

LESSON TWO: FREEDOM OF SPEECH/EXPRESSION

INTRODUCTION TO LESSON (2 MINUTES):

Team Captain: “Today’s lesson is about freedom of speech and other forms of expression. As we mentioned last week, all of the 3Rs instruction will be in small groups, so let’s get back into the same small groups we had last month with the same attorney volunteer in each group. If you were not in a group last month or for whatever reason do not know which group you should be in, see me. [Be sure all students are in a small group and try to have each group have the same students and volunteer teacher as last month, if possible. If there is a new volunteer attorney with a group, have the attorney introduce him/herself to the group.]”

SMALL GROUP DISCUSSION (33 MINUTES):

Attorney in Small Group: “I am handing out your Student Worksheets for today’s lesson [pass them out]. Please look at the Loyalty Oath on the first page. Raise your right hand and repeat its words out loud as I read it:

‘I, [say your name here], swear or affirm upon penalty of law that I will preserve, protect and defend the United States of America against all enemies foreign and domestic.
I will not say or do anything to undermine, impede, or in any way harm or negatively impact the United States’ War on Terror, including the current war in Afghanistan.’

Any questions about any of the words used in the Oath [you may have to explain the meaning of some of the words, such as ‘undermine, impede, etc.’]? Would you sign the Oath? Why or why not?

In fact, no such Loyalty Oath is required of citizens in the United States today; however, Loyalty Oaths have been an issue during other time periods in American history. Two such periods are referenced in your Student Worksheets. One was during the Red Scare of World War I and the other was during the McCarthy Era just after World War II. [Read the Student Worksheet Red Scare and McCarthy Era sections of the Worksheets with the students, asking for volunteers to read aloud.]

How could we know whether Loyalty Oaths, such as the one we read together at the start of today’s class, are legal? A good start would be the language of the United States Constitution. As we noted last month, you have a copy of it in your 3Rs Folder.

The Constitution is the document that sets forth our form of government. It identifies who has the power to govern us and how that power is to be exercised. No law can conflict with the Constitution, which is the ‘supreme law of the land.’

In your Student Worksheet for today’s lesson, after your Optional Activities, is a chart showing some of the powers granted under the Constitution to each branch of the national government and how each branch can check the power of the other, and another chart showing our National and State court systems, which courts form the Judicial Branch of government. [Do not review the charts with the students at this time. Feel free to do so if you have extra time at the end of the lesson.]

The Constitution also identifies certain individual liberties that we have as citizens that governments cannot take from us. Many of these rights are contained in the Bill of Rights, which are the first ten amendments added to the Constitution in 1791.

All Constitutional rights are not absolute (without limits or conditions). Rather, they must be carefully balanced against the rights of others and the common good of society as a whole. The Judicial Branch defines the limits of our individual rights by interpreting the language of the Constitution as it applies to the case before them, keeping in mind how the



courts have interpreted those words in similar circumstances over the years.

Part of the First Amendment is reprinted in your Student Worksheet. Let's read it together [have a student read the language to the group: 'Congress shall make no law ... abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances'.].

The First Amendment protects the rights of citizens against government (not private individuals or companies) efforts to limit or abridge free speech, a free press, the right to assemble and protest peaceably, and the right to ask the government to correct wrongs (redress of grievances). These rights are sometimes collectively referenced as 'freedom of expression.'

Does the Loyalty Oath we read violate the First Amendment? Why or why not?

If such an Oath did exist today and the government punished someone for being critical of the Iraq War, it is unlikely the Oath would be upheld in court because it would conflict with our free speech, press, assembly and petition rights.

Let's now read from your Student Worksheet about a speech given by Eugene Debs in Canton, Ohio in 1918. [Have a student read the 'Eugene V. Debs Fact Pattern' and 'Issue' portions of the Worksheet.]

Now, let's read the ruling by the United States Supreme Court (the highest court in the Judicial System) in the Debs case, as it is printed in your Student Worksheets [have a student volunteer read from the 'Debs Court Ruling' section of the Worksheet].

In 1969 another Ohio case was decided by the Supreme Court. The legal standard established by that court broadened free speech and expression protections, and it is still the standard used today. [Have a student volunteer read the *Brandenburg v. Ohio* section of the Worksheet.]

Let's review some of the other limits that the courts have placed on freedom of speech and other forms of expression. They are also listed in your Student Worksheet [have a student volunteer read 'Other Ways To Limit Free Speech and Expression,' which is in the Worksheet]."

