

CONSTITUTION DAY – SEPTEMBER 17

Classroom Activity

Purpose

The goal of this activity is to introduce 7th grade students to the First Amendment of the U. S. Constitution.

Format

- 10-15 minute interactive (Socratic style) lecture about the First Amendment
- Explain student exercise
- Students do the exercise
- Students report their decisions

Materials Needed:

- Power Point (on thumb drive or email to your teacher ahead of time)
- Student Exercise



Interactive Lecture (10-15 minutes)

- Introduce yourself and spend a couple of minutes telling the students what kind of law you practice.
- Make your lecture interactive by asking the students if they know some of the following information:
 - The Constitution was created on September 17 in 1787..
 - It was ratified on June 21, 1788 in what is now the Unitarian Universalist Church on the edge of the Boston Commons (on your power point are photos of the plaque on the outside of the church, the church itself and the view across the street from the church of George Washington in the Boston Commons (wearing a Boston Bruins jersey!))



- The original Constitution did not have a Bill of Rights.
- James Madison drafted the Bill of Rights in 1789 and it was adopted by the states in 1791.
- The Bill of Rights was created because our country's founding leaders were afraid the government would have too much power. These new American citizens wanted to be certain that particular, important rights were explicitly stated and protected.
- Thomas Jefferson was one of those founding citizens. He believed that a fair government must list and protect the basic rights of its citizens. His idea was that governments do not give rights to people, but rather have the responsibility to protect the rights that all people have naturally. They call his school of thought "Enlightenment".

- **Q:** Why were our country's founding fathers worried about whether the government had too much power?

A: Because the United States just finished fighting England for our independence. The Americans were protesting the King of England's strict control over the colonies. Americans wanted to make sure that no government held that kind of control over them again. These new American citizens wanted to be certain that particular, important rights were explicitly stated and protected.

The First Amendment to the U.S. Constitution states:

"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."

- The First Amendment protects Americans' rights to believe what they want to believe and say what they think, except in limited circumstances. It contains the most basic of all individual freedoms: Religion, Speech, Press, Assembly and Petition. These are often referred to as "the first five freedoms."

Taken together, these 5 freedoms constitute the cornerstone of our democracy.

Free speech deserves Constitutional protection because it serves 3 purposes:

- It advances knowledge and the ascertainment of truth,
- Facilitates self-government in a democracy, and
- Promotes individual autonomy, self-expression and self-fulfillment

Q: What are the five rights, or freedoms, set forth by the First Amendment? Can you pick them out?

A: The five freedoms are: Freedom of Religion, Freedom of Speech, Freedom of the Press, Freedom of Assembly and Freedom to Petition the Government. These are often referred to as "the first five freedoms."

- The First Amendment protects Americans' rights to believe what they want to believe and say what they think, except in limited circumstances.
- Taken together, these five freedoms constitute the cornerstone of our democracy.

Speech under the First Amendment

Q: What is speech? What different types of communication might qualify as speech under the First Amendment?

A: Speech is any form of communication including

- Verbal communication
- Actions (give example: protesting by picketing with signs)
- Written words
- Art & Literature (painting, singing, dance)

Q: Why as Americans are we given the right to free speech? How does it benefit us?

A: Free speech deserves Constitutional protection because it serves 3 purposes:

- It helps us learn things and to find out the truth about things,
- It helps us govern ourselves in a democracy, and
- It lets us be unique individuals who can express ourselves how we want

CRITICAL POINT: Only the government can violate the First Amendment. Vague and oppressive limitations placed on speech by Facebook, Twitter, Google or a private employer, no matter how restrictive, do not violate the First Amendment because those restrictions are not put in place by the government. They are put in place by a private company.

Q: Can you think of 5 different types of government?"

A: courts, police, public officials, public school employees, city council, FBI.

