 0-8 yrs	20,580	53.4	42.9
High School: 1-3 yrs	22,068	54.9	44.4
High School: 4 yrs	67,807	67.3	58.7
College: 1-3 yrs	30,915	75.7	67.5
College: 4 yrs +	28,593	83.8	79.1

Questions for small groups:

a. In the election of 1824, how many electoral votes were needed to win the election?

b. Based on the number of electoral votes cast in 1824, who was the winner of the election?

c. How was the President chosen in 1824?

d. Who won the election of 1824?

e. In the election of 1876, who got the most votes from the people? Was this the winner? Why or why not?

f. Find another example of a Presidential candidate winning the election but not winning the most votes from the people.

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6 Hispanics may be of any race.

g. According to the Census Bureau's Voting Characteristics of 1988, it is true to say that the more education one has, the more likely one is to register and vote.

h. What group is most likely to vote: white, African-Americans, Hispanic, according to the Voting Characteristics of 1988?

i. According to the Voting Characteristics of 1988, it is true to say that the younger you are the more likely you are to vote.

j. Compare the results of voting in the 1984 and 1988 Presidential elections. Which election had a higher voter turnout?

THE GENERAL ALLOTMENT ACT OF 1887 (DAWES ACT): SENATE COMMITTEE HEARING SIMULATION

Source:

Reprinted from Law in U.S. History, New Mexico Law-Related Education Project, edited by Melinda Smith

Historical Period: 1887

Class Periods: 4 and out-of-class preparation

Use of Outside Resource Persons:

A representative of a Native American tribe could present the history of reservations in Washington and how allotment affected Indians in the Pacific Northwest. A constitutional lawyer or historian could present

Objectives:

1. Students will identify issues and controversies surrounding the post-Civil War Indian policy of allotment.
2. Students will recognize the political and cultural conflicts existing between Indians and the U.S. government.
3. Students will identify nature of the trust relationship and the government's attempts to alter Indians' special status.
4. Students will identify the function of congressional committees in the legislative process.
5. Students will experience the role of pressure groups in the legislative process.

Materials:

Handouts 1, 2, and 7 for all students

Handouts 3, 4, 5, and 6 for students assigned to related roles

Name tags for role players

Procedures:

1. Pass out Handouts 1 and 2. Read through the background information with the class and explain that students will enact a Senate committee hearing to consider the General Allotment Act.

2. Read through the role descriptions on Handout 2. Explain what is required of the witnesses, Senate committee members, and

reporters (reporters should be selected on the basis of ability to listen, take notes, and write). Either select students to play roles or ask for volunteers. Explain that the rest of the class will act as observers, taking notes and giving a separate decision from that of the committee.

3. Distribute Handout 3 to Senate committee members, Handout 4 to witnesses and observers, Handout 5 to reporters, and Handout 6 to observers.

4. During preparation time, have committee members prepare questions for witnesses. Have witnesses prepare their presentations. Have observers review the materials they have been given. Work with individuals and have students complete preparations as homework.

5. Prior to class on the second day, set up the room as indicated in the diagram on Handout 2. Conduct the hearing, allowing five to seven minutes for each witness.

6. Complete the hearing on the third day. Then allow the Senate committee ten minutes to deliberate on their recommendations to the full Senate. During this time, ask all observers to write out their decisions and their reasoning.

7. Have the chairperson announce the committee's decision. Then ask observers to give their decisions and discuss them.

8. Discuss the following questions:

a. What information most influenced the decision of the committee? The observers?

b. Did the Indians have sufficient or adequate representation?

c. What is the purpose of a legislative committee?

d. Are pressure or interest groups necessary in the legislative process?

e. Do you think it is fair to have members of a Senate committee, none of whom are Indians, make a decision that will have a profound effect on the lives of Indians?

f. Do you agree or disagree with the statement: The General Allotment Act of 1887 was one of "the most destructive pieces of Indian legislation ever passed by Congress"?

9. Distribute Handout 7 or read it aloud to the class to inform students of the outcome of the passage of the Dawes Act.

10. The day after the simulation is completed, have selected newspaper reporters read their articles to the class, or duplicate them for distribution. Discuss the biases that the articles show.

11. A good follow-up lesson is Lesson 8: Native American Religious Practices: A Letter of Apology.

GENERAL ALLOTMENT ACT OF 1887 (DAWES ACT)

Background

From the start of colonization of the New World, most white settlers believed Indians must be "civilized" and converted to Christianity, with the ultimate goal of assimilation into white society. The colonists had no respect for the Indian culture; they considered Indians heathen and barbaric. The Indians were at war periodically with the colonists, as the colonists pushed the wilderness farther and farther into the continent, destroying the Indians' way of life. Mutual distrust became the traditional method of dealing with one another.

After independence, U.S. Indian policy was directed toward "civilizing" the Indians, with small attempts made at government expense. Mission schools were tried with varying success. Indians were subjected to corrupt practices and broken promises and treaties as a result.

Reform groups after the Civil War were sincerely concerned for the welfare of Indians. They believed that the only means to fair treatment for the Indians was through their becoming "white" and entering the American mainstream, leaving behind their Indian values and ways of life. Not only would they become "white" in religion, but in dress, culture and thinking.

Indian wars, brutal from both sides, had further divided the two peoples, with the Indian way of life becoming more incompatible with that of the expanding American nation. Indians were placed on reservations, making them dependent on reservation agents for food. Reservation schools and distant boarding schools were established.

The various Indian groups still refused to become like the whites. The only solution in the eyes of the reformers and the opportunists, the honest and dishonest, government officials and average citizens, was allotment. Under this plan, reservation lands held in common by the tribes would be divided and distributed to individual families, thus destroying the unity of tribes. It was believed that individual ownership of property, with the hard work required and the sense of pride it instills, would give the incentive to become "white" in name if not in fact. Joint tribal ownership of land was destructive of these goals because the closeness and commonalities shared by joint ownership reinforced Indian traditions and customs.

Even though a small effort at land allotment had been tried and had failed with some Kansas tribes in the 1850's, it was believed that the shortcomings of that attempt could be corrected. In 1863, the Homestead Law was passed in Congress, giving free land to anyone who would homestead 160 acres, improve and live upon the land. This opportunity was offered to the Indians in 1875, but few were interested. After 1875, allotment bills were brought before every session of Congress without success. Then in 1887, Henry Dawes of the Senate Indian

committee sponsored a bill that would sell reservation land not claimed by Indians to white settlers.

It should be stressed that other than the Indians themselves, the only opponents of the bill were many of the Indian agents.

PROVISIONS OF THE ACT

A. Reservation lands will be divided and allotted (distributed) in this manner:

   1. Each head of household will receive 160 acres.
   2. Each non-head of household will receive 80 acres. (Unmarried over 18 in age.)

B. This land will be held in trust by the U.S. government for 25 years during which time the allotment owner cannot sell, lease, mortgage or give away his land without the approval of federal administrators.

C. At the end of the trust period or when the Secretary of the Interior determines that an Indian allotee is competent to manage his own affairs, these restrictions will be removed with the land being owned by the Indian in the absolute sense.

D. Lands not allotted will be declared surplus and will be open for settlement or development by non-Indians.

E. If an individual refuses to make a selection, representatives of the U.S. government will make the selection for that individual.

ROLES FOR SENATE COMMITTEE HEARING

Chairperson of the Senate Committee on Indian Affairs and six committee members - The committee members are Senators, who will hear testimony and vote on whether to recommend passage of the bill in the full Senate.

Commissioner of Indian Affairs - S/he is in charge of the Bureau of Indian Affairs. As a government official, s/he feels that allotment is in the best interests of the Indians as well as the nation as a whole.

Agent for the Plains Indians - S/he has been living with the Plains tribes as the Indian agent. In this role, s/he provides food to the reservation tribes and represents the Indian needs to the federal government. S/he has observed that no change has taken place in the ways the Plains Indians conduct their lives. S/he feels they are not ready for allotment and should remain wards of the government much longer.

Agent for the Pueblo Indians - S/he is in favor of allotment. S/he feels that since the Pueblos have been farming and irrigating for centuries, there should be no difficulty in allotting their lands. It will break up their pagan dances and keep their traditions from being reinforced by the closeness of pueblo life.

U.S. Geological Survey Expert - S/he has been a member of the survey team that has mapped much of the West. S/he is acquainted with John Wesley Powell, another member. S/he believes that land beyond the 100th meridian (the geographer's great circle that passes through both poles in a north-south direction and measures 100 degrees longitude) is too arid for farming without proper irrigation, something which most Indians know nothing about. Therefore, allotment is doomed to failure in the areas beyond the 100th meridian, since Indians will not be able to farm successfully on this land.

Colonel in the U.S. Army - He has been an Indian fighter in the West ever since the Civil War ended. He has little respect for Indians, having witnessed the brutality of the Indian Wars in the West. He is all for allotment.

Missionary to the Indians - S/he, like other missionaries, is a strong advocate of allotment. Missionary schools have had uneven success in "civilizing" the Indians because of the youngsters' continued exposure to old Indian ways.

Tiwa Indian from Taos Pueblo - S/he is trying to prevent the destruction of the close community life of all the Pueblo Indians. S/he will try to show the benefits of the Pueblo life, not only to the Indians but to the nation. This way of life would surely be destroyed if allotment were to take place.

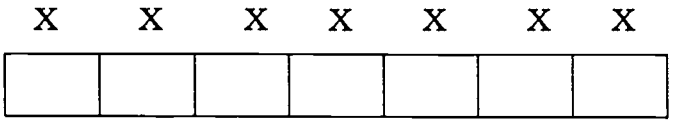
Lone Wolf, Kiowa Chief and Representative of the Plains Indians - Allotment is a terrible thing for the Plains Indians, and Lone Wolf will

explain why it is incompatible with tribes who have been hunters for as long as their tribal memory can record. They cannot become farmers and survive.

Reporter for a Conservative Newspaper - S/he is unsympathetic to the Indians and very favorable to the Dawes Act.

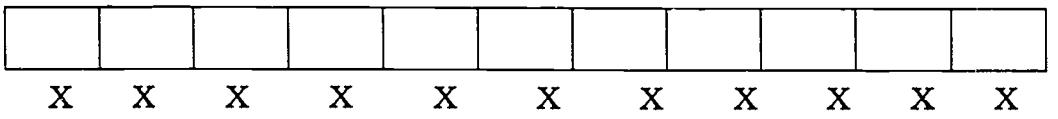
Reporter for a Liberal Newspaper - S/he is sympathetic to the maintenance of the Indians' way of life and against the disruption that would be caused by allotment.

SUGGESTED SETTING FOR THE ROOM

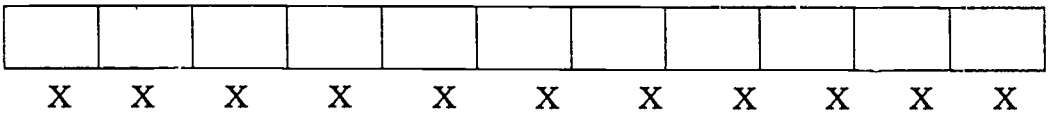


Senate Committee

X
Witness Desk



Observers and Witnesses



INSTRUCTIONS TO THE SENATE COMMITTEE ON INDIAN AFFAIRS

The year is 1886. You are on the Senate Indian Committee which will hear testimony of witnesses and then recommend to the entire Senate whether or not to pass the General Allotment Act. Little progress has been made in the 1880's in absorbing the Indians into the American way of life. The Indians still retain their tribal identities and customs because they have been isolated in reservations apart from whites. You must decide if the Allotment Act is in the best interests of the Indians and the U.S. government. You will listen to the testimony of each witness, take notes, and then ask questions.

Chairperson

The chairperson calls the meeting to order and asks for the witnesses to present testimony in the order listed. Allow between five and seven minutes for testimony and questions. After each witness concludes his/her formal testimony, ask your fellow committee members if they have any questions to ask the witness. You as chairperson may also ask questions. After all the witnesses have spoken, adjourn the hearing and find a quiet place where you and the committee can decide the merits of the act. When you reach a decision, announce the decision either to recommend the act for full Senate consideration or to reject the act.

Committee Members

Take notes as each witness testifies. Keep lists of reasons for and against allotment as you hear testimony. Prepare questions to ask each witness pertaining to his/her testimony and perceptions of the act. Don't hesitate to ask probing questions. Your job is to try to get as much information as possible about the underlying reasons for the different viewpoints.

After you have heard from all the witnesses, the committee will discuss and then vote on whether to recommend the act to the entire Senate for its consideration. The Senate, as a rule, tends to follow a committee's recommendation. Therefore, your decision will strongly influence, if not determine, the act's passage or rejection. So give serious thought to the consequences of your committee's decision.

Sample Questions

a. As a member of a Plains tribe, why are you against the idea of farming?

b. Your pueblo has been farming for centuries. Under allotment, you will be responsible only to your family and not to all the rest of your pueblo. Does it matter that you will be farming as individuals rather than as a community?

c. There is a great deal of land left in this country. Why is there a need to open up the unallotted Indian land to white settlers? Why can't that surplus land be left to the tribe to be held in trust in case the tribal population expands and the land is needed for further homesteaders among the tribe?

d. Commissioner, you say that the only way to "civilize" the Indians is to give them 160 acres to farm as individual families. Why is this the key to "civilizing" Indians?

e. As an Indian agent, you are responsible both to the federal government and the tribe to which you provide federal services spelled out by treaty. What has been your experience in getting the (Pueblo or Plains) Indians into the mainstream of American society?

f. As a missionary, you have lived closely with the Indians (Pueblo or Plains). Are they accepting white ways any more rapidly than they used to? Are they becoming good Christians?

g. Why is there a need to have the Indians accept white ways? Can't the Indians be allowed to keep their traditional culture and way of life?

h. Hasn't the failure of Indian policy been caused by the failure of the U.S. government to live up to its promises of adequate provisions? Don't you think that if the government could find a way to carry out its part, the problem of war could be eliminated?

i. Isn't the real reason why you support allotment the fact that you want good Indian lands available for white settlement?

INSTRUCTIONS TO THE WITNESSES

You are testifying for your particular interest group. The group you are representing has a vital interest in either getting this act passed or in keeping it from being passed. You must be as convincing as possible in your testimony. Be ready to answer the committee's questions on the spot.

Prepare your testimony from the information given below. Be prepared to talk for three to five minutes. Try to be as persuasive and sincere as possible. Avoid reading the testimony. Maintain eye contact with committee members. Feel free to use the phrases or statements provided or change them for maximum effectiveness.

Commissioner of Indian Affairs

You are the head of the Bureau of Indian Affairs. Your responsibility to the Indians is to determine what is best for them. You believe in what an earlier commissioner, a Seneca Indian himself, defined as the status of the Indians' relationship with the federal government: "They are held to be wards of the government, and the only titles the law concedes to them, to the land they occupy or claim is a mere possessory one...." Congress can legislate directly for the tribes, and you are the one to help interpret their needs for Congress.

You believe that reservations should be eliminated. This will force the Indians to become "individualized" rather than members of a tribe. The tribal traditions will and must be destroyed. Then and only then will Indians conform to white ways. Farming is the backbone of the American way of life. Farm owners must work hard; therefore, reservation Indians will become a part of the American tradition of hard work. To develop a strong desire to work and become an individual in a competitive society, the Indians must be made responsible for property. Even if they lose it later on, they will learn the value of land and will want to acquire more in the process.

Some critics say the U.S. government has treaties with the various tribes guaranteeing their land. You believe that treaties with the Indians have been an obstacle to an effective policy. A treaty implies equality between the parties entering into the treaty negotiations. That is clearly not the case in your view, since the Indians are wards of the government. We must get rid of the treaty as a means of dealing with the Indians. It is clear that progress cannot be made unless the Indians are forced to obey the wishes of the government. We know what is best for them. Like temperamental children, they want their own way when that way is not in their best interests.

Agent for the Plains Indians

As agent to the Great Sioux Reservation, you have witnessed the recent wars between the U.S. Army and various Plains tribes. There is much tension on the reservation. The treaties made with the U.S.

government promised yearly provisions of food and clothing. The provisions often do not get to the reservations due to fraud on the part of officials, who sell them or take them for themselves. As a result Indians often starve. To find food, Indians are forced to leave the reservation to hunt in the old manner. They often run into angry whites who shoot at them. The Indians retaliate and another "incident" is created, with the Plains Indians being blamed for it. The government has failed in its promises to Indians of schools, adequate food and clothing.

Indians have had to retain their old ways simply to survive. They are not ready for allotment. Why should they be? They don't even know how to farm. Why can't they be taught to be ranchers, a way of life much more closely tied to the old hunting tradition? Let the tribe as a whole become cattle ranchers using the entire reservation as grazing lands to be held in common. Let the government make a real effort to live up to its treaty obligations with real help in the form of instruction, schools, food that is decent and plentiful. Gradually, the Indians will begin adopting white ways. They are most assuredly not ready at this time. If their land is allotted, they will surely not survive. Allotment would be a disaster for the Plains Indians.

Agent for the Pueblo Indians

You are the Indian agent for the Northern Pueblos of New Mexico Territory. You firmly believe that allotment must take place for the welfare of the Pueblos. Much has been tried in the past to bring progress to the Pueblos but with little success; they are still engaged in subsistence farming with irrigation.

Boarding schools have been established in Santa Fe and Albuquerque. Mission schools have been established by the Catholics, Presbyterians, and Lutherans. Educational institutions are one of the strongest means of weakening tribal ties; however, this is not as effective as it could be because the close pueblo community life reinforces traditions and weakens newly learned ways. During summer vacations, the children begin to revert back to the old ways.

Some of the Indian customs that must be destroyed are the pagan dances and rituals that consume so much of their time. Even when these are discouraged, the Indians continue their old practices in secret.

The close-knit pueblo community allows custom and tradition to be reinforced every day. This sense of community must be destroyed. When each family lives separately on 160 acres, Indians will soon think of themselves more as individuals and not as part of the pueblo family. Each family, once weaned from dependence on the community, will accept white ways more readily.

Their individual and collective poverty will be things of the past. Their adobe mud huts can be replaced with wood structures of American style. Their pagan practices in the kivas will no longer have any meaning. The Christian Church will become the focus for their spiritual life. Instead of pagan dances, they can be taught the Virginia reel and other American dances. Most importantly, English will become their first

language, rather than Tiwa or another Indian language. They will be able to function better in society and will no longer be disadvantaged.

It will be easy for Pueblos to make the transition to allotment. They have already been farming and using irrigation in a most effective way for hundreds of years. Their farming methods, however, are primitive. With new technology and new methods that American farmers are using, each Indian farmer will produce a surplus that can be sold on the national market. With the money received for these crops, the farmer can buy luxuries that most white people enjoy. For these reasons, passage of the General Allotment Act is necessary.

Member of the U.S. Geological Survey Team in the West

You have surveyed much of the West and are well acquainted with the country "beyond the 100th Meridian" (this encompasses part of Nebraska, the Dakotas, Kansas, Oklahoma, West Texas, Colorado, New Mexico, Wyoming, Utah, Nevada, Arizona). Because of its lack of rainfall, this area is known as the Great American Desert. Generally speaking, these lands receive less than 20 inches of rainfall a year. Twenty inches is minimum for unaided agriculture. Major John Wesley Powell, famed member of the U.S.G.S. team that surveyed the Grand Canyon, reported in 1871 that the 100th meridian roughly indicates a line separating the area of sufficient rainfall for farming from the area requiring special techniques such as dry land farming and irrigation.

You believe the allotment based on 160 acres is a mistake. To allot the same amount of land for all Indians without regard for the region or locale in which they live is ridiculous. In the eastern half of the continent where there is adequate rainfall, Indians could make a living on 160 acres. West of the 100th meridian, they will starve. In this area, 320 acres is probably not sufficient even for ranching, to which the area is much better suited; it is even marginal grazing land. This act does not take into consideration the lack of farming experience of Indians in the West (with the exception of the Pueblo). The harsh conditions would challenge the best of farmers. Inexperienced farmers, such as the Plains Indians, will face disaster. The Dawes Act must not be passed as it is now presented.

Colonel of the U.S. Army, Indian Fighter

You fought in the Civil War, but the toughest fighting you have ever seen was against the Indians in the West. The only way to keep the Indians off the warpath permanently is to defeat them completely by destroying their tribal identities. Force them onto 160 acres and keep them there. They are still savages, and their spirits will never be broken until they are completely under the control of the federal government on an individual basis. Destroy the tribes and you will create individuals capable of being civilized.

Treaties are a mistake and are useless. A treaty implies that an Indian tribe is equal with the United States. Even if it were true, which it is ridiculous to consider, the tribes are made up of clans and each acts separately. There is no way to make all the clans live by a treaty.

Therefore, the only way to control Indians is to allot their lands and make them live as individuals.

You have been involved with fighting the Sioux for more than 25 years, and they are still a problem. The Apache, Nez Perce, Ponca, Utes, and Navajo have been involved in war with the Army during the same period of time. In 1868 the Commissioner of Indian Affairs estimated that the cost of Indians killed was running around $1,000,000 each. Bring peace to the whites, give the Indians their allotment and then open up the surplus to white settlers. Thousands of peaceful immigrants into our country are anxious to turn useless Indian land into crop and grazing lands providing the foodstuffs for a growing nation and for a hungry world. The drain on the federal treasury to kill them can be used to make whites out of them. The Dawes Act should be passed.

Missionary to the Indians

You work in a mission school for Plains Indians. You have lived among various tribes from the time you were a child; you speak several Indian languages. Even your parents were missionaries. You have witnessed Indians' scalping whites and whites killing Indians in the Plains Wars of the 1860's and 1870's. There can be no civilizing of the Indians until they become Christians. They will become true Christians in fact and not just in name only after they have been forced to give up their pagan religions, which only serve to undermine Christianity and any civilizing influence.

All Indian children should be sent to mission schools, where they will grow up speaking English as a first language. They will dress like American children and learn farming techniques. Mission schools will raise them in the Christian way, with full familiarity of the Bible and God's word.

To bring all of this about, Indians need to live next to white settlers who can show them how to farm, how to increase their herds, how to live like Americans and prosper. Through allotment, they will understand the pride of private ownership of land, home and possessions. The extra land sold to white settlers will create a new kind of community for the Indian, who can begin to be peaceful neighbors with white brethren. Allotment is the only way to achieve this. Then the Indian can truly know the civilizing influence of the Christian Church as well.

Tiwa Indian from Taos Pueblo

Your people came into this land hundreds of years ago. They are still people of ancient origin in this land. Your ways, so your legends tell you, have given your people strength, allowing you to survive the worst droughts, raids, and disasters. You have endured.

Each pueblo is a community that gives support and help to each member. Members share in dances to bring a good planting, to give a good harvest, to rejoice when there is plenty. These dances are not pagan dances, but a prayer to the same Great Spirit that whites pray to. Your collective prayers are in the form of dances in the openness, where

you are in touch with the skies above you, the ground beneath you, and the wind that surrounds you. These prayers are the same as white prayers inside a house closed off from the natural world where the Great Spirit lives. You pray together as whites do because you believe the voices of many are heard better than the quiet voice of one. You are many people who are one, not one of many people. The community or pueblo is what makes each individual strong and able; your people live close together to share their strength with each other. If you are separated onto 160-acre plots of land, your people will be separated from their source of strength.

Just as your customs and traditions seem strange to whites, so do white ways seem strange to you. Many foreigners come from faraway lands are allowed to become good Americans. Yet they speak strange sounds. Your people want to be good Americans, too. Why cannot the Pueblo Indians also speak Tiwa and English? Your accent is no stranger than that of the other new Americans. Is it the language that makes the government want to divide you up into little farms? Because you too speak another language?

Your people have a long history of peace with the American nation. You have caused no warfare. You have tried to farm your lands and be good people. Why must the government allot your lands? It will mean the end of all that is sacred to your people and to that which gives you your strength.

Lone Wolf, Chief of the Kiowas and Spokesman for the Plains Indians

Kiowas are hunters and have been for hundreds of years. You have hunted the buffalo across the plains, knowing no limits to your land except for Father Sky and Mother Earth. Then the whites came. Now you are being asked to live confined to 160 acres and become farmers. Farming is frowned upon because it is woman's work in the lesser tribes. But you are a hunting people. It takes no bravery to be a farmer! You are not farmers. You can never become farmers. So why must you give up being hunters with the tribal lands held in common? Now there is game than runs on the reservation. If you fence it up, there can be no game.

You have been told that the President and Congress have a law that says laws are made for the "protection of Indians." This Dawes Act does not protect your people. Without tribal lands, where can you hunt? With white settlers moving onto your lands, where can you live? You have no protection.

What about the treaties that the U.S. government made with you? In 1867 the government in Washington made the treaty of Medicine Lodge. They promised that if your people would move on to a reservation, no Kiowa or Comanche lands could be sold without approval by three-fourths of the adult male members of the tribe. Now the Dawes Act says that each male must choose 160 acres. Whatever is left over of the tribal lands will be sold to white settlers. What about the treaty?

Three-quarters of your males are not giving their consent to sell your land, and yet the government threatens to sell it.

In the Treaty of Medicine Lodge, the government promised to supply your people with food if you moved onto the reservation. Your people starve because the food promised is never delivered. They have to go off the reservation sometimes to hunt in order to feed their children. Where are the people who made the promises and signed the treaty? Do white leaders lie? Whites say they want to civilize your people. Is breaking treaties a civilized act? Is it civilized to promise food and then not deliver it? If lies and corruption are part of white civilization, you want no part of it.

INSTRUCTIONS TO THE NEWSPAPER REPORTERS

You both represent newspapers that have clear political biases. You are to take notes as each witness testifies. Write down facts and ideas as they are presented. Keep in mind the points of view of each witness. You will be expected to take your notes and write an article that reflects the bias of your newspaper. The reporter for the conservative newspaper will support allotment, slanting everything in favor of this position. The liberal reporter will be against allotment, sympathetic to the testimony against allotment and in favor of the Indian point of view. You want the class to see how differently the same event and set of facts can be reported based on the bias or slant of the reporter.

The articles should be ready for class the day after the decision to recommend passage or rejection of the act has been announced. Be prepared to read your article to the class and discuss how it was written.

INSTRUCTIONS TO THE OBSERVERS

Use this form to take notes on the testimony of each witness. Try to think about what is being said that makes you either sympathetic or unsympathetic. You will be asked to tell whether you would vote for or against passage of the Dawes Act. Be ready to explain why, giving specific reasons about particular facts that helped to influence your decision.

1. Commissioner of Indian Affairs:_____

2. Agent for the Plains Indians:_____

3. Agent for the Pueblo Indians:_____

4. U.S. Geological Survey Expert:_____

5. Colonel in the U.S. Army:_____

6. Missionary to the Indians:_____

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7. Tiwa Indian from Taos Pueblo:_____

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8. Lone Wolf, Kiowa Chief and Representative of the Plains Tribes:_____

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Your Decision:_____

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Your Reasons:_____

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POSTSCRIPT

The Dawes Act passed both houses of Congress and became law. The famous Kiowa Chief Lone Wolf did go to Washington to testify but was too late to be heard.

The Five Civilized Tribes (Cherokee, Chickasaw, Choctaw, Creed, and Seminole) who had been forcibly removed into Indian Territory in Oklahoma in the 1830's were temporarily exempted from the act. In 1889, through yet another act, their land was allotted as well.

Many of the Pueblo Indians of the Southwest escaped allotment. Later attempts were made in the 1920's, but these attempts failed. With some exceptions, the Pueblo Indians were able to keep their lands.

In the 1930's, Indian Commissioner John Collier got Congress to reverse the Dawes Act. He estimated that Indian land holdings throughout the nation were cut from 183,000,000 acres in 1887 to 48,000,000 in 1934 as a result of the act. All of the lost acreage (90,000,000 acres guaranteed by treaties) went to white settlers. It has been said that the Dawes Act was "one of the greatest mistakes ever made by the government."

LABOR'S STRUGGLE FOR LEGAL RECOGNITION

Source:

Adapted by UPSICEL from Law in U.S. History, New Mexico Law-Related Education Project, edited by Melinda Smith

Historical Period: Civil War to Present

Class Periods: 3 or more

Use of Outside Resource Persons:

An attorney for the Regional Office of the National Labor Relations Board, a labor attorney, a representative of a union could describe various labor incidents in Washington State, and could update students on what the current standing of unions in Washington is.

Objectives:

1. Students will identify the economic and social conditions leading to labor legislation.
2. Students will describe the nature of labor unrest in the late 19th and early 20th century.
3. Students will recognize the role of the Supreme Court in interpreting state and federal power to enact labor legislation.

Materials:

Handout 1 for all students

Handouts 2 - 10, one copy each

Procedures:

1. Pass out Handout 1. Read and discuss the background and chronology. Be sure students understand the relationship among state legislatures, Congress, and the Supreme Court with respect to labor legislation.

2. Divide the class into nine groups of three to four students each. Assign one of the episodes described on Handouts 2 through 10 to each group.

3. Have the groups read through their episodes. Each group is to make a presentation of their episode to the class, using one of the following mechanisms:

a. A skit of the events described in their episode. Students can make props, use signs to identify characters, and wear

costumes. They will need to tap their creative and dramatic abilities to make the episode understandable and interesting to the class.

b. A report on the episode. If library resources are available, it is recommended that students do research beyond what is provided. (A maximum of three students is recommended for a report.)

c. A group-prepared mural or collage. The final piece will be interpreted and explained to the class.

4. In preparing their presentations, all groups must address the following questions, which should be written on the chalkboard. (They are also presented at the end of each Handout.)

a. What were the workers in your episode fighting for?

b. What was the legal status of each of the following when your episode took place?

(i) The right of workers to organize
(ii) The right of unions to exist
(iii) The right to strike
(iv) Minimum wage
(v) Maximum work week
(vi) The right to bargain collectively

c. What gains or defeats resulted from the events of your episode?

5. Allow at least one class period for preparation.

6. Have groups give presentations. If a resource attorney (labor lawyer) is used, have him or her observe the presentations and participate in the discussion.

7. Debrief the activity using the following questions:

a. Do you think the demands of the workers in each of the episodes were justified?

b. Do you think there were alternatives to strikes to accomplish what the workers wanted?

c. Labor unrest often resulted in violence. In the episodes in which it occurred, what was the cause? Could violence have been avoided?

d. When did the Supreme Court finally allow Congress to enact labor legislation? What were the reasons for this change in interpretation of congressional powers?

LABOR'S STRUGGLE FOR LEGAL RECOGNITION

Background

Before the Civil War, the United States was a nation of farmers supported by some manufacturing. This changed in the decades that followed. The demand for more and better products spurred the growth of inventions and industries. Because of vast railway networks, national markets opened.

Corporations, the new basic unit of American industry, began to centralize the control of production and distribution for a national market. This created numerous, but impersonal, specialized jobs. Millions of immigrants poured into the country, competing with Americans for newly created industrial jobs, thereby lowering wages. Competition among corporations to reduce the costs of goods resulted in lower wages and longer hours for workers.

As labor conditions worsened, many workers recognized the need to organize themselves, form unions, and seek recognition of the rights of workers to bargain with corporations. Resistance to this move came from both corporations and governmental institutions. When unions began to organize and strike for better working conditions, the courts interpreted these actions as an obstruction to the free flow of commerce and the general welfare. When state legislatures and eventually Congress began to enact laws to protect labor, the Supreme Court frequently struck them down as unconstitutional. They were considered a violation of Fourteenth Amendment guarantees because they deprived corporations of property without due process of law.

Labor's struggle for legal recognition was long, violent, and divisive. Bloody battles erupted at coal mines, in steel mills, in auto plants, and on the docks. Labor had to win its struggle with state legislatures, the Congress, the Supreme Court, and the public. This was not fully achieved until at least the 1930's.

Chronology

1840's	President Van Buren established the 10-hour working day for government workers. Until then, an 11-hour day was common and would remain the average for nongovernment workers into the 1860's.
1842	The Supreme Court of Massachusetts, in the case of **Commonwealth v. Hunt**, decided that labor unions had a right to exist in Massachusetts.
1868	The National Labor Union helped push through Congress a law establishing an eight-hour working day for laborers and mechanics employed by or in behalf of the federal government.

1879 Massachusetts passed a law prohibiting women and children from working more than 60 hours per week.

1890 The Sherman Antitrust Act was passed by Congress to protect the public from monopoly and conspiracy practices of large corporations and to restore free competition. This new law was not very successfully enforced against corporations. However, it was used against labor unions to break strikes by considering strikes to be conspiracies to interfere with trade and commerce between states.

1898 Congress passed the Erdman Act, which provided for the arbitration of labor disputes involving carriers going between states. This was a victory for the railroad workers, who now had the right to bargain with management.

1905 The U.S. Supreme Court declared unconstitutional a New York law that fixed a maximum working day of 10 hours for New York bakers. Such laws were ruled to deprive owners of the property rights guaranteed by the Fourteenth Amendment. A law limiting a person's control over his or her business, including employment policies, deprived that person of his/her property without due process of law. The Court also said that this law violated a person's right to enter into contracts, accepting employment as a contract, even when not written down.

1908 In the Danbury Hatters case, the U.S. Supreme Court ruled that members of a labor union were to be held financially responsible for the full amount of individual property losses to businesses brought about by strikes. This ruling forced financial ruin on unions if there was any loss of business or property damage during strikes.

1910 New York passed the first important state law to compensate workers for accidents that took place on the job.

1911 Washington State passed laws to provide financial aid to workers injured on the job. Additionally, during this time period, Washington passed a law guaranteeing a minimum wage for women and children, and a law that women could not be forced to work more than eight hours per day.

1912 Massachusetts passed the first minimum wage law. Employers could not pay a wage earner less than a certain minimum wage.

1914 Under President Wilson's administration, Congress passed the Clayton Antitrust Act, that declared that labor unions and farm organizations had a legal right to exist. Union activities could not be considered "conspiracies in restraint of trade," as they had been under the Sherman Antitrust Act. The act made strikes, peaceful picketing, and boycotts legal under federal jurisdiction. It also said that courts could not grant an injunction (court order) in a labor dispute unless it was necessary to "prevent irreparable injury to property."

1916 President Wilson urged Congress to establish an eight-hour workday for railway employees with no reduction in wages after they threatened to strike. Congress passed the Adamson Act. For the first time, the U.S. Supreme Court said that Congress had the power to set maximum working hours for private employees because of the "public nature" of the railway.

1917 The U.S. Supreme Court ruled that the New York Compensation Law (1920) was constitutional. A precedent was thereby established for other states to enact worker compensation laws. Before this, the courts had ruled that if a worker had willingly assumed the risk of the job, the company was not responsible for injuries or death. This was a welcomed victory. In 1917, there were 11,338 accident-related deaths in manufacturing and 1,363,080 injuries.

1920's The U.S. Supreme Court, in a series of decisions, broadened the federal courts' powers to issue injunctions against strikes, arguing that they interfered with trade between the states.

1933 In the wake of the Depression during Roosevelt's administration, Congress passed the National Industrial Recovery Act (NIRA). It provided that each industry, with the participation of union and business representatives, must adopt a "code of fair practices." These codes had to be approved by the President. Most of these codes stipulated a 40-hour work week and minimum wages of $12.00 to $15.00 a week. Workers were guaranteed the right to bargain collectively. Employers were forbidden to pressure a worker to join a particular union or to remain a nonunion worker. They were also forbidden to refuse work to workers simply because they were union members.

1935 In the case of Schecter v. United States, the U.S. Supreme Court declared NIRA unconstitutional. The court said that Congress had given too much legislative power to the President. He had no power to approve or disapprove industry codes, and the codes were not legally binding.

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1935 Congress passed the National Labor Relations Act, known as the Wagner Act. The act guaranteed labor the right to organize and to bargain collectively for better wages and working conditions. It also provided that the majority of the workers in any plant or industry could select representatives for bargaining with management. It forbade discrimination against or firing of a worker based on union membership.

1938 Congress passed the Fair Labor Standards Act, which guaranteed a maximum work week of 44 hours, to drop to 40 hours in two years. It also guaranteed a minimum wage of $0.25 per hour to rise to $0.40 in seven years. It outlawed child labor in industries producing goods for interstate commerce.

1947 Over President Truman's veto, Congress passed the Labor Management Relations Act, called the Taft-Hartly Act. It reduced the power that organized labor had won under the New Deal. It allowed federal courts to issue injunctions against a strike when it affected an entire industry or a big portion of it or if it threatened the general welfare. It also prevented Communists from holding office in labor unions.

THE RAILROAD MEN'S WAR (1877)

1877 was the year of the great railroad strike, in which labor came into a full-scale conflict with industry. The strike began when the Baltimore and Ohio Railroad ordered a ten percent reduction in wages. This was the second wage reduction in eight months, cutting paychecks to five or six dollars a week. In addition, railroad workers were expected to pay their own expenses on overnight layovers away from home.

Trouble began when the railroads brought in strikebreakers. Policemen had to escort them to their jobs for fear that violence would erupt. Support for the strikers spread to many towns. An army of hungry and desperate unemployed workers joined the protest. When mayors appeared to plead for order, they were booed and shouted at by the citizens.

The strike became a national event when John Poisal attempted to keep a train from derailing by jumping on a locomotive run by strikebreakers. Poisal was shot by the strikebreakers and died nine days later. This generated more support for the strikers, and the strike spread from coast to coast. It flared into a small rebellion. In Baltimore, Pittsburgh, Martinsburg, Chicago, Buffalo, and San Francisco, militias were called out to put down the rioting mobs. Pitched battles resulted in federal troops being called in by President Hayes to restore order and keep the trains running.

