



***Judges
in the
Classroom***

***A Guidebook
for Judges
and Teachers***

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Funding generously provided by the Open Society Institute

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ISBN: 1-928919-10-3

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Founded in 1913, the American Judicature Society is an independent, nonprofit organization supported by a national membership of judges, lawyers, and other members of the public. Through research, educational programs and publications, AJS addresses concerns related to ethics in the courts, judicial selection, the jury, court administration, judicial independence, and public understanding of the justice system.

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Foreword

Projects such as “Judges in the Classroom” often bring to mind the words of Federal Judge Abraham Lincoln Marovitz: “Everybody can’t do big things, but there’s a lot of us who can do a lot of little things.” The success of this project thus far has been gratifying to both the judges and teachers who have been involved, as well as the students who we hope have gained from having judges in their schools across the state of Illinois.

The American Judicature Society as well as the Illinois Judges Association, devised this project so that students, teachers, and parents might be able to learn first hand what the role of judges is in our society. They learn about the types of cases we hear, the decisions we make, and the effect that these decisions has on anyone who may use the court systems of our nation. Topics concerning both Federal and State Constitutions have enlightened and have held students’ interest through many separate appearances of judges in schools around the state of Illinois.

The young people we speak before have a keen desire to learn about the justice system and the people who are called upon to make legal decisions on a daily basis. I hope that this guidebook and your willingness to be part of this project will be a fulfilling use of your time and intellect to better educate the people who do now, or in the future may make use of our courts. These “little things” that we do I am sure will reap great benefits.

My thanks to all the members of the American Judicature Society as well as the Illinois Judges Association for the hard work and dedication that has made “Judges in the Classroom” an outstanding success.

Honorable Stuart A. Nudelman
Judge of the Circuit Court of Cook County
First Vice President
Illinois Judges Association
State of Illinois

Acknowledgements

The American Judicature Society would like to thank the Honorable Stuart A. Nudelman for his dedication to bringing judges and students together and for his foreword to this Guidebook. Judge Nudelman's involvement in coordinating classroom visits for the Judges in the Classroom program has been and continues to be remarkable, and we appreciate his enthusiasm for the project. Our thanks also to Dr. John Paul Ryan, President of the Education, Public Policy, and Marketing Group, Inc. for his assistance as a consultant on the Guidebook. His work identifying relevant National Standards for Civics and Government has helped make the Guidebook a practical tool for social studies teachers, thereby increasing the likelihood that teachers will be able to spend class time with judges in their classrooms, and his assistance in editing and developing the Guidebook helped us create a useful tool for judges and teachers.

Introduction

Founded in 1913, AJS is a nonprofit, nonpartisan organization with a broad-based membership that includes judges, lawyers, journalists, academics and citizens. Through research, educational programs, and publications, AJS works to maintain the independence and integrity of the courts and increase public understanding of the justice system.

In 1997, when efforts to remove judges who had issued unpopular rulings were increasing and attempts to implement judicial term limits were beginning to gain popularity, AJS established the Center for Judicial Independence. The Center promotes a judiciary that is free to issue fair and just rulings without bowing to popular and political pressures. A critical aspect of AJS' mission through the Center for Judicial Independence is to educate the public on the importance of an independent judiciary and to focus attention on the proper role of the judiciary in relation to the legislative and executive branches of government. Two necessary objectives of these goals are to expose young people to judges and to provide judges with opportunities for public outreach. It is with these objectives in mind that AJS developed its Judges in the Classroom program as a project of the Center for Judicial Independence.

The Judges in the Classroom project was launched in Illinois in 1998 with a simple goal: to create a partnership between the judicial and academic worlds by bringing Illinois judges into middle school and high school classrooms. The result was an enthusiasm that far surpassed AJS's expectations. Since launching the pilot programs in Illinois, numerous judges have visited classrooms and have generated overwhelmingly positive feedback from teachers and students. Judges and teachers nationwide have expressed interest in the program as well.

The Judges in the Classroom program provides opportunities for interaction between judges and students. Teachers can benefit from a unique and provocative format for educating students on American government while increasing students' respect and appreciation for the justice system. The visit may provide a solid educational experience; it may also prove to be a decidedly positive influence on at-risk youth. By discussing topics that are relevant to students' lives, such as drugs, gangs, free speech, and juvenile offenses, teachers and judges have an opportunity to make a lasting impression on middle school and high school students.

The program is also tremendously beneficial to members of the judiciary. By visiting classrooms, judges not only have a unique opportunity to improve public confidence in the courts, but to improve the administration of justice as well. Through the Judges in the Classroom program, many students will see, hear, and meet a judge for the first time in their lives. A positive visit by a judge can foster in students a better understanding of the judiciary and can enhance the roles students will someday play in their government, as future jurors, voters, judges, lawyers, and legislators.

This guidebook is intended to help judges, lawyers, and teachers coordinate visits to middle school and high school classrooms. The timely discussion topics can supplement a teacher's regular curriculum by encouraging unique dialogue on matters related to the justice system. Suggestions are provided to assist teachers and judges in planning visits, and a set of talking points for judges accompany each unit.

Suggestions for Teachers and School Administrators

- Consider how a visit from a judge would enrich your current curriculum. This guidebook provides various lesson plans, offering different approaches for introducing a judge to a group of students. Determine the format of the program, including the length of time available and the number of students who will participate. Unit plans in this guidebook are designed for units that last approximately one to two hours. However, the length of the visit can be discussed with the judge and adapted to fit your mutual needs and limitations.
- Contact your local bar association, state law related education (LRE) representative, or court public information officer (PIO) to express your interest in having a judge visit your students and to inquire about the availability and interest of specific judges. Have several potential dates in mind for the judge's visit and call well in advance of the desired date – at least two weeks. Judges' schedules cannot be easily manipulated on short notice.
- If possible, provide a potential visiting judge with your home phone number to facilitate contact. Judges are on the bench during most of the day and are typically unavailable until late afternoon.
- Once you are in touch with a judge, discuss your objectives in arranging the visit and confirm the date, time, and other details. Provide the judge with directions to the school, parking suggestions, and instructions for reaching the appropriate classroom. Make sure the judge has the materials that will be used during the visit well in advance, including lesson plans, talking points for the judge and student handouts.
- Obtain general information about the judge's background to share with your students prior to the judge's visit, including the type of cases the judge presides over, how long the judge has served on the bench, how he or she was selected for the bench, and general information on his or her career before becoming a judge. This information will encourage discussion with the students before the judge's visit and will generate questions for the judge. Have the students discuss and then write down any questions they may have prior to the judge's visit.
- Have students scan the local newspapers and clip stories about legal issues they are interested in and would like the judge to discuss during the visit. Provide the judge with these articles prior to the visit.

- Provide students with handouts and other appropriate materials prior to the judge's visit. Give students adequate time to prepare so that they will be excited about the judge's visit and engage in discussion.
- Consider contacting your local newspaper or local television and radio stations if you are interested in publicizing the judge's visit. You may also want to encourage students to write an article on or take photographs of the judge's visit for inclusion in your school newspaper, newsletter, or yearbook.
- Give the students nametags to wear on the day of the visit so that the judge will be able to call on students by name during the discussion.
- Encourage your students to write thank you letters to the judge to include with your own letter of appreciation.

Suggestions for Judges

- If you are interested in initiating a visit to a classroom, contact middle school and high schools in your area or the school you attended if nearby. Your local bar, judges association, or state law related education (LRE) program may also have a program set up through which such visits are coordinated.
- Remember that teachers are often unavailable during the day and can only take phone calls before or after school. Ask the teacher for an alternate number to ease communication.
- Once you have scheduled a visit, make sure you know the age group you will be meeting with and the number of students involved. Ask the teacher about the level of understanding of the justice system the students have. Be prepared to meet students with a wide range of abilities and personalities.
- The teachers or school administrators you will be working with may have suggestions for content that will be particularly applicable and interesting to your audience. You might suggest following one of the lesson plans included in this guidebook if the teacher has no pre-conceived notion of the content of your visit.
- Make sure you are familiar with any materials that were distributed to the students in preparation for your visit.
- Encourage teachers to solicit questions from students prior to your visit. This will facilitate discussion with the students and allow more introverted students to get involved indirectly.
- Briefly outline your presentation before your visit. You may want to begin the discussion by asking students if any of their parents or relatives are lawyers or judges or if they have ever met a lawyer or a judge. Inquire as to what they think a judge's job is, how they think judges should act, and how one becomes a judge. It might be interesting to see students' perceptions and expectations of judges.
- Talk to the students about your background, including what you did before you were a judge, how you were selected or elected to serve as a judge, how long you have been a judge and what you like the most/least about being a judge. You may also want to discuss what your job entails and how you make decisions. Remember that in most cases you will be providing students with their first real life exposure to a member of the judiciary.