CRITICAL POINT: Only the government can violate the First Amendment. Vague and oppressive limitations placed on speech that is posted on Facebook, sent on Twitter or Yahoo's "terms of use", no matter how restrictive, do not violate the First Amendment because those restrictions are not put in place by the government.

Protected vs. Unprotected Speech

NOT ALL speech is protected.

Q: Can you think of reasons why some kinds of speech might not be protected.

- Safety of the public
- The need for government to administer other laws

Q: Can you think of ways people can get in trouble for telling lies or creating safety issues with their speech?

- Defamation (harming others by lying about them)
- Disturbing the peace
- Inciting a riot
- Causing a stampede by yelling “fire” in a crowded theater

Tell the story of the Tinker Case as a precursor to the students hearing other actual first amendment scenarios and deciding for themselves whether the speech in question was protected or not protected.

Tinker v. DesMoines Independent Community School District, 393 US 503 (1969)



Three siblings, John Tinker, 15, Mary Beth Tinker, 13, and Christopher Eckhardt, 16, years old, wore black arm bands to school to demonstrate their objection to the Vietnam War in the 1960s and to show their support for a truce. The boys both attended high

schools and the girl attended junior high school. The students wore black armbands to their schools and were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired. They missed several days of school. The students and their parents sued the school for violating their First Amendment rights to free speech. The case went all the way to the U.S. Supreme Court.

Q: What kind of speech did the students express? What value is that speech?

A: Political speech: Action (or symbolic speech) by wearing the black armbands with peace signs. Political speech gets the highest protection.

Q: Do students have free speech rights in school? Do people below the age of 18 have the same free speech rights of people older than 18?

A: Yes, students have free speech rights in public schools, but limitations can be placed on them. People below the age of 18 have free speech rights, but they are not as expansive as people above the age of 18.

Q: How do you think the court came down in the Tinker case? Did it find that the students First Amendment rights were violated?

A: The Supreme Court held in favor of the students. They said students cannot be punished for expressing their personal views, even on controversial matters, on the school premises. Students have the right to speak about political issues HOWEVER, the school can ban even political speech if it

“materially and substantially disrupts the operation of the school or collides with the rights of other students.”

The school, however, does not have to wait until a disruption occurs. If school authorities can forecast a substantial disruption of school activities it can ban the speech.

Pass out the “Protected or Not Protected” Activity to the students (gather them up after they leave the classroom).

- Help the class divide into groups of 5. Each group will have 3 justices and 2 lawyers: one for the government and one for the individual.
- Explain that one of the students will read the case out loud and then each lawyer will make an argument as to why the speech in question is protected or not protected.
- The 3 justices will debate for 1 minute and then vote by raise of hands. Majority wins. One student records the vote in each case so they can report to the classroom afterwards as to how their court voted.

Protected by the First Amendment or Not Protected?

RAPID FIRE DECISIONS! NO MORE THAN 2 *MINUTES* PER CASE!

- **Case Number One:**

In the 1960s, men had to serve in the United States Army. They were sent “draft cards” in the mail telling them when to report for military duty. The cards had numbers on them that helped the government keep track of its army.

Many men didn’t want to serve in the Army. They burned their draft cards as an expression of their protest against the war and serving in the military.

Do you think Burning a draft card was protected speech or not protected?

- **Case Number Two:**

During the civil rights movement of the 1960s, members of the Ku Klux Klan would sometimes burn crosses.

Do you think it is legal for the government to outlaw burning crosses?

What might the answer depend on?

- **Case Number Three:**

Your classmate refuses to say the Pledge of Allegiance in a public school because it uses the word “God” and he does not believe in God?

Do you think he can be forced to say the Pledge?

- **Case Number Four:**

You just bought your first car and you go to the Secretary of State and get a license plate. It says on it, “Live Free or Die.” You hate that. You put duct tape over it. Can the police arrest you, or is your symbolic speech protected?

- **Case Number Five:**

The head of the Cancer Awareness Club has passed out a bunch of stretchy bracelets that say “♥ Boobies”. Do you believe the school had the right to ban the bracelets?