This was a remarkable national event because it had not been organized. It was a strike where there were no labor unions. The railroad workers were only organized in local groups called "brotherhoods," whose major concern was insurance benefits, not collective bargaining. Although the Knights of Labor was being organized the same year, its influence on the strike was minimal because it did not believe in strikes. The railroad men's war went on for a few more days. Labor, however, was weak. The forces of the railroads and the government crushed the rebellion.

Questions:

a. What were the workers in your episode fighting for?

b. What was the legal status of each of the following when your episode took place?

(i) The right of workers to organize
(ii) The right of unions to exist
(iii) The right to strike
(iv) Minimum wage
(v) Maximum work week
(vi) The right to bargain collectively

c. What gains or defeats resulted from the events of your episode?

THE HAYMARKET RIOT (1886)

The strike for the eight-hour day began on May 1, 1886. The struggle had actually begun earlier. In the 1860's hundreds of eight-hour leagues were formed across the country. There was a feeling among the working class that the factories could afford a shorter day at the old pay and now was the time to get it.

In 1884 the American Federation of Labor was in its infancy. The federation organized the eight-hour campaigns and set May 1, 1886 as the date for a general strike nationwide. Laborers brought and wore eight-hour shoes, smoked eight-hour tobacco, and sang eight-hour songs:

We mean to make things over;
We're tired of toil for naught.
We want to feel the sunshine,
We want to smell the flowers;
We're sure that God has willed it,
And we mean to have eight hours.
Eight hours for work, eight hours
For rest, eight hours for what we will.

May 1, 1886 was a beautiful day in Chicago. Thousands of men and women waited for the parade to begin. The atmosphere changed as militiamen waited nervously to be called to action. At the meeting site, many speakers vented their feelings about the eight-hour day.

Trouble came on the third day of the strike at the McCormick Harvester Works, where strikebreakers had replaced strikers. The strikers rushed to the plant to heckle the "scabs," or strikebreakers, as the work shift changed. In a few minutes, 200 police arrived. The skirmish turned into a riot. When it was over, four workers were dead and many were wounded.

Leaflets called for a mass protest the next day, May 4, at Haymarket Square. A crowd of 3,000 people showed up; 180 policemen arrived and demanded that the crowd disperse. Suddenly, without warning, there was an ear-splitting explosion. Someone had thrown a bomb into police ranks. One policemen was killed on the spot; seven died later. A number of citizens were killed.

Haymarket opened the country to hysteria about unionism. Chicago immediately started a reign of terror. Police arrested 25 printers and wrecked their presses; they beat people suspected of conspiracy. Everywhere the police announced they had found pistols, swords, dynamite, and red flags.

Ten men were indicted for planting the bomb and charged with conspiracy to commit murder. The trial was less than fair. The jury had been chosen by the bailiff and included a relative of one of the victims. Much of the testimony was fabricated. The jury found eight guilty.

Seven were sentenced to hang, and the other was given a 15-year sentence. Two others had escaped to Europe.

On November 11, 1887, four of the convicted were executed. One man had committed suicide, and two of the sentences were changed to life in prison.

Questions

a. What were the workers in your episode fighting for?

b. What was the legal status of each of the following when your episode took place?

(i) The right of workers to organize
(ii) The right of unions to exist
(iii) The right to strike
(iv) Minimum wage
(v) Maximum work week
(vi) The right to bargain collectively

c. What gains or defeats resulted from the events of your episode?

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THE DEBS REVOLUTION (1894)

The country came near a revolution during the Pullman Palace Car Company strike of 1894. What began as a relatively small strike in a small town spread nationwide and almost paralyzed all industries.

George Mortimer Pullman, president of the powerful Pullman Palace Car Company, refused to discuss grievances with his employees. The American Railway Union, led by its president, Eugene V. Debs, took up the fight for better wages. These two self-educated men, who both came up from poverty, were to take very different paths that met on a collision course in the Pullman strike.

During the summer of 1893, Pullman began a squeeze on his employees to reduce the work force and to reduce pay. This move, Pullman thought, was necessary to meet economic conditions and the recession of 1893. As a result, workers fell behind in their rent payments. Some workers, after deduction, were taking home weekly paychecks of 47 cents.

Eugene Debs bowed to the demands by members of the American Railway Union to call for a strike. The strike was organized. Inspectors were to refuse to inspect the Pullman sleepers, and switchmen were to refuse to switch them onto trains to sidetrack them. Engineers and brakemen were to refuse to haul trains carrying Pullman Palace cars on them.

The boycott against Pullman Car Company began slowly. Management reacted by firing switchmen. Other workmen then walked off the job. As the strike spread, it began to shut down railroads like the Burlington, the Santa Fe, and the North Central. Soon the strike affected 27 states.

An important turn in the strike came when the federal government became involved. President Cleveland sided with management, claiming that the strike was interfering with the movement of U.S. mail. An injunction was served against the American Railway Union to prevent strikers from interfering with the mail. (An injunction is an order to prevent someone from committing a specific act.) President Cleveland ordered federal troops into Illinois against the governor's objections. While the troops were presumably called to enforce the injunction and preserve order, serious rioting was the result.

On July 4, 1894, in Chicago, people congregated, overturned some cars, and set them aflame. They did the same thing at the stockyards. The next day, another fire broke out at the World's Fair Columbian Exposition. Seven buildings were burned. More federal troops were sent to Chicago. Debs offered to end the strike if management would agree to arbitration (problem solving with a third party making a binding decision.).

Meanwhile, the courts ordered a grand jury investigation of Debs. He was charged with criminal conspiracy to obstruct the mails, interference with interstate commerce, and intimidation of citizens. Post office officials raided the office of the American Railway Union and seized Debs's personal papers.

On July 10, Debs decided to try to save the strike by extending it to other industries nationwide. Debs wanted to paralyze the entire economy. This way, the government could be forced into neutrality over all labor-management disputes. Debs issued an appeal for help, but it was poorly received. The general strike was a failure. Slowly, more and more trains began to move. The American Federation of Labor asked all workers to return to work.

The remainder of the strike was played out in the courts. Debs went to trial on September 5. He was sentenced to six months in the county jail. The government won its objective--to smash the strike.

Questions

a. What were the workers in your episode fighting for?

b. What was the legal status of each of the following when your episode took place?

(i) The right of workers to organize
(ii) The right of unions to exist
(iii) The right to strike
(iv) Minimum wage
(v) Maximum work week
(vi) The right to bargain collectively

c. What gains or defeats resulted from the events of your episode?

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THE WOBBLIES (1905-1909)

On June 27, 1905, Big Bill Haywood mounted the platform at Brand's Hall in Chicago and gaveled the meeting to order. Haywood explained that the purpose of the meeting was to begin the Continental Congress of the working class. Forming a working-class movement to emancipate the workers from the bondage of capitalism was to be its goal. Thus was born the most colorful labor organization in American history, the Industrial Workers of the World (called the IWW or Wobblies).

The IWW was made up of workers in 13 different industries, including agriculture, logging, mining, and railroads. The early years of the union were difficult. The first indication of public support came when its leaders were arrested for the murder of the governor of Idaho during a strike. The leaders were taken from Colorado to Idaho without proper court proceedings. Americans were outraged at the violation of due process rights under the Constitution. The men were put on trial, but the jury returned a verdict of not guilty.

The Wobblies had many other successes, due in part to their ability to organize and maintain membership.

The Wobblies had a regional office in Seattle and organized strikes in Washington's logging camps and lumber mills. A tragic conflict took place on Armistice Day of 1919, when shooting broke out between lumber Legionnaires and local Wobblies in Centralia, Washington. One Wobbly, Wesley Everett, was lynched by a mob of Legionnaires. Seven Wobblies received lengthy prison terms, but no Legionnaires were prosecuted for their role in the "Centralia Massacre." In its aftermath posses of armed Legionnaires scoured the countryside to round up Wobblies. Department of Justice officials seized the plant of the Union Record, the labor-backed newspaper in Seattle and arrested staff members.

The Wobblies' list of strikes is long but their most impressive victory came in 1909 against the Pressed Steel Car Plant in McKees Rocks.

Wages at the car plant were low and had already been reduced because of the panic of 1907. What really upset employees was the introduction of the "pool system." Pay was assigned to gangs and was given to the foreman to distribute as he saw fit. The foreman then used wages to reward or punish workers. On July 10, 40 employees refused to work unless they were told their rate of pay. They were fired. Within 48 hours, 5,500 men had walked off the job.

Strikebreakers were quickly assembled and loaded aboard ships on the Ohio River. Workers prevented them from reaching the factory after much rifle fire. Management then surrounded the plant with troops and police and escorted the strikebreakers in. Sixty strikers had themselves hired as strikebreakers and managed to convince other strikebreakers to leave the factory. Other skirmishes broke out when managers evicted 47

families from their houses to make room for the "scabs," or strikebreakers. Union leaders threatened that for every striker killed, a trooper's life would be taken.

Strikebreakers defected in large numbers, even though the company tried to keep them inside the plant. By now it was obvious that the factory could no longer operate. The company was defeated. On September 7, 1909, the pool system was ended and wages raised by five percent. All strikers were rehired.

Questions

a. What were the workers in your episode fighting for?

b. What was the legal status of each of the following when your episode took place?

(i) The right of workers to organize
(ii) The right of unions to exist
(iii) The right to strike
(iv) Minimum wage
(v) Maximum work week
(vi) The right to bargain collectively

c. What gains or defeats resulted from the events of your episode?

THE CHILDREN'S CRUSADE (1912)

The most unusual strike before World War I occurred in Lawrence, Massachusetts, in 1912. It was a local affair that attracted national attention.

Wages in Lawrence in 1912 were at the starvation level. For a 56-hour week, laborers earned an average of $8.76, about $400 a year. Half of the money went to pay rent for a five-room apartment in crowded tenements (apartment houses). Often the children went hungry; there were days when the only food was bread and water.

The immediate cause of the uprising in Lawrence was a reduction in the workweek from 56 to 54 hours. Normally, this would have been hailed as a victory, but laborers in the textile mills were not told whether this would also lower their weekly wages. On the first payday after the new ruling, workers found their checks $0.32 lower. Women in the textile factories began shouting, "Not enough pay! Not enough pay!" The next morning the fury spread to other mills. The workers went on a rampage, shutting off power, cutting belts, and shredding cloth. Ten thousand were on strike. The Industrial Workers of the World (IWW) was called in to help.

The IWW organized the most effective strike up to this time. The most important feature was the use of picket lines. The strike grew to 22,000 people. The picketers were blasted with water hoses, but they refused to react. They had taken a vow of nonviolent resistance. They challenged the police to arrest them but did not fight back. Committees visited "scabs," or strikebreakers, at home and persuaded them not to take jobs. Great relief funds were collected and distributed to the strikers. The walkout lasted nine and one-half weeks.

The feature of the strike that attracted national publicity and stirred the sympathy of the public was the use of children of the strikers. In order to save the children from the hardships of the strikes, the organizers hit upon the idea of shipping them out of town to live with other families. A massive effort was organized to relocate the children, who took with them the cause of the strikers. Several families were arrested for this tactic, and a congressional investigation was launched.

The factories of Lawrence could not hold out against the publicity that resulted, and they were finally forced to surrender. Management granted a pay increase of five percent, and the workers returned to their jobs.

Questions

a. What were the workers in your episode fighting for?

b. What was the legal status of each of the following when your episode took place?

(i) The right of workers to organize
(ii) The right of unions to exist
(iii) The right to strike
(iv) Minimum wage
(v) Maximum work week
(vi) The right to bargain collectively

c. What gains or defeats resulted from the events of your episode?

THE SPRUCE DIVISION (1917)

During World War I, spruce trees were in great demand because they were needed in the aircraft industry. It was the only lumber in adequate supply that was strong enough for wing spars for the World War I biplane fighters. In 1917, the Industrial Workers of the World and American Federation of Labor organized a general strike within the lumber industry. Some 40 to 50,000 workers went out on strike to demand higher wages, better living conditions and an eight-hour day. The strike shut down 85% of the lumber mills in Washington. When loggers went back to work they continued to "strike on the job." They laid down their tools and refused to work any more. They destroyed some company property.

The owners refused to give in. The situation continued for three months at a time when lumber was badly needed for the war effort. In response, the United States Government sent 27,000 soldiers, the famous Spruce Division, to harvest the spruce needed for the aircraft. The inexperienced soldiers found it impossible to do the work. Finally, the army did settle the strike. The lumber company owners agreed to an eight-hour day and some improvements in the loggers' living conditions. Loggers agreed not to hurt the war effort.

Questions

a. What were the workers in your episode fighting for?

b. What was the legal status of each of the following when your episode took place?

(i) The right of workers to organize
(ii) The right of unions to exist
(iii) The right to strike
(iv) Minimum wage
(v) Maximum work week
(vi) The right to bargain collectively

c. What gains or defeats resulted from the events of your episode?

THE STEEL STRIKE OF 1919

The early postwar years were not good ones for American labor. As economic depression hit the nation, unemployment grew, the cost of living rose, and labor discontent increased. In 1919 there was a rash of strikes across the country, including a strike in the steel industry involving more than 300,000 workers.

Steelworkers were unhappy about working conditions. In some places, like Gary, Indiana, employees worked 12 hours a day, seven days a week. Through the American Federation of Laborers, the National Committee for Organizing Iron and Steelworkers was formed. The committee launched a drive in steel towns to organize workers and present demands for an eight-hour day to management. When management refused to recognize the committee as a representative of all steelworkers, a massive strike was called for September 22.

Several factors led to the defeat of the strike. The country was being swept by a "Red Scare." In the wake of the Russian Revolution of 1917, public opinion was turning against labor. Strikers and labor leaders were labeled as Bolsheviks and communists, and management took advantage of the public fear of revolutionary plots. In Washington Sate, the State Legislature gave legal teeth to the postwar Red Scare by passing a Criminal Syndicalism Law. In 1917, Washington Governor Ernest Lister had vetoed a similar bill as a threat to the civil liberties of loyal citizens. But in 1919 broad, vague legislation was passed that made it a crime to advocate, teach, publish, or further any doctrine promoting force as a way of bringing about social change. Eighty-six people were convicted under the law during its first year on the books.

The steel strike was weakened for another reason. Many of the workers were immigrants who had just come to the United States during the great waves of immigration of the preceding decades. Fear and competition stirred among the different nationalities, each of whom became anxious that they might be replaced by other nationalities if they did not remain on the job.

On October 4, in Gary, strikers returning from a meeting met a group of homeward-bound "scabs" (strikebreakers), and the two groups engaged in a small fracas. The National Guard was called out, and martial law was declared. Strike leaders were arrested, picketing was restricted, and union meetings suppressed. Union members began to go back to work. By November many plants in the Chicago area were back in operation. All hope of a settlement vanished. On January 8,1920, the strike was suspended. On July 1 the National Committee for Organizing Iron and Steelworkers was disbanded.

Questions

a. What were the workers in your episode fighting for?

b. What was the legal status of each of the following when your episode took place?

(i) The right of workers to organize
(ii) The right of unions to exist
(iii) The right to strike
(iv) Minimum wage
(v) Maximum work week
(vi) The right to bargain collectively

c. What gains or defeats resulted from the events of your episode?

THE LONGSHOREMAN STRIKE OF 1934

The major problem facing dockworkers on the West coast was a hiring system called the "shape-up." Workers would form a line at the docks each morning, hoping that a foreman would pick them for the job. Many waited hours before being chosen. No one was assured a job unless one had an "in" with a foreman or was willing to pay a bribe.

In 1933 the political climate was more favorable than ever for union activity. The country was in the midst of the Great Depression, and Franklin D. Roosevelt had just been elected President of the United States. Roosevelt's New Deal policies did not include attacks on labor, since a large number of Americans were unemployed. When the National Industrial Recovery Act was passed in 1933, it included an important labor clause, Section 7(a). This clause granted workers the right to organize and bargain collectively. Many unions used this clause to begin new membership drives across the country. The International Longshoreman Association (ILA) on the San Francisco docks was one.

The first move of the ILA was to call a convention in 1934. The convention proposed that companies grant full recognition of the union, that the union control hiring, and that companies raise wages from $0.85 to $1.00 per hour. They also proposed a 34-hour workweek. Employers refused to deal with the union, and a strike date was set for March 23, 1934.

The union developed its strike tactics well. One was 24-hour pickets to guard against strikebreakers; the second tactic was unity of maritime workers, including seamen; and the third was a joint committee of all maritime unions pledged not to return to work until agreements were met satisfactorily.

On July 3, employers responded to the strike by moving stalled goods out of Pier 38 and on to market. To protect trucks carrying the goods, they placed railroad cars on both sides of the roads leading from Pier 38 to provide a barricade from the striking workers. When the trucks emerged from the pier, the docks of San Francisco became a vast tangle of fighting men. For four hours skulls were battered as the entire police force of the city was called out.

San Francisco was buzzing. A general city-wide strike was called in support of the dockworkers. On July 16 San Francisco was at a standstill. One store after another was forced to close its doors. The general strike lasted four days. The strikers had generated so much public support that now they would not face total defeat. Employers and the union agreed to arbitration (settlement of the dispute by using a third person to make a binding decision) on July 23. The settlement

provided for union recognition, a 24-hour week, ₱0.95 an hour, and a voice in hiring practices.

Questions

a. What were the workers in your episode fighting for?

b. What was the legal status of each of the following when your episode took place?

(i) The right of workers to organize
(ii) The right of unions to exist
(iii) The right to strike
(iv) Minimum wage
(v) Maximum work week
(vi) The right to bargain collectively

c. What gains or defeats resulted from the events of your episode?

THE GENERAL MOTORS SITDOWN STRIKE (1936)

In 1936 a Model-T Ford sold for $950.00. The men who built them, however, believed that they received few benefits from this successful industry. Only the young were capable of standing the pace of the assembly lines. Many men at age 30 looked as if they were 50. During the hot summer, many workers died and hundreds more were hospitalized. An employee worked furiously in the busy season and was laid off in the slow season. If he was too old or too tired, he was not called back.

In November 1936, a major grievance arose at the General Motors plant when the management cut three-man crews to two. The Perkins brothers sat through their shift refusing to work. They were called into the office and fired. "The Perkins boys were fired! Nobody starts working," someone shouted. A sitdown strike by 700 employees began. They refused to work until the men were rehired. Rehired they were, but they didn't work for long. The newly organized Congress of Industrial Organizations (CIO) was making plans for a strike designed to protest General Motors plant policies of spying on union activities.

The usual policy of General Motors when labor troubles flared was to take its equipment elsewhere and begin operations anew. However, union leaders proposed that workers seize the plant in a sitdown strike. The sitdown protected the strikers from police, troops, and tear gas. The corporations would think twice before subjecting their expensive machinery to warfare.

The sitdown strikers at General Motors recognized the importance of keeping the plant neat and free of damage, so clean-up crews were quickly organized. Patrols were set up to insure that no one was drinking. Quickly, the strike spread to other General Motor cities, and the company was at a near standstill.

To remove the strikers, the company devised a simple plan. First it would deny the strikers in the plant heat and food. Then it would find some reason to take over the factory. On January 11, 1937 the temperature was 16 degrees and union supporters were denied entry to the plant with the strikers' evening meal. This created a minor skirmish, and the charged-up police began releasing tear gas into the plant.

"We want peace. General Motors chose war. Give it to them," someone shouted. Armed with firehoses and automobile door hinges from inside the plant, the strikers struck back. They formed a barricade of automobiles between them and the police, and from the roof of the factory they threw hinges, nuts, bolts, and bottles. The police never made it into the plant.

General Motors agreed to negotiate directly with CIO leader John L. Lewis. They agreed to recognize the union, take no action against strikers, and grant a $0.05 an hour wage increase.

Questions

a. What were the workers in your episode fighting for?

b. What was the legal status of each of the following when your episode took place?

(i) The right of workers to organize
(ii) The right of unions to exist
(iii) The right to strike
(iv) Minimum wage
(v) Maximum work week
(vi) The right to bargain collectively

c. What gains or defeats resulted from the events of your episode?

SHOULD MEN HAVE THE VOTE

Source:

Adapted by UPSICEL from Law in U.S. History, New Mexico Law-Related Education Project, edited by Melinda Smith

Historical Period: Twentieth Century

Class Periods: 1/2

Use of Outside Resource Persons:

A representative from the League of Women's Voters could assist with this lesson.

Objectives:

1. Students will experience equality under the law.
2. Students will increase their awareness of implications of power monopoly by one sex.

Materials:

Handout 1

Procedures:

1. Pass out Handout 1 and have students read Alice Miller's argument.

2. Solicit student comments and discuss the questions that follow the argument.

3. Divide the class into groups of four or five students. Tell students to imagine a society in which women are the only persons allowed to vote, to hold political office, and to occupy positions of economic power. Have the students consider the following questions:

a. Would everything be turned around with men being discriminated against as women have been?

b. Would things be pretty much the same as they are now?

c. Some say present society is designed for the convenience of men. How would society look if it were designed for the convenience of women?

SHOULD MEN HAVE THE VOTE?

WHY WE OPPOSE VOTES FOR MEN

1. Because man's place is in the army.

2. Because no really manly man wants to settle any question otherwise than by fighting.

3. Because if men should adopt peaceable methods women will no longer look up to them.

4. Because men will lose their charm if they step out of their natural sphere and interest themselves in other matters than feats of arms, uniforms and drums.

5. Because men are too emotional to vote. Their conduct at baseball games and political conventions shows this while their innate tendency to appeal to force renders them particularly unfit for the task of government.

Alice Duer Miller, 1915

Questions for Discussion

a. Do you find Miller's argument effective? Why or why not?

b. Do you think sex stereotyping of women in society is as extreme as sex stereotyping of men in Miller's argument?

SCHENCK V. UNITED STATES (1919)

Source:

Adapted by UPSICEL from Law in U.S. History, New Mexico Law-Related Education Project, edited by Melinda Smith

Historical Period: 1919

Class Periods: 1

Use of Outside Resource Persons:

A representative of the selective service commission could present rules on the draft. A constitutional lawyer or member of the American Civil Liberties Union could debrief the case study and provide additional information.

Objectives:

1. Students will identify different interpretations of the First Amendment's guarantee of freedom of speech.
2. Students will increase their awareness of influence of political events on interpretations of constitutional freedoms.
3. Students will identify constitutional arguments for and against selective service.
4. Students will enhance reasoning and writing skills.

Materials

Handouts 1, 2, and 3

Procedures:

1. Pass out Handouts 1 and 2. Have students read the case, recording the important facts and issues on the case study sheet (Handout 2). Discussion of the facts and issues can take place either before or after students write them.

2. Take a vote to see (1) how students would decide the case and (2) how students believe the court decided the case.

3. Pass out Handout 3. Have students read the decision and complete the case study sheet.

4. Explain that the Holmes decision was important in that it established a standard or test, the "clear and present danger" test, for future free speech cases.

5. As a follow-up discussion, discuss views on the draft during the Vietnam era and currently.

SCHENCK V. UNITED STATES (1919)

World War I began in 1914. By the time the United States declared war in 1917, the war effort was not going well for our allies. The English and French could not take the offensive against Germany. The Russians were torn by their internal revolution. A massive effort was needed to insure an allied victory.

To provide the men needed, Congress passed the Selective Service Act of 1917, thereby creating a military draft. In order to protect the war effort, Congress also passed the Espionage Act of 1917. Among other things, the act made it a crime to cause or attempt to cause insubordination in the military and naval forces or to obstruct the recruitment or enlistment of persons into the military service of the United States.

Charles Schenck was an American who was deeply opposed to United States' participation in the war. He was the general secretary of the Socialist Party and was arrested for violating the Espionage Act after leaflets urging resistance to the draft were traced to Socialist headquarters.

The leaflet had been sent to men who had been drafted. On the front, it quoted the first section of the Thirteenth Amendment. It said that a draftee was little better than a convict. In impassioned language, it suggested that conscription (the draft) was despotism in its worst form and a monstrous wrong against humanity, in the interest of Wall Street's chosen few. It said, "Do not submit to intimidation." In form, at least, the leaflet confined itself to peaceful measures, such as a petition for the repeal of the act.

The other, later-printed side of the sheet was headed, "Assert Your Rights." It stated reasons for alleging that anyone violated the Constitution when he refused to recognize "your right to assert your opposition to the draft." It went on: "If you do not assert and support your rights, you are helping to deny or disparage rights which it is the solemn duty of all citizens and residents of the United States to retain." It described the arguments in favor of the draft as coming from cunning politicians and a mercenary capitalist press. Even silent consent to the draft law was described as helping to support an infamous conspiracy. It denied the power to sent U.S. citizens away to foreign shores to shoot up the people of other lands, and added that words could not express the condemnation such cold-blooded ruthlessness deserved. The leaflet concluded, "You must do your share to maintain, support, and uphold the rights of the people of this country."

Although Schenck denied responsibility for sending the leaflets, the trial court was presented enough evidence to convince it that he had. After Schenck was found guilty in a federal district court in Pennsylvania, he appealed his conviction, claiming that the leaflets should be protected as free speech. The government claimed that the

Espionage Act had been a valid and necessary limit on speech. The Supreme Court handed down its ruling in 1919.

CASE STUDY SHEET

Court Name_____

Court_____

Decision Date_____

Facts:

Legal Issues:

Decision:

Court Reasoning:

Student's Comment:

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DECISION: SCHENCK V. UNITED STATES

Mr. Justice Holmes wrote for a unanimous court, which affirmed Schenck's conviction.

> ...The document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out....We admit that in many places and in ordinary times the defendants, in saying all that was said in the circular, would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done....The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater, and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force....The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right.

THE SUPREME COURT, ROOSEVELT, AND THE NEW DEAL

Source:

Reprinted from Law in U.S. History, New Mexico Law-Related Education Project, edited by Melinda Smith

Historical Period: 1930's

Class Periods: 1-2

Use of Outside Resource Persons:

A constitutional attorney or historian could assist with the chronology of events.

Objectives:

1. Students will identify the relationship among the three branches of government.
2. Students will define judicial review.
3. Students will identify the factors that led to Roosevelt's court-packing plan.
4. Students will increase group process and critical thinking skills.

Materials:

One copy of Handout 1

Copies of Handouts 2 and 3 for all students

Procedures:

1. Before class, cut apart the 19 items on Handout 1, mount them on colored paper, and post them along the walls of the classroom. These will be the learning stations.

2. Pass out Handout 2. Read and discuss with the class, making sure students understand Roosevelt's proposal.

3. Divide the class into pairs. Distribute Handout 3, reading through the instructions with the students.

4. Allow students to proceed to stations.

5. When students have completed Handout 3, discuss their responses. Conclude with a discussion of the following question:

a. What advice would you have given President Roosevelt concerning his court proposal if he had asked your opinion in the early summer of 1937?

EVENTS AND FACTORS

1. Roosevelt not only surprised the nation with his court proposal in February 1937, but he also surprised many of his close advisors and key members of Congress. The President did not organize strategic support for his plan before announcing it on February 5.

2. The number of justices serving on the court has varied. The original court had six justices. In 1807, there were seven; in 1837, nine; in 1863, ten; in 1866, eight; and, in 1869, nine once again.

3. Roosevelt was a very popular President. His "New Deal" was also popular with voters.

4. Roosevelt claimed that the courts were overburdened and overworked. The additional judges that he would appoint under the plan would help solve these problems and make the courts more efficient.

5. Most judges and local bar associations (organizations of lawyers) were against Roosevelt's plan.

6. The rulings of the Supreme Court, especially its striking down both state and federal efforts to enact a minimum wage, were very popular.

7. One anti-New Deal justice announced in mid-May that he would retire on June 1, 1937. Roosevelt would, at last, be able to appoint someone to the court.

8. Opponents of the New Deal's economic and social policies turned public attention to the potential threat to judicial independence contained in FDR's plan.

9. Some people argued that the most dignified and safest way to alter the Supreme Court was by Constitutional amendment and that Roosevelt's plan was devious.

10. The Constitution created the Supreme Court but left many important decisions about it to the Congress. For example, Congress determines both the size and the appellate power of the court. It would be constitutional for Congress to change either.

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11. The plan was perceived by many as a thinly disguised effort to change the decisions of the Supreme Court rather than to make any truly needed reforms.

12. Chief Justice Hughes and Justice Brandeis wrote a letter to the chairman of the Senate Judiciary Committee, that was considering the bill. With statistics, the letter refuted Roosevelt's claims that the Supreme Court was overburdened because of "insufficient personnel" and the physical disabilities of the justices.

13. The number of justices serving on the Supreme Court had been fixed at nine for almost 70 years.

14. Most Americans, however they might disapprove of some of the Supreme Court decisions, revered the court as an institution. Most people believed that an independent judiciary was a necessary element of American government and that it should exercise judicial review and thereby guard the Constitution.

15. The Congress was controlled by huge Democratic majorities. Roosevelt was a Democratic President.

16. On March 19, 1937, the court announced an opinion that had been reached before Roosevelt's court proposal was made public. The Supreme Court upheld a minimum wage law like those that in the past had been found unconstitutional.

17. The Supreme Court began supporting New Deal legislation. In April, the Wagner Act was upheld. In May and June, the court sustained the Social Security and Unemployment Insurance Legislation.

18. The President's plan grievously offended the court's most liberal, most pro-New Deal, and coincidentally, oldest member, Justice Brandeis.

19. Even Democrats in Congress were worried that their approval of the President's plan would tip the balance of power among the three branches of government in favor of the President.

THE SUPREME COURT, ROOSEVELT, AND THE NEW DEAL[1]

In the darkest period of the economic disaster known as the Great Depression, 25 percent of the American work force was unemployed. Banks failed and businesses collapsed. Farmers, unable to make their mortgage payments, lost their farms. The stock market crashed, and thousands of Americans lost their life savings. Americans were bewildered and angry. They wanted a return to prosperity and, in 1932, elected a new President who radiated confidence and promised action to end the Depression.

Franklin Delano Roosevelt's first hundred days as President were marked by furious legislative activity. The new President sent measure after measure to the Congress, and his bills met almost no organized opposition in either house of Congress. The President's legislative program was collectively called the New Deal. It contained measures to offer relief from depression-caused hardship, encourage economic recovery, and institute reforms to help prevent another severe depression.

Throughout Roosevelt's first term, the President exercised leadership over the Congress, and the two branches worked cooperatively to make changes in the American economy. The third branch of government, the judiciary, did not have an opportunity to become involved in the New Deal until the middle of Roosevelt's first term. Remember that the Supreme Court only hears actual cases and controversies. Therefore, the President, the Congress, and the people had to wait until a person with standing to sue challenged a New Deal law before anyone could know whether the court would uphold the new laws as constitutional.

In the winter of 1934-1935, the answers to the questions of whether the New Deal was a radical and unconstitutional departure from traditional governmental involvement in the economy began to come. The Supreme Court approved parts of the New Deal but struck down many important New Deal measures. Besides striking down the National Industrial Recovery Act and the Agricultural Adjustment Act, the court declared both federal and state attempts to establish a minimum wage unconstitutional. Never before had a Supreme Court majority taken on almost the entire governmental program of a powerful President who was solidly backed by Congress and knocked down the program law by law. The court showed the President and Congress what a powerful check judicial review could be.

During the Presidential election campaign of 1936, the Supreme Court's actions became a hotly debated issue. The Democrats emphasized the narrow court majorities that had killed the New Deal

[1] From Supreme Court and FDR. Used with permission from the Law in a Changing Society Project, Dallas, Texas.

laws and said the court's interpretations of the law were fit for "horse-and-buggy" times, not for a modern nation facing a crisis. The Republicans defended the court's decisions and characterized Roosevelt as having contempt for the Constitution. Roosevelt argued that the justices had taken the Constitution and were "torturing its meaning, twisting its purposes to make it conform to the world of their outmoded beliefs." At the same time the Supreme Court was praised by anti-Roosevelt forces for its courageous defense of the "whole philosophy of individual liberty" and for its opposition to "so great a power over the lives of millions of men lodged in the hands of a single fallible being."

Apparently, the New Deal was widely accepted by American voters, for when the votes were counted in the Presidential election of 1936, Roosevelt won every state except Vermont and Maine and swamped his Republican opponent by more than ten million votes.

Roosevelt interpreted his landslide victory as a mandate for further reforms. With his personal popularity and prestige and his huge congressional majorities, only the Supreme Court appeared to stand in his way. Most presidents are able to influence the court through their appointments, but during Roosevelt's first five years in office, no justice had died or retired. Roosevelt was confident that the people approved of his policies, but would they approve of his efforts to restructure the Supreme Court?

Just two weeks after his second inaugural speech, Roosevelt sent a proposal to Congress. It was called a "court reform" measure by its supporters, while its opponents called it an effort to "pack the court." Simply stated, Roosevelt's bill provided that whenever a federal judge who had served ten years or more failed to retire within six months after reaching his 70th birthday, the President could appoint an additional judge. This additional judge would be assigned to the same court on which the older jurist was serving. No more than 50 such additional judges could be added to the entire federal judicial system, and the maximum number of Supreme Court justices was set at 15.

The Supreme Court was frequently characterized as the Nine Old Men. In 1937 that was an accurate if unflattering description. The youngest justice was 62; the oldest, 81. All four of the justices who had regularly voted against the New Deal measures were over 70. The intended effect of Roosevelt's court proposal was obvious, even if the President emphasized other reasons for supporting his bill.

Would the Congress agree to the changes Roosevelt urged? What would the court do? How would the general public respond? If you had been alive in 1937, how do you think you would have felt about Roosevelt's plan?

PREDICTING THE FATE OF ROOSEVELT'S COURT PROPOSAL

Choose a learning station that is open. With your partner, read the item posted. Discuss it briefly and decide whether it probably encouraged or discouraged adoption of President Roosevelt's plan to enlarge the Supreme Court. Copy the item (or an abbreviated version of it) under the appropriate heading on this sheet. After you have visited all 19 learning stations, review the factors and events. Also consider what you read in "The Supreme Court, Roosevelt, and the New Deal" (Handout 2). Decide which two events or factors were most encouraging to President Roosevelt and which two were most encouraging to those who opposed his plan for the courts.

Events or Factors Favorable to Roosevelt and His Plan	Events or Factors Unfavorable to Roosevelt and His Plan

THE SUPREME COURT AND FDR: INTERPRETING POLITICAL CARTOONS

Source:

Reprinted from Law in U.S. History, New Mexico Law-Related Education Project, edited by Melinda Smith

Historical Period: 1930's

Class Periods: 1 or 2

Use of Outside Resource Persons:

A political cartoonist from a local paper could present modern day examples of cartoons to assist with how to read them.

Objectives:

1. Students will be able to explain Roosevelt's attempt to expand the judicial system.

2. Students will increase skills in interpreting political cartoons.

Materials:

One copy of Handout 1

Copies of Handout 2 for all students

Overhead projector

Procedures:

1. Divide class into nine groups. Give each group one cartoon from Handout 1. Have the groups discuss their cartoons, using the questions to guide their analysis. Explain that each group will present a short report to the class.

2. Using the overhead projector, have each group report. Have them (1) describe the cartoon and (2) discuss the questions.

3. Pass out Handout 2 to all students. Read and discuss it with the class.

4. Have the original groups or pairs of students use the figures provided in Handout 2 to prepare a cartoon of their own, complete with caption, expressing their interpretation of how the court-packing issue was resolved. They may add figures or alter the figures to best express their attitudes.

5. Have the groups show their cartoons on the overhead projector and discuss them.

ONE

THE CARTOONS[1]

THE ILLEGAL ACT.

President Roosevelt: "I'm sorry, but the Supreme Court says I must chuck you back again."

a. Who is the drowning man?

b. Who is the man in the boat?

c. What is meant by the labels on the boat and in the water?

d. What point is the artist trying to make through the drawing and caption?

e. Do you agree or disagree with the artist's point of view? Why?

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[1] From Supreme Court and FDR. Used with permission from the Law in a Changing Society Project, Dallas, Texas.

TWO

The Guffey Bill, named for its sponsor, was designed to regulate production, prices, and wages in the bituminous coal industry. A case involving the constitutionality of the Guffey Coal Act was heard by the Supreme Court in 1936. The court had already declared many other key New Deal laws unconstitutional.

a. Identify the characters in the cartoon.