LARGE GROUP JEOPARDY REVIEW (5 MINUTES):

Team Captain: "In the time remaining, we will play Jeopardy Review. Before we do so, let me encourage you all to look at the optional activities of your Student Worksheets and ask your teacher whether you can do them for extra credit on your own time.

Let me briefly explain how we play Jeopardy Review [review the rules, which are provided in the User's Manual section at the front of the 3Rs Instructor's Guide, then play the game in the time remaining.]"



JEOPARDY!

10	10	10
The first ten amendments to the U.S. Constitution are called the _____.	This amendment to the Constitution protects Freedom of Speech.	The national and state court systems form this branch of government.
[Bill of Rights]	[First Amendment]	[Judicial]
20	20	20
Name of fear of socialists and communists during World War I.	The second Red Scare was led by Senator Joseph _____.	The First Amendment protects the right to _____ the government for a redress of grievances.
[Red Scare]	[McCarthy]	[Petition]
30	30	30
The First Amendment freedom that protects newspapers and other print media from government censorship.	This document sets forth our form of government and is the supreme law of the land.	The First Amendment protects the right of the people to peacefully _____.
[Freedom of the Press]	[U.S. Constitution or The Constitution]	[Assemble]
40	40	40
Last name of socialist arrested in Canton, Ohio during WWI for creating a “clear and present danger.”	The First Amendment says this legislative body shall make no laws abridging freedom of expression.	When the U.S. Supreme Court finds that a law conflicts with a right guaranteed in the U.S. Constitution, the law is held to be _____.
[Debs]	[Congress]	[Unconstitutional]
50	50	50
Time, place and date restrictions on Freedom of Expression are generally upheld because they are “content-_____” laws.	Laws that limit Freedom of Expression based on what is said or who says it are usually held to be unconstitutional. Such laws are called “content-_____” laws.	Name of the 1969 Supreme Court case involving a KKK rally in Ohio such and in which the “imminent lawless action” test was adopted.
[Neutral]	[Based]	[<i>Brandenburg v. Ohio</i> or <i>Brandenburg</i>]



LESSON TWO: STUDENT WORKSHEET

LESSON FACTS/TERMS/CONCEPTS:

Freedom of Expression; Freedom of Speech; Freedom of Press; Right to Peaceable Assembly; Right to Petition for a Redress of Grievances; Bill of Rights; Constitution; Loyalty Oaths; Supreme Court; Supreme Law of the Land; Interpret the Law/Judicial Interpretation; Red Scare; McCarthyism/McCarthy Era/Joseph McCarthy; Eugene Debs; Clear and Present Danger; Constitutional Amendment; Congress; Abridge; Espionage Act of 1917; Socialist/Socialism; Subpoena; Content-Neutral Laws; Content-Based Laws; Time/Place/Manner Restrictions; Communism/Communist; Bolshevik; Russian Revolution; Sacco & Vanzetti Trial; Blacklisting; *Brandenburg v. Ohio*; Imminent Lawless Action Test; Unconstitutional; First Amendment; Libel; Slander; National Security; Individual Rights v. Rights of Others/the Common Good; Precedent.

LOYALTY OATH:

I, _____ [say your name here], swear or affirm upon penalty of law that I will preserve, protect, and defend the United States of America against all enemies foreign and domestic. I will not say or do anything to undermine, impede, or in any way harm or negatively impact the United States' War on Terror, including the current war in Afghanistan.

Print your name here

Sign your name and today's date here



RED SCARE:

After World War I, the people in the United States became suspicious of radicals, especially those from foreign nations. The Russian Revolution where the Bolshevik Party (communists) seized power in 1917 led to fear of similar uprisings in the United States. In short, the Red Scare became associated with fear of communism, political violence, and labor unrest.

After World War I, factories that manufactured war supplies closed, throwing many people, including newly arrived immigrants, out of work. As labor unrest increased, some people began to see immigrants, labor activists, and political radicals as troublemakers or threats. They believed that government should respond forcefully and harshly to strikers and workers who demonstrated against labor conditions. Because some unions were influenced by the Socialist Workers Party, the general public blamed union leaders for any violence or lawlessness. Consequently, many union leaders were arrested, and many aliens suspected of radical views were deported. The Red Scare finally ended with the trial of Sacco and Vanzetti, two immigrant workers convicted of murdering a company payroll master. Despite weak evidence, both were executed in 1927.