- Encourage students to ask questions throughout the discussion and praise students who do. This will keep students' attention by making the discussion livelier and students will be more apt to participate.
- Discuss any terms and vocabulary that the students may not be familiar with. Words and concepts are listed at the beginning of each unit.
- Consider wearing or bringing your judicial robe on your visit. Most students have never seen a judge in official garb and will find it intriguing.
- If possible, invite the students to visit your courtroom either individually or as a class group coordinated by the teacher. Allow the students to experience the view from the bench, sit in the jury box, and peek into limited access areas, such as your chambers or the jury deliberation room.

Overview of Unit Plans

A Word About Standards

During the past decade, there has been a national movement toward school accountability, including the development of content standards for a variety of subject areas. These standards, both national and state-specific ones, are designed to improve education and ensure a common core of cultural learning within each state and across the country as a whole. In light of the national audience for this guidebook, we reference the National Standards for Civics and Government, developed in 1994 by the Center for Civic Education. At the beginning of each Unit, we identify which particular standard that Unit addresses.

Unit One: Due Process

This Unit is designed to illustrate the Due Process Clause of the Fourteenth Amendment in the context of a gang loitering ordinance. Students will read the ordinance and discuss whether it complies with the Fourteenth Amendment Due Process Clause of the U.S. Constitution. Students will be asked for suggestions on rewriting the ordinance if they find it is not constitutional.

Unit Two: Juvenile Justice

This Unit is designed to introduce students to the juvenile justice system and teach students the differences between the juvenile and adult justice systems. Students will discuss when and under what circumstances young people under the age of 18 can and should be tried as adults.

Unit Three: The First Amendment and the Supreme Court

This Unit is designed to enhance students' understanding of the First Amendment to the U.S. Constitution. Students will act as United States Supreme Court justices and will decide whether actions in four cases are protected or prohibited by the First Amendment.

Unit Four: Judicial Independence

This Unit is designed to illustrate the concept of judicial independence and how it can be affected by threats of impeachment. The controversy surrounding Judge Harold Baer's decisions in a criminal case are used to illustrate the concept of judicial independence and to generate student discussion. Students will act as judges and will consider the admissibility of evidence in a criminal case.

Unit One: Due Process

This Unit meets specific Grade 9-12 Content Standards of the National Standards for Civics and Government. The Unit addresses Standard III-D—“What is the place of law in the American constitutional system?” specifically, III-D.2—“Judicial protection of the rights of individuals.” This standard states that students should be able to “explain the importance of the right to due process of law for individuals accused of crimes. . .”

Unit Overview

Approximate Time: 1 - 2 class periods

Grade Level Range: 9 - 12

Summary

This Unit is designed to illustrate the Due Process Clause of the Fourteenth Amendment in the context of a gang loitering ordinance. Students will read the ordinance and discuss whether it complies with the Fourteenth Amendment Due Process Clause of the U.S. Constitution. Students will be asked for suggestions on rewriting the ordinance if they find it is not constitutional.

Objectives

This lesson plan will allow students to:

- Experience the decision making process judges use when deciding cases;
- Examine and understand the Due Process Clause by applying it to a factual scenario;
- Analyze an ordinance and determine whether it complies with the Constitution;
- Discuss the legislature’s reasoning behind laws.

Materials

This Unit requires:

- Handout 1-1: Gang Loitering Ordinance
- Handout 1-2: Gang Loitering Case
- Handout 1-3: Due Process Clause of the Fourteenth Amendment
- Handout 1-4: Revised Gang Loitering Ordinance

Background

There are actually two **due process** clauses in the U.S. Constitution. One is found in the Fifth Amendment and applies only to the federal government. The other, the topic of this Unit, is found in the Fourteenth Amendment and states that no state shall “deprive any person of life, liberty, or property without due process of law.”

A major function of the Fourteenth Amendment Due Process Clause is to make the Bill of Rights applicable to the states. Prior to the enactment of the Fourteenth Amendment, the Bill of Rights applied only to the federal government and not to state governments. The Fourteenth Amendment mandates that no person can be deprived of “life, liberty or property” without due process.

There are two types of due process: substantive and procedural. **Substantive due process** forbids states from unduly interfering with certain fundamental rights, such as the right to freedom of speech, assembly, and religion. It is substantive due process that provides individuals with the legal right to raise one’s children and marry. Substantive due process protects the substance of life, liberty, and property.

Procedural due process requires states to follow the proper procedure before depriving an individual of life, liberty, or property. Determining whether procedural due process has been afforded to an individual requires two forms of analysis. A court must first determine whether an individual has in fact been deprived of life, liberty, or property. Most cases revolve around the deprivation of property, since determining whether an individual has been deprived of life or liberty is relatively simple. Once such a determination is made, a court must then determine what procedure must be followed in order to ensure due process.

In criminal cases, due process may be threatened because conviction will often deprive an individual of liberty. Part of the procedure that must be followed to ensure due process is “fair notice” of the conduct that is prohibited. If a law does not give fair notice of prohibited conduct, the law will be found “vague” and therefore unconstitutional.

Background of *Chicago v. Morales*

Chicago v. Morales was the end result in a long battle over Chicago's anti-loitering ordinance. In an effort to reduce gang violence, Chicago passed an anti-loitering law that allowed police officers to order groups of people to disperse if the police reasonably believed one of them to be a gang member. Anyone who failed to disperse was subject to arrest.

While the police enforced the ordinance, over 45,000 people were arrested, even though many were not gang members. Many political leaders and community groups credited the ordinance's enforcement with decreasing incidences of gang violence. However, opponents of the ordinance, including non-gang members who had been arrested, claimed the ordinance violated constitutional protections for freedom of assembly.

Several court challenges were brought by people arrested under the ordinance, and some Illinois judges upheld the ordinance while others struck it down, holding it unconstitutional. Ultimately, the Illinois Supreme Court held that the ordinance violated the Illinois constitution, and the case was appealed to the United States Supreme Court. The U.S. Supreme Court held the ordinance to be unconstitutionally vague, and Chicago officials have subsequently reworked the law to come within the bounds of the Supreme Court's opinion. The new ordinance was passed by the City Council in February 2000.

Vocabulary Words and Concepts for Students

 due process

 fair notice

 liberty

 procedural due process

 substantive due process

 vague

 loitering

Teaching Unit One

Give each student a copy of each of the three handouts. Have the students read the handouts in order. Once they have done so, use the following questions to initiate discussion:

- What do you think of the ordinance?
- Would you vote for or against the ordinance?
- Why do you think the ordinance was created?
- Will the ordinance get rid of gang violence?
- Who does the ordinance apply to?
- Who determines whether an individual is loitering?
- Do the police have too much power? Too little?
- Does the ordinance take away too much of a person's freedom?
- Should the police be able to decide whether a person is loitering?
- Is the ordinance unconstitutional?
- If so, what suggestions would you have for rewriting the ordinance to make it constitutional?

As a class or in small groups, try rewriting the ordinance to bring it within the Supreme Court's guidelines. Offer the following suggestions to remedy the problems inherent in the ordinance:

- Adopt laws that directly prohibit gang members from congregating for the purpose of intimidating residents;
- Enforce existing laws that prohibit gang activity;
- Rewrite the ordinance to apply only to persons reasonably believed to be gang members;
- Adopt limitations that restrict the ordinance's criminal penalties to apply only to gang members.
- Compare the students' revised ordinances with the one actually passed by the Chicago City Council.