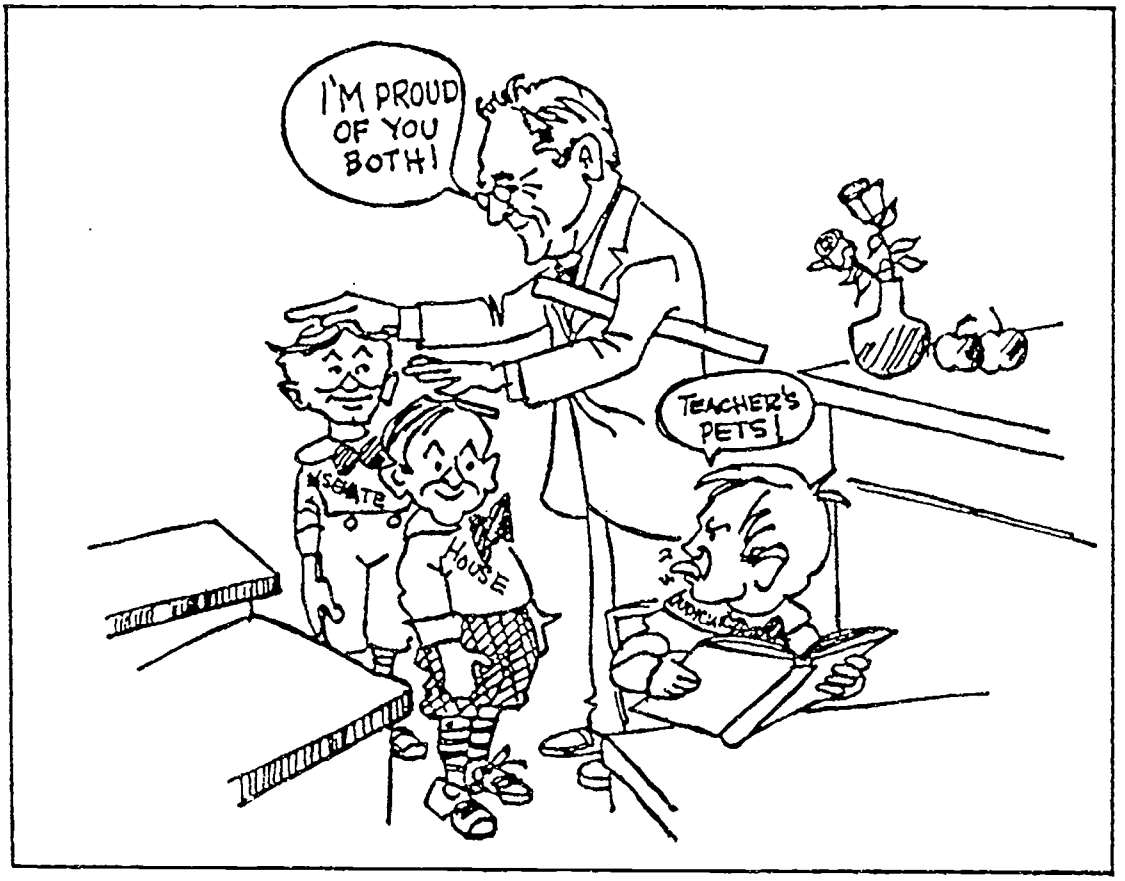
b. What is the relationship between the two men in the boat?

c. What is the relationship between the occupants of the boat and the fortress?

d. What is the meaning of the statement in the balloon?

e. How do you think the artist felt about the Guffey Bill? About the Supreme Court?

THREE



A cartoon like this appeared in January 1937, the month before Roosevelt announced his plan to enlarge the Supreme Court.

a. Identify each character in the cartoon.
b. Who is Roosevelt supposed to be in the cartoon?
c. Why are the two little boys smiling?
d. Why is Roosevelt so much larger than the other three characters?
e. Why is Roosevelt saying, "I'm proud of you both?"
f. Why is the other little boy sticking out his tongue and saying, "Teacher's pets!"?
g. What is the artist attempting to say with this drawing?
h. Can you think of any historical events or facts that support the artist's message? What are they?
i. Do you agree or disagree with the artist's viewpoint?
j. In keeping with the artist's point of view, what change could you suggest that might reflect the way things were in January 1938?

FOUR

"To Furnish the Supreme Court Practical Assistance."

A cartoon like this appeared shortly after Roosevelt sent his plan to Congress.

a. Who are the men on the front row of the Supreme Court's bench?

b. Describe the expressions on the faces of the two characters in the foreground. Identify them both.

c. What is the relationship of the men on the back row to those on the front row of the Supreme Court bench? Who do the men in the back row look like?

d. What is the central theme of this cartoon?

e. The artist probably wants those who see this cartoon to_____.

FIVE

THE INGENIOUS QUARTERBACK!

a. Identify the characters in the cartoon.

b. Explain the relationships between:

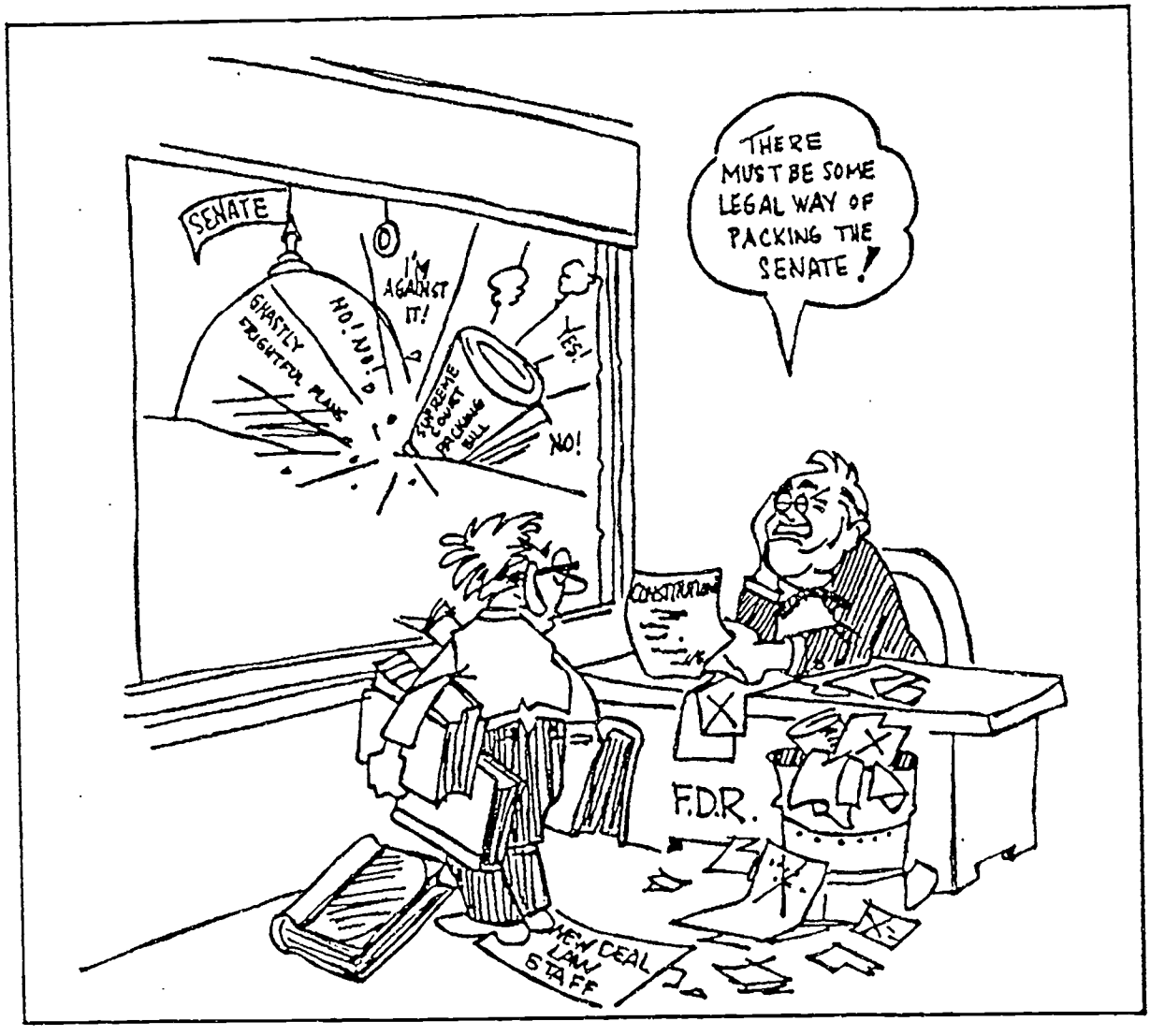
   (i) the quarterback and his team;
   (ii) the referee and the players;
   (iii) the quarterback's request and the rules of the game.

c. In what ways was the Congress acting like a referee in 1937?

d. How do you think the artist felt about Roosevelt's plan to enlarge the Supreme Court?

e. Do you agree or disagree with the artist's point of view?

SIX



a. Who are the two men in the drawing?

b. What is the relationship between the two men?

c. Why are there books and papers scattered everywhere?

d. What is the relationship between the man at the desk and the Senate?

e. Why is the man at the desk asking that question?

f. What does the question tell you about the artist's point of view regarding Roosevelt?

SEVEN

a. Identify each person in the cartoon.

b. The cartoon draws an analogy between the "court-packing" episode and a baseball game. What is the relationship between:

   (i) an umpire and the Supreme Court?
   (ii) a club manager and President Roosevelt?

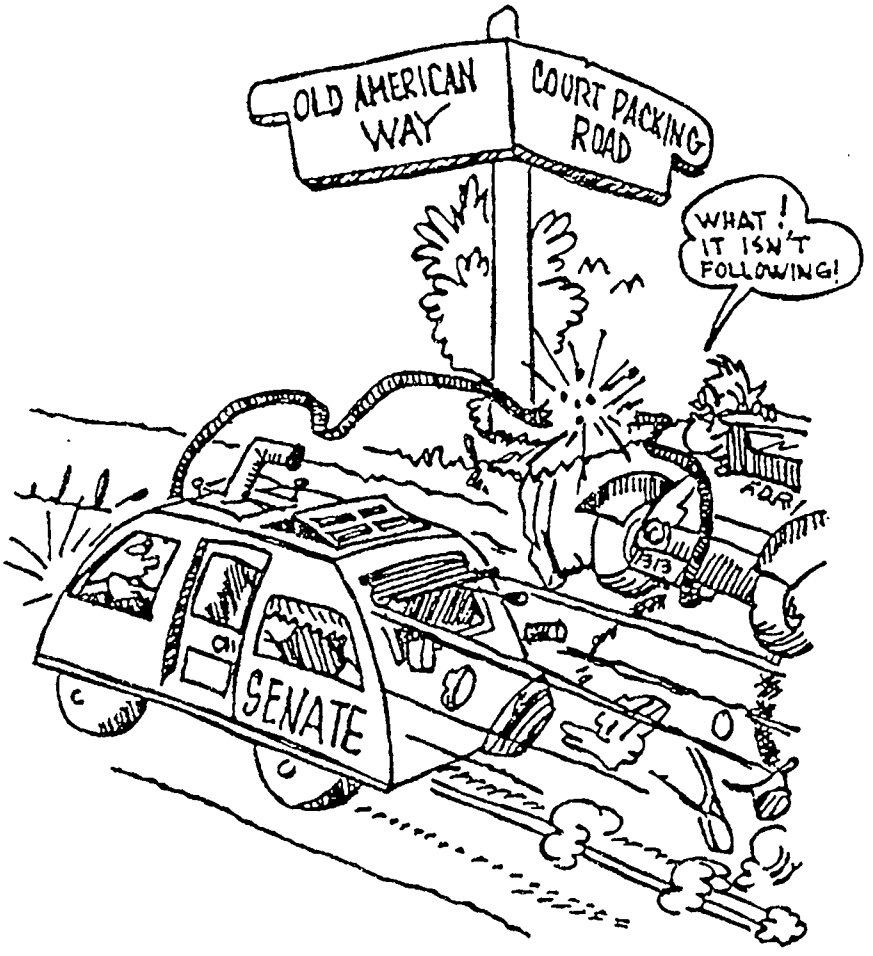
c. What is meant by the statement to Uncle Sam?

d. What message was probably intended by the artist's decision

   (i) to label the opposing club "Constitution Club"?
   (ii) to give the umpire a startled expression?

e. How do you feel about the artist's point of view? Do you agree or disagree with it?

EIGHT



THE OLD TRAILER DISCOVERS THAT IT HAS POWER OF ITS OWN.

a. Describe all the things you see in this drawing.

b. What is the normal relationship between a car and a trailer?

c. What is meant by the two signs on the post?

d. When did this cartoon probably appear?

e. What is the central theme of the drawing?

NINE

a. Who is leading the retreat?

b. What is represented by the low, threatening storm cloud?

c. The men behind Roosevelt are some of his top advisors. Can you identify any of them?

d. Who is Roosevelt supposed to resemble in this cartoon? What is the meaning of the caption?

e. Was the action by Congress a disastrous defeat for Roosevelt? Why or why not?

THE ARGUMENT RESOLVED

Roosevelt's plan to enlarge the Supreme Court was rejected by Congress. Scholars still disagree about which of the many reasons best explain the defeat. Some have emphasized Roosevelt's failure to organize key supporters for his plan before announcing it and his failure to correctly anticipate the reverence most Americans had for the Supreme Court. Others say that the biggest factor in the plan's defeat was the sudden about-face by the Supreme Court itself. In early 1937 the court, again by narrow majorities, began upholding laws favored by Roosevelt. One humorist called this "the switch in time that saved nine."

In the six years that followed, the Supreme Court did not strike down a single act of Congress as being unconstitutional. Before Roosevelt's death, he was able to appoint seven new justices to the Supreme Court. Factors like these led some to say that Roosevelt may have lost a battle but won the war.

Nevertheless, the outcome of this court-packing or court reform episode can also be viewed as a victory for the court, since its structure was not and has not been altered since. Still others emphasize that 1937 was a turning point for Congress and that when that body rejected Roosevelt's plan, it asserted its own independence and power. It is also true that after 1937 the Congress was much less willing to follow completely the President's lead than it had been when Roosevelt first took office.

What do you think? Was there a winner or a loser in the fight over Roosevelt's plan? Use the symbols on the next page, as well as any symbols you want to draw. Arrange them into a cartoon that will tell your audience how the court-packing/court reform episode ended and how you feel about it.

THE JAPANESE RELOCATION IN WORLD WAR II: FRED KOREMATSU V. UNITED STATES

Source:

Adapted by UPSICEL from Law in U.S. History, New Mexico Law-Related Education Project, edited by Melinda Smith and Great Trials in American History, NICEL.

Historical Period: World War II

Class Periods: 2

Use of Outside Resource Persons:

A former internee of a Japanese internment camp might present his or her experiences. A constitutional lawyer or historian might help with the case study.

Objectives:

1. Students will identify the events that led to the relocation of Japanese-Americans during World War II.
2. Students will apply the Fourteenth Amendment to the facts of the Korematsu case.
3. Students will identify how other constitutional guarantees apply to this case.
4. Students will identify issues and arguments involved in the Korematsu case.
5. Students will reinforce argumentation, reasoning, chronology, and group progress skills.

Materials:

Handouts 1, 2, 3, 4, and 5

Procedures:

1. Pass out Handouts 1 and 2 and read them with the class. Use the case study method to review the facts and issues of the case. Discuss questions and review the chronology of events.

2. Explain that students will be put into groups of three. One student will play the role of attorney for Korematsu, one the role of attorney for the U.S. government, and one the role of the judge. The attorneys will develop arguments for their sides and present them to the judge, who will make a decision. Explain that the groups will conduct their role plays simultaneously.

3. Assign roles. Allow attorneys time to prepare arguments. Use Handouts 3 and 4 with students who require special assistance in preparation.

4. While attorneys are preparing, meet with the judges and instruct them to read over the case and prepare questions for the attorneys. Explain that they should conduct the role play as follows:

a. Allow attorney for Korematsu five minutes to present arguments.

b. Allow attorney for the U.S. government five minutes to present arguments.

c. Allow one minute for rebuttal by Korematsu's attorney.

d. The judge will deliberate and deliver the decision.

e. The judge may interrupt during arguments to ask questions.

5. Conduct the role plays. Make sure groups are spaced so as not to distract each other.

6. Call on each judge for his or her decision and reasoning. Record the decisions on the board.

7. Distribute Handout 5 and read the decision with the class. Debrief the activity using questions such as the following:

a. For those students serving as judges in the simulation, what argument was most compelling in reaching their decisions?

b. Do you think there was sufficient threat to justify the relocation and internment of West Coast Japanese-Americans?

c. Do you believe that the limitation of any civil liberty is justified during wartime? Speech? Press? Due process? Freedom of movement?

d. In the 50 years since this case, demands by minority groups for equal protection and opportunity and the passage of state and federal anti-discrimination legislation have resulted in different public attitudes about discrimination. In light of contemporary standards, do you think the Supreme Court would rule the same way if it heard the Korematsu case today?

e. In 1950, more than $38 million was paid to Japanese-Americans who sued for damages and compensation for loss of property. In 1980 a congressional commission on wartime relocation and internment of civilians was created to investigate the effects of the internment. The commission released a report entitled Personal Justice Denied, which recommended that large sums of money, possibly several billion dollars, be paid in compensation to interned Japanese-Americans or their survivors. Do you think the government should take action on this recommendation? Should the government try to correct past injustices years later with monetary compensation?

In 1988, the U.S. Supreme Court shut the door on a five-year effort to reopen the legal issues posed by wartime detention of Japanese Americans in prison camps. The lawsuit sought billions of dollars in compensation for violation of their constitutional rights as well as for seizure and destruction of property. The Supreme Court let stand a ruling by the U.S. Court of Appeals for the Federal Circuit that dismissed the lawsuit. This was because the lawsuit was not brought within the 6 years period required by law for these types of lawsuits against the federal government.

On August 10, 1988, the U.S. Congress passed a statute that provided compensation, up to a maximum of $20,000 per individual, for Japanese-Americans and resident aliens who are living as of August 10, 1988 and who, during the evacuation, relocation, and internment period, were confined, held in custody, relocated, or otherwise deprived of property or liberty as a result of Executive Order 9066.

To date, the money has not been paid out.

Canada too interned all 22,000 Japanese into internment camp and a debate continues over a proper apology and compensation of former internees.

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FRED KOREMATSU V. UNITED STATES (1944)

In early 1942, America was at war with Japan following the surprise attack on Pearl Harbor. Many Americans feared that Japan might invade the West coast. At this time 112,000 people of Japanese descent lived on the West coast. People feared that some Japanese-Americans would become enemy agents.

Reacting to public pressure, President Roosevelt, with the approval of Congress, issued Executive Order No. 9066 (see next page). This order authorized the military to declare regions of the West coast as military zones. The military could thus relocate inland all people of Japanese descent--both U.S. citizens and aliens alike. These people were to be taken to mass relocation camps. When the order to evacuate went out, Japanese persons were given forty-eight hours to dispose of their homes and all other property that they could not carry with them.

Fred Korematsu was a U.S. citizen of Japanese descent who had lived all his life in California. English was his native language, and he went to typical American public schools. He played and followed American sports, hung around with his classmates--Japanese and non-Japanese alike--at a neighborhood drugstore, listened to the same music and radio programs, and dressed in the same style clothes as his non-Japanese friends. Although some people may have had anti-Japanese feelings, Fred Korematsu never had reason to question his rights as an American citizen. When he received an order to report to a center in preparation for relocation, he refused to go.

Fred Korematsu was twenty-two years old at the time and had a non-Japanese girlfriend whom he did not want to leave. He felt it was unjust and even illegal that he was to be forced into an internment camp. After all, he was a native-born American citizen, and his loyalties were firmly on the side of the United States. He had even tried to enlist in the U.S. Army after the attack on Pearl Harbor but was not accepted.

Korematsu was arrested by U.S. military police and was convicted of refusing to obey the evacuation order. He was given five years' probation and sent to a relocation camp in Topaz, Utah.

Korematsu appealed his case to the U.S. Supreme Court. He argued that Executive Order No. 9066 was unconstitutional because it discriminated against Japanese-Americans solely on the basis of ancestry and without any evidence of disloyalty. He also said that he had been deprived of his Fifth Amendment rights of liberty and property "without due process of law."

Questions for Discussion

a. Was there any evidence that Korematsu was disloyal or a threat to U.S. security? Should the loyalty of individual Japanese-Americans have been considered in this case?

b. America was also at war with Italy and Germany. Why do you think German-Americans and Italian-Americans were not treated in the same manner as Japanese-Americans?

c. Should the government be able to exercise greater power or suspend the Bill of Rights during a time of war? Should it have greater power even when not at war if it is acting in the interest of national security?

EXECUTIVE ORDER NO. 9066

(Issued by the President on February 9, 1942;
passed by Congress on March 21, 1942)

The successful prosecution of the war requires every possible protection against espionage and against sabotage to national defense material, national defense premises, and national defense utilities. Military commanders may at their discretion prescribe military areas and define their extent. From these areas any and all persons may be excluded, and with respect to which, the right of any person to enter, remain, or leave shall be subject to whatever restrictions the military commander may impose at his discretion.

CIVILIAN EXCLUSION ORDER NO. 34

(Issued March 24, 1942)

Those of Japanese ancestry shall:

1. depart from Military Zone One
2. report to and temporarily remain at an assembly center
3. go under military control to a relocation center there to remain for an indeterminate period until conditionally or unconditionally released.

Violation of Exclusion Order No. 34 shall be a misdemeanor payable by $5,000 fine or one year in jail, or both.

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CHRONOLOGY OF EVENTS

December 8, 1941	U.S. declares war on Japan
February 19, 1942	President issues Executive Order No. 9066
February 20, 1942	Lt. General De Witt is appointed Military Commander of the Western Defense Command.
March 2, 1942	De Witt creates Military Zones One and Two on the West coast. Persons or classes of persons as the situation may require will be excluded from Military Zone One.
March 2, 1942	Mr. Korematsu is put on notice that his residence is in Zone One.
March 21, 1942	Congress enacts Executive Order No. 9066.
March 24, 1942	De Witt institutes in Zone One an 8 p.m. to 6 a.m. curfew for all persons of Japanese ancestry.
March 24, 1942	De Witt issues Exclusion Order No. 34.
March 27, 1942	De Witt orders that after March 29 no person of Japanese ancestry will be permitted to leave Military Zone One.
May 3, 1942	Exclusion Order No. 34 is put into effect. Persons of Japanese ancestry are ordered to report on May 8 to a designated assembly center for relocation.

ARGUMENTS FOR PETITIONER, FRED KOREMATSU

1. The orders to evacuate violated the due process rights guaranteed to U.S. citizens by the Fifth and Fourteenth Amendments. Japanese-Americans had lost their liberty and their property without any kind of hearing or trial as required by the Constitution.

2. The order violated the Sixth Amendment procedural due process rights of citizens. There had been no charges against the Japanese-Americans; they were unable to call witnesses on their behalf; they had no attorneys and no juries to hear the facts and determine their guilt or innocence.

3. The order violated the Fourteenth Amendment "equal protection" clause. Japanese-Americans had been treated as a class of citizens rather than as individuals. This action was an act of racial discrimination, which the Fourteenth Amendment was designed to prevent. All citizens of the United States enjoy the equal protection of the law. The order affected thousands of Japanese-Americans who were not involved in sabotage. The government should have gone after those citizens it suspected of spying and not the entire group of Japanese-American citizens. Further, no similar action was taken against the German-Americans or Italian-Americans although the United States was at war with those countries too.

4. The emergency could not be as extreme as Executive Order No. 9066 would lead one to believe. In times of grave national emergency, the President may request a declaration of martial law and citizens' rights may be temporarily curtailed. The President did not do this.

5. It took the government six months to take action to prevent sabotage by Japanese-Americans. The national emergency could not have been as extreme as the government said if it took that long to respond to the "threat."

6. The government failed to prove in any tribunal the disloyalty of Fred Korematsu; therefore, the order is strictly discriminatory. The proper action of the government would have been to conduct loyalty hearings to screen individual Japanese-Americans.

ARGUMENTS FOR RESPONDENT, U.S. GOVERNMENT

1. People of Japanese descent living in the Western United States posed the gravest danger to public safety because the nation was at war with Japan. The government has the power to protect itself and that power must be equal to the danger it faces. The government must protect itself from espionage and sabotage.

2. The removal orders issued by the President were issued with the authority of Congress. Congress had enacted Executive Order No. 9066 into law. When Congress declared war on Japan, it gave the U.S. president power to wage war. When the U.S. wages war, it expects to wage war successfully.

3. The government could not easily or quickly determine who among the 112,000 Japanese-Americans on the West coast were disloyal to the United States. To hold a hearing for each individual would have been impossible; therefore, it was necessary to relocate the entire group.

4. The orders did not violate the Fourteenth Amendment. Precedent for this type of action had been set in a previous case, the Hirabayashi case. In Hirabayashi, the U.S. Supreme Court said imposing an evening curfew exclusively on Japanese-Americans was not a violation of the equal protection clause.

5. The action of the government must be judged solely in the context of war. At any other time, such an action might well be illegal.

THE COURT'S DECISION

The Supreme Court did not announce its decision until December 18, 1944, more than two and a half years after the original evacuation order. The decision went against Fred Korematsu: six justices upheld the military order, and three voted against it. Justice Hugo L. Black wrote the majority opinion, in which he said:

> The military authorities, charged with the primary responsibility of defending our shores, concluded that curfew provided inadequate protection and ordered exclusion....Korematsu was not excluded from the military area because of hostility to him or his race. He was excluded because we were at war with the Japanese empire, because the properly constituted military authorities feared an invasion of our West coast and felt constrained to take proper security measures.

The Court did say that all legal restrictions that curtail the civil rights of a single racial group are immediately suspect and must be rigidly scrutinized, though not all of them are necessarily unconstitutional. The validity of this action under the war power must be judged wholly in the context of war. Like action in times of peace would be lawless.

Disagreeing completely with Justice Black's opinion, Justice Frank Murphy wrote a dissenting opinion and referred to the case as an instance of "obvious racial discrimination." Justice Murphy pointed out that loyalty hearings should have been held to determine whether there was cause to remove individual Japanese-Americans. Those whose loyalty was doubtful should then be removed. But mass evacuation, he said, was in violation of "due process of law."

Justice Murphy and the other dissenters may have been outvoted in the Korematsu case, but in their written opinions they left powerful statements about the basic human and civil rights guaranteed by the U.S. Constitution.

> Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life....All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must accordingly be treated at all times as the heirs of the American experiment and as entitled to all the rights and freedoms guaranteed by the Constitution.

In November 1983, Fred Korematsu appeared before a federal court, which overturned his 1942 conviction.

IMMIGRATION AND REFUGEES

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 2

Use of Outside Resource Persons:

A lawyer who practices immigration law could serve as the judge if the class hold a simulation of an INS hearing. Someone who has been admitted to the U.S. as a political refugee could also participate in the class, and give his or her experiences. An employee from the regional office of Immigration and Naturalization Service might also be available to come and participate in a simulated hearing.

Objectives:

1. Students will examine U.S. immigration policy and the attitude of Americans toward immigrants throughout history.

2. Students will define "immigration," "alien," "refugees," and "persecution."

3. Students will analyze and apply the Refugee Act of 1980.

Materials:

Handouts 1 and 2

Procedures:

1. Write "immigration" on the board, and ask for a definition. Ask what governmental entity is in charge of immigration. Ask what "alien" means.

Immigration is the act of coming to a country of which one is not a native, with the intent of settling there.

The federal government handles all immigration matters. The INS, an agency within the executive branch, is the agency most involved in immigration.

"Alien" is the term used to describe any person who is not a citizen of the United States. Immigrants who have not attained citizenship status are aliens. Immigration laws create two types of aliens:
1) Nonimmigrant or nonresident status is assigned to those persons admitted to the U.S. for a limited time, such as tourists, students, diplomats, and crews of foreign ships;
2) Immigrant or resident alien status is assigned to those persons

desiring permanent residence in this country. Resident alien status is more difficult to obtain. Resident aliens are assigned an immigrant visa, called a "green card" and may live anywhere in the U.S., are protected by all Constitutional provisions that apply to "persons" (as opposed to "citizens"), and may participate in any legal activities within the U.S. They may apply for citizenship after 5 years of residence in the U.S., or 3 years if they are married to a U.S. citizen.

There is another type of alien, the illegal alien, who has entered the country without "checking in" at the border, or remained longer than their visa allowed. Illegal aliens are subject to deportation, unless they can prove that they would be subject to persecution if returned to their country.

2. Ask students what role immigration has played in U.S. history? Ask the students if any of them or their relatives came from another country. List the countries of origin on the board, or indicate on a world map, if one is available.

Except those descended from the Native Americans who were living in North America (estimated to be one million) at the time when Europeans began settling here, all Americans are descended from immigrants.

3. What has the attitude of Americans been toward immigration in the past?[1]

Even though the U.S. was largely populated by immigrants and their descendants, a strong anti-immigrant feeling developed very early in the history of this country. Some have called this attitude the "gangplank mentality."

Ask students what they mean by the "gangplank mentality?

This refers to the attitude of "now that we're here, let's pull up the gangplank so that we don't have to share the wealth with anyone else."

Point out that the "gangplank mentality" was applied to many different groups throughout our history.

Write the names of the following groups on the board as you review the history of the gangplank mentality.

1830's--The Irish arrived in American in large numbers, due to the potato famine in Ireland. They were discriminated against because of their religion. Samuel F.B. Morse, the inventor of the telegraph, published a bitter anti-Catholic book called Foreign Conspiracy Against The Liberties of the United States. He wrote that the "invasion" of the Irish Catholics posed a danger to American freedom, because they would seek to control the U.S. for the Pope. (Not so long ago, in 1960, when

[1] Some information from Bill of Rights in Action, Constitutional Rights Foundation, March 1981.

our first Catholic president, John F. Kennedy, was elected, there was talk that he would be controlled by the Pope.)

The Native American Party (not Native American Indians) was also formed. Supporters of this party called themselves "Nativists," believing that as white Protestant "native" born Americans, they were superior to the new immigrants. (What do you think the Native American Indians had to say about this?) The Native American Party favored the exclusion of all foreigners from public office, and supported a law that 21 years of residence should be required before becoming a naturalized citizen. By 1854, the Nativists had elected 9 governors and numerous members of Congress and state legislatures. However, the Nativists divided over the issue of slavery, and the party eventually collapsed.

1850-1880's--In the 1850's, the Chinese began arriving, drawn by the California Gold Rush, and the construction of railroads. By 1870, there were over 100,000 Chinese living in the U.S., mostly in the West.

An economic depression in 1873 caused high unemployment. Resentment toward the most recent immigrants began to grow. An Irish leader of San Francisco workers, Dennis Kearney, made speeches about the Chinese, ridiculing their customs, language and religion. He ended his speeches with the call: "The Chinese must go!" Congress responded in 1882 by passing a law which stopped further Chinese immigration into the U.S., and preventing Chinese already in the U.S. from becoming naturalized citizens.

1900's--Japanese workers arrived in the early 1900's, encouraged to immigrate by western farmers needing a supply of cheap field labor. Resentment toward these workers also grew, and in 1907, Japanese immigration was limited. Laws were passed limiting Japanese from becoming naturalized citizens and owning land. In 1942, 110,000 Japanese, over half of them native-born Americans, were forced to live in "relocation" camps during World War II.

1980's--Indochinese, Cubans, Jews from the Soviet Union, Eastern Europeans, Arabs, Central and South Americans, Mexicans, and many others are the immigrants of the 1980's and 1990's. Millions of people are currently applying for immigration to the U.S. Many others are entering as refugees (a person leaving his or her own country because of persecution there), and some are entering illegally.

During the Cuban boatlift in May 1980, the Louis Harris poll reported that 69% of Americans believed that President Carter was more wrong than right in admitting the Cuban refugees. At about the same time, a Gallup poll reported that 59% of Americans were opposed to the idea of accepting refugees to this country.

Today, the Neo-Nazi Party, the Aryan Nations, the Ku Klux Klan, and other Klan-type groups oppose the admission of any new immigrants. Calling themselves "100 percent Americans," they advocate violence against blacks, Jews, Asians, Catholics and other immigrants.

4. Pass out Handout 1, an opinion poll about immigration and refugees. Tell students to write "A" for "Agree," "D" for "Disagree," or "U" for "Undecided" beside each statement. Inform students that there are no right or wrong answers, every answer is worthwhile as long as the students can give reasons for their opinions.

Information for Handout 1

a. Persons seeking to immigrate to the United States should have the right to a free attorney to represent them in any court hearings they must attend to be admitted to the U.S.

Those seeking to enter the U.S. are not entitled to the Constitutional guarantees that protect citizens, but they are entitled to an exclusion hearing by statute. The U.S. Supreme Court has held that illegal aliens already present in the U.S. are entitled to the fifth amendment right to due process in a hearing involving the alien's right to remain in the United States. (This applies only to aliens who are already illegally in the U.S. and are apprehended--called "deportable aliens." Those aliens detained at the border before entry are called "excludable," and do not have due process rights).

The fifth amendment right to due process includes a hearing, a right to retain counsel (not at government expense), and possibly the right to a translator. Also, since the sixth amendment right to a free attorney for U.S. citizens has been interpreted by the U.S. Supreme Court to apply only in a criminal case in which imprisonment could occur, and deportation proceedings are civil in nature, this right would not be grounds for free counsel in immigration cases anyway.

Many lawyers and legal organizations offer free (or pro bono) legal assistance to aliens seeking political asylum (the right to stay in the U.S.) in the United States.

b. Only skilled workers, and those likely to find work, should be allowed to immigrate.

Present U.S. immigration policy favors refugees and family reunification over language skills, education and immediate ability to contribute to the economy. Therefore, refugees and immigrants who have family in the U.S. are given priority for entry into the U.S. This policy has received criticism from those who advocate a skills-based system, similar to that used by Canada.

The federal government has a policy to admit "economic immigrants," or those who come to this country in search of better economic opportunities, only to the extent their skills are needed in this country. If the immigrant has a skill that the U.S. has a shortage of, the immigrant is welcomed. Currently, the following occupations are welcomed: physical therapists, professional nurses, and college or university teachers of exceptional ability in the arts or sciences (excluding the performing arts). Also those in religious occupations and managers of international corporations are admitted.

c. Immigrants are taking jobs away from Americans, and that's wrong. They should be prohibited from competing for jobs on an equal basis with American citizens.

This is the opinion of many Americans, and one reason given for discrimination against recent immigrants.

Tell students that discrimination against aliens is a part of our history, but is no longer allowed by law. At this time, review the history of major U.S. Supreme Court cases addressing the issue of discrimination against aliens, which is outlined below

The U.S. Supreme Court first held that aliens, or noncitizens, were entitled to equal protection under the 14th amendment in 1885. In Yick Wo v. Hopkins[2], a San Francisco laundry licensing ordinance was used to discriminate against Chinese who owned laundries, by denying licenses to the Chinese, while granting licenses to white laundry owners. The Supreme Court held that the law was being applied in a way that discriminated against the Chinese, and thus violated the Equal Protection Clause of the 14th amendment.

Still, laws continued to be passed by the states that discriminated against aliens, particularly in the area of employment, and many of these laws were upheld by the courts, under the rationale that a state has the authority to limit the use of its public resources and funds to its citizens. Examples of some of the laws upheld are an Ohio law prohibiting aliens from operating pool halls, a Pennsylvania law prohibiting aliens from being licensed as public accountants, a New York law denying aliens the right to be awarded public works contracts, and a Maryland law prohibiting aliens from selling liquor. Aliens have also been denied the right to cut hair, sell soft drinks, handle animals or corpses or peddle goods--because of "a tendency to cheat customers."

Finally, in the 1940's the U.S. Supreme Court began to strike down some of these laws, beginning with a California law that prohibited aliens from obtaining a fishing license. It was not until 1971, however, that the Supreme Court severely limited the right of states to treat aliens differently than citizens.

In Graham v. Richardson[3], the U.S. Supreme Court held that aliens could not be denied welfare benefits simply on the basis that they were aliens. In Graham, for the first time, the Court classified aliens as a "suspect class." This classification means that laws discriminating against aliens must be examined under the "strict scrutiny" test, which is the strictest test that can be applied under the 14th amendment equal protection analysis. Under the strict scrutiny test, a law discriminating against aliens is unconstitutional unless the state can show that it serves a compelling, or very important purpose or need.

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2 118 U.S. 356 (1885).

3 403 U.S. 369 (1971).

Other "suspect classes" are race and national origin. (The strict scrutiny test is also used if a law interferes with fundamental rights in the Constitution, such as freedom of speech or religion.)

Since Graham, the U.S. Supreme Court has struck down a Connecticut law requiring that an applicant for the Bar (to practice law in a state) had to be a U.S. citizen[4], and a New York law limiting eligibility for college tuition assistance to citizens.[5] The Court has, however, defined an exception to the strict scrutiny test when the law excludes aliens from a political type job (the "political function" exception). In other words, the Court has made an exception that allows aliens to be discriminated against in certain types of occupations. Under this exception, the Court has upheld laws prohibiting aliens from serving as police or "peace" officers, and a New York law that excluded aliens who did not intend to become citizens from being certified as public school teachers.[6]

d. America should admit more immigrants.

According to the Immigration and Naturalization Service (INS), the federal agency responsible for administration of immigration to the U.S., about 10 million immigrants and refugees were legally admitted to the U.S. in the 1980's. This was the largest single decade of immigration in U.S. history.[7] At least twice that number are estimated to have entered illegally.

Those who are studying population trends predict that the population of the United States will begin to decline in about 30 years, unless immigration is increased This prediction is based on the present fertility rate - which is an average of 1.8 and 1.9 children per family.[8]

Ask students what the consequences of this would be?

One consequence would be fewer taxpayers and workers to support the Social Security system.

e. The United States has an obligation to accept a refugee (a person seeking political asylum or safety in the U.S.), if that person would be punished or harmed if returned to their own country.

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948 states that "Everyone has the right to seek and enjoy in other countries asylum from persecution." In 1968,

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4 In re Griffiths, 413 U.S 717 (1973).

5 Nyquist v. Maucles, 432 U.S. 1 (1977).

6 Amback v. Norwick, 441 U.S. 68 (1979).

7 The Washington Post, Section A p.1, May 23, 1990.

8 The Washington Post, Section A p. 18, Editorial, April 7, 1990.

the U.S. became a party to an international treaty, the United Nations Protocol Relating to the Status of Refugees. That treaty prohibits governments from forcibly returning refugees to countries where their life or freedom are at risk because of their race, religion, political opinions or associations, or nationality. Governments may, however, transport the refugee to a country other than their home country.

Throughout its history, the U.S. has accepted those who would face persecution if deported to their home country. Congress fully recognized an obligation to admit refugees from other countries when it passed the Refugee Act of 1980. That law defines "refugee" as any person leaving his or her own country because of a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." The law originally allowed for the admission of 50,000 refugees per year. The President is authorized to increase this number if "justified by humanitarian concerns or otherwise in the national interest." In 1987 the number was increased to 70,000, and over 90,000 in 1989.

f. The United States should accept more refugees from certain countries than others. For example, we should take more refugees from Communist countries.