MCCARTHY ERA:

The second Red Scare (1948-1956) is referred to as the McCarthy era, named after Senator Joseph McCarthy of Wisconsin. As was evident after World War I, where national hysteria centered on communism, the years after World War II had similar outbreaks of violence. During this time Senator McCarthy led a crusade to get rid of communists who he believed had infiltrated the government. He chaired a committee that threatened and bullied many witnesses subpoenaed to give testimony. Some government officials resigned under pressure from McCarthy's attacks. Finally, McCarthy's downfall came in 1954 during televised hearings when he claimed that the United States Army was being infiltrated by communists. His claims were baseless and challenged by Jack Welch, the army's lawyer. Since that time, the term "McCarthyism" has been associated with the use of harassment, false accusations, appeals to fear, and blacklisting to force conformity to an official position.

THE FIRST AMENDMENT/FREEDOM OF EXPRESSION:

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

EUGENE V. DEBS FACT PATTERN:

Eugene V. Debs, a well-known socialist, gave a public speech to an assembly of people in Canton, Ohio. The speech was about the growth of socialism and contained statements that the government claimed, and a jury agreed, were intended to interfere with soldier recruiting and encouraged insubordination, disloyalty, and mutiny in the armed forces during World War I, in violation of the Espionage Act of 1917. Debs appealed his arrest and conviction to the United States Supreme Court.

ISSUE:

Did the U.S. deny Debs' right to free speech under the First Amendment to the United States Constitution?

DEBS V. U.S. COURT RULING:

The Supreme Court of the United States upheld the lower court's decision in favor of the government. The Court said that free speech is not absolute and that Debs had actually planned to discourage people from enlisting in the armed forces. The Court refused to grant him protection under the First Amendment freedom of speech clause, stating that Debs "used words [in his speech] with the purpose of obstructing the recruiting service." Debs' conviction under the Espionage Act would stand because his speech represented a "**clear and present danger**" to the safety of the United States as it could influence soldiers to disobey their commanders and therefore endanger the lives of other soldiers.



BRANDENBURG V. OHIO:

Another Ohio case heard by the Supreme Court was *Brandenburg v. Ohio* (1969). Brandenburg was a KKK member who was arrested after speaking at a KKK rally where he referenced the possibility of revenge against blacks, Jews, and "their supporters." The Supreme Court held his arrest and conviction violated the First Amendment's freedom of speech provision. The Court's ruling broadened the limits of the "clear and present danger" rule to permit even inflammatory speech unless such speech created a danger of "**imminent** (immediate) **lawless action**." Brandenburg's speech did not create such a danger because there was no immediate threat of violence.

OTHER WAYS TO LIMIT FREE SPEECH AND EXPRESSION:

There are many ways in which the government might regulate speech, and not all of them are off limits, or even bad ideas. A town, for example, might prohibit picketing on city streets between midnight and dawn, or prevent people from using bullhorns to deliver a speech at night. These are examples of what we call "**content-neutral**" limitations on speech. They apply equally to everyone, and are usually designed to protect peace and order by governing where, when and how speech may be delivered: lawyers sometimes call them "**time, place and manner restrictions**."

Laws that single out speech for regulation based on what the speaker has to say are generally prohibited by the First Amendment. So while a town can ban the use of bullhorns at three in the morning, it cannot ban the use of bullhorns only when they are used in a speech which criticizes the mayor. There are very few exceptions to this rule. If a law singles out speech for harsher treatment based on its message, it is almost always unconstitutional. Many controversial cases involve efforts by the government to make "**content-based**" laws look content-neutral in an effort to get around this rule.

The government also limits free speech by outlawing libel and slander. **Libel** is a falsehood that someone writes to deliberately hurt another person and **slander** is speaking a falsehood to deliberately hurt another. A victim of libel or slander can sue the person making the falsehoods for the injury caused, such as spreading a false rumor that someone has a sexually transmitted disease.

National security is another reason the government can limit free speech. If information is top secret and would endanger national security, courts have permitted limits or bars to the communication of such information. Communication of troop movements to the public that could fall into enemy hands would be an example of such information that a court might limit or bar.





LESSON TWO: OPTIONAL STUDENT ACTIVITIES

JUDICIAL INTERPRETATION:

A local town has a nice public park with a big problem: vehicles are using roads in the park as a shortcut between two busy highways. This is causing problems with visitors to the park who complain of the noise, congestion and danger created by the fast-moving vehicles. Several citizens complained of almost being run over by speeding vehicles, and one child was injured by a vehicle that did not stop at a crosswalk. In response to many citizen complaints, the city council (legislative branch of local government) passed a law stating that there shall be no vehicles in the park and signs stating it were posted all around the park.