Conclude the discussion by reading a brief summary of the U.S. Supreme Court's decision in the case:

The United States Supreme Court found Chicago's ordinance unconstitutional. The Court held that (1) the ordinance was unconstitutionally vague in failing to provide fair notice of exactly which type of conduct was prohibited; and (2) the ordinance was also impermissibly vague in failing to establish minimal guidelines for enforcement by police officers. In other words, the Supreme Court found the ordinance unconstitutional because it gave the police too much discretion to determine whether someone is loitering. *City of Chicago v. Morales*, 119 S.Ct. 1849 (1999).

Further Resources

1. The full opinion of *Chicago v. Morales* is available at <<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=97-1121>>.
2. See <<http://www.abanet.org/publiced/youth/fall99main.html>> for an extended treatment of the Morales case, including links to opinions and information about interested parties.
3. Newspaper articles include:
 - a. Jan Crawford Greenburg, *City's Gang Loitering Law Hits High Court*, Chicago Tribune, April 21, 1998.
 - b. Judy Peres, *City's Loitering Law Gets Last Chance at Top Court*, Chicago Tribune, December 8, 1998.
 - c. Jan Crawford Greenburg, Gary Washburn, Gary Marx, *Top Court Ruling Shows Way To A Legal Anti-Loitering Law*, Chicago Tribune, June 11, 1999.
 - d. *Chicago's Anti-Gang Loitering Law 'Invalid' U.S. Supreme Court Finds Ordinance Too Vague*, Chicago Daily Law Bulletin Vol. 145, No. 113, June 10, 1999.
 - e. Fran Spielman, *New Anti-Gang Law Passes Black Aldermen Divided; 4 Rip Measure As Racist*, Chicago Sun-Times, February 17, 2000.
4. The new ordinance is available online at <http://www.chicityclerk.com/legislation/codes/chapter8_4.html#015>

Talking Points for Judges

1. How do you, as a judge, ensure that litigants in your courtroom receive the full “due process of law” to which they are entitled? Which procedures are the most important in this regard?
2. Are there gangs in your community? (*If no, see Talking Point #3*) Do gang activities pose problems in your community? What do the students think? Do you encounter gang members in your court (how do you know they are gang members)?
3. (*if there are no gangs in your community*) Are there other situations where “freedom of association” may be a problem in your community? Do too many teens/young adults hang out at the mall or at some public places in your community? Are there tensions between the police and young people in your community? What do the students think?
4. Are there juvenile curfew laws in your community? If so, describe their purpose and restrictions to the students. Ask students about their experiences with curfew laws.
5. In your experience as a judge, why is it important for the police to be able to exercise discretion in their day-to-day work? What constitutional and/or legal protections ensure that citizens will be treated fairly by the police?

Chicago's Gang Loitering Ordinance

Chicago Municipal Code § 8-4-015 (added June 17, 1992)

- (a) Whenever a police officer observes a person whom he reasonably believes to be a criminal street gang member loitering in any public place with one or more other persons, he shall order all such persons to disperse and remove themselves from the area. Any person who does not promptly obey such an order is in violation of this section.
- (b) As used in this section:
- (1) 'loiter' means to remain in any one place with no apparent purpose
 - (2) 'criminal street gang' means any ongoing organization, association in fact or group of three or more persons, whether formal or informal, having as one of its substantial activities the commission of one or more criminal acts, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.
- (c) Any person who violates this section is subject to a fine of not less than \$100 and not more than \$500 for each offense, or imprisonment for not more than six months, or both. In addition to or instead of the above penalties, any person who violates this section may be required to perform up to 120 hours of community service.

Gang Loitering Case

As a city, Chicago deals with gang activity. One way gangs maintain power and establish control over their turf is to loiter in specific areas and intimidate others from invading their turf. To combat gang violence, the Chicago City Council enacted a gang loitering ordinance to prevent gang members from loitering in public places.

A group of boys and girls hanging out on a street corner are seen by a Chicago police patrol car. The officers identify one of the boys in the group as a well known gang member and tell the group that they are violating Chicago's gang loitering ordinance and must disperse. The police car drives around the block and when it returns the group still has not dispersed. The police officers call for backup and arrest the entire group.

The American Civil Liberties Union and Public Defender's office challenge the law on behalf of the boys and girls. Lawyers analyze the situation and research the relevant law, and decide to challenge the constitutionality of the ordinance. The lawyer bases his challenge on the Due Process Clause of the 14th Amendment that states no state shall "deprive any person of life, liberty, or property, without due process of law. . . ."

In this context, due process means that the ordinance must give the average citizen adequate notice of what type of behavior is illegal. The lawyer believes that the ordinance's definition of "loiter," (to remain in any one place with no apparent purpose) is too vague to allow the average citizen to predict what kind of behavior will violate the ordinance.

Fourteenth Amendment

Section 1.

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

Revised Gang Loitering Ordinance

Chicago Municipal Code §8-4-015 (Revised February 16, 2000)

- (a) Whenever a police officer observes a member of a criminal street gang engaged in gang loitering with one or more other persons in any public place designated for the enforcement of this section under subsection (b), the police officer shall, subject to all applicable procedures promulgated by the superintendent of police: (i) inform all such persons that they are engaged in gang loitering within an area in which loitering by groups containing criminal street gang members is prohibited; (ii) order all such persons to disperse and remove themselves from within sight and hearing of the place at which the order was issued; and (iii) inform those persons that they will be subject to arrest if they fail to obey the order promptly or engage in further gang loitering within sight or hearing of the place at which the order was issued during the next three hours.
- (b) The superintendent of police shall by written directive designate areas of the City in which the superintendent has determined that enforcement of this section is necessary because gang loitering has enabled criminal street gangs to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities. Prior to making a determination under this subsection, the superintendent shall consult as he or she deems appropriate with persons who are knowledgeable about the effects of gang activity in areas in which the ordinance may be enforced.

Such persons may include, but need not be limited to, members of the department of police with special training or experience related to criminal street gangs; other personnel of the department with particular knowledge of gang activities in the proposed designated area; elected and appointed officials of the area; community-based organizations; and participants in the Chicago Alternative Policing Strategy who are familiar with the area. The superintendent shall develop and implement procedures for the periodic review and update of designations made under this subsection.

- (c) The superintendent shall by written directive promulgate procedures to prevent the enforcement of this section against persons who are engaged in collective advocacy activities that are protected by the Constitution of the United States or the State of Illinois.

(d) As used in this section:

(1) “Gang loitering” means remaining in any one place under circumstances that would warrant a reasonable person to believe that the purpose or effect of that behavior is to enable a criminal street gang to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities.

(2) “Criminal street gang” means any ongoing organization, association in fact or group of three or more persons, whether formal or informal, having as one of its substantial activities the commission of one or more of the criminal acts enumerated in paragraph,

(3) and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(4) “Criminal gang activity” means the commission, attempted commission, or solicitation of the following offenses, provided that the offenses are committed by two or more persons, or by an individual at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members.

(5) “Pattern of criminal gang activity” means two or more acts of criminal gang activity of which at least two such acts were committed within five years of each other.

(6) “Public place” means the public way and any other location open to the public, whether publicly or privately owned.

(e) Any person who fails to obey promptly an order issued under subsection (a), or who engages in further gang loitering within sight or hearing of the place at which such an order was issued during the three hour period following the time the order was issued, is subject to a fine of not less than \$100 and not more than \$500 for each offense, or imprisonment for not more than six months for each offense, or both. A second subsequent offense shall be punishable by a mandatory minimum sentence of not less than five days imprisonment.

In addition to and instead of above penalties, any person who violates this section may be required to perform up to 120 hours of community service pursuant to Section 1-4-120 of this code.

Unit Two: Juvenile Justice

This Unit meets specific Grade 9-12 Content Standards of the National Standards for Civics and Government. The Unit addresses Standard III-C—“How are state and local governments organized and what do they do?” specifically, III-C.2., which states that students should be able to “describe how their state and local governments are organized, e.g., the organization of legislative, executive, and judicial functions at state and local levels.”