This was the policy of the U.S. from 1952, when the McCarren-Walter Act was passed, making special provisions for refugees fleeing Communist countries. The Refugee Act of 1980 does not give priority to refugees fleeing from any particular country or ideological system. Statistics show, however, that more refugees are admitted to the U.S. from Communist countries and other countries with governments that our government opposes than from countries that our government supports.

Groups such as Amnesty International claim that the INS is biased against asylum seekers from certain countries, particularly El Salvador, Guatemala, and Haiti.[9]

g. Persons with AIDS should not be allowed to enter the U.S.

Since 1987, persons with AIDS or who are HIV-positive are barred from entering the U.S., unless they are U.S. citizens. (Homosexuals and former drug users are also barred). Those who are applying for resident status are required to take a blood test. Those entering under nonresident status, such as visitors, must declare that they do not have AIDS, but are not tested unless there is "suspicion" they may be infected. Suspicion is triggered if, for example, antiviral medications are found in the person's baggage. A person with AIDS may apply for a 10 or 30-day waiver of this law.

In June 1990, when the Sixth International AIDS conference was held in San Francisco, protests were held condemning this policy. Even

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9 Reasonable Fear, Human Rights and United States Refugee Policy, Amnesty International USA, March 1990.

though the U.S. government agreed to issue waivers to persons intending to attend the conference, conference participants staged a mass rally to oppose the government's policy, and organizers have threatened to move the 1992 meeting, scheduled to take place in Boston out of the U.S. unless the law is rescinded.

The law is part of the INS regulations, and classifies AIDS and HIV-positive as "contagious diseases," along with tuberculosis. Those critical of the law argue that AIDS is not transferred by casual contact or through the air, as is TB. Even the Center for Disease Control in Atlanta has criticized the policy as ineffective, and has called for its repeal.

5. Tell the class that they will now consider the issue of political refugees in more depth. Write "refugee" on the board and ask for a definition.

A refugee is a special category of "forced" immigrant - someone who is subject to persecution in their homeland. Refugees are entitled to special protections, both under international and U.S. law.

6. Ask the class to consider why people would choose to leave their home and go to a strange country? Brainstorm a list of reasons and write them on the board. Refer students to their history books, and ask them to think why settlers originally came to this country.

Possible responses include war - both civil war and war on the immigrant's native land by another country, famine, better opportunities for work or economic advancement, to have religious freedom, to avoid persecution because of political beliefs, to be with family or relatives, lifestyle, (for example some people come because homosexuality is not tolerated in their native country, or because women are treated better here), or simply for adventure.

7. Refer to the list of reasons to leave one's country written on the board. Ask students to point to those that they think should qualify a person to be a "refugee," and therefore entitled to asylum or special protections.

Students will probably mention most of the reasons listed, except economic opportunities, and possibly to be with family.

8. Tell students that the Refugee Act of 1980, which is modeled after the U.N. Convention Relating to the Status of Refugees of 1951, defines refugee as any person leaving his or her own country because of a "well-founded fear of persecution on account of 1) race, 2) religion, 3) nationality, 4) membership in a particular social group, or 5) political opinion."

9. Ask for a definition of persecution.

Persecution is to oppress, threaten or mistreat someone because of their race, religion or beliefs.

10. Compare the five criteria for asylum, or refugee status, to those the students came up with. Students will probably have more reasons than those specified in the law.

Some commentators criticize the U.S. Refugee Act and U.N. definition of refugee because it does not provide protection for those who are fleeing war or civil strife in their home country, especially if the person is "neutral," and not involved politically, and thus not subject to political persecution.

11. Inform the class that they will now consider hypothetical cases of refugees seeking asylum in the United States, using the standards applied by immigration judges when deciding whether to grant asylum. They are to apply the standards on Handout 2 in making their decision whether the individual should be given political asylum.

12. Pass out Handout 2 and review the standards.

13. The hypotheticals can either be done by class as a whole, or in small groups.

14. The class could also hold mock INS hearings, to determine whether the hypothetical applicants should be admitted as refugees. It would be best to go through one of the fact situations first with the whole class, to demonstrate how the standards should be applied.

If you decide to hold a mock INS hearing, it could be done by one group before the entire class, or the class should be divided in groups of 4-6 students. One student should be assigned the role of the INS judge, one student would be the applicant, one student the attorney for the applicant, and one student the attorney for the INS. For some hypotheticals there will be witnesses. Problems of proof will come up, since most people fleeing their homeland will not leave with documentation of their persecution. Often there will not even be any witnesses.

<u>Information about hypotheticals--(Statistics show that more refugees are women, thus three of the hypotheticals are female.)</u>

1) Inez is from a country in Central America that is involved in a bloody civil war. She lived in the city and was a very active member of a labor union involved in peaceful activities for democratic changes in her country. The government has a plan to imprison and torture all known union activists. Some of her friends and fellow union members have been arrested, kidnapped and some have been killed. She has fled to the United States, with papers showing her union activities. She has a witness to testify about her friend who was killed by the government.

Inez should be given refugee status. Applying the test, she has a fear of persecution, it is well founded, it is because of her political

opinion, she has written proof of that, and she is unwilling to return to her homeland.

2) Violeta is from the same Central American country as Inez. She lives with her family in a rural area, making her living by farming. She is not at all involved in political activities. The government has bombed, at random, rural villages in the area where Violeta lives, where rebel soldiers are thought to be hiding. Violeta's parents were killed in one such bombing. She gathers up her family, and flees to the United States. She has no written proof and only her 16 year old son to testify.

Violeta would not qualify for refugee status. Applying the test, she has a fear of persecution, it is probably well founded, but it is not because of one of the five enumerated reasons.

3) Marina is from another Central American country. While she has not been directly involved in political activities, her brother is a known organizer against the government in power. He has been tortured and imprisoned. Her parents, sisters, and brother's wife and children have been either arrested or detained and questioned about her brother's activities. Her sister has not been harmed. While she has not yet been detained, she fears that if she returns to her country, she will be arrested and tortured. Her brother testifies on her behalf about what the government did to him.

These are the facts of the INS v. Cardoza-Fonseca case, decided by the U.S. Supreme Court in 1987. The INS immigration judge found that Marina was not entitled to refugee status. Cases decided by the INS immigration judge are first appealed to the Bureau of Immigration Appeals (BIA). The BIA agreed with the INS judge, and dismissed her appeal. The BIA relied on the facts that Marina's sister, who remained in their country, had not been harmed, and that the government had not yet singled Marina herself out for persecution.

She appealed to the Ninth Circuit Court of Appeals, which reversed the BIA's decision. The INS then appealed to the U.S. Supreme Court, which ruled that the INS had applied too strict a standard, and that an individual's subjective fear of persecution was sufficient to show a "well founded fear of persecution."

4. O'Brien, a member of the Irish Republican Army (IRA), is being sought by the Irish government in connection with bombings by the IRA of a British department store in London. He is seeking asylum in the United States. He has a witness to testify that the government is seeking to arrest him.

O'Brien would probably be classified as a persecutor himself, since he has been involved in terrorist activities and is a member of an organization involved in terrorist activities.

5. Nelson Mandela, a leader of the African National Congress (ANC), a South African group that supports the use of violence if necessary to accomplish its goal of outlawing apartheid in South Africa, seeks

asylum in the United States. He claims that if he is returned to South Africa he will be imprisoned again for his activities on behalf of the ANC. He has witnesses and documentation to support his claim.

Would Nelson Mandela be considered a persecutor or a danger to the security of the U.S. due to his support of violence to achieve his goals? This one is up for grabs.

6. Truro is a 16 year old who has lived in the U.S. for two years while his father went to school. Both were here on student visas. About two weeks before Truro's time to return to his home country, where political turmoil and government suppression of free speech are common, Truro writes a letter to the newspaper, criticizing his home country and declaring his intent to stay in the United States. The ambassador from his country writes him a letter telling him that his actions have broken the law and subject him to criminal prosecution in his home country. Later the ambassador states that no prosecution will take place.

His father, who wants to return to his home country, claims his son is motivated to remain in the U.S. because of his American girlfriend and the educational and economic opportunities.

This is a difficult decision to make. Apparently Truro could be persecuted for his political beliefs if returned to his home country. However, Truro's timing seems to indicate he is motivated for other reasons to remain. If Truro consistently held these beliefs for some time, the judge may decide to grant asylum.

OPINION POLL-IMMIGRATION AND REFUGEES

Directions: Write "A" for Agree, "D" for Disagree, or "U" for Undecided next to each of the following statements. There are no right or wrong answers, every opinion is good when you can give a reason for that opinion.

_____a. Persons seeking to immigrate to the United States should have the right to a free attorney to represent them in any court hearings they must attend to be admitted to the U.S.

_____b. Only skilled workers, and those likely to find work, should be allowed to immigrate.

_____c. Immigrants are taking jobs away from Americans, and that's wrong. They should be prohibited from competing for jobs on an equal basis with American citizens.

_____d. The United States should admit more immigrants.

_____e. The United States has an obligation to accept a refugee (a person seeking political asylum or safety in the U.S.), if that person would be punished or harmed if returned to their own country.

_____f. The United States should accept more refugees from certain countries than others. For example, we should take more refugees from Communist countries.

____g. Persons with AIDS should not be allowed to enter the U.S.

STANDARDS FOR OBTAINING POLITICAL ASYLUM

An individual must show a well-founded fear of persecution on account of:
a. race
b. religion
c. nationality
d. membership in a particular social group
e. political opinion

This definition can be broken down as the following four requirements:

The individual applying for asylum (the applicant) must show:

1) fear of persecution; and

2) that the fear is "well-founded."

These first two requirements must be supported by facts showing that:

The persecutor (usually the government of the home country) knows or could find out that the applicant has a belief or characteristic (such as race) that it wants to overcome, and the persecutor both has the power to and wants to punish the applicant.

3) that the persecution is because of one of the following reasons:
a. race
b. religion
c. nationality
d. membership in a particular social group
e. political opinion; and

4) that the alien is unable or unwilling to return to his or her homeland because of persecution or the well founded fear of persecution.

The individual applying for refugee status has the burden of proving all of these, by a preponderance of the evidence. The U.S. Supreme Court recently held, in INS v. Cardoza-Fonseca[1], that the individual's fear of persecution can be based on his or her subjective mental state, not just objective, provable facts.

Finally, the following are denied asylum:

1) "persecutors" themselves are not eligible for asylum. A persecutor is anyone who ordered or otherwise participated in the persecution of any person on account of any of the five reasons

[1] 107 S.Ct. 1207 (1987).

listed (race, religion, nationality, membership in a particular social group, or political opinion).

2) those who would be a danger to the security or community of the U.S.

WHO SHOULD QUALIFY AS A REFUGEE?

Directions: Read the following cases, and decide whether you think the person should be admitted into the United States, under the Refugee Act of 1980. Apply the Standards for Obtaining Political Asylum in making your decision.

1) Inez is from a country in Central America that is involved in a bloody civil war. She lives in the city and is a very active member of a labor union involved in peaceful activities for democratic changes in her country. The government has a plan to imprison and torture all known union activists. Some of her friends and fellow union members have been arrested, kidnapped and some have been killed. She flees to the United States, with papers showing her union activities.

2) Violeta is from the same Central American country as Inez. She lives with her family in a rural area, making her living by farming. She is not at all involved in political activities. The government has bombed, at random, rural villages in the area where Violeta lives, where rebel soldiers are thought to be hiding. Violeta's parents were killed in one such bombing. She gathers up her family, and flees to the United States.

3) Marina is from another Central American country. While she has not been directly involved in political activities, her brother is a known organizer against the government in power. Her parents, sisters, and brother's wife and children have been either arrested or detained and questioned about her brother's activities. She fears that if she returns to her country, she will be arrested.

4. O'Brien, a member of the Irish Republican Army (IRA), is being sought by the Irish government in connection with bombings by the IRA of a British department store in London. He is seeking asylum in the United States. He has a witness to testify that the government is seeking to arrest him.

5. Nelson Mandela, a leader of the African National Congress (ANC), a South African group that supports the use of violence if necessary to accomplish its goal of outlawing apartheid in South Africa, seeks asylum in the United States. He claims that if he is returned to South Africa he will be imprisoned again for his activities on behalf of the ANC. He has witnesses and documentation to support his claim.

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6. Truro is a 16 year old who has lived in the U.S. for two years while his father went to school. Both were here on student visas. About two weeks before Truro's time to return to his home country, where political turmoil and government suppression of free speech are common, Truro writes a letter to the newspaper, criticizing his home country and declaring his intent to stay in the United States. The ambassador from his country writes him a letter telling him that his actions have broken the law and subject him to criminal prosecution in his home country. Later the ambassador states that no prosecution will take place.

His father, who wants to return to his home country, claims his son is motivated to remain in the U.S. because of his American girlfriend and the educational and economic opportunities.

THE CABINET GAME

Source:

This lesson was originally created by New Mexico Law-Related Education, a program of the New Mexico Bar Foundation and is used with their permission. Adapted by the University of Puget Sound Institute for Citizen Education in the Law.

Class Periods: 1

Use of Outside Resource Persons:

An employee of one of the federal agencies that has offices in the area would be a good resource person for this lesson. For example, the Commerce Department, Health and Human Services, Housing and Urban Development, Justice, and Labor Departments all have offices in Seattle.

Objectives:

1. Students will identify the 14 executive departments.
2. Students will identify how the executive branch of government works.

Materials:

6 copies of Handout 1-Cabinet game clues, cut into pieces, and inserted into 6 envelopes.

14 copies of Handout 2-Cabinet game answers.

Procedure:

1. Xerox six copies of Cabinet game clues, and cut them apart. Put each of the six sets of clues into an envelope. (You may not have six teams, depending on the size of the class.)

2. Xerox 14 copies of the Cabinet game answers. Make 14 signs, one for each of the following executive departments:

Labor	Interior
Transportation	Education
State	Treasury
Energy	Agriculture
Housing and Urban Development	Defense
Health and Human Services	Commerce
Justice	Veterans Affairs

3. Tell the class that the Constitution gives the President of the United States the power to "...require the Opinion, in writing, of the principal Officer in each of the executive Departments...." List the

14 executive departments on the board, and ask students to review their textbooks describing the function of each.

4. Select 14 students to be the secretaries of each of the executive departments in the President's Cabinet. Locate these students in a row on one side of the classroom, with the sign identifying his/her department. Give each Secretary a copy of the answer sheet (Handout 1)

5. Divide the rest of the class into teams of three students each. Assign each team a letter from A-F. Give each team one of the envelopes of clues. Instruct the class as follows:

a. Take a clue from your envelope, read it and decide with your group which department is responsible for conducting that function of the executive branch. Write the answer directly on the clue.

b. Have one member of the team report to the department the team has chosen. The department secretary signs the clue, to show that the team has reported to his/her department, and then checks to see whether that clue is a function of his/her department, from the answer sheet.

c. If the team has chosen the correct department, the Secretary awards that team 5 points on the score sheet, which is at the bottom of each answer sheet. Minus five points are recorded if the choice is incorrect.

d. Those who have chosen wrong may return to their groups to discuss the clue again. They are allowed one more try. Award three points for a second guess that is correct. Do not subtract points for a second incorrect answer. Only two tries are allowed.

e. The game is over when all teams have finished their clues. Each Secretary should tally his/her scores for each team.

6. Tally the scores on a grid, on the board, while each Secretary reads off the points for each group.

CABINET GAME CLUES

a. Our ambassadors work in this department.

b. This department is responsible for coining and printing our money.

c. This department is headquartered at the Pentagon, and it employs over three million people, some of whom are civilians, some of whom are in uniform. They are in charge of the nation's security.

d. The Attorney General is the head of this department.

e. The National Park Service is in this department.

f. This department helps the nation's farmers.

g. This department regulates the flow of goods and services between states.

h. This department enforces the minimum wage law.

i. The Food and Drug Administration is in this department.

j. This department helps the states with their schools.

k. This department helps cities and towns.

l. This department helps set the regulations for airline safety.

m. This department monitors the development and conservation of the nation's power sources, including nuclear fuels.

n. The Internal Revenue Service is in this department.

o. This department represents the government in legal cases.

p. This department directs the food stamp program.

q. This department counts the population of the United States every ten years through its Bureau of the Census.

r. This department inspects places where people work to make sure the workplaces are safe.

s. The Social Security Administration is in this department.

t. This department can regulate how much you pay for a train ride to another state.

u. This department includes the Secret Service which protects the President.

v. The Federal Bureau of Investigation is in this department.

w. The National Weather Service is in this department.

x. This department works with the Indian tribes in the country.

y. This department manages more than 500 million acres of public lands, and is responsible for the protecting fish and wildlife resources.

z. This department operates programs for men and women who have served in the nation's armed forces.

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CABINET GAME ANSWERS

Department of Defense

Over three million people work here, some in the military, some not; they are in charge of the nation's security.

Department of Labor

This department inspects places where people work to make sure the workplaces are safe.

This department enforces the minimum wage law.

Department of Agriculture

This department directs the food stamp program, and helps farmers.

Department of Justice

The Attorney General, who represents the U.S. government in legal cases, is head of this department.

The Federal Bureau of Investigation is in this department.

Department of Housing and Urban Development

This department helps cities and towns.

Department of Health and Human Services

The Food and Drug Administration is in this department.

The Social Security Administration is in this department.

Department of State

Our ambassadors work in this department.

Department of Commerce

This department regulates the flow of goods and services between states.

The National Weather Service is in this department.

This department counts the number of people in the United States every ten years through its Census Bureau.

Department of Energy

This department monitors the development of the nation's power sources, including nuclear fuels.

Department of Education

This department helps the states with their schools.

Department of the Treasury

The Internal Revenue Service is in this department.

This department is responsible for printing and coining our money.

This department includes the Secret Service which protects the president.

Department of the Interior

The National Park Service is here.

This department enforces laws concerning air poilution.

This department works with Indian tribes.

Department of Transportation

This department can regulate how much you pay for a train ride to another state.

This department helps set the rules for airline safety.

Department of Veterans Affairs

This department operates programs for those who have served in the nations' armed forces.

Score Sheet

	Team A	Team B	Team C	Team D	Team E	Team F
+5						
+3						
-5						
TOTAL						

WHAT IS INTERNATIONAL LAW?

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law.

Class Periods: 1

Use of Outside Resource Persons:

A lawyer who represents multi-national corporations would be a good resource person to discuss international law and its implications for American business today.

Objectives:

1. Students will define international law.
2. Students will list 5 problems that are resolved by international law.
3. Students will list the sources of international law.

Procedures:

1. Ask students what international law is. Why should we study it?

The traditional definition of International law is "the principles and rules of conduct that nations commonly observe in their relations with each other." More liberal scholars of international law say international law should also regulate the conduct of individuals and nongovernmental organizations (known as NGOs) such as multinational corporations and human rights organizations.

As transportation improves and nations become more interdependent, the importance of international law grows. We are not just citizens of the United States, but citizens of the world. Global solutions are necessary to many of the problems facing us today.

2. Ask students to list some examples of problems that require an international approach, or that only international law can resolve.

Possibilities are arms control and armed conflict between nations; environmental problems such as acid rain, air pollution, global warming; the use and exploration of ocean resources; international air traffic; control of epidemics; the illicit drug trade; human rights violations; resettlement of refugees; and natural disasters that affect more than one nation, such as earthquakes or floods.

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3. How does international law differ from the U.S. federal law or the law of other individual nations?

In the United States, we have a Constitution that defines the law, and how it will be enforced. There are published volumes of the laws (or statutes) passed by Congress. There are volumes of cases decided by the federal courts interpreting the law. The same is true for each of the states within the United States, and for most other individual nations. There is a centralized government that has sufficient authority and resources to enforce the law.

International law, on the other hand is not defined in any one place. There is no one central authority or enforcer. The United Nations does not govern the member nations, but is more of a forum. The International Court of Justice, commonly known as the world court, can only hear cases that the nations consent for it to hear.

4. Where does international law come from? Where, for example, would you go to find the international law governing fishing rights in international waters, or the seizure of hostages and takeover of the American embassy in Teheran, Iran in 1979, or the invasion of Panama by the United States in December 1989?

There is no one source of international law. Article 38 of the Statute of the International Court of Justice (ICJ) says that the Court should apply the following in deciding international disputes:

(1) international treaties;
(2) international custom, as evidence of a general practice accepted as law; or
(3) decisions of international courts or international organizations.

Treaties or international agreements

Ask students what a "treaty" is.

"Treaty" is the broad term used to refer to international agreements between nations. A treaty can be between two nations (bilateral treaty), or more than two (multilateral treaty). Sometimes treaties are called conventions, which usually refers to formal agreements between more than two nations.

Another useful distinction in discussing treaties is one between "law-making treaties" and "treaty contracts." The first refers to treaties that are intended to lay down rules of law or conduct between nations. The latter are usually treaties between only 2 or a few nations, dealing with some special matter concerning them only. Ask, for example, how a treaty between the U.S. and Canada opening up trade restrictions should be classified. (treaty contract). How about an agreement between 35 nations to limit the killing of whales? (law-making treaty).

When many nations enter into a treaty, they are agreeing to abide by the terms of the treaty. The United Nations Charter is such a law-

making treaty. The 159 member nations have agreed to abide by the provisions of the Charter.

A treaty addresses the issues in all three of the disputes mentioned above. The Convention on the Law of the Seas addresses international fishing rights. While this treaty has not been ratified yet (Some treaties need to be ratified or accepted to be binding), 130 nations voted for it at the international conference which drafted it. The UN Charter discusses the use of armed force against another nation.

Custom

Ask students what a "custom" is.

Customs are habits or practices that have developed over a period of time, so that they are accepted by many people. Examples are men take their hat off when entering a building; Americans eat with a spoon, knife and fork; Chinese eat with chopsticks; Sunday is a day of rest. There are endless examples.

Custom was the primary source of international law until recently, when more law-making treaties have been made. To be accepted as a "custom," a practice must be generally recognized by the international community of states. For example, one of the oldest customary international laws, having its roots in the ancient Greek city-states, is that ambassadors and diplomats are protected from violence or interference when they are within another nation. Many of the laws governing the seas are derived from custom.

Court decisions

Decisions of international courts and even national courts, such as the U.S. Supreme Court form the basis of international law. The International Court of Justice has only heard about 30 cases in its 40 year history, so there is not a lot of precedent (rules that govern later, similar cases) there. (Actually, the ICJ is not bound by its prior decisions, but is free to develop international law.)

Particularly well-reasoned or respected opinions of national courts are sometimes accepted as international law

5. How do we decide if international law has been violated? How is international law enforced?

Since there is no centralized authority or decision-maker, the individual nations, through their ambassadors and leaders, decide whether a violation of international law has occurred. The usual forum is the United Nations.

The UN can formally condemn an action taken by one of its member states, but has no real enforcement mechanisms. The International Court of Justice only hears those cases that the disputants agree to put before it. Its caseload is light as a result. Even when it is determined that a violation has occurred, there are no sanctions.

One legal scholar has called the possibilities:

"reciprocity, retaliation, and relevant expectations. If you scratch my back, I will scratch yours. If you twist my arms, I will twist yours. If you claim a continental shelf along your coastal lines, we will do the same. If you claim a two-hundred-mile fishery zone, we will do the same--we might even claim five hundred miles. In the final analysis, the real policing and stabilizing power comes from the shared perception of common interest. This is the keystone of international law, as in all forms of law.[1]

[1] Lung-chu Chen, An Introduction to Contemporary International Law, 10 Yale University Press 1989.

FOREIGN POLICY AND THE CONSTITUTION

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 1

Use of Outside Resource Persons:

An attorney practicing constitutional law would be an excellent resource to define the executive branch's authority to exercise foreign policy and to describe current controversies in foreign policy.

Objectives:

1. Students will define foreign policy.

2. Students will analyze the Constitution and identify provisions relating to foreign policy.

Materials:

Copy of the Constitution for each student.
Handout 1

Procedures:

1. Introduce the lesson by writing "foreign policy" on the board, and asking for a definition. Ask for examples of foreign policy decisions made by our government. Ask students what branch of government is in charge of foreign policy.

Foreign policy refers to those policies, decisions and actions taken by the U.S. (or any country) on various issues relating to interaction and relationships with other nations.

Foreign policy decisions include the appointment of an ambassador to Nicaragua, approving a foreign aid bill for Israel, the Senate approving the INF treaty between the U.S. and the Soviet Union (which calls for the elimination of intermediate-range nuclear-force, or INF missiles), the Secretary of State announcing a new U.S. policy toward China, approval of a new defense budget, CIA activities--the list is endless.

Students will probably answer that the President is in charge of foreign policy, and today, that is largely true. As we will see after reading the Constitution, the framers gave Congress even more extensive foreign policy powers than it gave to the executive branch, but the President's powers have grown since then.

2. Ask students to describe the U.S. in 1787, in terms of its relationship with the rest of the world.

The United States was not a world power in 1787, when our Constitution was written, but a weak, newly-formed nation, just emerging from the Revolutionary War. War and conflict were frequent in Europe, as European states sought to expand their colonies, establish alliances and balance each other's power. The United States had just succeeded in wresting itself from Britain's colonial empire, but was surrounded by Spanish colonies to the south, and British colonies to the north. Thus, the framers of our Constitution were concerned with foreign policy, but were largely motivated by the fear of European interference.

Good relations with foreign powers was also in jeopardy due to some states' violation of the peace treaty with Britain by expropriating the estates of Loyalists. Other states were refusing to pay debts to foreign countries. A uniform foreign policy for the new federal government was necessary to address these problems.

3. Make sure each student has a copy of the Constitution and ask the following questions. This also could be done as a group exercise, by dividing the class into groups of 3 to 5 students, with groups assigned to either Article I, II, III or IV.

a. Read the Constitution and find any references to the relationship of the U.S. with other nations.

The Constitution's first reference to foreign policy is in Article I, Section 8, which gives Congress the power to tax to "provide for the common defense," "to regulate commerce," "to establish a uniform rule of naturalization," "to define and punish piracies and felonies...and offenses against the law of nations," "to declare war," "to raise and support armies..." and "to provide and maintain a navy." While it is not explicitly stated in the Constitution, the Congress also affects foreign policy through its power over appropriations and taxes, as set forth in Article I, Section 7. For example, Congress could refuse to approve aid to a particular country in a bill supported by the President.

Article I, Section 10 forbids the states from entering into any treaties or "agreements or compacts" with a foreign power, or engaging in war.

The executive's foreign policy powers are found in Article II, Section 2. These include serving as commander in chief of the army and navy; making treaties, with the advice and consent of the Senate, provided that two-thirds of the senators present concur; and nominating and appointing, with the advice and consent of the Senate, ambassadors and other public ministers.

The only mention of foreign policy in relation to the judicial branch is in Article III, Section 2, which states that the judicial power shall extend to cases concerning treaties, and ambassadors and other public ministers. Point out that the Supreme Court has rarely heard cases

about the allocation of foreign policy-making in the Constitution. The Court has held that these cases are political in nature, rather than legal.

Article VI states that the Constitution, the laws of the United States, and treaties made shall be the supreme law of the land.

None of the 26 amendments to the Constitution deals with foreign policy issues.

b. Ask students why the states are forbidden from involvement in foreign policy.

If individual states were allowed to conduct foreign policy, there would be not one foreign policy position, but potentially 50 (or at the time the Constitution was written, 13). States are permitted to enter into compacts and agreements with other nations, with the consent of Congress. Such agreements include the agreements of New York and the city of New York with the United Nations about the UN headquarters there, and agreements between states bordering Canada about bridges and highways crossing the border.

c. What were the framers worried about as far as foreign policy?

War and treaty-making are the foreign policy issues that were of most concern to the framers. Put another way, foreign policy in 1787 consisted primarily of "making or not-making war and making or not-making treaties."[1]

Point out that the treaty-making provision in Article II is cumbersome, requiring two-thirds of the Senate to ratify any treaties made the President. This was so that alliances would not be entered into lightly. Later, Jefferson wrote: "On the subject of treaties, our system is to have none with any nation, as far as can be avoided."

d. From a reading of the Constitution, what branch of government seems to have the most foreign policy powers?

Congress has the most enumerated powers relating to foreign policy.

d. Does this match how our foreign policy today is conducted? Why or why not?

No. Since Washington, presidents, with few exceptions, have sought to expand their foreign policy powers. Through the years, Presidential authority in foreign policy-making has grown, while the power of Congress has weakened. The President as the organ of communication with foreign governments, declares foreign policy. Through the appointment and receiving of ambassadors, s/he has control of the channels of information. The President is one person, and

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[1] Louis Henkin, Foreign Affairs and the Constitution, 34. Norton Press 1975.

is always "in session," while Congress is a large, unwieldy body, not always immediately available and able to act quickly. Decision-making by Congress takes time, while the President can take action promptly. An example is President Kennedy's handling of the Cuban missile crisis in October 1962. With the discovery that the Soviet Union was placing some 40 nuclear missiles in Cuba, the President called for a "quarantine" on all ships carrying offensive weapons to Cuba. He acted before Congress had taken any action. Some considered his action to be almost the same as a declaration of war.

The President has also appropriated additional foreign policy powers through "executive agreements"-which are like treaties, but without the approval of the Senate. These are not mentioned in the Constitution, but the U.S. Supreme Court ruled that they have the force of international law. If the appropriation of money is necessary to carry out the agreement, however, Congress will have to approve that appropriation.

e. How does the Constitution divide war-making between the Congress and the President?

The Constitution leaves the power to declare war to Congress. During the Constitutional Convention, Mr. Madison and Mr. Gerry moved to insert "declare," striking out "make" war. This gave the President the power to defend the country if suddenly attacked.

f. Write on the board "make war," and cross out "make" and replace with "declare." Ask students what difference does it make that Congress has the power to "declare" war, but not the power to "make" war?

Explain that the change from "make" war to "declare" war divided the war-making power between the President and Congress. Congress has the power to declare war, to raise and support the armed forces, and to enact all measures necessary for executing declarations of war.

Article II, Section 2 makes the President the commander in chief of the army and navy..., when called into actual service of the United States...." Therefore, the President has the power to direct war once it is declared by Congress.

Point out that the President's war-making (and foreign policy-making) powers have expanded over the years. As the representative of the United States in dealings with foreign countries, the President declares foreign policy and receives ambassadors. The President also can take action more quickly than Congress, as when President Kennedy immediately called for a "quarantine" on all ships carrying offensive weapons to Cuba during the Cuban missile crisis in October 1962.

g. Must Congress declare war before force can be used against another country?

History has shown that force can be used against another country without Congressional approval. Through interpretations of the

Constitution, it has become fairly clear that the President has the power to use force without Congressional authorization (1) to repel sudden attacks, (2) to protect American rights and interests abroad and (3) to fulfill any obligations created by treaties.

4. Write the three reasons listed above on the board and ask students to identify any recent instances of the President's ordering troops into foreign countries without authorization of Congress. What was the justification in each instance?

Students might mention the invasion of Panama on December 20, 1989, the March 24-25, 1986 attacks on Libyan naval and land-based missile forces; the October 25, 1983 invasion of Grenada; and the sending of troops to Lebanon in the early 1980's. The justifying reasons for each invasion were to protect American rights and interests abroad.

The President can also use force to fulfill treaty obligations. For example, the North Atlantic Treaty Organization (NATO) established a mutual security agreement that makes an attack on one of the members an attack on all. So if Great Britain were attacked by another country, the President has the constitutional authority to use force in defense of Great Britain against the attacking country without requiring Congress to pass a statute or joint resolution. Point out that the President must have the approval of 2/3 of the Senate to make a treaty in the first place.

5. Inform students that in recent years, Congress has attempted to pass statutes to define when the President may order the armed forces to use force. Ask if anyone knows the name of the law limiting the President's war-making powers.

Write "War Powers Act" on the board. Inform students that many view the War Powers Act as an attempt by Congress to reassert its Constitutional power to declare war, and remove war-making from the executive branch of government.

Basically, the War Powers Act requires that before American troops can be sent into hostilities or situations where hostilities are about to occur, the President is to consult with Congress in every possible instance. After the troops are sent in, when there has not been a declaration of war, the President must send a report to Congress within 48 hours. Involvement of the troops must be terminated in 60 days - or in special circumstances 90 days - unless Congress has taken action to approve it. Congress can end the involvement before 60 days by passing a resolution in each house. This does not require the President's signature and therefore is not subject to veto by the President.

6. Pass out Handout 1 or display it on an overhead projector. Ask students to find where in the Constitution the President is given the constitutional authority to take each of these actions without Congressional approval.

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Answers to Handout 1

a. Request Canada to mediate a problem with Iran.

Yes. Article II, Section 2 gives the President the authority to appoint ambassadors, and as a result to seek friendly solutions to problems with other countries.

b. Order out of the United States all diplomats from a country committing an unfriendly act against the United States.

While there is no express constitutional provision, the President may do this without Congressional approval.

c. Impose sanctions against South Africa.

There is no constitutional authority for the President to do this without Congressional approval. In 1977, Congress passed the International Emergency Powers Act permitting the President to punish other countries. President Carter first invoked the act during the Iranian hostage crisis of 1979 and 1980, to freeze Iranian government assets in the U.S.

d. Order the United States Minister to China not to pay money owed to China in the amount acknowledged by the Chinese government to be owed to an American citizen in China.

There is no specific constitutional authority for this action, but it can be implied from the President's power to appoint ambassadors, and would not require Congressional approval.

e. Send aid to the *contras* in Nicaragua.

The President does not have the authority to authorize monetary aid. Only Congress has appropriation powers. President Reagan, however, strongly supported aid to the Nicaraguan rebels, who were trying to overturn the Sandinista government, with its close ties to the Soviet Union. In 1982, Congress passed what came to known as the "Boland Amendment," a series of laws restricting and then prohibiting U.S. support of the contras. Reagan signed the law, but voiced his disapproval of it. Some called the Boland Amendment an attempt to make the members of Congress 535 Secretaries of State, and claimed that Congress was interfering in an area that was "clearly" the President's realm.

The Iran-Contra affair that became public in 1987 was an attempt by some members of Reagan's administration (Oliver North, John Poindexter and others) to get around the Boland Amendment, and secretly continue to support the contras.

f. Order United States troops to occupy Panama.

The President does not have the power to declare war, but under Article II, section 2, he is the Commander in Chief of the armed forces.

Under the War Powers Act, the President must notify Congress before sending American troops into another country, whenever possible.

When President Bush ordered American troops to invade Panama on December 20, 1989, he did notify Congress, after the invasion had already taken place.

7. Additional activity for advanced students: Pass out Handout 2, and ask students to decide whether the Boland Amendment was constitutional.

Was the Boland Amendment Constitutional?[2]

From October 1984 to December 1985, the Boland Amendment required that "no funds available" to the Defense Department, CIA, or "any other entity of the United States involved in intelligence activities" could be spent to support "directly or indirectly, military or paramilitary operations in Nicaragua."

Opponents of the Boland Amendment argued that Congress unconstitutionally invaded the president's right to command the nation's defense, as well as lead the country in foreign affairs. However, the constitutionality of the Boland Amendment was never legally challenged in the courts. In this activity, students examine both sides of the controversy and then decide if the Boland Amendment was constitutional.

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2 From Bill of Rights in Action, Constitutional Rights Foundation, Spring 1988.

THE PRESIDENT AND THE CONSTITUTION

Does the President have the constitutional authority to take each of these actions without the approval of Congress?

a. Request Canada to mediate a problem with Iran.

b. Order out of the United States all diplomats from a country committing an unfriendly act against the United States.

c. Impose sanctions against South Africa.

d. Order the United States Minister to China not to pay money owed to China in the amount acknowledged by the Chinese government to be owed to an American citizen in China.

e. Send aid to the ***contras*** in Nicaragua.

f. Order United States troops to occupy Panama.

WAS THE BOLAND AMENDMENT CONSTITUTIONAL?

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Opponents of the Boland Amendment argued that Congress unconstitutionally invaded the president's right to command the nation's defense, as well as lead the country in foreign affairs. However, the constitutionality of the Boland Amendment was never legally challenged in the courts. In this activity, you will examine both sides of the controversy and then decide if the Boland Amendment was constitutional.

Write two paragraphs of about 100 words supporting both of the following topic sentences:

Topic Sentence 1:

The Boland Amendment was constitutional since Congress had the right to limit the president's actions in Nicaragua.

Topic Sentence 2:

The Boland Amendment was unconstitutional since it violated the president's right to command the nation's defense and lead the country in foreign affairs.

THE CONSTITUTION, TREATIES AND INTERNATIONAL LAW

Source:

Written by University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 1

Use of Outside Resource Persons:

An attorney working in international law or the constitution could assist in describing current disputes over treaty compliance by the United States.

Objectives:

1. Students will analyze the Constitution and its provisions relating to international law.

2. Students will analyze whether the United States abided by its treaty obligations under the United Nations charter.

Materials:

Handout 1
Copies of the Constitution

Procedures:

1. If you have not done Lesson 2, Foreign Policy and the Constitution, with your class, do that lesson now. The students look for references to foreign policy in the Constitution. (Instructions and answers for this are in # 2 a. and b. of Lesson 2).

2. Ask students what the Constitution says about international law. (If you have not Lesson 1, first define international law -- "the principles and rules of conduct that nations commonly observe in their relations with each other."

The Constitution gives treaties the authority of domestic law. Article VI of the Constitution provides that treaties, along with the Constitution and laws of the United States will be the supreme law of the land. The Supreme Court has interpreted this to mean that treaties have the same force as laws passed by Congress. When a treaty comes into conflict with a law passed by Congress, the one that came later in time will be given effect. This, in effect, means that Congress can pass a law denouncing a previous treaty. This would not, however, relieve the U.S. of its international obligations under the treaty.