- **Case Number Six:**

You have had a bad year with one of your teachers. You go on your FaceBook page and you write, “Ms. _____ is the worst teacher I’ve ever met. To those students who have had the displeasure of having Ms. _____, or simply knowing her and her insane antics; Here is the place to express your feelings of hatred.”

Peter Bayer, the principal of Pembroke Pines High, suspended Evans for three days and removed her from her Advanced Placement classes for violating the school's rules against "cyberbullying" and "harassment" of a staff member, according to court documents.

Can the school suspend you for putting that on your FaceBook page?

Can the school suspend students for “Liking” that posting?

- **Case Number Seven:**

Your friends pick up on the idea of criticizing teachers on FaceBook and one of them starts using vulgar language about a teacher and asks fellow students to help him raise money “to help pay for a hit man.” A picture of the teacher with her head cut off is posted. The teacher is so emotionally distraught she takes a one-year medical leave of absence and the student is suspended for 10 days.

Can the school do that?

- **Case Number Eight:**

The Class Clown decides to take some video footage on his i-phone of the gym teacher bending over and while the student stood behind her making vulgar motions and dubbed in the song “Ms. New Booty.” The student was suspended for 40 days.

Can the school do that?

ANSWER KEY

- **Case Number One:** Burning draft cards

Draft-card burning was a symbol of protest performed by thousands of young American men as part of the opposition to the involvement of the United States in the Vietnam War. Beginning in May 1964, some activists burned their draft cards at anti-war rallies and demonstrations. By May 1965 it was happening with greater frequency. To limit this kind of protest,^[3] in August 1965, the United States Congress enacted a law to broaden draft card violations to punish anyone who "knowingly destroys, knowingly mutilates" his draft card.^[4] Subsequently, 46 men were indicted^[5] for burning their draft cards at various rallies, and four major court cases were heard. One of them, *United States v. O'Brien*, was argued before the Supreme Court. The act of draft card burning was defended as a symbolic form of free speech, a constitutional right guaranteed by the First Amendment. The Supreme Court decided against the draft card burners; it determined that the federal law was justified and that it was unrelated to the freedom of speech. This outcome was criticized by legal experts. (From Wikipedia)

- **Case Number Two:** Burning a cross

In *Virginia v. Black (2003)*, the United States Supreme Court deemed constitutional a statute outlawing the public burning of a cross with intent to intimidate, but held that statutes that did not require additional showing of intent to intimidate (other than the cross itself) were unconstitutional. (From Wikipedia)

- **Case Number Three:** Pledge of Allegiance

Minersville School District v. Gobitis, 310 U.S. 586 (1940), was a decision by the Supreme Court of the United States involving the religious rights of public school students under the First Amendment to the United States Constitution. The Court ruled that public schools could compel students—in this case, Jehovah's Witnesses—to salute the American Flag and recite the Pledge of Allegiance despite the students' religious objections to these practices. This

decision led to increased persecution of Witnesses in the United States. The Supreme Court **overruled** this decision a mere three years later, in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943). It was a significant court victory won by Jehovah's Witnesses, whose religion forbade them from saluting or pledging to symbols, including symbols of political institutions. However, the Court did not address the effect the compelled salutation and recital ruling had upon their particular religious beliefs, but instead ruled that the state did not have the power to compel speech in that manner for anyone. (From Wikipedia)

- **Case Number Four:** License Plate: "Live Free or Die"

In 1977, the U.S. Supreme Court ruled in the case of *Wooley v. Maynard*, 430 U.S. 705, that the State of New Hampshire could not prosecute motorists who chose to hide part or all of the motto. That ruling came about because George Maynard, a Jehovah's Witness, covered up "or die" from his plate. "By religious training and belief, I believe my 'government' – Jehovah's Kingdom – offers everlasting life. It would be contrary to that belief to give up my life for the state, even if it meant living in bondage."^[2] Pursuant to these beliefs, the Maynards began early in 1974 to cover up the motto on their license plates.