Unit Overview

Approximate Time: 1 class period

Grade Level Range: 7 - 9

Summary

This Unit is designed to introduce students to the juvenile justice system and teach students about the differences between the juvenile and adult justice systems. Students will discuss when and under what circumstances young people under the age of 18 can and should be tried as adults.

Objectives

This lesson plan will allow students to:

- Understand who is a minor in the eyes of the law;
- Discuss and evaluate laws that allow young minors charged with serious offenses to be tried in adult court;
- Interpret legal principles dealing with juvenile law and apply them to factual scenarios.

Materials

This Unit requires:

- Handout 2-1: Who Is a Minor?
- Handout 2-2: Case Situations

Background

At the beginning of the 20th century, juvenile courts were established in response to criticism over the inclusion of children in adult courts. Prior to 1900, no distinction was made between an adult and a child who committed a crime. Critics noted that this approach failed to account for the developmental stages a child goes through before gaining the mental sophistication necessary to accurately and consistently discern right from wrong.

Juvenile courts originated as institutions for housing children deemed juvenile delinquents and evolved into a separate court system that attempted to take into account the fact that minors were fundamentally different from adults. These courts have focused on the needs of the child and on rehabilitating him or her in order to prevent future criminal behavior.

Any individual who breaks the law is accountable for his or her actions regardless of age. However, if the individual has not yet reached a certain age, which varies by state, they are dealt with through the juvenile justice system rather than through the adult system. Most states have enacted laws governing juveniles and the juvenile courts. Some states, including Georgia, North Dakota, and Pennsylvania, have adopted the Model Juvenile Court Act, making juvenile laws uniform in those states.

There are many differences between the adult criminal and juvenile criminal justice systems. One of the most significant differences is that the juvenile justice system focuses on rehabilitation rather than punishment. Special emphasis is placed on providing the juvenile with alternative treatments, such as probation, substance abuse treatment, and counseling. When deciding how to sentence a juvenile, a judge might consider the seriousness of the offense, the juvenile's history of delinquency, the age of the minor, whether the offense was committed in an aggressive or premeditated manner, or whether the minor used or had a deadly weapon when committing the offense. If warranted, the juvenile may also be sentenced to a juvenile detention facility, although generally not past the age of 18.

Another major difference between the adult and juvenile justice systems is that adult proceedings are adversarial in nature and juvenile proceedings are not. A proceeding is adversarial when there are lawyers on both sides who present competing interests to the court for resolution. The juvenile system is non-adversarial in that theoretically only the interests of the minor are significant. Therefore, although a juvenile proceeding may appear similar to an adult criminal proceeding, all parties are working toward a resolution that is in the best interest of the minor.

Juvenile proceedings are also private, whereas adult proceedings are open to the public. Records of juvenile proceedings are sealed once the minor becomes an adult. Records of adult criminal proceedings are permanent, except for some minor offenses that may be removed from the record after a period of time. Unlike adults involved in criminal proceedings, juveniles do

not enjoy a constitutional right to a jury trial. A juvenile does, however, have a right to have an attorney present during the proceedings.

The age of minority may differ slightly from state to state. This lesson plan involves a discussion of the Illinois Juvenile Code, which is typical of most states. In Illinois, a minor is anyone under the age of 18 (see 325 ILCS 45/2 (c)). However, juveniles can be transferred into adult court systems if certain prerequisites apply and a special request is made. In some cases, such as when a juvenile is at least 15 and is charged with certain offenses such as first-degree murder or armed robbery with a firearm, the juvenile is automatically transferred into the adult court system (see IL ST CH 705 § 405/5-805).

Vocabulary Words and Concepts for Students

 adjudicatory hearing

 arraignment

 delinquent

 juvenile

 minor

Teaching Unit Two

Begin the discussion by brainstorming with the students to define the words “juvenile” and “minor.” Follow this discussion by distributing copies of the handouts. Have the students read the definition of a minor.

Have students read each of three hypothetical situations. After each case situation, discuss the questions with the students. Conclude the discussion by explaining the following correct answers to the questions.

Case Situations

- **Case One:** Spencer is 15 years old. She and her 18-year-old sister Monique go to the mall together. Monique convinces Spencer to shoplift a few CDs. Spencer puts the CDs in her bag. An undercover security guard catches them both.

1. Can Spencer be tried in juvenile court? Why or why not?

Yes, Spencer can be tried in juvenile court since she is under 17 and will be charged with stealing.

2. Can Monique be tried in juvenile court? Why or why not?

No, Monique cannot be tried in juvenile court because at the time she committed the crime she was 18.

- **Case Two:** Jamie and his friend, Tony are both 16 years old. They are caught driving a car they took without permission. Jamie turns 17 one week after his arraignment. Tony is found guilty at his adjudicatory hearing and the court orders that he spend six months in confinement. After Tony has spent two months in confinement, he turns 17.

1. Can Jamie’s adjudicatory hearing take place in juvenile court?

Yes, Jamie’s adjudicatory hearing can take place in juvenile court because Jamie was 16 when the crime was committed.

2. Will Tony be transferred from the juvenile detention center to the adult facility at the time he turns 17?

No, Tony will not be transferred. An automatic extension occurs when an individual turns 17 while in a juvenile facility, and lasts until they turn 21.

- **Case Three:** Drew, who is 15, is charged with first degree murder.

1. Does the juvenile court have authority to handle Drew's case?

No, the juvenile court does not have jurisdiction because a juvenile age 15 or older who is charged with first degree murder is transferred to the adult court.

Further Resources

1. On January 30, 2001, Frontline aired a 90-minute program on juvenile justice, which focused on the question of whether and when juveniles should be tried and sentenced as adults. The related website address is <<http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/>>, and ordering information for the program is available on the site. The site offers historical and statistical information about juvenile law as well as links to related websites. There is also a discussion area where students may voice their opinions.
2. The Office of Juvenile Justice and Delinquency Prevention website is <<http://ojjdp.ncjrs.org/>>.
3. Federal juvenile law is available in 42 USCA 72, and can be found online at Findlaw.com at <<http://caselaw.lp.findlaw.com/cascode/uscodes/42/chapters/72/toc.html>>.
4. For information on the history of juvenile courts and a discussion of their reform, see Candace Zierdt, *The Little Engine That Arrived at the Wrong Station: How To Get Juvenile Justice Back on the Right Track*, 33 U.S.F.L.Rev. 401, (1999).
5. A recent (February 2001) California Court of Appeals decision emphasized the importance of a judge's role in deciding whether to try a juvenile as an adult. See *Crucial Role for California Judges*, Los Angeles Times, Friday, February 9, 2001.

Talking Points for Judges

1. Discuss with students the unique philosophy of the juvenile court—including a focus on the best interests of the child, limitations on legal advocacy, an orientation toward rehabilitation rather than punishment in sentencing, and any other distinctive factors.
2. How and why is the juvenile court different from adult criminal courts? What procedures are different (e.g., why aren't there jury trials, why are juvenile courts closed to the public, etc.)? How are rules of evidence and standards of judgment different than in adult courts?
3. What are the most important decisions or rulings that you make as a judge in the juvenile court?
4. What are the roles of lawyers in the juvenile court? Are juveniles usually represented by lawyers in your court? Why or why not?
5. Are some juveniles who come before you in court “waived” to the adult criminal courts? Which juveniles? For which offenses? Are these waivers automatic, or do you exercise discretion as to which juveniles to waive to adult court? (If discretionary) How do you decide which juveniles to send to the adult court? What legal criteria guide your discretion?
6. How have the young people who come before you in the juvenile court changed over the years? What kinds of crimes and problems are you facing (more of) today?
7. If you were to turn over your gavel to another juvenile court judge tomorrow, what advice about the juvenile courts would you offer to the new judge?

Who is a minor?

A minor, according to the Minor Identification and Protection Act, is a person under 18 years of age.

However, a juvenile who is at least 15 years old at the time a crime was committed must be charged and tried as an adult if charged with one of the following crimes:

- first degree murder;
- aggravated criminal sexual assault;
- armed robbery with a firearm;
- aggravated vehicular hijacking with a firearm; or,
- an offense under Section 401 of the Illinois Controlled Substances Act while in school, on school property.