The Constitution also gives Congress the power to punish "offenses against the law of nations." This is a reference to international law, including both treaties and principles of customary international law, and implies that the framers intended that our government adhere to international law.

3. Ask students what if our government wishes to take an action in violation of international law? One that is in violation of the United Nations Charter, for instance? Pass out Handout 1, a copy of the U.N. Charter, or use an overhead projector. Ask if they can think of any examples of actions taken by our government that were in violation of international law.

Tell students that when the United States invaded Grenada in October 1983, and bombed Libya in April 1986, it was faced with accusations that its action was a violation of international law and the U.N Charter. Also, the United States invasion of Panama in December 1989 was considered by some to be a violation of international law.

The Charter, in Article 2(4), provides that:

> All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

Article 51 provides:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

4. Give students a few minutes to read the Charter, and then read aloud the following hypotheticals. Ask if the action taken is a violation of the U.N. Charter.

a. Pakistan threatens to send armed troops into northern India, where a border dispute between the two countries is taking place.

The Charter, in Article 2(4), says that members shall refrain from the threat of force. Unless Pakistan is acting in self-defense to an armed attack, this is a violation of the Charter.

b. India responds by bombing a Pakistani border town.

This is a violation of the Charter. Pakistan has only threatened to invade India. The right of self-defense is only when there has been an armed attack.

c. The United States invades Grenada to protect American medical students.

This was a violation of the U.N. Charter.

Under the Reagan administration, the U.S. found itself at odds with international law more than once. The United States did not find much support among its fellow states at the U.N. after its invasion of Grenada. On November 2, 1983, the U.N. General Assembly voted 108 to 9 for a resolution deploring the U.S. "armed intervention" in Grenada and calling for the immediate withdrawal of troops. Israel, El Salvador and 6 Caribbean nations were the only countries to join the U.S. in opposing the resolution.

U.N. Ambassador Jeane Kirkpatrick defended the U.S. action, stating that the U.S. action was to save American lives, restore order to the island, and was at the invitation of Grenada's Governor General and Organization of Eastern Caribbean States. She also pointed out that the invasion was supported by an overwhelming majority of the people of Grenada and neighboring states. The action was also widely supported by U.S. citizens.

5. Ask students whether these provisions conflict with the U.S. Constitution, which gives Congress the right to declare war, and the President's power to send troops abroad as Commander in Chief.

The effect of these provisions of the U.N. Charter is to deny the President's power to send troops abroad and the Congress' power to declare war, unless it is in self-defense, as described in Article 51. One international law scholar has described this quandary as "Both the Congress and the President continue to have their powers - though not the right under international law - to declare war, use force or otherwise act in violation of the UN Charter, as they can disregard other international obligations."[1]

In 1984, following the mining of its harbors by the CIA, Nicaragua filed a complaint against the United States in the International Court of Justice (ICJ), or World Court, charging U.S. efforts "to coerce and intimidate" Nicaragua by attacks on "air, land and sea" through its support of the Contra forces fighting the Sandinistas. The U.S. called for a halt to the suit, and charged that the World Court was not the proper forum for the dispute. The Court ruled that it had jurisdiction of the case, and the U.S. then withdrew itself, stating the case presented political questions, not proper for the Court to hear. The Court

[1] Louis Henkin, Foreign Affairs and the Constitution, Norton Press (1975).

continued to hear the case in the absence of the U.S., and in June 1986 issued an order denouncing the U.S. sponsored military actions against Nicaragua and U.S. support for the Contras as a violation of the UN Charter ban on the use of force. (Article 2(4)).

On April 16, 1986, the U.N. General Assembly also condemned the U.S. bombing of Libya, by a vote of 79-28. There, the U.S. defended its actions by portraying Libya as the source of a "worldwide terrorist campaign" and said its attack on Libya was an act of legitimate self-defense permitted by the U.N. Charter.

6. Review with students the events of December 20, 1989, when the U.S. invaded Panama.

A few hours after ordering U.S. troops to invade the country of Panama, President Bush explained that General Manuel Noriega had declared "a state of war with the United States and publicly threatened the lives of Americans in Panama." This, he said, had been followed by the murder of an unarmed American servicemen by Noriega's forces and beatings and harassment of others. He added that, as General Noriega's "reckless threats and attacks upon Americans in Panama" had created an "imminent danger to the 35,000 American citizens in Panama," he as President was obligated to "safeguard the lives of American citizens."

On January 3, 1990, when Noriega had turned himself in to U.S. military authorities in Panama and was enroute to Homestead Air Force Base in Florida, President Bush declared that he had accomplished all four objectives for which he had ordered U.S. troops to Panama. These were: "To safeguard the lives of American citizens, to help restore democracy, to protect the integrity of the Panama Canal Treaties, and to bring General Manuel Noriega to justice." President Bush called the invasion "Operation Just Cause."

7. Ask students to read Handout 2, opposing opinions about the U.S. invasion of Panama in December 1989. Ask those who agree with Opinion A to go one side of the room, and those who agree with Opinion B to go to the other side. Ask each group to select a Reporter, and identify the most persuasive arguments for their view, and to rank them in order of persuasiveness. Encourage students to add any other arguments of their own. When asking for feedback from the groups, alternate from Group A to Group B, allowing each side to give its arguments. (The first opinion is that of George McGovern, and is excerpted from an article by McGovern appearing in the Washington Post on January 16, 1990. The second is a conglomeration of viewpoints, from Law Review articles, and letters to the editor.)

8. Tell students that the James Baker III, Secretary of State, defended the U.S. actions in Panama by stating that the U.S. was exercising its inherent right of self-defense under Article 51 of the U.N. Charter.

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9. Why should the United States, or any nation obey international law?

The Constitution, as discussed earlier, implies that the U.S. government should adhere to international law. The division between the Congress and the President of foreign policy powers makes each branch a watchdog over the other's actions.

Self-interest also is an incentive, since if the U.S. does not abide by its treaty promises, it can not expect other countries to honor theirs.

Also, abiding by international law contributes to a stable international environment, which is in the interest of all countries.

Finally, there is what might be called the "international equivalent of peer pressure to abide by international law, or what Law Professor M.F. Zoller has defined as the traffic-light paradigm. Most people, she says, do not run through traffic lights. Partly this is out of fear of the police. But mainly it is because everybody stops at lights and everyone expects you to. States more often than not comply with international law, but they do so because everybody does."[2]

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[2] Quoted in Great Decisions 87, Foreign Policy Association, p.12.

UNITED NATIONS CHARTER

The United Nations Charter, in Article 2(4), provides that:

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> Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

OPINION A

Like Grenada in 1983 and a dozen other 20th century American invasions of defenseless little countries to the south of us who needed to be taught proper conduct, the invasion of Panama seems to be good for public morale.

Seemingly, the Panamanian invasion is popular with the political establishment, most of the press and much of the American public -- as it is with some Panamanians. "A political jackpot," said a jubilant Lee Atwater, chairman of the Republican National Committee. Only slightly less jubilant in their praise of the great courage and wisdom of President Bush in ordering the invasion (without consulting them) are the Democratic and Republican congressional leaders....Pollsters are reporting that Mr. Bush has finished his first year in office with higher ratings than any of his three predecessors, and that the invasion of Panama has erased the "wimp" image of a weak president.

Nonetheless, this invasion was illegal and mistaken on all important counts. History, I believe, will so judge it, possibly in the near future. The president acted in violation of international law, of the U.N. Charter and of the Charter of the Organization of American States -- to say nothing of our own Constitution.

The people of Poland, Czechoslovakia, East Germany, Bulgaria and Romania lived under military dictatorships every bit as repressive as Noriega's. But they finally said, "We've had enough. Get out of the way, Mr. Dictator." And the dictatorships have collapsed in rapid succession from Warsaw to Bucharest. This should have been the formula for removing Noriega -- by the Panamanian people, not by the sacrifice of American soldiers and American principles.

Consider the contrasting images of Eastern Europe and Panama that filled our television screens in the wake of huge multitudes singing and dancing in the streets and placing Christmas trees in the gun muzzles of tanks. In Panama, the street scenes were of looters and opportunists taking advantage of the chaos, while America prepared to pick up the bill to underwrite the reconstruction of the country. The whole world rejoiced over the liberation of Eastern Europe. But the Organization of American States -- the U.S. dissenting -- voted unanimously to condemn the American invasion of Panama.

As I consider the long overdue ending of the Cold War and the incredible changes now taking place in Eastern Europe -- partly as a result of Gorbachev's courage in criticizing existing policies -- I can't help wondering if we do not need a little of this critical self-appraisal and reform here in our own land.

OPINION B

We are told by critics that the invasion of Panama was a violation of international law, though international law is a cloudy concept that hardly corresponds with the laws that a democratic people impose and enforce on themselves. It is much harder to tell what is lawful under international law than under national law, as international law derives from so many conflicting sources -- custom (what nations have actually done); treaties (like the charters of the United Nations and the Organization of American States); scholarly texts and judicial decisions.

More important, to say international law means that one people cannot go to the rescue of another is as logically and morally misguided as to say that I cannot step onto my neighbor's property to prevent him from beating his child with a baseball bat.

Noriega has given us enough reason to legally intervene by nullifying an election that all observers say he lost, and then causing his hand-picked assembly to elect him as the "Maximum Leader" on Dec. 15, 1989. Panama Defense forces began to harass American military personnel, killing one on Dec. 16, 1989, and injuring another. Having taken these actions, the Noriega regime has no valid legal complaint when the nation it declared war against responds by using military force.

All these grumblings about Panama cannot alter one fact that even the most grudging reporters - including non-U.S. journalists - have admitted: the overwhelming support of the invasion by the Panamanian people themselves. And since Panama is the Panamanian people, it is clear that the United States didn't violate Panama's sovereignty; Noriega did. This country restored Panama's sovereignty.

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CLAIM YOUR JURISDICTION GAME

Source:

The concept for this lesson was originally created by New Mexico Law-Related Education, a program of the New Mexico Bar Foundation and is used with their permission. Adapted by the University of Puget Sound Institute for Citizen Education in the Law.

Class Periods: 1

Use of Outside Resource Persons:

A judge, lawyer or court clerk would be a good resource person for this lesson.

Objectives:

1. Students will list the levels within the judicial system.
2. Students will identify the courts in the federal and state systems, and which court would handle a particular type of case.
3. Students will list the differences between federal and state court jurisdiction.

Materials

Handout 1

8 Signs saying "Claim" on one side and "Do Not Claim" on the other side

Procedures:

1. Explain the structure of the federal and state courts to the class. Begin by putting the following diagram on the board, pass out Handout 1, or use an overhead projector. (Handout 1 includes the same information, in an abbreviated form.)

Federal cases	Local and State Cases
US SUPREME COURT	WASHINGTON SUPREME COURT
U.S. COURT OF APPEALS, NINTH CIRCUIT	COURT OF APPEALS, DIVISIONS I, II, III
U.S. DISTRICT COURTS FOR EASTERN AND WESTERN WASHINGTON	SUPERIOR COURTS
	DISTRICT COURTS & SMALL CLAIMS COURTS
	MUNICIPAL COURTS

2. Ask students: what is the difference between trial and appellate courts?

Trial courts hear testimony, consider the evidence, and decide the **facts** of the case. A trial court may sit with or without a jury. Once a trial court has decided the case, the losing party may **appeal** the case to an appellate court. Usually the appellate court can only decide whether the trial court made an error in applying the **law** in the case. The appellate court must apply the facts as they were decided by the trial court. There are two levels of appellate courts in both the federal system (the Court of Appeals and the U.S. Supreme Court) and in Washington State (the Court of Appeals and the Washington Supreme Court).

The **federal** court system consists of the U.S. Supreme Court, the twelve Courts of Appeals (Washington is in the 9th Circuit), and the federal District Courts.

The District Courts are the federal trial courts. Washington has two District Courts, one for Eastern Washington, located in Spokane, and one for Western Washington, located in Seattle. The District Court for Western Washington also sits in Tacoma.

The Washington Supreme Court is the state's highest court. The decisions of this court set the law for all the other state courts in Washington.

The Washington Supreme Court can hear

* cases of habeas corpus (challenging custody) and other writs, and

* appeals of cases except of civil actions where the value in controversy is less than $200 (unless a tax, duty, assessment, toll or municipal fine or concerns the validity of a statute).

Generally, cases are appealed from Superior Court to the Washington Court of Appeals in the appropriate Division, and then to the State Supreme Court. Sometimes though, a case has such broad public interest and requires a prompt and final decision by the Supreme Court that it will go directly from Superior Court to the State Supreme Court.

Appeals where the death penalty has been ordered go directly from the Superior Court to the Supreme Court. Appeal directly from Superior Court to the Supreme Court is also permitted when the case involves a state official, when a trial court has ruled a statute or ordinance is unconstitutional, and when conflicting laws are involved.

The Courts of Appeals hear most cases appealed from Superior Court. Each case is decided only after a transcript (written record of everything that was said in the trial proceedings in Superior Court) is reviewed and oral and written arguments, called briefs, have been considered. No witnesses testify in appeals cases.

Superior Courts are found in each of Washington's 39 counties. These courts have the authority to hear all types of civil and criminal trials and to act as appeals courts for cases from district and municipal courts. They are the only state courts that can hold trials for civil cases involving over $10,000, title or possession of land (real property), legality of a tax, impost, assessment, or toll, probate and domestic relations matters, felonies, juvenile cases and appeals from municipal and district courts. Because there is no limit on civil and criminal cases, they are called general jurisdiction courts.

The Superior Courts hear actions, including

* the ownership of real property (land)
* civil cases involving value of $300
* felony cases
* misdemeanor cases not assigned to other courts
* insolvency proceedings
* nuisance actions
* probate
* dissolution and annulments
* naturalization
* writs

Courts of limited jurisdiction, which include district courts (the Small Claims Court is a district court), municipal courts and police courts, can only hear certain types of cases. Courts of limited jurisdiction hear eight out of every nine legal cases filed in state court. This is mainly because traffic violations and misdemeanor cases are heard in these courts.

District courts can hear criminal traffic cases and traffic infractions. The maximum penalty for traffic infractions is $250 fine, and no jail penalty may be imposed.

They may also hear criminal and gross misdemeanors and preliminary hearings for felony cases. Those convicted of violations may be sentenced up to $1,000 in fines, a year in jail, or both.

The Small Claims Department of the District Courts is limited to money claims of $2,000. These are filed and heard in District Court by District Court judges. People represent themselves without attorneys and witnesses generally cannot be compelled to come to court.

When individuals violate municipal or city ordinances, the cases are tried in municipal and police courts. A judge may impose fines of up to $1,000, a year in jail or both. Some cities arrange to have their district court handle these types of cases.

3. Write the word jurisdiction on the board. Ask the class what this word means.

Explain that the derivation of the word "jurisdiction" is from Latin, "to say the law." When a court has jurisdiction of a case, that court has the **power** to hear that case. The jurisdiction of the federal courts is

defined by the Constitution, and by Congress. The jurisdiction of the state courts is defined by our state Constitution and Legislature.

The federal courts are courts of **limited jurisdiction**. Article III section 2 of the Constitution empowers the federal courts to hear only cases involving certain subject matters or certain persons. This is called "subject matter jurisdiction" and "jurisdiction over the parties."

Cases involving the following **subjects** may be heard by federal courts:

a. cases arising under the Constitution

b. cases arising under the laws of the United States, and treaties

c. cases of maritime or admiralty jurisdiction (which means cases arising on the navigable waters of the U.S. or the high seas, or directly related to maritime matters).

Cases involving the following **parties** may be heard by the federal courts:

a. The United States and one of its officers

b. An ambassador or consul or official of a foreign government

c. One state suing another state, or a citizen of another state

d. Citizens of a state, or a state suing a foreign government or foreign citizen

e. Citizens of different states suing one another This last type of jurisdiction, called diversity jurisdiction is the most commonly used, and Congress has passed a law requiring that at least $10,000 must be involved in the case before the federal court has jurisdiction.

(There are a few other types of jurisdiction over parties, but the above are the most common).

State courts have jurisdiction of all other matters. State courts share jurisdiction of most of the above types of cases with the federal courts, except in certain areas where the federal courts have **exclusive** jurisdiction, such as a case involving an ambassador, patents and copyrights or violations of a federal law.

4. Announce to the class that you will be playing a game. Divide the class into the following groups:

Small Claims Court, Pierce County, Washington

Tacoma Municipal Court

Superior Court for Pierce County, Washington

Washington State Court of Appeals, Division I

Washington Supreme Court

U.S. District Court for the Western District of Washington

U.S. Court of Appeals, Ninth Circuit

U.S. Supreme Court

5. Have each group make a sign identifying its court.

6. Explain that you will read a number of cases. Each group will caucus and decide whether their court has jurisdiction to hear that case. After a minute, ask the groups to hold up their signs either claiming or not claiming jurisdiction of the case. Teams get three points for correctly claiming jurisdiction, one point for correctly not claiming jurisdiction, and a minus three points for incorrectly claiming or not claiming jurisdiction.

7. Keep track of the score on the board.

Cases and answers

a. Martha shoots and kills her husband in Pierce County, Washington. (Superior Court)

b. Leroy's landlord refuses to return his damage deposit of $300 when he moves out of his apartment, even though the apartment is in excellent condition. (Small Claims Court).

c. Frank has been convicted of murder in Pierce County Superior Court and his sentence is the death penalty. He appeals his case. (Washington Supreme Court)

d. Charlene is accused of burning the American flag in front of the Post Office in Seattle. (U.S. District Court for the Western District of Washington

e. Charlene is convicted under the federal flag burning statute, and appeals her conviction. (U.S. Court of Appeals or U.S. Supreme Court.)

The usual route of appeal from the U.S. District Court is to the Court of Appeals. In certain cases, such as the flag burning case, where a speedy resolution of an issue by the U.S. Supreme Court is warranted, the U.S. Supreme Court will hear the appeal directly. This is what happened in the Seattle flag burning case.

f. Martha appeals her conviction for murder in the second degree. She is sentenced to 20 years. She appeals her conviction. (Washington Court of Appeals)

g. Al is being tried for robbing a federal savings and loan. (U.S. District Court)

h. Kelly gets a ticket for speeding 75 in a 55 mile zone in the city of Tacoma. (Tacoma Municipal Court)

i. Yolanda was in a car accident in which she injured her neck. She claims that Steve, the driver of the other car was at fault. She claims damages of $10,000. Steve's insurance company refuses to pay the claim. (Pierce County Superior Court)

j. Regina buys a new tape deck for her car at Tunetown in Tacoma After she has used it for two weeks, it breaks. Schmidt refuses to repair the deck, or give her a new one. Regina brings a case against Tunetown to recover the $500 she spent on the tape deck. (Pierce County Small Claims Court)

k. Arnold was convicted of burglary in the first degree by a jury. He appeals his conviction. (Washington Court of Appeals)

l. The U.S. District Court for the Western District of Washington rules that the state initiative to terminate mandatory busing violates the equal protection clause of the U.S. Constitution. The state of Washington appeals. (U.S. Court of Appeals, Ninth Circuit)

m. The Court of Appeals for the Ninth Circuit has upheld the U.S. District Court's ruling that the state initiative to terminate mandatory busing is unconstitutional (U.S. Supreme Court)

n. The Pierce County Superior Court rules that the new Tacoma anti-loitering ordinance is unconstitutional. The city appeals this decision. (Washington Supreme Court)

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FEDERAL AND STATE COURTS

Federal cases	Local and State Cases
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U.S. COURT OF APPEALS, NINTH CIRCUIT	COURT OF APPEALS, DIVISIONS I, II, III SUPERIOR COURTS
U.S. DISTRICT COURTS FOR EASTERN AND WESTERN WASHINGTON	DISTRICT COURTS & SMALL CLAIMS COURTS
	MUNICIPAL COURTS

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A CURRENT POLITICAL ELECTION AND ITS RELATIONSHIP TO THE TWO-PARTY SYSTEM

Source:

Adapted by UPSICEL from a lesson developed by Jerry Thorpe, Wilson High School, Social Studies Dept., Tacoma, Washington.

Class Periods: Outside class assignment

Use of Outside Resource Persons:

This lesson requires students to work with outside resource persons: candidates, political parties, area coordinators and others. Additionally, students are required to arrange for a presentation in class.

Objectives:

1. Students will identify the steps by which candidates for office are elected and the influence of the two-party system.

2. Students will use presidential, congressional, state executive or legislative branch contests from which to gather data.

Procedures:

1. Assign each student to select a political contest that is of particular interest. Examples include the U.S. President, U.S. Senator or Representative, State Governor, State Superintendent of Public Instruction, State Attorney General, and state Senator or Representative.

2. Teacher should assign students this report at the conclusion of the primary election, or immediately, if the student is covering the presidential race.

3. Students will study both the Democrat and Republican candidates for the position selected and will write a report that includes:

A. Information About the Candidates

(i) Background: education, age, occupation and religion;

(ii) Important issues identified by each candidate;

(iii) Describe how each candidate is different on the issues. If they are not different on the issues, students should indicate that.

(iv) What strengths or weaknesses each candidate possesses.

(v) Amount of money budgeted by each candidate. Indicate what areas receive the most money.

(vi) Describe the campaign strategy of each candidate.

(vii) Describe how closely each candidate works with the formal political party during the campaign.

B. A General Description of the characteristics and beliefs of both the Republican and Democratic parties.

C. Describe how the candidates' positions on the issues is the same or different from the positions of the formal political party, on those same issues.

D. Write a personal evaluation of each candidate, indicating which candidate is considered to be the superior choice.

4. Students should be encouraged to interview the candidate, or attend forums to gather material.

5. Students should collect campaign materials, news articles and advertisements to obtain information.

6. Students should interview the campaign chair or local area coordinator. This is especially important in races that are national or state wide.

7. Students should be encouraged to volunteer to help in the campaign of both (if possible) candidates to learn about the practical side of running for office. (Note: Extra credit could be awarded for each hour worked, but the time must be documented and signed off by the candidate or the campaign chair/coordinator.)

8. Candidates should be invited to speak to the class. All students working on the same contest should be encouraged to coordinate their efforts so that the candidates will be better able to schedule their time.

9. The project is to be turned in seven days after the general election.

TRACKING DOWN THE CRIMINAL WITH PAINT CHIPS

Source:

Developed by Kerstin Gleim, Washington State Crime Lab in conjunction with the University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 2

Use of Outside Resource Persons:

An investigator from the Washington State Crime Lab can assist with the analysis of the paint chips and describe the work of the lab.

Objectives:

1. Students will identify role of State Crime Lab in evaluating evidence in criminal trials.
2. Students will develop observation and analytic skills.
3. Students will appreciate the difficulty of determining what evidence is relevant to prove persons guilty.

Materials:

Paint chips. You will need 14 paint chips from one car and another 14 paint chips from either the same car or another. It is recommended that you obtain them all from the same car.

Call an auto wrecking yard and ask if you can take paint chips from a vehicle that is dented and already has paint missing. The place to take samples is at a dented spot on the vehicle where chunks of paint are easy to break off. The object is to look for paint chips that have more than one layer. So either you will find a vehicle with a factory paint so you may be able to see the metal where paint has come away, or you will find a repainted vehicle where the paint falls away at the interface of the scraped surface and the new layers. Either of these types are sufficient for the exercise. If you are really lucky you can obtain paint chips on a repainted vehicle all the way down to the metal. In that case you could have more than three layers, including some of the original layers. Many-layered paint chips are useful to illustrate the different types of characteristics (class and individualizing) that we look for.

Magnifying lens or stereo microscope - 5X or higher

7 single edged razor blades or exacto knives or scalpel blades in a holder such as is used for dissection in biology

Handouts 1, 2, 3, and 4

Procedures:

1. Before the activity, collect paint chip samples as described under Materials.

2. Hold up a set of paint chip samples to students and tell them that today their job is figure out from these chips whether or not Harlan is the one who killed Thomas in a hit and run accident.

3. Introduce the work of the Washington State Crime Lab.

The Washington State Crime Lab employs scientists (chemists, biochemists, biologists; a Bachelor's degree in a laboratory science is a minimum requirement) who do forensic analysis of physical evidence that is submitted by police agencies. The goal of a forensic scientist is to answer questions that may help police investigations or prosecution of criminal suspects in a court of law. Physical evidence may be able to make a connection between a suspect and a victim, a suspect and a place, or may aid in the reconstruction of events. Physical evidence may also clear a suspect.

4. Write these main headings (those in bold) of the scientific arease examined by the Crime Lab on the board and ask students to brainstorm what kind of evidence might fall under each.

A. Chemistry

1. Identification of Drugs (controlled substances)
2. Arson investigation
    a. Identification of accelerants (agents that cause fires to burn more rapidly, like gasoline) at a fire scene
    b. Comparison of a suspected accelerant source to material from a fire scene
3. Explosives
    a. Identification of type
4. Identification of unknown materials

B. Microanalysis

1. Characterization and/or identification of small particles such as hairs, fibers, glass, paint, soil. Comparison of such items with suspected sources
2. Comparison of impression evidence such as shoe prints, glove prints and fabric impressions with suspected sources
3. Examination of vehicle lamps to determine if on or off during impacts
4. Reconstruction of events

C. Firearms and Toolmarks

1. Firearms
    a. Determine if firearm functions as intended
    b. Examine spent ammunition such as bullets, cartridge cases or other projectiles to:
        (i) Identify type of firearm
        (ii) Determine if fired from a specific firearm
    c. Detection and identification of gunpowder residue
    d. Reconstruction of events
    e. Serial number restoration
2. Toolmarks
    a. Identify a type of tool that made a damage mark
    b. Comparison of toolmarks (such as a pry mark) with a suspected tool
    c. Examination of internal mechanism of locks to determine if they have been picked

D. Biochemistry

1. Serology
    a. Identification of various biochemical markers in blood and seminal fluid. Biochemical markers include the ABO blood typing
    b. Comparison of potential donor's biochemical markers to those body fluids or stains collected as evidence

2. DNA
    a. Comparison of a potential donor's DNA sequences to those body fluids or stains collected as evidence

E. Document Examination

1. Handwriting comparison to determine authenticity
2. Documents examination to determine if they have been altered

Other types of forensic science that are not done in the State Crime Lab, but are done in other public labs include:

A. Medical examiners who are forensic pathologists perform autopsies on dead bodies to dermine mode and time of death.

B. Toxicologists who analyze body fluids for the presence of drugs or poisons.

C. Finger print examiners compare fingerprints recovered as evidence to potential donors.

5. Optional to explain the tools used in the Crime Lab

A. Chemistry

1. Wet chemical methods
2. Microscopy
3. Various types of chromatography
a. Thin layer (TLC)
b. Gas Chromatography (GC)
c. Gas Chromatography - mass spectrometry (GC-MS)
4. Spectrometry
a. Infrared (IR)
b. Mass spectrometry (MS)
c. UV/visible
d. X-ray fluorescence (XRF)

B. Microanalysis

1. Microscopy, both for magnification and as an analytical tool
a. Light microscopy
b. Scanning electron microscopy (SEM)
2. Wet chemical methods
3. Chromatography (as listed above)
4. Spectrometry (as listed above)
5. Casting techniques
6. Photography

C. Firearms and Toolmarks

1. Microscopy
2. Wet chemical methods
3. Photography
4. Casting techniques

D. Biochemistry - Serology

1. Wet chemical methods
2. Electrophoresis (a type of chromatography)
3. Microscopy
4. UV/visible spectroscopy
5. Antigen-antibody testing

E. Biochemistry - DNA

1. Electrophoresis
2. Radiolabelled probes/autoradiography

6. Pass out Handout 1 and have class read aloud.

7. Divide the class up into seven teams of four to five investigators.

8. Hand out two sample paint chips to each team. Ask them to study the paint chips and list their characteristics. Give students five minutes for this. After they have done this, brainstorm one

characteristic from each group. Complete the list when each characteristic has been provided. (Students will probably not have many characteristics to report.)

9. Now tell students to take a second, more comprehensive look, using a magnifying lens or stereo microscope - 5X or higher. They may also be issued a razor or exacto knife to cut into the sample chip. Pass out Handout 2 for each team to complete. Put these questions on the overhead, or use Handout 3. Require students to answer each question as best they can.

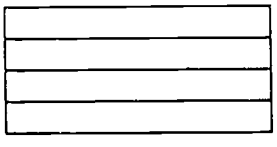
10 Before students begin, they should be told how vehicles are painted.

11. Collect the reports from each group for review and return to students.

The results from this investigation will depend upon the paint chips you collected. Students should identify the layer structure of the paint chip:

For example:

Results:



Clear coat
Metallic blue
Gray
Reddish brown

The top coat and layer structure are typical types of paint for a motor vehicle. The bottom layer has a texture typical of an original layer. The paint chip[illegible]e fairly clean indicating they were deposited recently.

Conclusion:

The source of the submitted paint chips is a motor vehicle painted a metallic blue color which is probably the original factory coating. These paint chips are suitable for comparison should a suspected vehicle be recovered.

11. Inform students of a new development.

Two weeks after the killing, police are given a tip that Harlan Blackwell was the driver of the vehicle that hit Thomas. The police obtain paint chips from Harlan's car and turn them over the State Crime Lab.

12. Assign students in their same teams to compare the paint chips from Harlan's car and from the incident. Pass out Handout 4 which asks students to report their group's results and conclusions.

Again, student answers will depend upon what paint chips were located by the instructor.

For example:

Results:

The paint chips from item 1 have the same layer structure as those from item 2. Color, thickness and consistency of layer are similar in both samples.

Conclusion:

The paint chips recovered at the incident site (#1) either came from the vehicle represented by the paint chips in item #2, or from another vehicle with the same paint layers.

13. Divide the teams into two groups. Assign one half of the teams to provide all the reasons why the paint chips support the fact that Harlan's car hit Thomas. Assign one half of the teams to provide all the reasons why the paint chip comparison shows that Harlan's car was not the one to hit Thomas, or alternatively shows why there is no real proof that Harlan's car was the one that hit Thomas.

Points to consider:

Paint chips at a hit-and-run scene merely indicate that a vehicle hit something at this point. If there is something else nearby that could have been hit by a vehicle, such as a telephone pole, further investigation is warranted. The following questions could then be asked:

1. Does the telephone pole show any signs of being hit, such as damage, paint transfer?

2. Are the paint chips from the crime scene fairly clean or do they have encrusted dirt such that it appears they were lying at the side of the road for some time?

3. Are the victim's clothes available for examination? The presence of paint chips or paint smears on the clothing which are similar to a suspect vehicle tentatively link that vehicle to the incident.

HIT AND RUN: THE CRIME LAB

Directions: Read the facts that follow. Later you will play the role of a crime lab investigator. You will be assigned to a team to determine what the paint chips tell you about Harlan's guilt.

Thomas Terry, a junior at Sage Brush High School, had a job at the local record store. He closed the store on a Thursday night. As he was walking home, one mile from the store, he was hit by a car and killed. The driver did not stop. No one saw it happen.

Thomas is discovered ten minutes after the incident by another pedestrian. The hit and run occurred at an intersection which is controlled by a traffic light. There is also a telephone pole near the corner where Thomas is found. At the scene, police collect paint chips lying in the road. These paint chips are turned over to the State Crime Lab.

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SAMPLE REPORT NO. 1

Agency: Local Police Department **Case No.** 90-123

Investigating Officer Det. Sam Black **Lab No.** 190-2621

Suspect_____

Victim Thomas Tarry

Items Examined

#1 - Three paint chips reportedly recovered at the incident site

Procedure

The paint chips were examined to determine a possible source.

Results

Conclusion

Investigatory Team_____

_____

HOW VEHICLES ARE PAINTED

Vehicles are painted in the following manner:

1. The bare metal body parts of a vehicle receive a primer coat. Then either another layer is added as an intermediary for the top coat or the top coat is the next layer. As a result factory paint jobs are either two-layered or three-layered.

2. Top coats are either non-metallic or metallic. If they are metallic, the usually have a base coat and a clear coat: the base coat having color and the metal flakes, the clear coat being very transparent, hence nearly invisible, thick surface coat that is exposed to the air.

The purpose of the paint on a vehicle is to protect the metal from weathering and to provide a beautiful finish. Paint chips that originate from vehicles are distinguishable from those that originate from architectural surfaces (building, etc.) because of the vehicle's one or two layers of grainy, textured undercoat and the very smooth and lustrous top coat.

Whether a paint is a factory finish or a repaint can often be determined by looking at the primer undersurface:

a. A factor primer undersurface has an "ora ge peel" look because it is applied to worked metal.

b. A repaint primer undersurface has parallel lines in it reflecting the sanding that was done on the surface it was applied to.

A repaint may also have more than three layers.

Directions: Examine the paint chip and describe each of these aspects.

1. How many layers of paint are there?

2. What color, consistency and thickness are they?

3. Is there a top layer? How can you tell?

4. What does the bottom layer look like?

5. Is this the original coat of paint?

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SAMPLE REPORT NO. 2

Agency: Local Police Department **Case No.** 90-123

Investigating Officer Det. Sam Black **Lab No.** A190-2621

Suspect Harlan Blackwell

Victim Thomas Tarry

Items Examined

#1 - Three paint chips reportedly recovered at the incident site

#2 - Paint chips reportedly recovered from Harlan Blackwell's vehicle. These were used as controls.

Procedure

The paint chips from item 1 were compared to those from item 2 to determine if they have a common source. Comparisons were done by examining the paint chips side-by-side using a magnifying lens or stereo microscope at magnifications up to ___ X magnification.

Results Make sure that you identify the similarities between the two samples and the differences between the two samples.

Conclusion Be sure to tell if by comparing the paint chips Harlan's car was the one to hit Thomas.

Reporting One half of the teams will argue to the class why the paint chip comparison gives evidence of Harlan's guilt. The other half of the teams will argue to the class why the comparison shows that Harlan is not guilty, or alternatively argue that there is not adequate proof that Harlan is guilty.

Investigatory Team_____

_____

_____

_____

_____

_____

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WHOSE FOOTPRINT IS THIS?

Source:

Developed by Kerstin Gleim, Washington State Crime Lab in conjunction with the University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 1 or 2

Use of Outside Resource Persons:

An investigator from the Washington State Crime Lab can assist with the analysis of the shoe prints and describe the work of the lab.

Objectives:

1. Students will develop observation and analytic skills.
2. Students will appreciate the difficulty of determining what evidence is relevant to prove persons guilty.
3. Students will identify characteristics of an expert witness.
4. Students will learn format for direct and cross examination.

Materials:

Before each class, at a minimum, you will need to create one "exemplar impression" of the suspect's shoe and one shoe print impression found at the scene of the crime. (You may also make additional sets so that not all studeent groups will be working on the same set of impressions.) You will need to xerox these two impressions to have sufficient quantity for students to work in small groups.

Use either 1, 2 or 3 pairs of athletic shoes to represent the "suspect's" shoes that were recovered by the police. For each set of shoe impressions that you make, pick a pair of shoes and make at least two impressions (the exemplar made from the suspect's shoe and the impression found at the crime scene):

1) One or more control or exemplar sets of impressions (one from each shoe of the pair). These are impressions that the examiner knows were made from a known pair of shoes. These impressions should be as clear and as complete as possible. In the Crime Lab, an examiner receives a suspected pair of shoes and makes his/her exemplar impressions in the lab.

2) One or several impressions that allegedly were found at the crime scene. Students groups could be given different sets that vary in degree of difficulty. The following is a list of possible crime scene impressions in order of difficulty beginning with the easiest.

a) A whole shoe or nearly whole shoe impression made clearly so that the size of the impression could be compared and salient features show up.

b) Any type of partial impression (a portion of the shoe sole) clearly made so that at least one individualizing characteristic is visible. A portion of a shoe impression could be the toe area, heel area, an edge area. These types of impressions are most common because a criminal doesn't always step square in the middle of the paper (or other substrate), but only steps on a portion, thereby leaving a partial impression cut off by the edge of the paper.

c) A partial impression clearly made so that only pattern or wear characteristics are visible; no individualizing characteristics are visible.

d) Overlapping impressions clearly made.

e) Any of the above not clearly made, but blurred slightly as though the shoe moved or pivoted slightly as the person stepped to make this impression.

To make shoe impressions, clean the sole first by removing most of the loose debris. Don't dig out embedded debris yet as such things could contribute to features on the shoe impression. In the Crime Lab, examiners collect debris from the shoe soles and package it separately because it may also be something that could be compared to debris from the crime scene, thereby making a connection.

Next blacken the soles of the shoes with fine black powder. Black fingerprint powder is best. An alternative to fingerprint powder is charcoal. Rub the soles lightly with a piece of charcoal until the sole surface is blackened. Using either method, knock off any extra blackening agent. Wearing the shoe, step on white paper to make your impressions. Make some impressions on a hard surface, and some on a soft surface (put a couple of towels under the white paper). The shoe soles can be cleaned with soap and water to remove either type of blackening agent without any permanent harm.

The easiest way to make use of your exemplar impressions (those representing the shoes taken from the suspect, not those recovered at the bank) is to make copies onto clear transparent sheets, so you can overlay your exemplars onto the impressions of those taken from the scene. In the Crime Lab, exemplars are made directly onto transparent sheets using specially prepared transparent film to which fingerprint powder sticks in a semi-permanent fashion.

NOTE: Another type of comparison you can set up would be with a shoe impression set using two different pairs of shoes. In such a case, in order to make it challenging enough, find two pairs of shoes with very similar sole patterns. Prepare impressions found at the crime scene from one pair of shoes and the exemplar impressions from another pair of shoes, using the degree of difficulty list as previously stated.