The local police have been busy arresting people who violated the law. They include:

- 1) An ambulance driver who cut through the park in an emergency because it was the quickest way to the local hospital for the heart attack victim the ambulance was carrying.
- 2) A van driver hauling new playground equipment to the children's playground which was being renovated by the city government.
- 3) A city garbage truck driver who was picking up garbage from the park's trash bins.
- 4) A bicyclist exercising by riding through the park.
- 5) A mother pushing a baby stroller across the street.

All of those arrested have challenged their arrest under the law in the local courts (judicial branch). You are the judge and must decide whether to uphold the law as it applies to each of the people arrested.

Before deciding, consider that in interpreting the law courts usually look first to the actual language of the law and the words used to determine what they mean and what was intended by their use. Courts also see how other courts have ruled on similar issues. Such prior rulings serve as "**precedent**" for other courts considering the same issue. Here, you are to assume there is no precedent. Consider the intended meaning of the term "vehicle" (for example, combustion engines only?) and the intent of the law (to reduce traffic hazard to pedestrians using the park). By interpreting the law, you give the law new meaning that other courts and branches of government (including the police) will then follow. Of course, the city council could, after you rule, revise the law to clarify its meaning (by defining the terms used and stating their intent). Laws are often rewritten after courts interpret them.

State how you would rule as to each of the five people arrested and fully explain your reasoning.

FREEDOM OF EXPRESSION HYPOTHETICAL:

Consider the following hypothetical situation and answer the questions that follow:

Jan is a member of a religious group called the "True Believers" (TBs). The TBs believe that God controls all aspects of human existence and that when a society fails to abide by God's word, it will be punished.

The TBs believe that God is punishing the United States because it has not outlawed homosexual conduct. This punishment, they believe, includes the deaths of U.S. servicemen and women in Iraq and Afghanistan.

To draw attention to their beliefs and to get the U.S. to "get right with God," they engage in demonstrations at the funerals of servicemen and women killed in those two conflicts. At such demonstrations they pass out literature, carry signs and yell, all of which includes statements like "God punished your child for permitting homosexual conduct," "Your child died for our sins," and "Your child deserved to die."

As you would expect, this has caused the families great anguish and at some funerals violence has broken out when family members have attacked the TBs.

Recently, a citizen of Pleasantville, Ohio died in Iraq. The TBs announced plans to appear and protest at the



funeral. To avoid problems, the Pleasantville City Council passed a law that there shall be no protesting of any issue by the TBs within the city limits. The TBs ignored the law and during their protest at the funeral, which had not become violent at that point, they were all arrested for violating the law.