A juvenile who is at least 13 years old at the time a crime was committed may be charged and tried as an adult if charged with first degree murder committed during the course of either aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnapping.

A juvenile who is at least 15 years old at the time a crime was committed may be charged and tried as an adult if the crime was a forcible felony and (i) the juvenile has previously been found guilty for committing a felony and (ii) the crime was committed in furtherance of criminal activity by an organized gang.

Case Situations

Case One: Spencer is 15 years old. She and her 18-year-old sister Monique go to the mall together. Monique convinces Spencer to shoplift a few CDs. Spencer puts the CDs in her bag. An undercover security guard catches them both.

1. Can Spencer be tried in juvenile court? Why or why not?
2. Can Monique be tried in juvenile court? Why or why not?

Case Two: Jamie and his friend, Tony are both 16 years old. They are caught driving a car they took without permission. Jamie turns 17 one week after his arraignment. Tony is found guilty at his adjudicatory hearing and the court orders that he spend six months in confinement. After Tony has spent two months in confinement, he turns 17.

1. Can Jamie's adjudicatory hearing take place in juvenile court?
2. Will Tony be transferred from the juvenile detention center to the adult facility at the time he turns 17?

Case Three: Drew, who is 15, is charged with first degree murder.

1. Does the juvenile court have authority to handle Drew's case?

Unit Three: The First Amendment and the Supreme Court

This Unit meets specific Grade 9-12 Content Standards of the National Standards for Civics and Government. The Unit addresses Standard V-B—"What are the roles of the citizen in American democracy?" specifically, V-B.2—"Political rights." This standard states that students should be able to "explain the importance . . . of such political rights as freedom of speech, press, assembly and petition."

Unit Overview

Approximate Time: 1 - 2 class periods

Grade Level Range: 7 - 9

Summary

This Unit is designed to enhance students' understanding of the First Amendment to the U.S. Constitution. Students will act as United States Supreme Court justices and will decide whether speech and actions in four cases are protected or prohibited by the First Amendment.

Objectives

This lesson plan will allow students to:

- Experience the decision making process judges use when deciding cases;
- Examine the First Amendment and apply it to factual scenarios;
- Develop teamwork skills and share viewpoints in small groups while respecting the opinions of others;
- Argue and defend various points of view.

Materials

This Unit requires:

- Handout 3-1: The First Amendment
- Handout 3-2: Case One – The Human Cannonball
- Handout 3-3: Case Two – The Crèche, the Christmas Tree, and the Menorah
- Handout 3-4: Case Three – Free To Wear Armbands?
- Handout 3-5: Case Four – The School Newspaper

Background

There are currently nine justices on the U.S. Supreme Court: Chief Justice William Rehnquist, and (in order of their seniority on the Court) Justice John Paul Stevens, Justice Sandra Day O'Connor, Justice Antonin Scalia, Justice Anthony M. Kennedy, Justice David H. Souter, Justice Clarence Thomas, Justice Ruth Bader Ginsburg, and Justice Stephen B. Breyer. The number of justices is determined by Congress. Candidates are nominated to the Supreme Court by the President and are confirmed by the Senate. Supreme Court justices serve life terms and can only be removed from office through “impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.”

As the highest court in the United States, the Supreme Court has the final word on cases that come before it. The Supreme Court receives approximately 5,000 cases every year. The Court only decides to hear about 150 cases each year. The Court does not hear the rest of the cases, either because they are not sufficiently important to warrant review by the Court or because they do not meet the requirements necessary for the Court to hear the case. For these cases not heard by the Supreme Court, the decision of the lower federal or state court stands.

The First Amendment to the U.S. Constitution generally encompasses four rights: freedom of speech, freedom of association, freedom of the press, and freedom of religion. Freedom of speech is the right to express thoughts and opinions without government restriction. Freedom of association affords individuals the right to peacefully gather together for some purpose or business. Freedom of the press is the press' right to publish its thoughts and opinions without government restriction. Freedom of religion is the right to believe in and practice one's religion or to refrain from believing in or practicing any religion without government interference; as well as the right to live in a society where the government neither establishes a religion nor prefers one religion over another.

Vocabulary Words and Concepts for Students

 freedom of association

 freedom of press

 freedom of religion

 freedom of speech

Teaching Unit Three

Divide the classroom into groups of approximately five students each. Depending on the number of students in the class, you may have groups of more or less than five but an odd number of students in each group is preferable.

Explain to the students that they will be acting as Supreme Court justices. Discuss the general role of the Supreme Court.

Choose one of the cases to work with. Distribute the corresponding handouts to the students. Have students offer their interpretations of the Amendment and then offer your own interpretation of what the First Amendment guarantees.

Give each group a few minutes to decide the case. Tell the students to keep track of how many people in each group voted for each side. Write each group's decision and number of votes on the board. The discussion questions listed on the handouts are intended as guides to generate discussion. The case resolutions are provided for you or the judge to share with the students to further develop the discussion. Encourage the class to discuss whether they think the Supreme Court's actual decision was correct or incorrect.

Further Resources

1. Findlaw.com offers a searchable database of Supreme Court opinions. Students can search on the site at <http://guide.lp.findlaw.com/cascode/supreme.html> or the direct sites for the unit's cases are:
 - a. *Zacchini v. Scripps-Howard Broadcasting Co.*: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=433&page=562>
 - b. *Allegheny County v. Greater Pittsburgh ACLU*: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=492&page=573>
 - c. *Tinker v. Des Moines Independent Community School District*: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=393&page=503>
 - d. *Hazelwood School District v. Kuhlmeier*: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=484&page=260>
2. The United States Supreme Court official website is <http://www.supremecourtus.gov/>
3. The Oyez Project is a site maintained by Northwestern University that offers information about the Supreme Court. <http://www.supremecourtus.gov/>
4. Findlaw.com also provides a Supreme Court center at <http://supreme.lp.findlaw.com/>
5. The ACLU's website is www.aclu.org. The site offers information about First Amendment cases.
6. Mary Beth Tinker and the other two student plaintiffs in *Tinker v. Des Moines* responded to student-submitted questions in 1998 about their experiences as young plaintiffs, the impact of the case on their relationships with family and friends, and their views of First Amendment rights in the United States today. See the American Bar Association website at <http://www.abanet.org/publiced/lawday/tinker/home.html>

How the Supreme Court Decided

- **Case One:** Zacchini won by a 5-4 vote. The Court reviewed the right of publicity—generally, the right of exclusive control over an artist’s performance or work—and concluded that the media has no protectable First Amendment right when it broadcasts a performer’s entire act without his or her consent.

The Court noted that a performer’s act is the result of his own talent and work, and that most of the economic benefit of such an act derives from the right to control its performance. While the Court acknowledged the press’ right to report on events considered “newsworthy,” the justices limited this right.

Balancing the press’ interest in freedom of speech and the coincident public interest in relying on a free press to report newsworthy events with an artist’s interest in maintaining control over his work or act, the Court determined that the television station had violated Zacchini’s right of publicity and because it televised his entire act, its actions were not protected by the First Amendment. *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977).

- **Case Two:** Allegheny County won by a 5-4 vote on the Christmas tree, menorah, and “salute to liberty” display, but lost on the crèche display. The Court applied an Establishment Clause analysis to determine whether the displays either advanced or inhibited religion in their primary effect, and whether they fostered an excessive entanglement with religion. The Court decided that the combination of a Christmas tree and the “salute to liberty” sign sufficiently lessened the religious message sent by the menorah, so that their joint display did not send a message that the government favored one religion over another. Moreover, the Court stated that Christmas trees are secular, or non-religious, symbols, and that menorahs have both religious and secular aspects, so that the overall effect of the display was a secular recognition of the diversity of religions in America. The Court decided that a crèche is a predominantly religious symbol of the Christian faith, and that the accompanying banner reading “Glory to God in the Highest” reinforced this interpretation. The poinsettias surrounding the crèche were determined to accent the religious symbolism because they were the traditional flowers of the Christmas season. *Allegheny County v. Greater Pittsburgh ACLU*, 492 U.S. 573 (1989).