This would be a good exercise to illustrate that in forensic science, investigators not only make connections in investigations, but also find exculpatory evidence. (In this case, would a definite non-match be exculpatory?) If the shoe impression from the scene was sufficiently similar to the exemplary impressions (that is, no differences were noted), this would illustrate why forensic scientists are cautious and conservative in their assessments and interpretations and must always consider that such a "match" may not reflect a real match.

Handouts 1, 2 and 3

Procedures:

1. Prepare classroom sets of shoe impressions as described in the Material Section above.

2. Pass out Handout 1. Read aloud with students the facts.

3. Divide students into groups of three to five. Provide students with an exemplar impression taken from the suspect's shoes and an impression found at the crime scene.

4. Review with students the information about shoes, which is contained in Handout 2. Then instruct them to answer the questions contained in Handout 1.

Answers to Handout 1

Student answers will depend upon the actual shoe impressions developed by the teacher.

5. To debrief student answers, students teams may individually report or they may present the information as expert witnesses in court.

6. If the expert witness format is chosen, students would be told what an expert witness is and then directed to have one of their members role play the prosecutor who is prosecuting George Michaels for the bank robbery and wants the shoe impressions to show that George is guilty. Another will role play defense counsel for George to show that the shoe impressions do not match and another will then play the Crime Lab Investigator. Give students twenty minutes to develop their questions for direct and cross examination. Students may be given Handout 3 to assist in developing questions.

Expert witnesses are witnesses who are allowed to testify because they know more about a particular topic than a lay person and their testimony will help the jury or fact-finder decide what is true. Expert witnesses may have specialized training and education or specialized experience that enables them to draw conclusions from the material they testify about and to give opinions. Expert witnesses may use background material and references to aid in drawing conclusions and making opinions.

Witnesses who are not expert witnesses are more limited in what they can testify to. Generally, these non-expert witnesses are not allowed to give opinions unless it is about something they had an opportunity to observe and is something that ordinary people are capable of forming opinions about. (For example, my opinion was that he was drunk, having seen him slur his words, fall down three times and smell of alcohol.)

An expert witness must be qualified as an expert before being allowed to testify. Sometimes attorneys for both sides will agree that the witness is an expert, other times, the person is required to answer questions on the stand about their experience and qualifications. Then the court decides whether the witness will be allowed to testify as an expert witness.

The job of expert witnesses is to get across the information to the court that they have in order to assist the fact-finder understand some technical topic. Sometimes this entails teaching the court some of the background material so the court has some understanding of the basics for the expert witnesses' conclusions and opinions. An expert witness should correct any misleading information that is spoken even if it means that the witness takes the initiative in court. (Normally witnesses follow the lead of the questions that are asked.)

THE GREAT BANK ROBBERY

Directions: Read the facts that follow and then answer the questions in teams.

On July 28, a masked man entered a Security Pacific Bank armed with an automatic weapon and robbed the bank of approximately $35,000. There were only two customers in the store at the time of the robbery.

During the robbery, the masked man stepped on a piece of paper that had fallen to the floor. Later the police will collect this shoe impression of the robber's shoe.

While the silent alarm has alerted police to the robbery, police in a police car two blocks from the bank see a man running away from the bank. They stop and arrest George Michaels. At the station, they require him to turn over to them his clothes, including his shoes.

The police turn over George's shoes from which an exemplar has been made and the shoe impression found in the bank to the Washington State Crime Lab. It is your job to determine whether George's shoes are the ones that made the impression at the bank.

To do this, you will be given an "Exemplar," which is a shoe impression made from George Michaels' shoe. You will also be given the shoe impression found by the police at the bank.

1. List all the characteristics that are the same.

2. List all the characteristics that are different.

Make sure you consider:

1. **The shoe sole pattern**
2. **Size**
3. **Mold characteristics**
4. **Wear pattern**
5. **Accidental marks**

c. Is it possible that George Michaels' shoe made the impression at the bank?

CHARACTERISTICS OF SHOES

Characteristics of shoes are divided into "class characteristics" and "individualizing characteristics." Class characteristics are those that apply to large number of shoes because of the way that shoes are made. Individualizing characteristics, on the other hand, are those qualities of the shoe that occur because specific things have happened to that particular shoe, making it different from others.

1. Sole pattern is a class characteristic.

There are hundreds of different sole patterns made by the shoe industry and the athletic outsole manufacturers change their designs regularly. To demonstrate this to yourself, go into a shoe store that carries athletic shoes and look at the sole patterns. Or another way is to look at the shoe print of the other students in your class. Place a carbon paper on a white sheet of paper and step firmly on the carbon paper. This should nicely reproduce the shoe sole pattern. Label them with the brand, size, degree of wear (by looking at the actual outsole and making a subjective judgment), date. Keep them in a 3-ring binder and as you accumulate them, you will be making a reference collection.

2. Size is a class characteristic.

You cannot determine a standard size by measuring the shoe. There is more than one reason for this. First of all, different manufacturers make slightly different fits. Secondly manufacturers may use the same length shoe sole for more than one size. This can be done most easily with those soles that are cut with dies (like cookie cutters) from larger material. Contrast this with a molded sole (see #3 below.) Even so, size is a good comparison characteristic if you have enough shoe print to determine a length and a width.

3. Mold characteristics are class characteristics.

There are different ways to make outsoles. The following is a very brief summary:

a. Sheets of rubber with a pattern are made. Outsoles are cut out with a die (like a cookie cutter) and attached to the upper part of the shoe in various ways. An example of this type is the old fashioned gym shoes where the sole is attached to the upper part using a "foxing strip."

b. Outsoles are produced in approximate size molds, then are cut to a precise size, attached to the upper part, then sometimes ground at the edges to make a clean interface.

c. Material is molded into an exact size mold (that is, there is a different mold for each size).

(1) Injection molding can be detected if you see a plug or a circle where the injection port was.
(2) Compression molding
(3) Open pour molding

Molds for outsoles may be designed with an area where some fine stippling can be produced. When this stippling is added to the mold by hand with a die and hammer, a unique pattern results. The pattern of this stippling will vary from mold to mold, so if a stippling pattern matches this is a good comparison characteristic. Such stippling may only be visible on relatively new shoes, as this characteristic wears away quickly.

4. Wear patterns are individualizing characteristics.

After a shoe has been worn for a period of time, some of the tread gets worn down which slightly changes the pattern of the shoe print. Each person wears their shoes down in different places depending on how they walk. Thus wear pattern reduces the number of other shoes that would produce the same shoe print.

5. Accidental marks are individualizing characteristics.

When a shoe is used, over time damage occurs on the shoe soles even if only small cracks or nicks appear in the pattern. Such accidental damage is completely random and therefore not reproduced in exactly the same places or the same way in someone else's shoes. The presence of several accidental damage marks on a shoe sole can individualize it, therefore it would make a unique shoe impression. If such accidental damage marks in a crime scene impression match marks on an exemplar impression, that shoe to the exclusion of all others can be identified as having made the impression.

Caution 1: One must have the shoe to determine if the marks one sees on an impression truly reflect damage marks on the shoe sole.

Caution 2: In some molding processes (particularly using polyurethane) air bubbles are introduced in the outsole such that after the sole wears down they are exposed. These air bubble marks can be mistaken for accidental damage marks when usually they occur in a pattern and are class characteristics. This is an example of why one must have the shoes to be able to assess the source for what might appear to be accidental marks in an impression.

QUESTIONS FOR EXPERT WITNESSES

Sample questions to qualify a witness as an expert.

The attorney wishing to use the witness as an expert asks a series of questions to establish to the court that the witness qualifies as an expert. Sample questions may include:

1. State your name.
2. For whom do you work?
3. What is your business address?
4. What is your occupation?
5. For how long have you been doing this sort of work?
6. What is your educational background?
7. Have you received any specialized training in the field of shoe impression comparisons?
8. What are your job duties?
9. What percentage of your time is devoted to this work?
10. Do you belong to any professional organizations that relate to your field?
11. Have you testified in court on other occasions? How many times?

The other side may then chose to question the proposed expert witness to show that the person is not qualified. Sample questions may include:

1. Do you have any degrees other than (whatever witness stated)?
2. Did you receive any training in shoe impression comparison in your college education?
3. Was this a formal course? Recognized by an outside body (such as a professional organization possibly previously mentioned by the witness)?
4. What are the qualifications of those who trained you?
5. Is the training certified?
6. Are you a certified shoe impression examiner?

The attorney then asks the judge to qualify the witness as an expert and the judge makes a ruling.

B. Chain of Custody Questions

An item cannot be admitted into evidence unless it can be shown it was the same item found on the scene of the crime. One way this can be done is to prove exactly who had possession of the item at all times between when it was found and the day of trial. Therefore, each person who takes possession should identify the item and the date. This establishes "chain of custody."

Sample questions to establish chain of custody include:

1. Have you seen this evidence before?
2. How do you recognize it?
3. How did it come into your possession?
4. When did you receive it?
5. Is there any change since you saw it last?

C. Shoe Impression Comparison Questions

The attorney calling the expert witness might ask:

1. Did you perform any analysis on this evidence?
2. What analysis did you do?
3. Explain to the court the basis for shoe print comparisons.
4. Did you reach any conclusions about the comparison?
5. What conclusion did you reach?

On cross-examination, the attorney may ask:

1. How many other shoes are there with this same sole pattern?
2. Can you say that this shoe to the exclusion of all others made this impression?
3. How many other shoes are there that could have made this impression?

ATTORNEYS

Source:

Developed by William Krieger, Ph.D., for the University of Puget Sound Institute for Citizen Education in the Law; sources as noted.

Focus: Literature, Definition, and Spelling

Class Periods:

Objectives:

1. Students will become familiar with LRE terms through spelling and dictionary exercises.
2. Students will compare and contrast the images of "literary" and other "media" lawyers and activities of real attorneys.
3. Students will list topics related to the practice of law: preparation, kinds of legal practice, typical daily activities.
4. Students will investigate the sources of public impressions of attorneys as a general class and evaluate their validity.
5. Students will evaluate the appropriateness of attorneys' fees in relation to the difficulty of particular cases, the client's ability to pay, and the attorney's worth as a trained and educated professional with a special service to "sell."

Procedures:

Activity One: A class can pursue this project as individuals or in teams; using all the words for each person or team, or splitting the list into several smaller components. The object of this exercise is to identify words and phrases which are related to law and to learn about their legal meanings. By using standard desk dictionaries (e.g., Webster's Ninth New Collegiate Dictionary provides the following definition of "plea bargaining": the negotiation of an agreement between a prosecutor and a defendant whereby the defendant is permitted to plead guilty to a reduced charge), students may see that some of these words have non-legal meanings too; this affords the instructor a good opportunity to discuss that occurrence of several meanings to a single word, connotation, denotation, and word histories. At the same time, students are likely to become more familiar and more comfortable with legal jargon. The words can also be used for spelling and definition quizzes or tests:

retainer	privilege	defense
preventive advice	defendant	prosecution

plea bargaining		hung jury
allegations	plaintiff	motions
answer		direct examination
bar association	laws	precedent
mediation	ombudsman	arbitration
negotiation	verdict	discovery
grand jury	jury	complaint
damages	counterclaims	remedy
cross-examination		trial court
superior court	district court	municipal court
supreme court	appeals court	
error of law	appeal	ordinances
error of fact	regulations	judicial review
statutes	party	felonies
misdemeanors	civil action	jurisprudence
criminal action	gross misdemeanors	

Activity Two: Read "Bartleby the Scrivener": According to Melville's story, what does a scrivener do; is there a modern-day equivalent to a scrivener?

What other employee categories are part of a law office? How do big law firms differ from small ones? How do these differ from the kind portrayed in "Bartleby"? in "L.A. Law"? Write a description of the law office in which Bartleby works. Compose a letter to a law firm in which you inquire about the nature of the office and the work; based upon your response, write a description of that office; compare it with Bartleby's office and work. What do you think that lawyers do? Why do lawyers have a bad reputation? What kind of education, experience, and training do they need? Do they continue to receive education and training?

Activity Three: "Lawyers' Fees: What's Reasonable? How do you Find Lawyers in Washington? How do You Complain If You Are Unsatisfied" from Constitutional Rights Foundation's publication on "Civil Law" and the Washington Supplement to Street Law.

LAWYERS

The Washington State Bar Association was created in 1933 to serve as an arm of the Washington State Supreme Court.

The Bar Association has operated a Lawyer Referral Service since 1962 for persons of moderate means who may require legal services and who do not know how to locate an attorney appropriate to their location and problems. The State Bar operates this service in all counties except for Lewis, King, Pierce and Spokane Counties. The local bar associations in these four counties operate their own lawyer referral service.

To use the service, an individual calls the State Bar Lawyer Referral desk and is then referred to an attorney in his or her county for a one-half hour consultation. A small fee is charged for the referral. The attorney to whom the caller is referred is a member of a voluntary panel of attorneys who apply each year to serve on the panel. Assignments are made on a rotating basis.

Attorney discipline is handled by a Disciplinary Board. This Board has 13 members, four of whom are not lawyers and are appointed by the State Supreme Court, the nine attorney members are appointed by the Board of Governors of the State Bar. The State Supreme Court has authority to review the actions of the Disciplinary Board.

The State Bar also has the "Talk to an Attorney" Program. Any individual who has a complaint about a lawyer, questions about attorney "ethics" or any general question whether or not something is legal may call the Bar Association and speak with a member of its Legal Department. (The number of calls averages between ten and fifteen per day, about 3,000 per year.) This "talk to an attorney" program allows for early screening, such as referral to arbitration.

For people who live at or below the federal poverty levels in Washington, there are three publicly-funded legal services programs. Evergreen Legal Services is the largest, serving an estimated year-round poverty population of about 447,424 in 31 of the counties in Washington. It serves about 100,000 migrant workers, a substantial Native American community and institutionalized poor people. It also contracts with private attorney to provide additional programs.

Additionally, other organizations serving the poor and unrepresented include the Fremont Public Association, Legal Action Center, the Disabilities Law Project, the Unemployment Law Project, University Legal Assistance (Spokane), Seattle Indian Center, Asian Counseling and Referral, El Centro de la Raza, Washington Protection and Advocacy, Consejo Counseling, Seattle Tenant's Union, Seniors Rights Assistance, Disabled American Vets, Sea Vac, and numerous organizations serving victims of abuse and domestic violence.

Activity Four: Speaker: one to three attorneys representing some variety of background and specialty (i.e., ACLU, criminal lawyer, personal injury lawyer, corporate lawyer, etc.)

A. Students work in small groups to write questions in anticipation of the speaker's presentation (see questions in Activity Two for suggestions);

B. Students will follow the speaker's presentation by filling out a form on which they will respond to the following:

1--"This is the question I asked," or "This is the question I wanted to ask."

2--"This is the answer I received," or "This is what I learned from the response to another student's question [name the question]."

3--"These are some other things I learned about what lawyers do."

Activity Five: Composition

A. Students will write a short essay responding to the following (from CRF, "Civil Law," p. 7):

Do you think lawyers should charge their fees according to the incomes of their clients, the value of the case in monetary terms, or should flat hourly rates be charged in all cases? State your position and the reasons for it.

B. Students will write a short essay in response to Ambrose Bierce's definitions of "lawyer" and "homicide" and their impressions drawn from the attorneys' presentations: "Lawyer, n. One skilled in circumvention of the law"; "Homicide, n. The slaying of one human being by another. There are four kinds of homicide: felonious, excusable, justifiable, and praiseworthy, but it makes no great difference to the person slain whether he fell by one kind or another--the classification is for the advantage of the lawyers."

C. As a research assignment, students will locate, read and reflect on the implications of Benjamin Franklin's parable about the oyster and the attorney, in order to defend or refute its validity. This could be done in conjunction with additional research on attorneys (interviews, etc.)

See also the attached cartoon and article: This cartoon raises a number of issues and questions; among them is the rather paradoxical attitude Americans seem to have about lawyers: on the one hand, complaining that they are unscrupulous mercenaries; on the other hand, turning over the most extraordinary, personal, and sometimes trivial causes to their hands--and expecting complete and usually lucrative remedies.

LANDLORD-TENANT PROBLEMS

Source:

Developed by William Krieger, Ph.D., in conjunction with the University of Puget Sound Institute for Citizen Education in the Law, with some materials adapted from Street Law, 3rd ed. St. Paul: West, 1986 and the Washington Supplement to Street Law.

Literary Focus: Short story

Class Periods: 4-5

Objectives:

1. Students will identify tenant and landlord rights and responsibilities.
2. Students will determine precautions landlords and tenants should take before entering into a rent or lease agreement.
3. Students will practice mediation to settle a rental or lease dispute.
4. Students will suggest remedies for resolving the conflict portrayed in "Under the Lion's Paw."
5. Students will become familiar with procedures of mediation as a form of conflict resolution.

Materials:

Handout 1: Figure 25, Street Law, p. 295.
Handout 2: Punctuation Exercise
Handout 3: Opinion poll
Handout 4: "Steps in a typical mediation," Street Law, p. 25
Text of "Under the Lion's Paw"

Procedures:

1. Level One: A. Grammar/Punctuation: sentences with landlord/tenant content. Assign students as individuals or in small groups to provide correct punctuation marks to Handout 2.

Supplementary Answers to the Opinion Poll - Handout 3

What follows is a statement of the Residential Landlord-Tenant Act, found at Title 59 of the Revised Code of Washington. Since this is an opinion poll, all students' opinions are correct provided that students can give reasons for their opinions. The law is provided since students generally desire to know how the law applies to the opinions they have expressed.

Inform students that the law in Washington applies to almost all tenants who rent a place to live within Washington State, including persons who rent mobile homes. However, it does not apply to tenants of commerical property, residents of housing provided for seasonal farmwork, residents of hotels and motels, and residents of medical, religious, educational, recreational or correctional institutions. Additionally, leases of a year or more are not covered by the law if the tenant's attorney has approved of this.

____a. The landlord should have the right to inspect the premises at any time.

Washington law states that landlords must get the consent of the tenant before entering a tenant's apartment or house. Tenants, of course, may not withhold consent unreasonably. Landlords must also give tenants two days notice before entering, unless there is an emergency. If the landlord needs to show the building or apartment to prospective tenants or purchasers, only one days' notice is required. If there is an emergency or if the tenant moves out without notifying the landlord, the landlord may enter without the required consent.

If the landlord or tenant violates this law, after being served with a notice listing the dates of the violations, s/he will be liable for up to $100 for each violation.

____b. The landlord should not be held liable for any injuries or damages to the tenant or the tenant's guests, regardless of cause.

Washington law specifically prohibits clauses that release the landlord from all liability for injuries or damages to tenants or guests, regardless of cause. Even if such a clause appeared in a lease that the tenant and landlord signed, the courts in Washington would not enforce it.

Tenants may sue landlords for injuries to themselves, their guests, and property if they can show that the injuries occurred as a result of a hazardous condition that existed at the beginning of the lease, and was not obvious. For example, if the supports under the floor had been partially burned in a fire and not replaced and the floor caved in after new tenants had moved in, the landlord would be responsible for any injuries.

The tenant must establish that the landlord knew of the condition that caused the injury. If a tenant notifies the landlord of a dangerous condition, such as a loose stair railing, or exposed wires, and the landlord does not fix the problem, the landlord will be liable if the tenant is injured.

____c. Tenants should have a duty to make repairs of the structure, equipment, and fixtures which are part of the apartment.

Washington courts have ruled that a warranty of habitability is implied in every residential lease agreement. This means that every rental unit must meet a basic standard of fitness. Landlord and tenant

cannot agree to allow an unfit apartment or house to be rented for persons to live in. Washington law requires landlords to maintain the leased premises in reasonably good condition, including electrical, plumbing, heating and appliances supplied by the landlord. The law also requires landlords to control infestations by rodents, insects and other pests.

Landlords must also keep buildings that they lease as residences maintained in accordance with the local housing code so that no conditions exist that would endanger the health or safety of the tenant. It is unlawful for a landlord to rent property that has been condemned or is unfit for habitation. If a landlord knowingly violates this law, the tenant may recover from the landlord three times the monthly rent, or three times the actual damages caused by the violation, whichever is greater, plus attorney's fees.

Most cities and towns in Washington have enacted housing codes, which are based on the Uniform Building Code used throughout the United States. The Uniform Code specifically sets forth the duties of owners and tenants. These duties are imposed regardless of what the lease agreement may say.

Examples of landlords' duties include removing all garbage from the property, maintaining the property in a safe condition, including heat, installing smoke detectors, and maintaining the yard of all buildings with two or more units. Examples of tenants' duties include keeping their living quarters clean, repairing any damage caused by the tenants or their guests, and cooperating with the owner.

Of course, before a landlord is responsible for repairs, the tenant must notify the landlord that something needs fixing. Washington law states that notice of needed repairs must be in writing, and must include the address and apartment number of the property and a description of the problem. Revisions to the landlord-tenant act that went into effect August 1, 1989 specify waiting periods allowed for the landlord to begin making repairs. Unless circumstances are beyond the landlord's control, s/he must begin within 24 hours to fix a hazardous condition, or if the tenant does not have hot or cold water, heat, or electricity. The landlord is allowed 72 hours to repair a refrigerator, range and oven, or a major plumbing fixture. Other problems, such as broken windows, locks, and doors must be repaired within 10 days.

Violations of the Building Code are enforced by a city officer, who has authority to inspect any building which s/he has reason to believe may be in violation of the Code.

As a practical matter, the enforcement of housing code violations varies depending on which city or town you are in. In some cases, violations of the housing code may be reported and are not acted on for months, or even years. In cases where tenants have organized, or sought media attention for their problems, action is taken more promptly.

_____d. With 30 days' notice, a landlord should be able to end a lease agreement for any reason.

If a lease is for a period of time, the landlord may not end the lease agreement unless there is legitimate reason, for example, not paying rent, seriously damaging the property (called "waste"), creating a nuisance (interfering with other tenants' use and enjoyment of the property), or conducting an illegal business on the property, including drug-related activity.

If the tenant is not complying with a rule in the lease, such as no pets, the landlord must give notice of the violation. The tenant then has ten days to comply, and if the problem is corrected, the eviction cannot go forward.

For month-to-month rentals in Washington, either the tenant or the landlord can end the lease by giving the other party 20-days notice. The notice must be received at least 20 days before the end of the rental period (the day before the rent is due).

_____e. With 30 days' notice, a tenant should be able to end a lease agreement for any reason.

Unless the lease states otherwise, no notice is necessary if the tenant moves out at the end of the term of the lease. If the tenant stays on after the term set out in the lease, s/he is considered to be renting under a month-to-month agreement.

If the tenant wants to move before the end of the lease term, s/he must either get a release from the landlord or permission from the landlord to sublet the apartment. If the tenant does neither of these, s/he could be liable to the landlord for the rent due for the entire remainder of the lease. Thus, if a tenant rents an apartment for twelve months, and moves out after five months, the landlord can make the tenant pay for the remaining seven months' rent. The law, however, requires the owner to make a good faith effort to re-rent the apartment as soon as possible.

If the apartment is rented to another person, the first tenant would only have to pay for the time before the new lease started. If the landlord cannot rent the place for the same rent that tenant paid, the tenant would have to pay for the difference for the remaining seven months. The tenant would also be responsible for the landlord's costs in advertising the apartment, and any other costs in finding a new tenant.

For month-to-month rentals in Washington, either the tenant or the landlord can end the lease by giving the other party 20 days notice. The notice must be received at least 20 days before the end of the rental period (the day before the rent is due).

_____f. When the lease allows pets, landlords should not be able to charge the tenant's deposit for damages done by pets when the tenant moves.

The Washington landlord-tenant law has detailed requirements about security deposits. Security deposits and fees may be either refundable or nonrefundable. If the payment is called a "deposit," it

must be refunded. A non-refundable payment might be called a "cleaning fee," for example, and would not be returned to the tenant at the end of the lease. The law does not limit the amount a landlord may charge for a security deposit or fee.

If a security deposit is collected from the tenant, the lease agreement must be in writing and must state under what conditions the landlord may keep all or any part of the money when the lease term is over. The landlord must make a detailed checklist at the beginning of the lease, stating the condition of the floors, walls, drapes, carpets, appliances, and any furniture in the house or apartment. Both landlord and tenant are to sign the list. When the tenant moves out, the landlord will refer to the list to determine if the apartment is in good condition, excluding normal wear and tear.

If a pet damaged any of the apartment, the landlord would be entitled to deduct for the damage.

The landlord is required to deposit the money in a trust account, to give the tenant a receipt, and to notify the tenant in which bank the money is held. The law does not require the landlord to pay the interest to the tenant.

Within fourteen days after the termination of the rental agreement and after the tenant has moved out, the landlord must refund the entire security deposit or give a specific statement why a portion of the money is being withheld. If the landlord fails to refund the deposit or give a statement within fourteen days, s/he is liable to the tenant for the full refund, even if there was damage to the apartment or house.

Landlords will also often ask for "last month's rent" at the beginning of the lease term. If the money is paid as "security" for the last month's rent, the landlord is required to treat the money as part of the security deposit, and place it in a trust account with the rest of the deposit. If the amount is prepayment of the last month's rent, the landlord can spend it however s/he wishes. To determine which situation exists, tenants should discuss it with the landlord, or examine the lease agreement.

____g. When the tenants move, they should be able to remove items which they added as improvements (e.g., panelling, drapes, air conditioning) whether or not the improvements were made with the landlord's permission.

In landlord-tenant law, there is a distinction between fixtures and moveable property. Fixtures are items that cannot be removed without a risk of injury to the property and would include panelling, window fans installed through cut in the wall, etc. The law identifies that these fixtures become the property of the landlord and may not legally be removed at the end of the lease.

However, items that are easily removable without damage may be taken by the landlord, for example, drapes and window air conditioning units. If the landlord had originally supplied these items which the

tenant then upgraded, the tenant would be obliged to return in the same condition the items that were removed. For example, drapes that were taken down to install the new drapes would have to be returned to the windows.

____h. There is little or no difference between renting and leasing.

This is true in landlord-tenant law.

____i. A landlord can raise the rent at any time 30 days after written notice.

Washington law does not talk about escalation clauses, which are provisions that allow automatic increases in the rent during the time of the lease. They are probably legal and enforceable if they are made a part of the lease agreement. Otherwise, a landlord may not raise the rent during the rental period covered by the lease agreement. With a month-to-month tenancy, the landlord must give written notice of an increase in rent at least 30 days prior to the date of the increase, which must be the date that rent is due. There is no limit on how much rent may be increased, or how often the rent may be raised.

Washington does not permit rent control. Rent control is an arrangement in which the government controls the amount of money that can be charged as rent for rental units and limits the ability of the landlord to raise the rent. A specific state statute forbids any city in Washington to pass rent control laws.

____j. If a tenant is not happy with conditions in the rental, he can withhold rent until the problems are eliminated.

If a landlord fails to make necessary repairs after the tenant had made a request in writing, the tenant may not withhold rent. The law does give the tenant several options, but these options are only available if the tenant has paid rent.

1. The tenant can move out after giving written notice to the landlord. The tenant is then no longer obligated to pay rent for the rest of the term of the lease, and is entitled to the return of all deposits (unless the property is damaged by the tenant) and a prorated refund of any rent for time that the tenant did not live in the rented premises.

   For example, in the third month of a year long lease, the landlord does not supply the tenant hot water within 24 hours after the tenant gives written notice that there is no hot water. The tenant then gives written notice to the landlord that he is leaving the apartment due to the lack of hot water. The tenant leaves the apartment on the 15th of the month. The tenant is free from any obligation to pay rent for the remainder of the year, is entitled to a full refund of all deposits (unless he had damaged the apartment), and is entitled to a refund of half of the rent for the month when the tenant left the apartment.

2. The tenant can bring an action in court, or for arbitration if the landlord agrees, to force the landlord to make the repairs. The action must be brought in Superior Court, where an attorney is not required, but recommended. The Small Claims Court can only handle cases to recover money. For example, tenant could sue a landlord to recover a security deposit in Small Claims Court if the amount is less than $2000. To force the landlord to make repairs, however, the tenant must file in Superior Court, where the judge has the authority to order the landlord to take action.

3. The tenant can hire someone to make the repairs and deduct the amount from the rent. There are specific rules relating to this remedy, which must be consulted if a tenant is considering this choice. The Attorney General's office is updating its brochure on the Residential Landlord-Tenant Act which will give this information, or a tenant could consult a tenant's group in the area. The tenant may not deduct more than two month's rent in one twelve month period.

4. The tenant may make the repairs him or herself, and deduct the cost from the rent. The cost of the repairs may not be more than half-a-month's rent. No more than one month's rent may be subtracted for repairs within a twelve month period. The landlord is entitled to inspect to see that the repairs were done properly.

5. The tenant may deposit the rent money in "escrow" if very serious and dangerous conditions exist on the property. "Escrow" means that the tenant pays the money to a third party, such as a bank, attorney or the Clerk of Court of the county. That person then holds the money until the dispute between the landlord and tenant is resolved.

To make use of this remedy, which requires the tenant to pay the rent, but prevents the landlord from receiving it, the property must "substantially endanger the health or safety of the tenant." Examples would be no heat or water, structural weaknesses in the building, bad wiring or fire hazards.

The tenant must notify the landlord of the deposit of rent into the escrow account. If the landlord makes the repairs, the money is turned over to him or her upon completion. If the landlord wishes to dispute that the dangerous conditions exist, s/he may file a court action for release of the rent money held in escrow.

_____**k. Landlords must provide services and recreational facilities for every five apartments.**

There is no legal obligation on a landlord to provide this unless the landlord has agreed to do so in a written lease with its tenants.

2. Level Two: Writing Exercise

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You are the landlord of a small apartment building. One of your tenants (a renter who paid the first and last months' rent plus $250 damage deposit when he/she took occupancy) has moved, leaving the apartment a terrible mess. Write two paragraphs: one describing the apartment before it was rented, the other describing the apartment as damaged. In the first paragraph, try to be very objective; in the latter paragraph, attempt to show not only the extent of the damages but also your feelings about having had your apartment so terribly damaged.

3. Level Three: Mediation or Arbitration simulation (use Problem 20, Street Law, p. 292)

A. Small groups will work on the issues and the roles (i.e., some groups will discuss the problem and the role of mediator or arbitrator, other groups will thoroughly discuss the situation from the side of the landlord or of the former tenant) to be played in the simulation;

B. Groups will be selected to play their respective roles in a simulated mediation or arbitration; observers will be polled regarding their judgment of the fairness of the results.

C. Visiting attorney may critique.

D. Students will summarize the conditions of the mediated settlement.

4. Level Four: Read Hamlin Garland's "Under the Lion's Paw"

A. Write a one-page (250 words) defense for Haskins or Butler's position in the situation as portrayed by Garland; be sure to draw your findings from specific details in the text of the story.

B. Final opinion poll on the fairness of landlord-tenant laws.

CORRECT THE PUNCUATION MARKS

Directions: Add the appropriate punctuation marks to the following items. If an item needs no change, write "NC" near the item number.

1. A landlord shall have access to the premises at any time to inspect to make repairs or to show the apartment

2. The tenant will give the landlord prompt notice of any breakage in the structure equipment or fixtures of the apartment

3. The tenant will not keep any pets live animals or birds of any kind in the apartment

4. If the tenant vacates the apartment without first furnishing notice the tenant shall be liable to the landlord for one months rent

5. In the event of increases in real estate taxes fuel charges or sewer and water fees the tenant agrees to pay a share of such charges fees or increases

6. The landlord shall not be liable for damage to the property occupied by the tenant caused by rodents rain snow defective plumbing or any other source

7. The landlord does hereby let unto the tenant the premises known as McCluth Arms Apartment 127 at 4415 68th St Ct N W Tacoma Washington

8. The term of this agreement commences on the _____ day of _____ 1990.

9. A sum of _____shall become due and payable on the _____ day of each month until the _____day of _____ 1990

10. The tenant will not make any alterations or additions to the structure equipment or fixtures of the apartment without written permission of the landlord

11. What are the costs including rent utilities security deposit maintenance fees etc

12. Are there any special rules no pets no children no parties

13. What services storage trash removal maintenance of yard appliances will the tenant receive

14. How long will the lease last and how can it be ended

15. Can the lease be extended

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16. Before you sign the agreement did you check to see that all the blanks were filled

17. After inspecting the apartment did you include responsibility for repairs in your written agreement

18. A tenants most important duty is paying the rent but generally landlords can not raise the rent during the term of a lease

19. Many communities especially large cities have rent control laws rent control laws slow down the rising cost of housing

20. Major repairs and upkeep of common areas such as hallways stairwells and yards are normally the landlords responsibility

21. Mediation takes place when a third person helps two disputing parties talk about their problem

22. Mediators do not impose a decision mediators are neutral

23. A mediators job is to listen to both sides and the mediator helps them find a solution

24. For example in many communities the Better Business Bureau BBB mediates disputes between shoppers and store owners

25. To locate a mediation program in your community contact your local court district attorneys office or social service agency

PRELIMINARY OPINION POLL ON LANDLORD-TENANT LAW
LANDLORD-TENANT OPINION POLL

Directions: Respond by indicating "Y" for yes (if you believe that it should be, not necessarily that it is the law) and "N" for no (if you believe that it should not be) to each of the following statements. Be prepared to give your reasons.

_____a. The landlord should have the right to inspect the premises at any time.

_____b. The landlord should not be held liable for any injuries or damages to the tenant or the tenant's guests, regardless of cause.

_____c. Tenants should have a duty to make repairs of the structure, equipment, and fixtures which are part of the apartment.

_____d. With 30 days' notice, a landlord should be able to end a lease agreement for any reason.

_____e. With 30 days' notice, a tenant should be able to end a lease agreement for any reason.

_____f. When the lease allows pets, landlords should not be able to charge the tenant's deposit for damages done by pets when the tenant moves.

_____g. When the tenants move, they should be able to remove items which they added as improvements (e.g., panelling, drapes, air conditioning) whether or not the improvements were made with the landlord's permission.

_____h. There is little or no difference between renting and leasing.

_____i. A landlord can raise the rent at any time 30 days after written notice.

_____j. If a tenant is not happy with conditions in the rental, he can withhold rent until the problems are eliminated.

_____k. Landlords must provide services and recreational facilities for every five apartments.

Level Two: Writing Exercise

You are the landlord of a small apartment building. One of your tenants (a renter who paid the first and last months' rent plus $250 damage deposit when he/she took occupancy) has moved, leaving the apartment a terrible mess. Write two paragraphs: one describing the apartment before it was rented, the other describing the apartment as damaged. In the first paragraph, try to be very objective; in the latter paragraph, attempt to show not only the extent of the damages but also your feelings about having had your apartment so terribly damaged.

INJURIES TO PERSONS

Source:

Developed by William Krieger, Ph.D. in conjunction with the University of Puget Sound Institute for Citizen Education in the Law (other sources as noted).

Class Periods: 1-2

Literary Focus: Poetry

Objectives:

1. Students will define: assault, rape, homicide.

2. Students will list examples of acts which injure persons and indicate when these may be crimes, when not.

3. Students will explain why there are varying degrees and classifications of homicide and rape, and examine various defenses to these crimes.

4. Students will realize that feelings about an action which may injure another may not necessarily affect the legal status of that action as a crime.

5. Students will recognize and express their own views regarding crimes against persons and punishment for crimes against persons.

Materials:

Text of poems: Robert Frost (1874-1963), "Out, Out . . . ";

Countee Cullen (1903-46), "Incident";

Marge Piercy (b. 1936), "Barbie Doll";

Thomas Hardy (1840-1928), "The Man He Killed";

William Butler Yeats (1865-1939), "Leda and the Swan"

Handout 1: Definitions of "Crimes against the Person"

Handout 2: "Standard Sentencing"

Procedures:

Have the students read one or more of the poems, or assign particular poems to particular groups of students.

Each of the poems deals with a person who has been injured in some traumatic way: a boy whose hand is severed by a saw; a child whose heritage is assaulted by the prejudicial words of another; a girl whose self-image is attacked at various stages of her growth and development; a soldier who is killed by his enemy (the opposing soldier apparently is also traumatized by this action); and a woman who is raped (by a god in the shape of a swan). Not all are victims of a direct, physical attack, nor are they all objects of intentional, pre-meditated harm. But all are harmed, and each poem may be used as a vehicle for raising questions about crimes against persons. Each poem also contains ample material which is typically the focus of "literary" discussions: conflict, characterization, imagery, references and allusions, and lyrical and metrical qualities.

"Out, Out--"

"Out, Out--" may startle readers and move them in a variety of ways. The apparent callousness of the family and the doctor ("And they, since they/Were not the one dead, turned to their affairs.") may shock and even enrage some students. When students begin to vent some anger or frustration over this, it is a good time to bring up some of the literary qualities that Frost uses to make this poem so effective: vivid imagery that appeals to several senses ("snarled and rattled," "Sweet-scented" wood, "Five mountain ranges one behind the other," "They listened at his heart./Little--less--nothing!"), familiar situations and scenes (childhood and family memories), a powerful theme (youthful death and the need for others to go on with their lives), and stark contrasts (the orderly last activities of the workday in juxtaposition with the fatal harshness of the severed hand ("The boy's first outcry was a rueful laugh,/As he swung toward them holding up the hand/Half in appeal, but half as if to keep/The life from spilling").

Ask the students to identify the facts of the case: Just as the sister called "Supper," the saw jumped ("as if . . .,"), but we do not know why it jumped. Its "jump" may have been caused by a knot in the wood, the boy's looking up when he heard "Supper," a fluctuation in the power, or even a mechanical defect in the saw (it "snarled and rattled,/As it ran light, or had to bear a load").