He was convicted of breaking a state law against altering license plates.

The U.S. Supreme Court ruled 6–3 in his favor and likened Maynard's refusal to accept the state motto with the Jehovah's Witness children refusing to salute the American flag in public school in the 1943 decision *West Virginia State Board of Education v. Barnette*.

"We begin with the proposition that the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all," Chief Justice Warren Burger wrote for the majority in *Maynard*.

"Here, as in *Barnette*, we are faced with a state measure which forces an individual, as part of his daily life indeed constantly while his automobile is in

public view to be an instrument for fostering public adherence to an ideological point of view he finds unacceptable.

"The fact that most individuals agree with the thrust of New Hampshire's motto is not the test; most Americans also find the flag salute acceptable," Burger wrote.

The Supreme Court concluded that the state's interests paled in comparison to individuals' free-expression rights.^[3]

(From Wikipedia)

Justice Jackson said, "national unity is something officials may foster by persuasion and example, but not coercion."

- **Case Number Five: Bracelets for Cancer Awareness**

H. v. Easton Area Sch. Dist., 827 F. Supp. 2d 392 (E.D. Pa. 2011)

The speech is both political and sexual and the school can't shut that down. It is political because the bracelets are intended to raise awareness about breast cancer and to reduce the stigma associated with openly discussing breast health. While it can be argued that the speech is lewd and vulgar (the word "boobies" is off-color slang for "breasts"), the political meaning of the speech outweighs its sexual nature. Also, like the political, anti-war speech in Tinker, breast cancer awareness is a national public health issue. It affects everyone.

The Court held in favor of the students. It said the speech was political speech and the schools could not ban it. It also said there was no evidence that the speech caused a material disruption in the school, so it could not be banned. This case happened in Pennsylvania in 2010.

Case Number 6: _Expressing an Opinion about a Teacher on FaceBook

In a Feb. 12, 2010 ruling in Bayer v. Evans, U.S. Magistrate Judge Barry L.

Garber of Miami declined Evans's request for an injunction barring the principal from keeping the student's discipline in school records. But the judge denied qualified immunity for Bayer, holding that Evans's speech was protected under the First Amendment and that the principal should have known he was violating a clearly established right by disciplining Evans.

"Evans's speech falls under the wide umbrella of protected speech," Judge Garber said. "It was an opinion of a student about a teacher, that was published off-campus, did not cause any disruption on-campus, and was not lewd, vulgar, threatening, or advocating illegal or dangerous behavior."

(From SCOTUSBlog by Mark Walsh)

Case Number 7: Posting threats against a Teacher on FaceBook

***J.S. v. Bethlehem Area School District* 807 A.2d 847 (Pa. 2002)**

The court ruled in favor of the school. The court held that statements were not a true threat, but the emotional and physical injury of the teacher (she took a one-year medical leave of absence) was evidence of substantial disruption in the school. Further, the speech threatened violence against a specific, named person. That also constitutes disruption. What sets the *Bethlehem* decision apart from previous decisions is its use of *Tinker* to restrict off-campus speech. The court also stated that students accessing the material at school was a key factor in its holding. It may be sufficient to consider the speech on-campus speech under *Tinker* if the speech is accessed at school. This was the first time that Tinker was applied to off-campus speech. It looked at whether the blog caused a disruption at school. If it did, then the speech could be shut down.

Case Number 8: Posting embellished footage of a teacher on YouTube

***Requa v. Kent School District*, 492 F.Supp.2d 1272 (W.D. Wash 2007)**

Holding: for school. Court observed that the video of the teacher and students was shot on-campus and then mounted to YouTube off-campus. The court held that a student filming a student making vulgar actions behind a teacher's back or filming her buttocks as she bends over in the classroom constitutes a substantial disruption to the work and discipline of the school. It also simulated an act of violence against a specific, named person, which is disruptive.