- **Case Three:** The students won by a 7-2 vote. The Court noted the school’s interest in maintaining control and providing a safe environment for students. The Court then balanced these needs with the First Amendment rights of the students. Stating that the school would have to show that the students’ wearing of armbands would “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,” the

Court determined that the school had not made such a determination. The prohibition on armbands resulted solely from school officials' fear that the sight of the armbands would cause a disturbance among other students.

The Court focused on the idea that the students' armbands were a form of "pure speech" reasoning that the armbands were a "silent, passive expression of opinion." The justices also noted that the school's prohibition extended only to the armbands, and therefore prevented a specific and particular opinion from being expressed. The Court stated that such particularized prohibitions on speech are constitutionally impermissible without a demonstration of their necessity in preventing "substantial interference with schoolwork or discipline." *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).

- **Case Four:** The school won by a 5-3 vote. The Court recognized the students' First Amendment rights, but focused on their limitations in the school setting. Noting the fact that the school paper was produced in the context of a school course, the Court examined the course description in the Hazelwood East Curriculum Guide and the Hazelwood School Board Policy. These sources revealed that "school sponsored publications are developed within the adopted curriculum and its educational implications in regular classroom activities," and that students in the Journalism II class were intended to learn about "the legal, moral, and ethical restrictions imposed upon journalists within the school community."

The Court interpreted these printed guidelines along with the information that the teacher of the Journalism II class maintained some level of editorial control over the content of the paper, and that the principal always reviewed the paper before publication. Because the Court determined that the school did not intend the paper to be a "public forum" but rather part of a "regular classroom activity," the school was determined not to have violated the students' First Amendment rights by deleting the two pages of the paper on which the objectionable stories appeared. Even though other stories were removed from the paper by the principal's decision to remove two pages of the paper instead of allowing the students to edit the stories and re-format the paper, the Court determined that his actions were reasonable. The justices noted that the principal thought there was no time to edit the stories and still meet the printer's deadline, so even though his decision caused other unobjectionable material to be deleted, his decision was reasonable. *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).

Talking Points for Judges

1. Sometimes, young people believe that the “freedom of speech” protected by the First Amendment is unlimited. Discuss with the students Justice Holmes’ famous dictum (i.e., there is no right to yell “fire” in a crowded theatre). Are some kinds of speech not constitutionally protected (e.g., obscenity)?
2. Why is a free press so important to democracy? Offer students some examples (either national or from your state/community) where press investigations helped to protect our freedoms and rights. Are the protections for newspaper and television “press” similar?
3. Explain the two general principles about religion in the First Amendment—the prohibition of the establishment of religion (often referred to as the “separation of church and state”) and the free exercise of religion. How are these principles different? Can they, at times, be in conflict with one another?
4. Discuss with the students any past cases of yours in which First Amendment claims were raised. Do trial judges have the authority to decide that a First Amendment right was violated—or is that authority reserved only for appellate judges? (This topic provides a good opportunity to discuss with students the differences between trial courts and appellate courts, including the different roles regarding fact-finding and interpreting laws.)
5. Why does the First Amendment specify only that Congress may not make laws abridging our basic freedoms, without any reference to other units of government (states, cities, etc.)? (This topic provides the opportunity to discuss colonial concerns about a strong central government; the evolution, meaning, and impact of the 14th Amendment; and changing federal-state power relations.)

The First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Case One—The Human Cannonball

Hugo Zacchini is an entertainer who performs a “human cannonball” act at the Geauga County Fair. His entire act, during which he is shot from a cannon and sails about 200 feet into a net, lasts approximately 15 seconds. Zacchini makes his living by performing this act.

Zacchini saw a freelance reporter with a video camera at one of his performances and asked him not to film the act. The reporter returned the next day with instructions from an Ohio television station to film Zacchini’s act. Zacchini’s entire 15 second act was televised that night during a news story.

Zacchini sued the station, claiming that the television station had appropriated his “professional property” and his earning power had been reduced because the station showed for free what he charges people to see at the county fairs where he performs. The station replied that it had a First Amendment right to broadcast Zacchini’s performance because it was newsworthy.

Discussion Questions

1. Who should win and why?
2. How should the Court balance the importance of protecting an artist’s work and his or her right to profit from such work with the importance of the freedom of the press to report on such work?
3. What are some examples of television media using parts of artist’s work during their news stories?
4. Are there similar controversies on the Internet about whether or how artists’ work should be protected?

Case Two—The Crèche, the Christmas Tree and the Menorah

Allegheny County displays a crèche (a Christian nativity scene) in the main part of the county courthouse during the Christmas season. The display is on the Grand Staircase of the Allegheny County Courthouse, and it includes the crèche, an angel with a banner saying “Gloria in Excelsis Deo,” and is surrounded by poinsettia plants. There is a sign that says the display was donated by the Holy Name Society.

Also during the Christmas season, Allegheny County displays a 45 foot Christmas tree, an 18 foot menorah, accompanied by a sign with the mayor’s name, titled “Salute to Liberty” and a message that reads: “During this holiday season, the city of Pittsburgh salutes liberty. Let these festive lights remind us that we are the keepers of the flame of liberty and our legacy of freedom.” This display is placed at one of the entrances to the City-County Building.

The Pittsburgh chapter of the American Civil Liberties Union (ACLU) challenges both displays claiming that they violate the Establishment Clause of the First Amendment. The ACLU wants to prevent the County from exhibiting the crèche and the menorah. Allegheny County claims that the crèche display is acceptable because it is not owned by the county, and because the poinsettias are not religious symbols. The county also claims that the menorah display is constitutional because it is accompanied by a Christmas tree that is a non-religious symbol, and a “salute to liberty” sign.

The U.S. Supreme Court has interpreted the Establishment Clause in several cases, and has developed a test they will apply to these displays. First, any government endorsement of religion is invalid. Second, the Court must determine whether the government’s use of an object has the effect of endorsing religion by determining what viewers would think the purpose of the display is. To determine how viewers would interpret a display, the Court must consider the objects in their physical setting and context.

Discussion Questions

1. Do the two displays violate the Establishment Clause of the First Amendment?

2. Should Allegheny County be allowed to display either the crèche in its courthouse or the menorah with the Christmas tree and “salute to liberty” sign in front of the city-county building? Why or why not?
3. If local governments can’t have “religious” displays during the holiday season, does this somehow violate its citizens’ right to the free exercise of religion?

Case Three—Free to Wear Armbands?

In 1965, the United States had soldiers fighting in the war in Vietnam. While many Americans supported involvement in this war, many did not, and these people often protested the war in various ways. In Des Moines, Iowa, a group of adults and students who were opposed to the war met to discuss ways of demonstrating their opposition and support for a truce. They decided to wear black armbands during the winter holiday season to symbolize their feelings.

The principals of the Des Moines schools heard about these plans, and made a rule stating that students could not wear such armbands to school, and if they refused to remove them, such students would be suspended. Several students who had been at the meeting attended school wearing black armbands, refused to remove them when teachers asked them to, and were suspended.

On behalf of the students, their parents challenged the school's rule claiming it violated the students' First Amendment right of freedom of speech. The school claimed that because schools are a special setting in which school officials are responsible for the safety of students and they feared a disturbance would result from students wearing black armbands, their rule was constitutional.

Discussion Questions

1. Who should win and why?
2. Does the fact that the students chose to wear armbands instead of carrying signs with written messages or making a speech mean that they were not engaged in "speech"? Why or why not? What kinds of non-vocal or non-written activities could be considered speech?
3. Does the school's interest in maintaining a safe school environment suggest that students have a less of a right to freedom of speech when they are in school or on school property? Why or why not?

Case Four—The School Newspaper

Hazelwood East High School offered a Journalism II course in which students produced the school newspaper, *Spectrum*. *Spectrum* was written and edited by the students in the class; however, the teacher chose the editors, the publication dates, the number of pages in each issue, assigned story ideas, and edited stories. The school's principal reviewed each issue before publication.

In May 1983, the issue of *Spectrum* included a story on three pregnant girls attending the school and one on the impact of divorce on students. The issue was submitted to the principal on May 10 and was scheduled for publication on May 13. The principal objected to these two stories, and felt that they could not be edited to his satisfaction by May 13. Therefore, he decided to delete the two pages on which the stories appeared so that the rest of the paper could be published.