Certainly when it jumps, it does its damage quickly, and the result is devastating. It cuts the boy's hand off. The family responds by calling for the doctor who comes and attempts to care for the boy, but by the time he has arrived "the hand was gone already." Other than putting the boy under the anesthesia of ether, we do not know what treatment, if any, the doctor attempts. Someone watches the boy whose pulse finally throbs "Little--less--nothing!--and that ended it."

The power of the poem draws from these facts but relies most heavily upon what is suggested through images, allusions, and subtleties of the characters' interaction. The Poem's title is itself a quotation: it comes from the famous Shakespearean soliloquy in Macbeth (V, v., 17ff):

Tomorrow and tomorrow, and tomorrow,

Creeps in this petty pace from day to day,

To the last syllable of recorded time;

And all our yesterdays have lighted

fools

The way to dusty death. Out, out brief

candle!

Life's but a walking shadow, a poor

player

That struts and frets his hour upon the

stage,

And then is heard no more; it is a tale

Told by an idiot, full of sound and

fury,

Signifying nothing.

This allusion to Shakespeare's famous lines can be used to bring out some important distinctions. First, the idea of the quotation is metaphorical, philosophical, and cynical--not legal. The metaphors of the "brief candle," the "walking shadow," the "poor player," and the idiot's tale suggest the brevity and apparent meaninglessness of life. Certainly in the grand scale of events an individual life does not amount to much, compared for example to all human history. A single life seems to be even less significant when it is weighed against all natural or geological history. Given human fallibilities it signifies still less, perhaps (most cynically) nothing but "sound and fury." However, legally speaking a life means something: it is valued by society for a variety of reasons. The number and kinds of homicide suggest our sense of value; further the wording of the various definitions implies our legal sense of the value of human life.

Ask students to consider this point as they review the definitions.

So, while Frost's point may be that life is fragile and fleeting, that point may not cover all of the legal bases. It is on this point which students may raise the issue of whether or not someone has committed an illegal act. Is this a case for Child Protective Services (CPS), Consumer Affairs, or the Prosecutor--or all of them?

Clearly, in this poem as with the others in this section all of the situations are fictitious, and the evidence available in most of them would not be sufficient to bring any perpetrators to trial. But

hypothetically speaking, students should be encouraged to ask what kinds of offenses might be alleged.

To whom or against whom has something happened? In Frost's poem, of course, the boy has died, but have one or both of the parents been at fault or caused harmed themselves? Did one or the other of them contribute to the accident? Was the sister involved? What about the doctor: did he do all that he could have done? Though students may regard these questions as ludicrous given the "family" circumstances, ask them to consider the same questions as if the boy were not a family member. Have them reflect upon the kind of questions and concerns his parent(s) or guardian(s) would probably raise:

How did this happen?

Was there a defect in the material or the saw?

Did he receive the proper kind and amount of training to do this job?

Was he being supervised when the accident occurred?

What sort of treatment did he receive?

Who is responsible?

Was there a deliberate, malicious attempt to hurt our child?

Was someone negligent or reckless in regard to our child's safety?

As with most literary analysis, there is no right answer. The students' application of the definitions to the circumstances of the poem will be valid or invalid both legally and literarily.

It is important to remember that several types of homicide can easily be eliminated because of the special characteristics they require. Murder in the first degree can be ruled out because of its requirement for "premeditated intent" or "extreme indifference to human life." It is clear, from the preliminaries as well as the responses to the amputation, that the other parties are neither intent on doing harm nor uncaring. Because of its reference to "a child or person under sixteen years of age," the definition of Homicide by Abuse might appear to apply in this case. However, there is no "pattern or practice of assault or torture." The poem does refer to the wish for a shortening of the workday "To please the boy by giving him the half hour/That a boy counts so much when saved from work." But the boy does not seem to be engaged in torturous labor; as a matter of fact, there is a hint that the boy is proud of his being a "big boy/Doing a man's work, though a child at heart--."

And murder in the second degree can be set aside too: it must occur with intent (though without premeditation) or in conjunction with "any felony other than those involved in first degree felony murder."

The forms of manslaughter might be applied if one argues "recklessness" on the grounds that a "reasonable person" would have provided ample protection for the boy against just such a dangerous "jump" of the saw. The facts of the case provide no support for this one way or the other, but this at least is a hypothetical worth pursuing. Since manslaughter does not include an intent to cause death, a case might be made for a first or second degree manslaughter. The keys to these charges would be whether or not it could be shown that the risk was "substantial," that someone (the adult[s] supervising in this case) failed to be aware of that risk, and that those supervising made insufficient efforts to protect the victim from that risk.

If one or more of the poem's characters are not at fault, the manufacturer of the saw may be liable for money damages in a civil products liability lawsuit. In such a case, of course, investigation would be required; under these circumstances there is simply not enough to go on in the poem. However, the poem can be used to show what is needed in order to determine fault and responsibility (culpability and liability).

All of this would have to be based upon conjecture resulting from interpretation, a good literary exercise but a weak legal case.

"Incident"

Countee Cullen

One of the telling features of this poem is its brevity, for it treats a traumatic event in a very short fashion. The contrast, ironically, helps to reveal the gravity of the events. Being called "Nigger" is not only the only thing which the narrator remembers about his/her eight months in Baltimore, but it is also memorable to write down now. This effect is further enhanced by the understated title.

Another contrast is also significant: the "Heart-filled, head-filled with glee" eight-year-old visitor to Baltimore confronted by another child of like age and size. The other child's response to the glee of the former youth is to stick out his tongue and call him "Nigger." The narrator has done nothing to provoke this response; his only gesture was to smile.

Having seen all of Baltimore, this incident is all that the narrator remembers of his eight-month stay there.

Consider this a case of malicious harassment: to paraphrase the definition, a youth maliciously and with intent to intimidate or harass another because of that person's race, thus causing reasonable fear of harm to himself. That the youth has never forgotten it is irrelevant as a matter of law, but it helps us remember that a thoughtless or hurtful remark may have very long and devastating effects.

"Barbie Doll"

Marge Piercy

Judging by its publication date (1969), a reader might guess that this poem fits into the unsettling category of literature known a "black humor." Probably the best known example of "black humor" is Joseph Heller's 1961 novel Catch-22 which blasts the inane operations and rules of modern bureaucratic society. Certainly "Barbie Doll" is also satiric if not written in the same grotesque vein.

Although the allusion to the popular Barbie doll, Mattel's most famous and lucrative toy item, is intended to make us consider the impossibilities of the "plastic" ideal our subject is encouraged to strive for, today's students may need some background to appreciate this one. Thomas Hine in his study of American life in the 50s and 60s provides a useful context with his term "Populuxe" which he defines as a way of referring to the moment when America found a way of turning out fantasy on an assembly line. . . . The symbolic queen of Populuxe was Barbie, a doll who made her debut in 1959. She was an 11 1/2-inch late adolescent, whose 3 1/4-3- 4 3/4 measurements caused a certain consternation at first. . . . In true Populuxe fashion, Barbie was important not for herself but for all that could be added to her. She had party dresses, and gowns for the prom, and a wedding ensemble, casual clothes, outdoor clothes and outfits for many professions and avocations.

She, like the doll, is typical of her times (interestingly ten years after Barbie's debut); her character de-personalized by her being called "This girlchild" and by the notations regarding her birth ("as usual") and childhood, decorated by a standard array of gimmicks ("dolls that did pee-pee," etc.).

In jagged contrast to the innocuous images of her pre-pubescent years ("Miniature GE stoves" and "wee lipsticks"--even their size makes them seem harmless and insignificant) comes the classmate's observation that she is fat and ugly. This kind of harsh contrast ("magic of puberty" against "a great big nose and fat legs") is typical of black humor. Similarly, in stanza two, it is health, intelligence, strength, abundance, and ability in opposition to apologies and, again (the repetition making it worse as it must be for the "girlchild"), the "fat nose on thick legs."

We don't know who "advised" and "exhorted" her, nor do we know whether or not she sought advice. But we do know that her capacity to

fulfill the measure of the suggestions was finite and ultimately futile ("Her good nature wore out . . . ."). The components of that good nature, unlike one of Mattel's doll's infinitely new, changeable, and interchangeable outfits, simply could not bear the pressure. The practiced coyness, heartiness, smiling, and subtle flattery, "like a fan belt," just wore thin and snapped.

This "girlchild" committed suicide, perhaps in a grotesque way by cutting off the offending parts of her physique. In the mood of black humor, one can even imagine her, in her vain and twisted efforts to do the right thing, thinking of the biblical exhortation to eliminate one's offending parts: "And if thy hand offend thee, cut it off: it is better for thee to enter into life maimed, than having two hands to go into hell, into the fire that never shall be quenched." Whether or not the final two lines of stanza three are figurative or literal, their effect is the same: shock. The character takes her own life because she can not be what she thinks others would like her to be. And she has nothing more than an artificial (Barbie-generated) and uneasy sense of what she thinks she would like to be.

The poem's narrator is apparently angry at something or someone for contributing to this ghastly "consummation." The "turned-up putty nose," as false as the Barbie Doll image the girl had striven for, suggests the anger. The consummation is a sham, even in death. The undertaker's cosmetics have made her pretty, and she has been surrounded by satin and the softness of a "pink and white nightie," paradoxically to make her appealing for the very people who she thought saw her as fat and ugly. There is simply no fulfillment or satisfaction.

And why not? Whose fault is it? One might argue that this girl was driven to commit suicide, that in a subtle but systematic way society drove her to it by imposing such a preponderance of false values on her. Certainly she was injured by her schoolmate's unkind remark, but it was not endangerment or assault. Nor was it harassment because the perpetrator did not threaten bodily injury or property damage; did not restrain the victim. The schoolmate did harm the "girlchild," but this must be in conjunction with "the person who is threatened [being] in reasonable fear that the threat will be carried out. Again, there was no threat, though there was harm. Not even promoting a suicide attempt applies here, for it requires that "a person knowingly causes or aids another person to attempt suicide."

This is a good case in which to bring up the issue of kinds of harmful acts which are not crimes, acts which hurt people's feelings and may, as this poem suggests, have devastating or fatal effects. Ask students to reflect on the "degrees" of murder and to discuss the possibilities of "degrees" of suicide. There is, to be sure, great debate about this regarding euthanasia which has been practiced more or less since at least the time of the golden age of Greece. And there is the recent case of the "suicide doctor" and his tailgate "suicide machine." Students might be reminded at this point that this is not a real life but the life of a fictitious girl character in order to prompt their thinking hypothetically here: would we be willing to excuse or allow suicide in cases wherein the

harm to the individual would be greater if that person were to live than todie.

This is a very hot issue, and achieving any closure with it may be difficult. Referring to the text is often helpful in such cases because we can say, "These circumstances, not just any circumstances." But even so, students are likely to rationalize a non-decision by pleading that they are in no position to "play God" nor do they wish to be. In the face of such defenses apply the definitions, look to the details of the text. Make, for instance, a "balance sheet" of the character's circumstances as she is in the poem:

Problems	Potential
1. paranoic	1. health
2. thinks she's fat	2. intelligence
3. thinks she's ugly	3. strong
4. low self-esteem	4. dexterity
5. feels inadequate	5. good nature
6. worn out	6. can be motivated

Have students discuss remedies or ways of intervening with a person like this. This case also provides a good companion for comparison and contrast with the situation portrayed in "Incident."

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"The Man He Killed"

Thomas Hardy

In "Barbie Doll" there is an inexcusable and harmful series of actions which are not illegal; in this case there is a harmful act (usually considered illegal) which is, by traditional standards excusable and probably not illegal in these circumstances. Still it is homicide, but students ought to deliberate and develop a list of "excusable" or "non-criminal" homicides. Under normal circumstances, self-defense and insanity might be two appropriate defenses to homicide in Washington.

In this poem there is no doubt that the narrator committed the act: "I shot him dead . . . ." He says it three times which in literary tradition is an ample, powerful, and significant number. Each time he says it we learn a little more about the act and his attitude toward it. In his first admission, for instance, he tells us that he shot in self-defense: "I shot at him as he at me,/And killed him in his place." They have met as opposing infantrymen and fired their weapons at one another as an act of war. It is a quick, clean process as suggested by the words " . . . killed him in his place": no chase, no preliminary wounds, no hand-to-hand struggle--just shots fired and one man dead.

"The insanity defense in Washington requires that at the time of the crime, as a result of a mental disease or defect, the mind of the defendant was affected so that [s/he] could not understand what [s/he was] doing and [s/he was] unable to tell right from wrong regarding the crime. The defendant must establish the insanity defense by a preponderance of the evidence."

(Students might think the defense of duress applies here. However, duress is never a defense to a murder or manslaughter charge. "Duress in Washington requires that the defendant participate in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the defendant that in case of refusal s/he or another would be liable to immediate death or immediate grievous bodily injury. The apprehension must have been reasonable and the defendant must not have participated in the crime except for the duress.")

Self-defense to a charge of murder or manslaughter requires that the accused, given his or her situation, have a reasonable belief that his or her life, a close family member, or other person in his or her presence is in imminent danger of death or serious bodily injury. The prosecutor must prove beyond a reasonable doubt that self-defense did not exist. An initial aggressor cannot claim self-defense unless he or she withdraws and abandons the conflict first.

It is not clear whether or not this is self-defense because the surviving infantryman may have been an initial aggressor. However, he

certainly had a reasonable belief that his life was in imminent danger of death or serious bodily harm.

Second, "I shot him dead because--/Because he was my foe" provides us with the motivation for the killing. As an act of war, this motivation is enough if the victim is clearly a "foe." The only doubt suggested by the poem relates to why he is a foe not whether or not he is one. If this murder had taken place in a neighborhood between two members of rival gangs, the definition

of "foe" would not be enough to excuse the killing. Ironically, the hypothetical gang member is likely to have been far more deliberate and intentional about his actions than the killer- infantryman in Hardy's poem: "He thought he'd 'list, perhaps,/Off-hand-like--just as I--/Was out of work--had sold his traps--no other reason why." Neither the killer nor the victim enlisted because of some compelling belief or for the sake of defending an ideology. The gang member is likely to believe that he has a valid and worthy cause--perhaps his identity and dignity albeit distorted--to fight and kill for. Typical of literary descriptions of adversaries in war, this narrator sees the situation not as patriotic or heroic but "quaint and curious."

There was nothing personal in the warfare. We had nothing against the enemy, or any one else, for that matter. They had nothing against us either except we were trampling all over their country and killing all their folks. In the bush we tried to kill each other with no more remorse than shooting paper targets. To this day, I can honestly say that I never met a Vietnamese, alive or dead, that I didn't respect.

And with that we are finally brought to the third confession: "You shoot a fellow down" which brings the poem full circle to its opening reflection. If these adversaries had met in an inn or a tavern, they would probably have bought one another drinks, even lent money to one another, "You'd treat, if met where any bar is,/Or help to half-a-crown."

Murder, homicide, taking a life--these are some of the words we use for killing human beings. The law is seldom unambiguous about such actions. That is, the law provides for extenuating circumstances, for judgments regarding intent, pre-meditation, self-defense, insanity, accident, and duress. But this is an act of war; that is its special status. Thus it is excusable homicide.

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"Leda and the Swan"

William Butler Yeats

It was a commonplace activity for the Greek god Zeus to take the shape of an animal in order to go among the mortals and cavort with them, often raping a mortal woman or two. He felt that it was his prerogative as the chief god. Thus when he came to Leda, a married woman with two sons, he arrived as a swan. He took her with some force, "A sudden blow." She staggered, and he caught the nape of her neck in his bill. She was "terrified" and apparently felt helpless: "How can those terrified vague fingers push/The feathered glory from her loosening thighs?" As line 13 puts it, she was "mastered by the brute blood of the air."

Yeats's purpose is to take up the question of whether or not Leda was aware of the momentous nature of the occasion. The product of this violent union was Helen, later known as "Helen of Troy." Did Leda gain anything from the experience ("Did she put on his knowledge with his power")? A question that might be put to students at this point is whether or not it would be any more or less a rape if she did.

With that it would be advisable to go to the definitions for some review of the types and degrees of rape in the Washington system. Since the nature of the perpetrator or the perpetrator's motives--regal or not--are irrelevant, the crime appears to be rape in the second degree. Rape in the first degree might be charged because there is forcible compulsion and the perpetrator might be understood to have used a deadly weapon. This argument would be based upon the fact that Zeus is a god with extraordinary powers capable of destroying a human being quite easily. Second degree seems more likely because there is such clear evidence that the sexual intercourse was accomplished by "forcible compulsion."

Composition: Individual Writing Activities:

A. Using Countee Cullen's poem as a model, write a short poem about an "incident" you have observed or experienced; or write a paragraph (anecdote) which presents the same kind of event or experience.

B. Choose one of the poems, and explain why (or why not) it portrays a "crime against a person", after reviewing the definitions of each crime; be sure to use the legal definitions as the basis of your judgment, but show how you would modify them in order to make them more appropriate for the particular situation you have chosen.

C. Should there be additional categories of crimes against persons?

What are they?
How would you punish people who commit such crimes?
What would your purpose be?

Using one of the situations portrayed in the poems, identify the type of crime (a new category, if you wish), define it, and explain your rationale for punishment of that type of crime. Be sure to take into consideration the question of "standard sentencing" explained in Handout 2.

Group Activity:

A. Review the "Definitions: Homicide and Assault" together; ask students to name examples of injuries which might fit in to the various categories; elicit a description of injuries which do not seem to be covered by any of the listed types of homicide or assault.

Explain to students that a crime is made up of an act and intent. Each crime is defined by its component parts, called elements. A prosecutor must prove each element of the crime beyond a reasonable doubt in order to convict a defendant of a crime.

B. Assign one or two small groups to each poem; each group lists the facts of the case; each group identifies the "crime" most closely fitting the injurious action presented in their assigned poem; each group will poll the members of the remaining groups regarding the following:

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A. Was this action harmful?

B. Was this action intentional?

C. Was this action deliberate?

D. Was this action negligent?

E. Was this action a crime?

F. Was this action premeditated?

F. Who is the perpetrator?

G. Should the perpetrator(s) be punished?

H. Should the punishment

1. attempt retribution (getting even)?

2. attempt deterrence (convince others or this defendant not to repeat the crime)?

3. attempt rehabilitation (to improve the defendant so as not to commit additional crimes)?

4. attempt incapacitation (to remove the defendant from society so that others will not be harmed)?

J. The groups could also ask whether or not the "crime" should be regarded as excusable, justified, the result of duress; whether or not it was voluntary, involuntary, felonious, malicious, etc.

If two groups are assigned to each poem, one group should approach the situation as prosecution, one as defense. The remainder of the class will determine guilt or innocence as if it were a jury, after hearing what the two groups had determined based upon their discussion of the above questions.

HOMICIDE, ASSAULT, AND RAPE

In Washington, homicide is defined as killing of a human being by the act, procurement or omission of another, death occurring within three years and a day. The homicide is either

a. murder

(1) 1st degree: A person is guilty of murder in the first degree when, with a premeditated intent to cause the death of another person, he or she causes the death. Premeditation involves more than a point in time; OR (2) under circumstances showing an extreme indifference to human life, a person engages in conduct which creates a grave risk of death to any person, and thereby causes the death of a person; OR when a person commits or attempts to commit certain felonies and during or in immediate flight from the crime causes the death of a person who is not one of the participants.

(2) aggravated 1st degree: A person commits aggravated murder in the first degree when he or she commits premeditated first degree murder plus an aggravating factor.

(3) 2nd degree: A person is guilty of murder in the second degree when, with an intent to cause death of anther person, but without premeditation, he or she causes the death of such person; OR a person commits or attempts to commit other felonies than those involved in first degree felony murder and in committing or in immediate flight from the crime, the person or another participant causes the death of a person other than one of the participants.

b. homicide by abuse: A person commits homicide by abuse when a person, under circumstances showing an extreme indifference to human life, causes the death of a child or person under sixteen years of age, a developmentally disabled person, or a dependent adult, and the person has previously engaged in a pattern or practice of assault or torture of that person.

c. manslaughter

(1) 1st degree: A person commits manslaughter in the first degree when he or she recklessly causes the death of another person.

(2) 2nd degree: A person commits manslaughter in the second degree when, with criminal negligence, he or she causes the death of another person.

d. excusable homicide: The killing of a human being, either by misadventure or in self-defense. IT consists of a person's acting in a manner which the law permits, such as self-defense or accidental homicide. The name itself suggest some fault, error, or omission, however slight, that the law excuses it from guilt of felony.

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e. justifiable homicide: A person commits justifiable homicide when the accused kills another intentionally, but without any evil design, and under such circumstances of necessity or duty that make the act proper, and relieve the party from any shadow of blame. For example, when a warden lawfully executes a sentence of death, or where the killing takes place in the attempt to prevent the commission of a felony which otherwise could not be avoided or, as a matter of rights, such as self-defense or other causes provided for by law.

f. vehicular homicide: A person commits vehicular homicide when he or she kills another as a direct result of driving of any vehicle by a person under the influence of liquor or drugs or by reckless driving.

Since July 1, 1988, the State of Washington has defined assault and these related crimes in the following ways:

a. Assault in the first degree: A person commits assault in the first degree when a person with intent to inflict great bodily harm:

(1) assaults another with a firearm or deadly weapon or any force likely to produce great bodily harm; OR
(2) administers poison or causes another to take poison; OR
(3) assaults another and inflicts great bodily harm.

b. Assault in the second degree: Assault in the second degree occurs when a person who has not committed assault in the first degree:

(1) intentionally assaults another and inflicts substantial bodily harm; OR
(2) intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; OR
(3) assaults another with a deadly weapon; OR
(4) with intent to inflict bodily harm, administers poison, the human immunodeficiency virus, or any other destructive substance to another person; OR
(5) with intent to inflict bodily harm, exposes or transmits human immunodeficiency virus; OR
(6) with intent to commit a felony, assaults another; OR
(7) knowingly inflicts bodily harm which by design causes such pain or agony as to be torture.

c. Assault in the third degree: Assault in the third degree occurs when a person who has not committed assault in the first or second degree:

(1) with intent to prevent or resist any lawful process by a court officer or lawful apprehension of himself/herself or another, assaults a person; OR
(2) assaults a person employed as a transit operator or driver by a transit company while that person is in control of a transit vehicle; OR

(3) with criminal negligence, causes bodily harm to another person with a weapon or instrument likely to produce bodily harm; OR
(4) assaults a fire fighter or other employee of a fire department while performing their official duties; OR
(5) with criminal negligence, causes bodily harm accompanied by substantial pain that lasts for a period sufficient to cause considerable suffering.

d. Assault in the fourth degree: Assault in the fourth degree occurs when a person commits an assault not amounting to assault in the first, second, third degree, or custodial assault.

e. Custodial assault: Custodial assault occurs when a person not guilty of assault in the first or second degree assaults a staff member of a juvenile or adult corrections or detention institution, a community corrections officer, employee or volunteer who was performing official duties at the time of the assault.

f. Reckless Endangerment: Reckless Endangerment was changed in 1989 in order to address drive-by shootings. Reckless endangerment in the first degree occurs when a person recklessly discharges a firearm in a manner which creates a substantial risk of death or serious physical injury to another and the discharge is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge.

g. Reckless Endangerment in the second degree: Reckless Endangerment in the Second Degree occurs when the person recklessly engages in conduct that is not first degree reckless endangerment, but which creates a substantial risk of death or serious physical injury to another.

h. Coercion: Coercion occurs when a person by use of a threat compels another to engage in conduct which the other person has a legal right not to do, or to abstain from conduct which the other person has a legal right to do. A threat means to communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time, to cause bodily injury to another person in the future, to cause physical damage to another's property, or to subject another to physical confinement or restraint.

i. Malicious harassment: Malicious harassment occurs when a person maliciously and with intent to intimidate or harass another because of, or in a way that is reasonably related to, that person's race, color, religion, ancestry, national origin, or mental, physical, or sensory handicap:

(1) causes physical injury to another; OR
(2) by words or conduct places another in reasonable fear of harm to person or property; OR
(3) causes physical damage to the property of another.

Certain actions are automatic violations of this statute: cross burning, defacement of another's property with symbols or words which historically connote hatred or threats toward the victim.

Rape in the first degree occurs when a person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or and accomplice:

(1) uses or threatens to use a deadly weapon; OR

(2) kidnaps the victim; OR

(3) inflicts serious physical injury; OR

(4) feloniously enters into the building or vehicle where the victim is located.

Rape in the second degree occurs when a person who has not committed rape in the first degree, engages in sexual intercourse with another person.

(1) by forcible compulsion; OR

(2) when the victim is incapable of consent because of being physically helpless or mentally incapacitated; OR

(3) when the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim.

Rape in the third degree occurs when a person who has notcommitted rape in the first or second degree engages in sexual intercourse with another person, not married to the perpetrator:

(1) where the victim did not consent to sexual intercourse and the lack of consent was clearly expressed by the victim's words or conduct; OR

(2) where there is threat of substantial unlawful harm to property rights of the victim.

STANDARD SENTENCING

Standard sentencing is a system of assigning penalties to convicted criminals. It reduces the broad discretion of the sentencing judge by requiring the judge select from a narrow range of penalties determined by the severity of the crime and the offender's criminal history. The guidelines, not the judge, determine the appropriate punishment--jail, prison, work release, community supervision, restitution, as well as the length of confinement and the amount of the fine. Deferred or suspended sentences were abolished as well as extensive parole supervision.

Judges may go outside this standard range of sentences when special circumstances are present. However, they must put their reasons in writing and be subject to an appeal when they do so.

OUT, OUT--'"

Robert Frost

The buzz-saw snarled and rattled in the yard
And made dust and dropped stove-length sticks of wood,
Sweet-scented stuff when the breeze drew across it.
And from there those that lifted eyes could count
Five mountain ranges one behind the other
Under the sunset far into Vermont.
And the saw snarled and rattled, snarled and rattled,
As it ran light, or had to bear a load.
And nothing happened: day was all but done.
Call it a day, I wish they might have said
To please the boy by giving him the half hour
That a boy counts so much when saved from work.
His sister stood beside them in her apron
To tell them `Supper.' At the word, the saw,
As if to prove saws knew what supper meant,
Leaped out at the boy's hand, or seemed to leap--
He must have given the hand. However it was,
Neither refused the meeting. But the hand!
The boy's first outcry was a rueful laugh,
As he swung toward them holding up the hand
Half in appeal, but half as if to keep
The life from spilling. Then the boy saw all--
Since he was old enough to know, big boy
Doing a man's work, though a child at heart--

He saw all spoiled. `Don't let him cut my hand off--
The doctor, when he comes. Don't let him, sister!'
So. But the hand was gone already.
The doctor put him in the dark of ether.
He lay and puffed his lips out with his breath.
And then--the watcher at his pulse took fright.
No one believed. They listened at his heart.
Little--less--nothing!--and that ended it.
No more to build on there. And they, since they
Were not the one dead, turned to their affairs.

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"INCIDENT"

Countee Cullen

Once riding in old Baltimore,
  Heart-filled, head-filled with glee,
I saw a Baltimorean
  Keep looking straight at me.
Now I was eight and very small,
  And he was no whit bigger,
And so I smiled, but he poked out
  His tongue, and called me, "Nigger."
I saw the whole of Baltimore
  From May until December;
Of all the things that happened there
  That's all that I remember.

"BARBIE DOLL"

Marge Piercy

This girlchild was born as usual
and presented dolls that did pee-pee
and miniature GE stoves and irons
and wee lipsticks the color of cherry candy.
Then in the magic of puberty, a classmate said:
You have a great big nose and fat legs.

She was healthy, tested intelligent,
possessed strong arms and back,
abundant sexual drive and manual dexterity.
She went to and fro apologizing.
Everyone saw a fat nose on thick legs.

She was advised to play coy,
exhorted to come on hearty,
exercise, diet, smile and wheedle.
Her good nature wore out
like a fan belt.
So she cut off her nose and her legs
and offered them up.

In the casket displayed on satin she lay
with the undertaker's cosmetics painted on,
a turned-up putty nose,

dressed in a pink and white nightie.

Doesn't she look pretty? everyone said.

Consummation at last.

To every woman a happy ending.

"THE MAN HE KILLED"

Thomas Hardy

Had he and I but met
By some old ancient inn,
We should have sat us down to wet
Right many a nipperkin!

But ranged as infantry,
And staring face to face,
I shot at him as he at me,
And killed him in his place.

I shot him dead because--
Because he was my foe,
Just so: my foe of course he was;
That's clear enough; although

He thought he'd 'list, perhaps,
Off-hand-like--just as I--
Was out of work--had sold his traps--
No other reason why.
Yes; quaint and curious war is!
You shoot a fellow down
You'd treat, if met where any bar is,
Or help to half-a-crown.

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"LEDA AND THE SWAN"

William Butler Yeats

A sudden blow: the great wings beating still
Above the staggering girl, her thighs caressed
By the dark webs, her nape caught in his bill,
He holds her helpless breast upon his breast.

How can those terrified vague fingers push
The feathered glory from her loosening thighs?
And how can body, laid in that white rush,
But feel the strange heart beating where it lies?

A shudder in the loins engenders there
The broken wall, the burning roof and tower
And Agamemnon dead.
Being so caught up,
So mastered by the brute blood of the air,
Did she put on his knowledge with his power
Before the indifferent beak could let her drop?

JUVENILE JUSTICE, SUICIDE AND MENTAL ILLNESS

Source:

Developed by William Krieger in conjunction with the University of Puget Sound Institute for Citizen Education in the Law.

Focus: Punctuation; short story

Class Periods:

Objectives:

1. Students will become familiar with the juvenile justice system.
2. Students will list differences between the juvenile justice process and the adult process.
3. Students will clarify ways that the law and society approach suicide and mental illness.
4. Students will reflect on the difficulty of dealing with legal issues in which individuals and the public have prejudicial and irrational fears.

Materials:

Text of McCullers' "The Haunted Boy"

Handout 1: Was Gerald Gault Treated Fairly: A Punctuation Exercise

Handout 2: Washington's Juvenile Court System

Handout 3: Juvenile or Adult?

Handout 4: The Stigma of Mental Illness

Handout 5: Two poems--Sexton and Parker

1. Level One: Have students individually punctuate the following statements (an unpunctuated copy of "The Case of Gerald Gault," Street Law, 3rd ed., p. 108). Then have students check their punctuation with another student in small groups and finally with the instructor. Also in small groups, have students a list of anything that happened to Gerald Gault that they consider unfair, giving their reasons.

Students should then return to the large group and reveal items of unfairness and reasoning.

Students should review the chart on the Washington's Juvenile Court Process, Handout 2 and determine in what ways

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Gerald Gault would have been treated differently under Washington's juvenile system.

Answer to Handouts 1 and 2

In Washington, Gerald Gault could be taken into custody provided that there was sufficient information (probable cause) that he had been involved in the offense. It is unlikely that the information supplied by Mrs. Cook amounts to probable cause to take into custody.

Additionally, in Washington, Gerald Gault would not have been kept in detention under these circumstances. Juveniles will be held in detention if there is cause to believe:

a. that the juvenile will likely fail to appear for further proceedings; or

b. detention is required to protect the juvenile from him or herself; or

c. the juvenile is a threat to the community; or

d. the juvenile will intimidate a witness, etc.; or

e. the juvenile has committed a crime while another case was pending; or

f. the juvenile is a fugitive from justice; or

g. the juvenile's parole has been suspended or modified; or

h. the juvenile is a material witness; or

i. upon finding members of the community have threatened the juvenile; or

j. at the juvenile's request.

A detention hearing will be held within 72 hours of the filing of charges if a juvenile was placed in detention. The purpose is to determine whether continued detention is necessary until further proceedings occur.

Gerald would also have his case screened by the prosecuting attorney who under Washington law would have to divert the case. Gerald would have the right to reject diversion and go to court for a hearing to determine guilt or innocence. If Gerald goes to court, he would have a free attorney if he were not able to afford one. Gerald's parents would also have been notified of the nature of the criminal charges.

If Gerald had a hearing, Mrs. Cook would have had to have been called as a witness. Hearsay evidence is not admissible, in the same way

as for adults. Juveniles in Washington do not have jury trials and their trials are open to the public. A record would be made of the hearing.

Evidence must be beyond a reasonable doubt for juveniles, a preponderance of the evidence is not sufficient for a finding of guilt.

Sentencing in Washington is determined by use of a matrix. A standard range for this type of offense, for a first offender would not carry with it a period of commitment to a juvenile institution. At most he might have to pay a fine, do community service hours, and be under community supervision for a short period of time.

2. Level Two: Distribute Handout 3 and have students define and distinguish between the terms (individual or small group assignment).

3. Level Three: Read Carson McCullers' "The Haunted Boy"

Present information on Washington law regarding families in conflict, abused and neglected children, and suicide.

a. Families in Conflict

Explain to students that before 1977, children who ran away or were considered beyond the control of their parents (status offenders) were treated within the same system with children who committed crimes. Nationwide studies were showing that many children who ran away were leaving homes where they had been abused, either physically or sexually, or both. Others were leaving homes where there had been no abuse; there had been, instead, a total lack of concern about the child. These children were not in need of the same treatment as those who committed crimes.

Today when things go wrong between parents and children in Washington, there are special procedures. In 1979, "Procedures for Families in Conflict" became the law. This law set up a procedure for a parent or a child to request an out-of-home placement when a conflict occurs that cannot be resolved. This law strengthened the authority of parents to make decisions about children, while still providing protection for those children whose parents truly abuse or neglect them.

The Juvenile Court decides petitions for out-of-home placement when the parent/child dispute cannot be settled by counseling. Prior to hearing a petition for an Alternative Residential Placement, a family assessment must be completed by the State Department of Social and Health Services. The family assessment is aimed at family reconciliation and avoidance of out-of-home placement.

A child or a child's parent may file the petition to approve an out-of-home placement for the child. The Department may assist either the parent or child in filing a petition.

The Court then holds a hearing to determine whether or not to grant the petition, considering that the state legislature gave families the

right to place reasonable restrictions and rules on their children, appropriate to their individual child's developmental level.

The court may approve the petition only if it is established by a preponderance of the evidence that:

a. the petition is not capricious;

b. the petitioner, if a parent or the child, has made a reasonable effort to resolve the conflict;

c. the conflict which exists cannot be resolved by providing services to the family while keeping the child in the home;

d. reasonable efforts have been made to prevent the need for removal of the child from the home and to make it possible for the child to return home; and

e. a suitable out-of-home placement resource is available.

b. Abused and Neglected Children

Washington has special laws dealing with child abuse and neglect. The laws define "child abuse and neglect" as:

> ...the injury, sexual abuse, sexual exploitation, or negligent treatment of a child by any person under circumstances which indicate that the child's health, welfare, and safety is harmed thereby....Provided, That this subsection shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare, and safety: And provided further, That nothing in this section shall be construed to prohibit the reasonable use of corporal punishment as a means of discipline.

Parents do not have a free hand in disciplining their children. It is the policy of the state to "protect children from assault and abuse." The following actions are considered "unreasonable physical discipline" under the state child discipline law, and are treated as crimes:

> ...throwing, kicking, burning, or cutting a child; striking a child with a closed fist; shaking a child under the age of three; interfering with a child's breathing; threatening a child with a deadly weapon; or doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks. The age, size and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate.

It is also a crime in Washington for a parent or other person with physical custody of a child to "create a substantial risk of or cause bodily

harm to a child by withholding any of the basic necessities of life." The basic necessities of life include food, shelter, clothing, and health care. If the parent cannot afford to provide these things, this may be a defense, if the parent made a reasonable effort to get assistance.

If there is sufficient evidence of serious abuse, the prosecutor will bring a criminal case against the abuser in Superior Court. Most cases, however, go to Juvenile Court, where dependency proceedings are held. A dependency proceeding is filed by DSHS and it is to decide who should have custody of the abused child.

If the child is not returned to the home, s/he will be placed in "shelter care", which is usually a foster home or group home, or with a relative.

The court can order counseling for the abuser. After a period of time the court will review the placement and decide whether the child should be returned to the home, if the child has been removed.

c. Suicide

In Washington, it is not a crime to attempt to commit suicide. However, it is the felony of Promotion of Suicide to knowingly cause or aid another to commit suicide.

Even though it is not a crime in Washington to commit suicide, the government may have the right to intervene in a person's life when that person has attempted suicide. The Involuntary Treatment Act provides for involuntary commitment and treatment of mentally disordered persons when there is:

a. a mental disorder

AND

b. some behavior that

(i) makes him or her a danger to self, others, the property of others OR

(ii) gravely disabled.

The danger that the person presents includes a substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict other physical harm on the person.

At attempted suicide is not sufficient for involuntary commitment. A mental disorder must also be present. A mental disorder means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

Examine McCullers' text to determine the status of Hugh ("the haunted boy") and the mental state of Hugh's mother.

Consider Hugh's status: Is he an abused or neglected child or a person in conflict with his family that requires an out-of-home placement? Is there evidence that Hugh's mother could be involuntarily committed to a mental hospital?

Even though Hugh likes John better than anyone else, he cannot tell John the truth about his mother or his fears. Why? What does Hugh's reluctance and other details of the story tell us about the problems of dealing with mental health? What are some of the legal problems?

Have students review Handout 4 and question whether or not the issue of stigma played a role in Hugh's silence.

Write a short essay about one of the following:

a. When should a child be placed into the custody of someone other than his/her family?

b. Should attempted suicide be treated as a criminal offense?

WAS GERALD GAULT TREATED FAIRLY
A PUNCTUATION EXERCISE

Directions: Punctuate the following statements. Then in small groups, check your punctuation. Review the punctuation with your instructor to assure that everyone has the same sense of the case. Also in small groups, make a list of anything that happened to Gerald Gault that you consider unfair. Explain your reasoning for each item on the list.