Three students challenged the principal's decision claiming that he and the school had violated their First Amendment right of freedom of speech. The school officials defended the principal's decision by claiming that the newspaper was part of a school sponsored course, and therefore the school was entitled to exercise some editorial control over the contents of the paper to ensure that it did not conflict with the school's view of appropriate content.

School officials also agreed with the principal that the pregnant girls' privacy was not adequately protected and that this story was inappropriate for the school's younger students. School officials also argued that the principal's decision to cut the divorce story (because a student criticized her father while the father was not given an opportunity to respond) was rational and fair.

Discussion Questions

1. Who should win and why?
2. Does the fact that the newspaper was part of a school class that students took for credit and a grade affect whether the school has a right to control the content of *Spectrum*? Why or why not?
3. Should students' participation in school activities affect how their freedom of speech rights are interpreted? Why or why not?
4. Should the principal have been required to give the students an opportunity to edit their stories instead of cutting them from the paper? Why or why not?

Unit Four: Judicial Independence

This Unit meets specific Grade 9-12 Content Standards of the National Standards for Civics and Government. The Unit addresses Standard III-D—“What is the place of law in the American constitutional system?” specifically, III-D.2—“Judicial protection of the rights of individuals.” This standard states that students should be able to “explain the importance of an independent judiciary in a constitutional democracy.”

Unit Overview

Approximate Time: 1 - 2 class periods

Grade Level Range: 9 - 12

Summary

This Unit is designed to illustrate the concept of judicial independence and how it can be affected by threats of impeachment. The controversy surrounding Judge Harold Baer’s decisions in a criminal case are used to illustrate the concept of judicial independence and to generate student discussion. Students will act as judges and will consider the admissibility of evidence in a criminal case.

Objectives

This lesson plan will allow students to:

- Discuss the concept of judicial independence;
- Gain an understanding of both decisional and institutional independence;
- Understand how appointed judges’ decisional independence can be threatened;
- Experience the decision making process judges use when deciding cases;
- Examine the Fourth Amendment and apply it to a factual scenario.

Preparation and Materials

This Unit requires:

- Handout 4-1: The Fourth Amendment
- Handout 4-2: Fourth Amendment Rules for Police Search
- Handout 4-3: Case Facts
- Handout 4-4: Judge's Decision
- Handout 4-5: Backlash
- Handout 4-6: New Evidence

Background

Judicial independence is a concept that expresses the ideal state of the judicial branch of government. The concept encompasses the idea that individual judges and the judicial branch as a whole should decide cases free of political or ideological influence. Scholars have broken down the general idea of judicial independence into two distinct concepts: **decisional independence** and **institutional independence**.


Decisional independence refers to a judge's ability to make decisions free from political or popular influence based solely on the individual facts and applicable law. Decisional independence can be threatened in a number of ways, including threats of impeachment, political pressures, and judicial elections. In the context of a federal judge, who is appointed for life without possibility of decreases in pay, independence may seem protected. However, federal judges are subject to impeachment, and politicians and citizens may effectively use the threat of impeachment to compromise a federal judge's independence, thereby improperly influencing him or her to consider the possibility of impeachment when making a particular decision.

Institutional independence describes the separation of the judicial branch from the executive and legislative branches of government. Although the judicial branch is independent of the other two branches of government in accordance with the doctrine of separation of powers, it nonetheless is dependent on the legislative branch to approve funding for the courts and pay raises for judges. This arrangement creates a potentially compromising situation whereby judges and the justice system as a whole may feel pressured to do business in a way that maintains a good relationship with the legislature so as to avoid any retaliation that might affect funding decisions.

Vocabulary Words and Concepts for Students

 decisional independence

 institutional independence

 fair & impartial

 impeachment

 evidence

 judicial independence

 separation of powers

Teaching Unit Four

Begin the Unit by talking about judicial independence in the context of “separation of powers.” Students will benefit from a discussion about federal judges’ appointments, so they can understand the unique benefits and pressures of lifetime appointment. You may also want to describe the purpose of impeachment of judges. Have the students share their opinions regarding whether judges can make independent decisions.

Divide the classroom into groups of approximately five students each. Depending on the number of students in the class, you may have groups of more or less than five but an odd number of students in each group is preferable. Explain to the students that they will first be voting on the outcome of a case and will then reconsider their vote after hearing new evidence.

Distribute Handout 4-1 (The Fourth Amendment). After allowing students an opportunity to share what they think the Fourth Amendment means, explain the general meaning of the Fourth Amendment.

Distribute Handout 4-2 (Fourth Amendment Rules). To help the students understand the significance of the Fourth Amendment, compare the rules to a set of instructions. Explain that the Fourth Amendment is similar to class or school rules that tell them how they should behave in certain situations. Point out to the students that when determining whether a search is legal, the judge will look at the evidence introduced at the trial and will decide whether the police followed the rules.

Distribute Handout 4-3 (Case Facts). This handout includes the facts of the case being considered and a list of evidence that was offered at the first hearing. Have the students discuss whether they think the police followed the Fourth Amendment rules, based solely on the facts outlined in Handout 4-3.

Distribute Handout 4-4 (Judge's Decision). This handout describes how the judge decided the case and the reasoning behind the judge's decision. Solicit reactions from the students.

Distribute Handout 4-5 (Backlash). Discuss with the students the immense political attention and criticism of Judge Baer's decision.

Distribute Handout 4-6 (New Evidence). Explain to the students that new evidence was presented at a second hearing and they must now decide whether they would change their minds based on the new information.

Ask the students whether they think Judge Baer's second decision was a result of his fear of losing his job or whether he believed the new evidence and thought the police followed the Fourth Amendment rules.

Further Resources

1. This unit is based on *U.S. v. Bayless*, 913 F.Supp. 232 (S.D.N.Y. 1996) and *U.S. v. Bayless*, 921 F.Supp. 211 (S.D.N.Y. 1996).
2. An editorial in the Washington Times captures the political setting in which this case took place. Judge Baer's decision was made during an election year, and became a central issue between President Clinton and Bob Dole. See *Making the Judge Undo It*, Philip Terzian, The Washington Times, April 5, 1996.
3. The American Judicature Society has a Center for Judicial Independence with a website offering information on independence and related issues. <www.ajs.org/cji/>. Information about Judge Baer is included in AJS' "Judges Under Fire" page at <<http://www.ajs.org/cji/fire.html>>, and as an example of the effect of political threats on judicial independence in the "What is Judicial Independence" section at <<http://www.ajs.org/cji/politicalthreats.html>>.
4. The American Bar Association has a Standing Committee on Judicial Independence. <www.abanet.org/judind/home.html>.
5. Citizens for Independent Courts has a website at <www.constitutionproject.org/cfic.html>.
6. See <<http://www.usatoday.com/news/index/clinton/clin893.htm>> for a list of impeachments. AJS also has more information on impeachment as it relates to judicial independence at <<http://www.ajs.org/cji/impeachment.html>>. Only 13 federal judges have been impeached in the history of the United States, and of those, only 7 were convicted:
 - U.S. District Judge John Pickering of New Hampshire, who was charged with misconduct in a trial and intoxication, was convicted and removed from office on March 12, 1804.

- U.S. District Judge West Humphreys of Tennessee was charged with supporting secession and accepting an appointment as a judge for the Confederate states without resigning from his U.S. post and was convicted, removed from office, and disqualified from holding further office on June 26, 1862.
 - Robert Archbald, associate judge, U.S. Commerce Court, was charged with misconduct including receiving personal profits and accepting free trips to Europe and was convicted, removed, and disqualified from holding further office on January 13, 1913.
 - U.S. District Judge Harold Ritter of Florida was charged with a variety of judicial improprieties including receiving corrupt payments, practicing law while serving as a federal judge, falsifying his income tax returns and was convicted and removed from office on April 17, 1936.
 - U.S. District Judge Harry E.W. Claiborne of Nevada was charged with underreporting his income on his federal income tax returns, bringing disrepute on the federal judiciary, and betraying the people's trust and was convicted and removed from office on October 9, 1986.
 - U.S. District Judge Alcee Hastings of Florida was charged with perjury and conspiring to obtain a bribe and was convicted and removed from office on October 20, 1989.
 - U.S. District Judge Walter L. Nixon of Mississippi was charged with lying to a federal grand jury and was convicted and removed from office on November 3, 1989.
7. Although unrelated to the case profiled by this unit, *Fifty-Eight Lonely Men: Southern Federal Judges and School Desegregation*, by Jack Walter Peltason, details the experiences of southern federal judges who upheld and enforced the Supreme Court's ruling in *Brown v. Board of Education* holding segregated schools unconstitutional. The judges' independence was tested by the immense opposition to the Supreme Court's ruling.