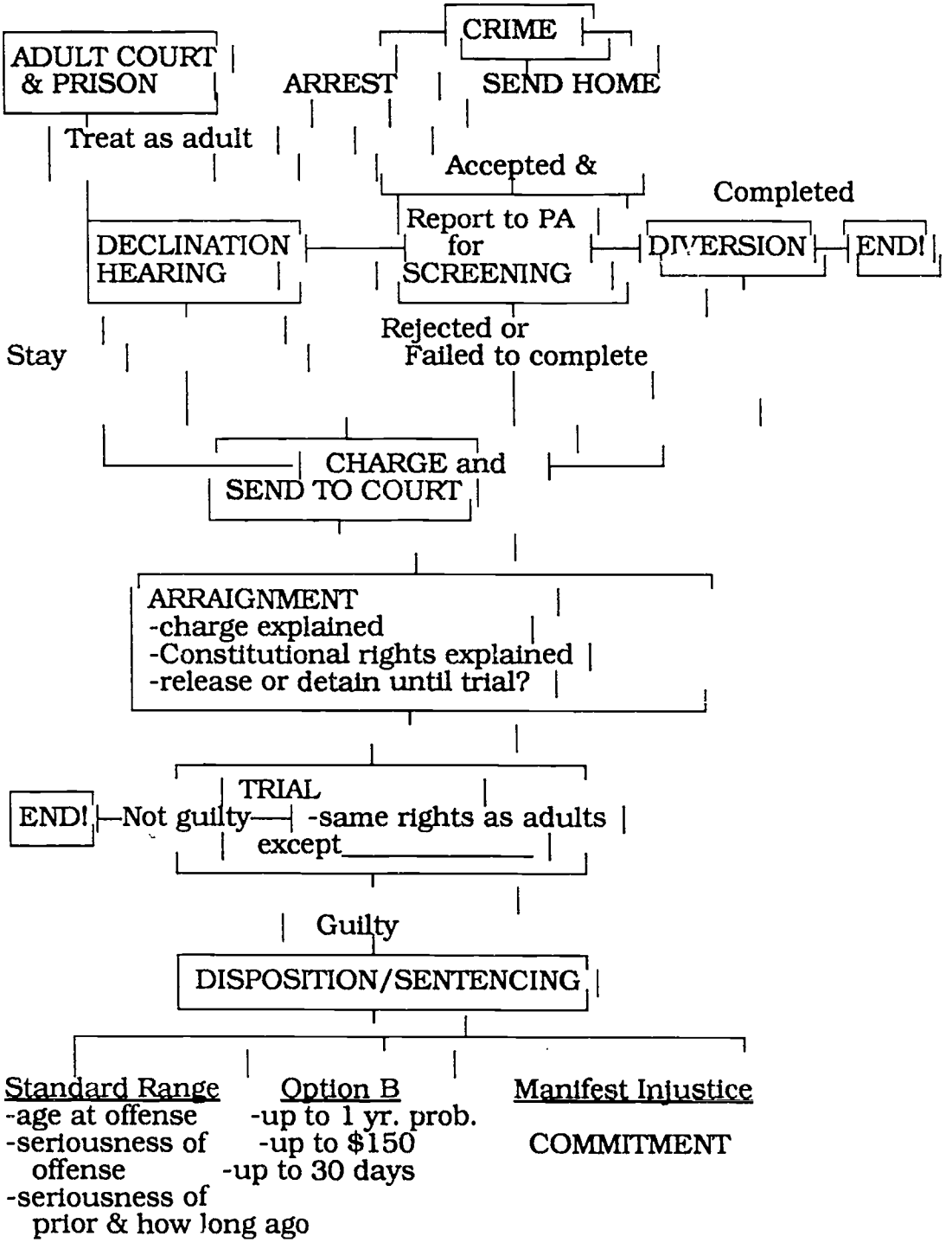
Return to the large group and reveal items of unfairness and reasoning. Review the chart on Washington's Juvenile Court Process to determine the procedure in Washington.

Gerald Gault age 15 was taken into custody and accused of making an obscene phone call to a neighbor at the time Gerald was taken into custody his parents were at work and the police did not notify them of what had happened to their son Gerald was placed in a detention center when his parents finally learned that he was in custody they were told that there would be a hearing on the next day but they were not told the nature of the complaint against him

Mrs Cook the woman who had complained about the phone call did not show up at the hearing instead a police officer testified to what he had been told by Mrs Cook Gerald blamed the call on a friend and denied making the obscene remarks no lawyers were present and no record was made of what was said at the hearing

Since juries were not allowed in juvenile court the hearing was held before a judge who found by a preponderance of the evidence that Gerald was delinquent and ordered him sent to a state reform school until age 21 an adult found guilty of the same crime could be sent to county jail for no longer than 60 days

WASHINGTON'S JUVENILE JUSTICE SYSTEM[1]



[1] Developed by Terry Lane, Prosecutor, Pierce County, Juvenile Division and adapted by UPSICEL.

JUVENILE OR ADULT?

Define and distinguish between the following sets of terms:

Crime	Offense
Arrest	Take into custody
Plea bargain agreement	Diversion agreement
File charges	Diverted
Trial	Adjudicatory Hearing
Sentence	Disposition
Crazy	Mentally ill
Insane	Incompetent

THE STIGMA OF MENTAL ILLNESS

There is a stigma of mental illness in society:

"There are as many schizophrenics in America as there are people in Oregon, Mississippi and Kansas, or in Wyoming, Vermont, Delaware and Hawaii combined...."[2]

Despite its widespread prevalence, the disease is remote to most people because we have become experts in hiding it. It lurks behind the curtain in many families, but nobody bothers to mention it. It is the aunt who used to live with them but then moved; what they don't add is that she moved to the state hospital. It is the son who got in trouble in late adolescence and is now said to be living in Pennsylvania; what they don't add is that he is committed to the state hospital there. It is the sister who tragically committed suicide over, it is rumored, a love affair; what they don't add is that she committed suicide because she was plagued by voices and chose not to live with her disease. We hide it in the family closet, hoping nobody will tell, hoping nobody will find out. It is a stigma....

For it is only our ignorance (of mental illness) which continues to keep schizophrenics in the closet. It is only our lingering mystical mentality, our heritage of examining entrails to predict the future, our aversion to the evil eye, which keeps us from putting schizophrenia into its proper 980s perspective. Schizophrenia is a brain disease, now definitely known to be such. It is a real scientific and biological entity as clearly as diabetes, multiple sclerosis, and cancer are scientific and biological entities.[3]

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2 President's Commission on Mental Health, 1978, quoted in E. Fuller Torrey, M.D., Surviving Schizophrenia, (New York: Harper & Row, 1983), p. 1

3 E. Fuller Torrey, M.D., Surviving Schizophrenia, (New York: Harper & Row, 1983), pp. 1-2.

TWO POEMS

Anne Sexton, "Ringing the Bells" in To Bedlam and Part Way Back (Boston: Houghton Mifflin, 1960), p. 40.

And this is the way they ring
the bells in Bedlam
and this is the bell-lady
who comes each Tuesday morning
to give us a music lesson
and because the attendants make you go
and because we mind by instinct,
like bees caught in the wrong hive,
we are the circle of the crazy ladies
who sit in the lounge of the mental house
and smile at the smiling woman
who passes us each a bell,
who points at my hand
that holds the E flat,
and this is the gray dress next to me
who grumbles as if it were special
to be old, to be old,
and this is the small hunched squirrel girl
on the other side of me
who picks at the hairs over her lip,
who picks at the hairs over her lip all day,
and this is how the bells really sound, as untroubled
and clean
as a workable kitchen,
and this is always my bell responding
to my hand that responds to the lady
who points at me, E flat;
and although we are no better for it, they tell you to
go. And you do.

Dorothy Parker, "Resume" in Poetry, 3rd ed., edited by Joseph de Roche (Lexington, Massachusetts: Heath, 1988), p. 401.

Razors pain you;
Rivers are damp;
Acids stain you;
And drugs cause cramp.
Guns aren't lawful;
Nooses give;
Gas smells awful;
You might as well live.

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WHO'S LIABLE FOR INJURIES ON THE JOB?

Source:

Developed by Dale Greenawald, Social Science Education Consortium and Newsweek, Inc., in conjunction with University of Puget Sound Institute for Citizen Education in the Law

Class Periods: 1-2

Use of Outside Resource Persons

An investigator from the State Department of Labor and Industries Industrial Safety and Health Division would make an excellent resource to provide local examples of existing hazardous chemicals in the workplace. Additionally, a lawyer in product liability law could assist in describing the principles of manufacturer liability.

NOTE TO TEACHERS:

Extension Activities:

Teachers should consider how these cases might be used to promote learning of social science and science content. Possible suggestions include:

1. In cases involving flamability--flash point, gaseous diffusion

2. In cases of dermal absorption-- permeable membranes

3. Examine the structure, properties and reactions used to manufacture chemicals discussed in cases. Also discuss concentrations.

4. Discuss how the chemicals in the cases act in/on biological systems. What systems do they attack and how?

5. Also consider how members of the science department can work with social studies teachers to show students how their field can assist in understanding these issues. Also, how might you involve social studies teachers?

Have students participate in writing a policy for handling hazardous materials in the department or school.

Ask students to identify safer procedures or materials that might have been used in each situation.

Have students identify the chemicals found in their work environments, what are they, how are they manufactured, what do they do, how do they impact various biological systems and what materials might be substituted if these are hazardous?

These are only a few suggestions about how these cases might be used to promote content learning.

Legal Implications:

The unique properties and consequences of exposure to toxic materials pose a variety of legal issues. Because there is often a period of decades between exposure to a toxic material and symptoms of any injury the legal system has had to make adjustments. Among the issues the legal system must consider because of the extended latent period are:

a. Who is responsible --sue entire industry to spread costs
b. Subclinical injury --e.g. inhalation of asbestos, precursor
c. Emotional distress caused by fear from exposure
d. Awards of medical monitoring
e. Problem or establishing link between injury and exposure
f. Statute of limitations--from time of discovery of injury or knowledge of exposure.

Objectives:

1. Students will identify Washington laws regarding manufacturers' liability for safe products in work environments where students are commonly employed.

2. Students will apply manufacturers' liability law to work situations in which they might find themselves.

3. Students will learn laws related to protecting themselves from dangerous material in the work environment.

4. Students will be encouraged to protect themselves from hazardous materials in the work place and to apply appropriate legal action if they are injured on the job as a result of exposure to toxic materials.

5. Students will describe Washington's "Right to Know" of chemical hazards in the work place and the penalties for employers who violate this law.

6. Teachers will identify windows of opportunity in the curriculum for using these issues to teach social studies and science.

Materials:

Handouts 1 and 2

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Procedures:

1. List these five employment situations on the board and ask students to identify what toxic or chemically hazardous material might be located there.

Employment	Toxic Materials
1. Fast food/restaurants	1. Cleaning agents, degreasers
2. Gas stations/car repair	2. Petroleum products
3. Lawn and garden care/nurseries	3. Pesticides, insecticides, petroleum products
4. General retail establishments	4. Glues, fabric conditioners, dies, petroleum products and others
5. Recreation facilities/swimming pools	5. Cleaning agents, pest control compounds, anti-fungicides, water purification materials

2. Explain to students that there are four ways that the law regulates the health and safety of employees in the workplace.

a. Occupational Health and Safety Administration and its Washington State equivalent, the Department of Labor and Industries Industrial Safety and Health Division. Their job is to regulate employers to provide a safe and healthy work environment. This includes fines and criminal penalties for employers but no recovery of money for injuries to the employee.

b. The Environmental Protection Agency and Agricultural Employment Laws also provide for safe and healthy work environments.

c. Workers' compensation is a system to pay workers for injuries received on the job, regardless of fault of the employer. While this ensures that employees will be paid promptly for injuries on the job, the amount they are paid is usually far less than what they would have won had they sued in court and proven fault. In Washington State, the workers' compensation program is exclusive, which means that injured employees receive workers' compensation for injuries and have no right to sue their employer for those injuries.

d. Washington's Product Liability Law (R.C.W. 7.72 et seq.) This is a special type of "tort" law which allows injured persons or their estate or their surviving relatives to sue manufacturers when the manufacturers' product causes some harm, including death.

3. Ask students what a tort is.

A tort is a wrongful act that is not a breach of contract for which the law provides a remedy of money damages. The injured person in a tort suit is called the "plaintiff" or "claimant" and the wrongdoer is the "defendant." A tort action is a civil action, brought by the injured person, to recover compensation from the wrongdoer for the injury the wrongdoer caused.

Torts have three purposes: to compensate victims promptly and efficiently, to deter risky behavior and to allocate fairly costs to wrongdoers and benefits to victims.

Ask for examples of torts: car accidents, medical malpractice, etc.

4. Explain that today's class will focus on conditions which make manufacturers liable for injuries caused by their products. Make sure that students understand that sellers have less liability than manufacturers. Pass out Handout 1 and have students follow along.

Manufacturers in Washington can be responsible if their product causes injury to a consumer under one of three theories: negligence, strict liability, or breach (violation) of warranty. In deciding whether or not a product is not reasonably safe, the judge or jury considers how the ordinary user (not some expert) would use the product.

Sellers in Washington can be held responsible under certain circumstances, such as when the seller gives an express warranty or conceals some defect in the product or commits some negligence.

a. Negligence

In a negligence products liability suit, the manufacturer's liability can arise from a failure to warn the consumer adequately about some danger in using the product or a failure to give adequate instructions in how to use the product safely. The factfinder (judge or jury) has to decide if, at the time of manufacture, the likelihood that the product would cause the harm and the seriousness of those harms made the warnings or instructions inadequate and that the manufacturer could have provided the warnings or instructions that the consumer claims would have been adequate.

The manufacturer can also be liable if the product was not reasonably safe in its design. The factfinder (judge or jury) has to weigh the likelihood of the product causing a harm similar to what happened to the consumer and the seriousness of that harm against the burden on the manufacturer to design a product that would have prevented this injury and how feasible and practical the alternative design would be.

Another requirement on manufacturers is that if a manufacturer learns (or reasonably should have learned) after its product was manufactured that the warnings or instructions were not adequate, it must issue warnings or instructions to inform the users about the danger.

b. Strict Liability

Under the strict liability theory, the manufacturer will be liable if the product was not constructed properly. This means that when the product left the control of the manufacturer, it was different in some material way from the design specifications or performance standards of the manufacturer or differed in some important way from otherwise identical units of the same product line.

c. Express and Implied Warranties

The manufacturer is strictly liable for harm caused because the product did not match the manufacturer's express warranty or implied warranties. To be part of an express warranty, the buyer and the manufacturer must have agreed as part of their bargain how the product would perform or be used and this agreement proved to be untrue.

5. Divide the students into 10 groups and assign each group one of the ten cases. Distribute Handout 2 to all groups. Ask students to apply the law to their case. Each group should identify the most important facts, the legal issues raised by the case, the best reasons supporting each position and how they would decide the case. Court decisions for debriefing are provided below. Debrief each group's responses.

Answers to Handout 2

Case 1: Alice

(Bender et al v. William Cooper and Nephews Inc. 55 NE 2d 94)

The court ruled for the manufacturer. It reasoned that a well educated women, especially one who grew up in a medically oriented family should have known that any product that when diluted was still three times more powerful that carbolic acid crystals would not be safe to place in the eye, the most sensitive of all parts of the body. Even though the label indicated that it was safe and non-irritating one could assume that for the diluted product, not the concentrate. Moreover, these words were not set out to call special attention to them. The directions that specified a dilution rate of 60 to 1 clearly suggested that safety depends on dilution. This direction when considered with the three rating made the plaintiff's argument weak indeed. Finally, the plaintiff produced no evidence that the product when diluted could cause eye injury. Directed verdict of acquittal upheld.

Case 2: John

(Shirley v. Drackett Products Co. (1971) 26 MI App 644, 182 NW 2d 726)

The court ruled for John. It said that, while an injury alone does not establish negligence the circumstantial evidence was sufficient to establish it. The plaintiff did not have to know the precise identity of the chemical causing the damage, but merely show that in fact the product

had produced an injury and that there had not been adequate warning to protect against it.

Case 3: Susan

(Roberts v. U.S. (1963, CA 3 NJ) 316 F2d 489)

The court ruled for Susan. The court reasoned that, even though this was the first case of injury resulting from this product, the defendant should have know that it was an inherently dangerous product even when used as intended and should have provided adequate warning. Moreover even if the producer did not know of the potential for injury he should have as he is held to a standard of expert knowledge, and evidence was available to show that injury of some type, although perhaps not this exact type, was foreseeable to a reasonable person.

Case 4: Joe

(Watson v. Borg-Warner Inc. (1950) 190 Tenn 209, 228 SW 2d 1011)

By accepting workers' compensation Joe lost all right to sue the employer. (NOTE In some states including Washington workers' compensation is the only remedy against an employer for injuries received on the job). Moreover, he did not provide expert testimony to show that the oil was directly responsible for the skin condition. The absence of any medical definition of the problem or chemical analysis to show a relationship between the oil and the injury meant that the plaintiff failed to establish that the oil was in fact the cause of the injury. The isolated fact that one event occurred after another is not by itself sufficient to conclude that the event which is first in time is the cause of the latter. Moreover, the plaintiff must establish negligence and show that the company had known or should have known that the oil was dangerous. He did not show that the defendant should have reasonably foreseen the probability of harm. The company had no way of knowing that changing oil would cause any medical problem and therefore exercised due care. The fact that the company stopped using the oil after Joe's injury did not establish liability. (NOTE: In most states the rule of subsequent repair would mean that evidence about a defendant's actions after the injury occurred are not admissible in court. Otherwise the defendant would be discouraged from doing the right thing, because it might prove them wrong in court for the injury).

Case 5: Monika

(Tuscon Industries Inc. v. Schwartz (1972) 108 AZ 464, 501 P2d 936)

The court ruled for Monika. It said that a faultlessly made product may be viewed as defective if it is unreasonably dangerous to place in the hands of a user without suitable warning. Although there was a warning it was clearly not sufficient if someone in an adjacent room could be blinded by escaping vapors. The warning clearly needed to instruct that ventilation to protect the user should not be done in a manner that endangered others. The fact that no injuries had been reported and lack of past claims are no proof of safety or protection against strict liability.

The manufacturer has a duty to possess expert knowledge in his field of product. The installers cannot be held liable since they could not foresee the harm without a stronger warning label on the material.

Case 6: Helen

(Prather v. Upjohn Co. (1986) (1986, CA 11 Fla) 797 F2d 923)

The court ruled for the manufacturer since it provided adequate safeguards with its safety booklet and warning in each box of materials. The manufacturer was able to show that the plaintiff's suggested warning method was no more effective in assuring that the warning would get to the hands of the ultimate user. In addition, the plaintiff did not establish that the product was defective or unreasonably dangerous given the thoroughness of the accompanying warning. The manufacturer cannot be held liable for the failure of the employer to convey the warning information.

Case 7: Bill

(Ferebee v. Chevron Chemical Co. 552 F Supp. 1293)

The court found for Bill. Although there was conflicting testimony from experts regarding paraquat as the cause of injury the jury decided the facts of the case and they are not subject to review. The plaintiff had to establish:

paraquat was the cause of death and injury

paraquat was inherently dangerous

the defendant knew or should have know of this danger

the duty to warn was not met

the inadequate warning was the cause of injury and death

All requirements were met. The ability of the label to meet EPA requirements did not mean that the company did not have a responsibility to label the product in a manner that more clearly explained the dangers of the product. While the deceased's illness was rare, it was foreseeable and any foreseeable injury regardless of its rarity produces a responsibility to warn. The defendant should have had knowledge that skin exposure could cause lung disease and death. While the warning suggested precautions, the user must also be warned of the consequences of failure to follow that warning. This was not provided.

Case 8: Jack

(Hunter v. E.I. DuPont de Nemours & Co. (1958, D.C., Mo) 170 F Supp. 352)

The court ruled against Jack. It reasoned that the plaintiff failed to prove that the product was inherently dangerous. The company's

toxicology research and the absence of any previous injury suggest that the warning was adequate. The plaintiff can recover only if he can show that the product was dangerous to human health and life when used as directed.

Case 9: Sally

(May v. Allied Chlorine and Chemical Products Inc. Fla., 168 SO 2d 784)

The court ruled against Sally. It said that the manufacturer has no responsibility to provide a warning regarding every type of device or method that might not be suitable for filtering a toxic gas. The plaintiff knew of the danger of chlorine and the manufacturer fulfilled its responsibility by providing adequate warning.

Case 10: Walt

(Perfection Paint and Color Co. v. Konduris (1970) 147 Ind App 106, 258 NE 2d 681)

The court ruled for Walt's estate. It indicated that the fact that no sale occurred did not relieve the manufacturer/supplier of responsibility. The material was provided as part of a business transaction. Sale must be broadly defined if the intent of the law to protect the public is to be maintained. The material was not misused as the manufacturer's representative was responsible for its application and the company's contention that it could not foresee its use in these circumstances is clearly without foundation since it suggested the use. The lacquer thinner was defective and unreasonably dangerous because it was more dangerous than would be contemplated by ordinary users with ordinary knowledge.

6. Identify for students that the Washington State Department of Labor and Industries Industrial Safety and Health Division administers the State's "Right to Know" law.

7. Ask students if they know what the Right to Know law requires.

Explain that in 1984, the Worker and Community Right to Know Law was passed in Washington, it provides ways for citizens to learn about hazardous chemicals in their neighborhood and for workers to learn about hazardous chemicals in their work areas. Hazardous chemicals are chemicals or mixtures of chemicals that can cause injury physically or cause health problems.

1. Employers are required to identify what chemicals are used
2. Where they are kept.
3. How they might harm the worker.
4. How to tell when chemicals have been spilled or released.

5. What your employer is doing to protect employees from being exposed to chemicals.

6. What to do in case of emergency.

7. How to use hazardous chemicals safely as part of workers' jobs.

Three main sources of information about the chemicals in the workplace are the label on the chemical container, the material safety data sheets prepared for that chemical and the employer's written hazard communication program.

The label should tell the worker exactly what could happen to someone who is exposed to the chemical. Vague warnings such as "caution" or "danger" are not adequate and violate the law.

Material Safety Data Sheets are technical bulletins that describe each chemical in the workplace. The employer is required to keep such a sheet on each chemical used in the workplace and let employees see it at any time.

The employer is required to have a written hazard communication program which lists all hazardous substances in the workplace, who is responsible for the program and where the Material Safety Data Sheets are kept.

Employees may request an inspection anonymously and employers are forbidden to retaliate against employees for making these requests or complaints.

Employers who violate the law may be fined or in certain situations be prosecuted for a crime.

8. Ask students if they have heard of the Washington Industrial Safety and Health Act of 1970.

Under this law every employer is required to provide a workplace that is free of recognized hazards that are causing or are likely to cause serious injury or death to employees.

Any employee has the right to contact the WISHA and provide them with information or request an inspection that can be done anonymously.

Employers cannot retaliate against employees for reporting them.

WHEN A MANUFACTURER IS RESPONSIBLE FOR HARM CAUSED BY ITS PRODUCTS

a. Negligence

In a negligence products liability suit, the manufacturer's liability can arise from a failure to warn the consumer adequately about some danger in using the product or a failure to give adequate instructions in how to use the product safely. The factfinder (judge or jury) has to decide if, at the time of manufacture, the likelihood that the product would cause the harm and the seriousness of those harms made the warnings or instructions inadequate and that the manufacturer could have provided the warnings or instructions that the consumer claims would have been adequate.

The manufacturer can also be liable if the product was not reasonably safe in its design. The factfinder (judge or jury) has to weigh the likelihood of the product causing a harm similar to what happened to the consumer and the seriousness of that harm against the burden on the manufacturer to design a product that would have prevented this injury and how feasible and practical the alternative design would be.

Another requirement on manufacturers is that if a manufacturer learns (or reasonably should have learned) after its product was manufactured that the warnings or instructions were not adequate, it must issue warnings or instructions to inform the users about the danger.

b. Strict Liability

Under the strict liability theory, the manufacturer will be liable if the product was not constructed properly. This means that when the product left the control of the manufacturer, it was different in some material way from the design specifications or performance standards of the manufacturer or differed in some important way from otherwise identical units of the same product line.

c. Express and Implied Warranties

The manufacturer is strictly liable for harm caused because the product did not match the manufacturer's express warranty or implied warranties. To be part of an express warranty, the buyer and the manufacturer must have agreed as part of their bargain how the product would perform or be used and this agreement proved to be untrue.

SHOULD THE MANUFACTURER PAY?

Directions: Read the cases that follow and apply the rules of product liability to each of these cases. Identify the most important facts, the legal issues raised by the case, the best reasons supporting each position and how you would decide the case.

Fast food

Case 1

Alice had just completed another long and tiring day at Big Jim's Hamburger Heaven. She still had to disinfect a few kitchen items before going home. She knew that her Dad and his brother, both of whom were doctors, were planning on taking their families to a concert. Since she had read all of the directions several times during the past few years and had mixed and used the disinfectant at least a dozen times, she just read the section on general disinfection this time. She didn't think that the disinfectant was dangerous. The can had not been opened so she could easily read the directions:

> Cooper Pine Oil Disinfectant. Made according to the formula of the U.S. Government Hygiene Laboratory, and has a coefficiency of 3 when tested by the U.S. Department of Agriculture method. This means that Cooper Pine Oil Disinfectant is guaranteed to be three times stronger than pure carbolic acid crystals when tested against a vigorous culture of typhoid germs under conditions prescribed for this test. For general use ...it is safe and non-irritating... Use 2 ounces in three gallons of water. For disinfectant use, add 6 1/2 ounces in three gallons of water. Add water to disinfectant at the rate of 1 gallon. Cooper Pine Oil Disinfectant to 60 gallons of water.

Because the gallon of disinfectant was heavy, Alice grabbed the can with both hands and stooped over to pour it into a smaller container. As she was pouring the molasses-like liquid splashed into her eye and she felt an immediate lightening stab of pain. Instantly, Alice reached for the garden hose and let water flow over her eye in an attempt to wash out the disinfectant but the pain remained. She suffered permanent impairment of her sight. Alice sued the manufacturer. During the trial she had expert testimony that reported that the concentrated product caused eye injury in rabbits and dogs.

The defendant responded that Alice was basing her case on only a few words from the label and that if she had read it thoroughly she would have understood that a diluted product that was three times stronger than carbolic acid crystals would have to be harmful if placed as a concentrate in the eye. In addition the product was not falsely labeled and there was no warranty that it was safe to place in one's eye. Finally, the product was not inherently dangerous, negligently manufactured or

fraudulently represented. Alice's eye injury was the direct result of her own carelessness.

Would you hold the manufacturer liable for Alice's eye damage?

Fast Foods

Case 2

John hated opening the hotdog stand for the summer season. There was always so much to do--cleaning, painting, stocking. It never seemed to stop. But, as much as he hated it, he liked making the money that kept his car on the road. The boss had asked him to make sure that the rest rooms were clean so that employees could use them as they did the other cleaning. The toilet bowl looked pretty bad. Water dripping all winter had left a lot of rust. This was going to be a tough one. As soon as John dumped the cleaner in the bowl a cloud of gas escaped choking him. His boss heard John choking and rushed him to the hospital. He was treated at the hospital for 122 days for acute bronchitis and acute asthma. His lungs were permanently damaged. Track and football were out of the question. He could hardly breathe and it wasn't going to improve. John sued the manufacturer for his injuries. Experts testified that sodium bisulphate and a chlorine ion in the bowl cleaner would react with iron oxide to release poisonous chlorine and hydrogen chloride gases. John testified that he did not know what chemicals had caused his injury. There was no warning label. The manufacturers contended that there was no direct proof that the cleaner had in fact caused John's injury.

Would you find the manufacturer liable for Johns injury?

Gas Stations/Car Repairs

Case 3

Susan was really excited about her new job. At 23 she was sure that she was at the beginning of a really good career. She was testing hydraulic systems at Joe's repair station. As part of the test she would have to open little air valves to release air that was trapped in the lines. Whenever she did this a mist of air and ethylene glycol would spray into the air. Sometimes a little liquid would also spray out and Susan would get some on he. face. The stuff had a sort of sweet smell. The ethylene glycol came in big drums with just the manufacturer's name on them. After six months on the job Susan failed her vision test for her drivers' license. Soon she lost all vision in her left eye and had only 10-20 percent vision in her right one. Experts testified that she is suffering from a toxic disease of the central nervous system, has a life expectancy of less than ten years, and will be confined to a wheel chair within a year. Susan contends that she was not warned about the hazards of the material.

The manufacturer argued that tests conducted on the material suggested that ingestion of the material could cause major damage, but that data was incomplete about the amount that had to be ingested to

produce substantial damage. In addition they had some test results that showed that inhalation could produce vision disturbances, and minor kidney and lung damage. They were also aware that the material could be absorbed through mucous membranes. But, they had no evidence to indicate that damage of this magnitude could be caused by breathing the vapors. This was the first case with an injury this serious.

Would you find the manufacturers liable for Susan's injury?

Gas Station/Car Repair

Case 4

Joe was glad to have a job in the shop. He knew that times were tight and he wanted the money. Part of his job involved using an oil to lubricate parts. A few days after using a new oil, his hands broke out in a rash. Joe told the foreman and continued to work. The rash got worse. He went to the company nurse who treated the irritation, but it didn't improve. He saw the company doctors who sent him to the hospital. His hands were blistered and the skin was peeling. He went home and made a claim for workers' compensation. Finally Joe sued his employer. He didn't have any expert witnesses testify about the nature of his injury or the composition of the oil. The company stopped using the new oil shortly after Joe was admitted to the hospital.

Would you find Joe's employer liable for Joe's injury?

Retail Stores

Case 5

Monika always dreamed of having her own store. But, for now, she was happy to work for Wild Willy's Carpet Farm. One day after reporting for work she noticed that a strong smell was coming from the air conditioner. She turned it off, but the smell continued. Her eyes watered and she coughed. In the shop next door workers were installing new formica counters. They were gluing the formica with a cement that contained butanone. The warning on the container said to use adequate ventilation, avoid contact with the eyes or skin, not to take it internally, avoid flames, and avoid breathing the vapors. The shop's windows were open. After several days of exposure, Monika went home with a headache. The following day she went to her eye doctor who told her that she had chemical kiratis, a chemically caused condition in which the outer layer of the cornea of the eye blisters and is loosened. He treated Monika, but she developed glaucoma and cataracts and has had to have several operations. She has a 40 percent probability of becoming totally blind according to her doctor. She sued the manufacturer of the glue. Experts testified in court that this condition could have been caused by the exposure to the cement fumes.

The manufacturer said that his company makes 40,000 pounds of the cement a month and has done so for 15 or 20 years and has never

had a single complaint or reported injury. He feels that the warning on the can is adequate to protect users.

Would you find the manufacturer liable for Monika's injury?

Retail Stores

Case 6

Helen's boss wanted to display some new items in the store. He asked Helen to use some polyurethane foam sheets to make a little display box and gave Helen a soldering gun to melt the foam and cut it into pieces that were the size she needed to make the box. While heating the foam it gave off smoke and fumes. Shortly thereafter, Helen was diagnosed as having a progressive, debilitating illness that caused shortness of breath, reduced pulmonary function, bronchitis and chest pains. She sued the manufacturer. Experts testified that such illness may be caused by tolulene diisocyanate (TDI) a chemical used to make polyurethane and that remains in the foam. OSHA has found it to be dangerous in concentrations above 0.02 parts per million for 20 minutes. Helen testified that she was never warned of any hazard in heating the material and that she didn't see a warning label that was included with each shipment. She argued that each sheet should have had the label stapled to it so that the ultimate user could not avoid seeing it. Her lawyers did not indicate that the warning sheet itself was inadequate, only that it's distribution was faulty. The manufacturer countered that the employer had received a 40-page safety booklet that experts testified was one of the best in the industry, that the employer also had had personal experience that indicated that these materials were hazardous under certain conditions, and that stapling the safety note to the sheets would have destroyed the sheets and many of the notes would have been torn off during packaging. In addition, the company only sold the materials to knowledgeable customers, gave them clear warning of the dangers inherent in using the product including cutting it with a hot wire or heat contact. They indicated that this process should only be done with adequate ventilation.

Would you find the manufacturer liable for Helen's injury?

Lawn, Garden and Nursery

Case 7

Bill's new job had him working with both greenhouse plants and ones outdoors. He really liked being outside on the sunny days. All he had to do was spray the weeds around the plants with this stuff called paraquat. His supervisor and some of the other workers showed him how to mix it and warned him about not getting any in his mouth. They pretty much told him everything that was on the label and any safety information that they had read. He always washed his hands after using it, but can't remember if he ever read the warning label on the containers himself. Sometimes he got it on his hands when he shielded the plants from the weeds he was spraying. He never had any contact with the concentrate however. A couple of times when he'd been working in the

fields, he had a lot sprayed on him as he walked behind the tractor and it had even made him sick for a day or two. Within a year Bill's health started to deteriorate. He was short of breath and the doctors diagnosed his problem as pulmonary fibrosis, a disease that killed him five years later, before he died, he sued the manufacturer. The doctors testified that paraquat was the cause of the disease. There were also articles in medical journals and the manufacturer's own research that suggested that skin exposure to paraquat could cause lung damage and death.

However, other workers showed no signs of the disease even though they handled paraquat. In addition, the containers were labeled with a hazardous warning that met Environmental Protection Agency standards. It indicated that paraquat could kill if swallowed and that it was harmful to eyes and skin. The warning recommended washing if exposed. The manufacturer also noted that the directions suggested wearing waterproof clothes when using the materials. The manufacturer argued that the plaintiff's exposure would have been substantially reduced if he had followed the recommended procedures. Finally, the manufacturer stressed that Bill's symptoms were not exactly the same as victims of paraquat ingestion.

Would you find the manufacturer liable for Bill's fatal illness?

Lawn,Garden, and Nursery

Case 8

It was a terribly hot day and Jack had to finish spraying the last section of lawn. The sun burned on his bare back and legs as he finished putting the amine salt 2,4-dichlorophenoxyacetic acid, known as 2,4-D, on the grass. It was diluted to 1/10 of 1 percent strength. So mostly he was just spraying water. The label said, "Avoid contact with eyes, skin and clothing; 2,4-D weed killers may cause skin irritation and should be washed off with soap and water. Do not take internally." Although Jack read the warning, he knew that during the day some of the spray had blown onto his shorts and bare skin. It couldn't be helped in the hot weather and wind.

That night Jack felt light headed, nauseous, short of breath, tight in the throat and sore in the chest. He called his doctor who treated him for sun exhaustion, but during the evening he became progressively sicker. Finally he was rushed to a hospital suffering from acute laryngo spasms resulting in severe oxygen deprivation. Jack sued the manufacturer.

The manufacturer produced extensive test results showing that toxicology studies and records kept by the company had never shown any human injury when the product was used as directed. This evidence they argued suggested that the warning was adequate.

Would you find the manufacturer liable for Jack's injury?

Recreation/Swimming Pool

Case 9

"Got a bad leak in the chlorination room," Sally heard the other lifeguard call. Quickly she grabbed her gas mask. From the manufacturer's warning labels and safety materials, she knew that this was nasty stuff and could cause serious injury, but someone had to find out what was causing the problem. Putting on the gas mask she found a chlorine cylinder leaking and was able to temporarily stop it. Unfortunately, she also permanently damaged her lungs by breathing chlorine gas. Sally later discovered that the gas mask that she used was not intended to be effective in high concentrations of chlorine. She sued the manufacturer of the gas for failing to provide a proper warning that included a specific list of equipment that would protect against exposure.

Would you find the manufacturer liable for Sally's injury?

Recreation/Swimming Pool

Case 10

Everyone hated cleaning up the rec center. Every year when it shut down at the end of the season everything had to be scrubbed. But this year was worse than normal because it was a paint year. Walt was usually glad that he could work at the rec center. It was good background for a star athlete and someone who wanted to be a coach. But this was one part of the job he could do without. They had tried a new paint on the floors and it didn't stick to the concrete. In a couple of the rooms they had used a paint remover to get most of the bad paint off and the rest came up when a lacquer thinner was applied. This process was recommended by the paint manufacturer who supplied the paint remover and thinner at no charge. Walt was lucky. He hadn't been on the crew when that task was done, but now there was only one room left and Walt and a couple of the guys were going to finish it up today. They'd already gotten most of the old paint up when Frank, the paint company's sales rep showed up. He apologized for all the work that his company had made when its paint didn't stick, but at least the free paint remover and lacquer thinner would get the floor ready for a different type of paint. Frank warned the guys to make sure that the room was well ventilated, that there was no smoking or anything that would make a spark.

After the warning Frank poured about a gallon and a half of the thinner on the floor and began to spread it around. Suddenly the room bust into a ball of fire. A water heater in the corner of the room had ignited the fumes. Walt was in the back of the room and he had the longest distance to get to the door. By the time he made it he was a running torch. He died of burns the next day. Walt's estate sued the manufacturer. It argued that the lacquer thinner was defective and unreasonably dangerous and that the manufacturer had not provided adequate warning of its hazardous nature. Experts testified that there was not adequate ventilation in the room and that it was extremely hazardous to use it in such a confined area because the material had a

flash point of only 34 degrees F. The sales rep admitted that he saw the water heater, but didn't know that it was working.

The manufacturer, however, argued that it was used inappropriately because it was never intended as a paint remover. In addition the manufacturer contended that it was not liable since the company had not sold the product. It had given it to the rec center.

Would you hold the manufacturer liable for Walt's injury and death?