Talking Points for Judges

1. What does the concept of “judicial independence” mean to you as a judge? Do you discuss judicial independence with other judges? (how, in what settings?)
2. Federal judges are appointed to the bench for lifetime tenure. State judges generally serve for limited terms of office. As a result, do federal judges have more “independence?”
3. Unlike federal judges, state judges are typically elected (though in some states, they may be appointed by the governor, the state legislature or otherwise through a merit plan.) Are elected judges more “accountable” to the public? Should judges be independent, accountable, or both?
4. Can you cite some examples where the independence of judges (in other states, communities or times) has been restricted in some way? Describe to the students the issues and the resolution of the controversy.
5. What kinds of cases do you, as a judge, find to be the most controversial in your community—i.e., the ones attracting the most press or public interest? Why? What special precautions, if any, do you take when a controversial case comes to your court?
6. Are cameras allowed in the courts in your state? Should they be? Would (do) cameras potentially restrict the independence of judges? How? (Do you think that the presence of cameras in the Florida state courts influenced—for good or bad—the 2000 presidential election contest proceedings and public understanding of the courts and our legal system?)

The 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 be seized.

Fourth Amendment: Rules

The Supreme Court has established rules to determine whether or not a police officer can stop a person to investigate potentially illegal activity. The Court has interpreted the Fourth Amendment in various cases to establish clear rules for police to follow when engaging in stops or searches. If the police do not follow these rules, they run the risk that any evidence they gather will not be admissible in court. The stop involved in this case is known as a “limited investigative stop,” and is governed by the rules from *Terry v. Ohio*, 392 U.S. 1 (1968).

- 1) The stop must be based on a reasonable suspicion that criminal activity may be going on. This means the person’s actions must make the officer suspicious that illegal activity is taking place.
- 2) The stop must be supported by specific facts. This means that the officer must have a reason to be suspicious. In other words, the officer must be able to explain why he or she thought the person was doing something illegal by stating specific things he or she knew about the person or saw the person doing.

Case Facts

(U.S. v. Bayless, 913 F.Supp. 232 (S.D.N.Y. 1996))

At around 5:00 in the morning, police officers observed a car with Michigan license plates driving slowly in a Manhattan, New York neighborhood. The driver of the car double-parked and four men loaded duffel bags into the trunk. The four men walked away and the car pulled away from the curb. The car drove to a stoplight and after the light turned green, the car proceeded through the intersection. Two blocks later, the officers stopped the car.

Carol Bayless, the driver of the car, was arrested for a drug-related crime. After searching her trunk, the officers found that the duffel bags were filled with drugs. In order for the state to introduce the drugs into evidence at trial, the lawyers must convince the judge that the officers followed the **Fourth Amendment** rules when they searched the trunk of the car.

Officer Jacobs testified under oath that he and his partner were suspicious that Ms. Bayless was doing something illegal. He also testified that they stopped Ms. Bayless in order to see if their suspicion was correct. Officer Jacobs gave the following reasons for their suspicion:

1. The neighborhood Ms. Bayless was driving in was well known as a place where drug crimes were often committed.
2. Ms. Bayless' car had out of state license plates.
3. Ms. Bayless was driving slowly and then double-parked the car.
4. Four men came from between other cars and loaded duffel bags into Ms. Bayless' trunk.
5. The four men ran when they saw the police.

Carol Bayless gave a videotaped confession soon after she was arrested. Her story differed from Officer Jacobs' in the following ways:

1. Ms. Bayless said she was not driving the car before it was double-parked but was a passenger.
2. The driver got out of the car and then she got into the driver's seat after the car was parked.
3. The original driver removed bags containing money from the trunk and took them inside a nearby building.

4. Ten minutes later, the original driver came out with other men and Ms. Bayless gave one of the men the keys.
5. One of the men opened the trunk and put duffel bags inside.
6. Ms. Bayless then drove away.
7. Ms. Bayless did not see the men run away from the police.

The Judge's Decision

(U.S. v. Bayless, 913 F.Supp. 232 (S.D.N.Y. 1996))

Decision:

Judge Baer decided that the police did not follow the Fourth Amendment rules when they searched the trunk of the car.

Explanation:

Judge Baer heard all of the evidence during trial. Part of his job as the judge is to pay attention to how people act when they are telling their story and to determine whether they might be lying. Because Carol Bayless had nothing to gain by confessing, the judge believed her story to be true. Also, because she gave her confession right after she was arrested, the details were fresh in her memory. On the other hand, Officer Jacobs did not tell his story until many months later at the trial. After considering all of the evidence, Judge Baer decided that:

1. The police did not show any evidence to prove that drug crimes were often committed in the neighborhood.
2. The fact that the license plates were from another state was not unusual because she could have been a tourist.
3. Ms. Bayless was not speeding and double parking is not uncommon.
4. Ms. Bayless' version of what the four men did was more believable than Officer Jacobs' version.
5. The duffel bags could have been luggage and she could have been on her way back to her own state.

Backlash

Judge Baer's decision to suppress the drugs found in Ms. Bayless' car was met with a lot of attention. The decision was made during a presidential election year, and the Republican candidate, Bob Dole, used Judge Baer's decision as an example of an irresponsible, liberal judge. He claimed that Judge Baer should be impeached. President Clinton's response was that Judge Baer's reasoning was flawed, and maybe he should resign.

Both candidates focused on dicta in Judge Baer's opinion that was critical of the police. Dicta is language in a judicial opinion that has no effect on the legal issues involved. Essentially, dicta is extra language that often states a judge's own understanding of the facts. The relevant dicta in this case reflected Judge Baer's opinion that because police in the specific neighborhood had a reputation for being unethical and abusive, it was not unreasonable for the four men to run when they saw the police. While this statement was not the main basis for Judge Baer's decision to suppress the drugs, the fact that a federal judge had sharply criticized the police caused an otherwise routine decision to gain notoriety.

Once Judge Baer's continued tenure as a federal judge became a presidential campaign issue, many criticized both candidates for their disregard for Judge Baer's judicial independence. Because Judge Baer had not done anything outside the scope of his official judicial duties, Baer's supporters opposed the calls for his resignation or impeachment. While the presidential candidates may have disagreed with Judge Baer's decision, Baer's supporters explained that impeachment or resignation were not the appropriate responses.

New Evidence

(U.S. v. Bayless, 921 F.Supp. 211 (S.D.N.Y. 1996))

After the first hearing, Judge Baer was informed that new evidence was found. A second hearing was held to review the new evidence and to decide whether this new evidence proved that the officers followed the Fourth Amendment rules when they searched Ms. Bayless' trunk. The following new information was presented at the second hearing:

1. The officers gave specific reasons for their belief that the neighborhood was known as an area where drug crimes were often committed.
2. Unlike the first hearing, both Officer Jacobs and his partner testified during the second hearing and their stories matched.
3. Unlike the first hearing, Ms. Bayless testified in the second hearing and she contradicted her videotaped confession.

The American Judicature Society

The American Judicature Society (AJS), founded in 1913, is an independent, nonpartisan organization of judges, lawyers, and other members of the public who seek to improve the justice system.

AJS, which brings a public perspective to justice system issues, has the following mission:

- To minimize the role of politics in judicial selection.
- To support an independent judiciary that operates with the highest standards of ethics.
- To enhance the role of the jury and the importance of jury service.
- To increase public understanding and appreciation of the justice system.
- To promote operational improvements in the courts.
- To build knowledge through research on judicial issues.