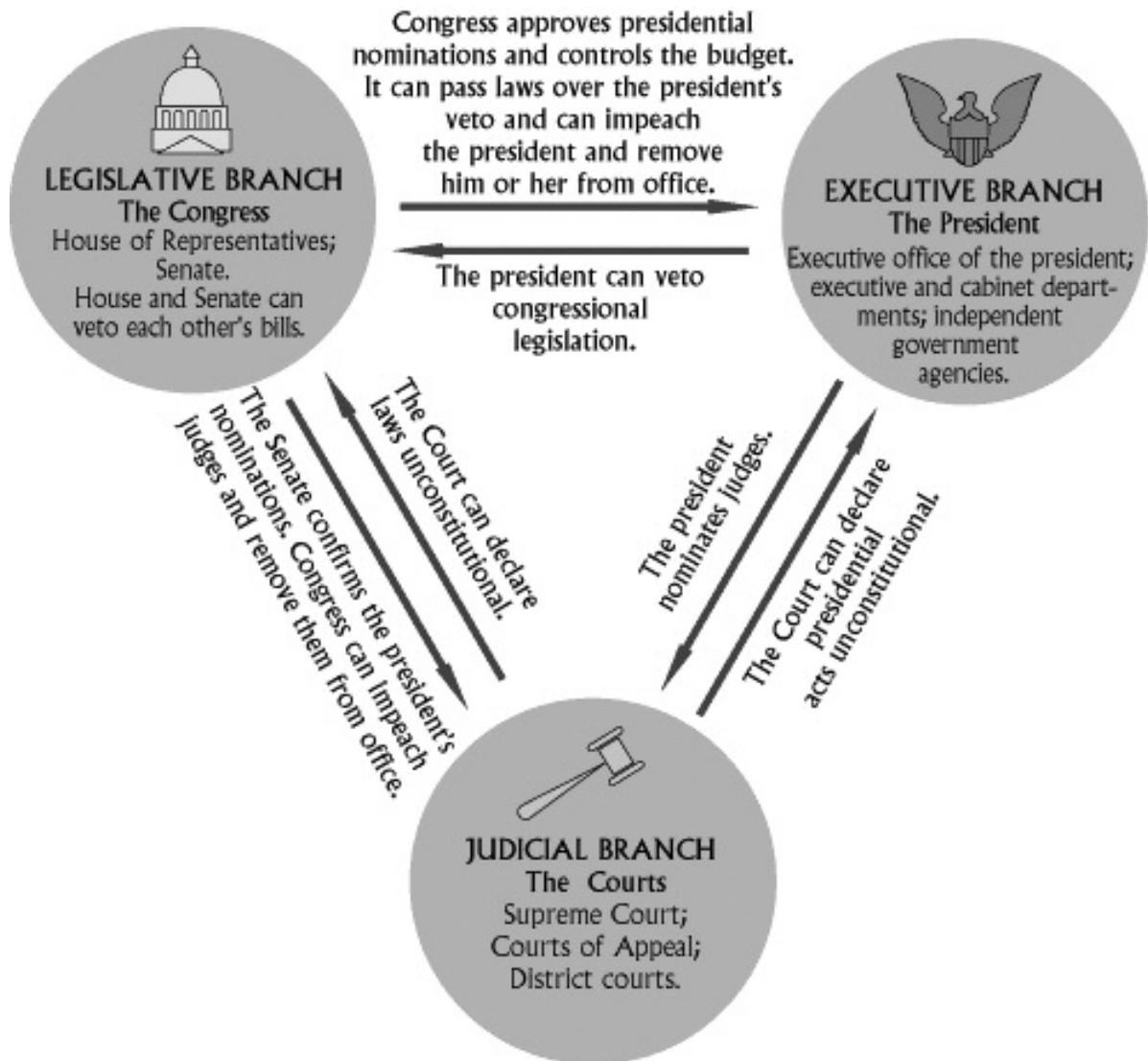
- 1) What arguments might you make as an attorney for the TBs supporting an argument that their First Amendment rights were violated?
- 2) What arguments might you make as an attorney for Pleasantville supporting an argument that the Pleasantville law was not in violation of the First Amendment and should be upheld?
- 3) As the judge hearing and deciding this case, how would you rule and why?

SHORT ESSAY/CONSTRUCTED RESPONSES:

1. The First Amendment guarantees every American freedom of speech. However, this right can be restricted if it creates the danger of “imminent lawless action.” Explain the meaning of the term “imminent lawless action,” provide an example, and compare and contrast it to the “clear and present danger” rule set forth in the *Debs v. U.S.*
2. Using freedom of expression as an example, explain how individual rights are relative, not absolute, and describe the balance between individual rights, the rights of others, and “the common good.”
3. Thomas Jefferson said “[t]he Constitution ... is a mere thing of wax in the hands of the judiciary [Courts], which they may twist and shape into any form they please.” What did Jefferson mean? Do you agree? Disagree? State why and provide examples supporting your position.
3. G. Norman Collie, a 19th century social and political activist, said “[i]n free countries, every man is entitled to express his opinions and every other is entitled not to listen.” What did Collie mean? Do you agree? Disagree? State why and provide examples supporting your position.
4. Author Norman Cousins said “[i]n a democracy, the individual enjoys not only the ultimate power but carries the ultimate responsibility.” What did Cousins mean? Do you agree? Disagree? State why and provide examples supporting your position.



This is what creates our system of “checks and balances”



FEDERAL AND STATE COURTS

Article III of the Constitution establishes the judicial branch of government. In the United States, we have two separate judicial systems – the federal court system and the state court system. The charts below provide a brief overview of the systems.

FEDERAL COURT SYSTEM

UNITED STATES SUPREME COURT

Cases usually involve important questions about the Constitution or federal law
Cases may come from state or federal court
Original jurisdiction in some instances



UNITED STATES CIRCUIT COURTS OF APPEAL

Hear appeals from the district courts located within the circuit
Twelve Regional Courts of Appeal
One U.S. Court of Appeal for Federal Circuit



UNITED STATES DISTRICT COURTS

(Trial Courts, U.S. Bankruptcy Courts)
Criminal and civil matters



OHIO STATE COURT SYSTEM

OHIO SUPREME COURT

Original jurisdiction in select cases; court of last resort on state constitutional questions and questions of public or great general interest



COURTS OF APPEAL

Original jurisdiction in select cases; appellate review of judgments from common pleas, municipal, county courts



COURTS OF COMMON PLEAS

Civil (above \$15,000), criminal, domestic relations, probate and juvenile matters



LOWER COURTS

(Municipal, Mayors, Court of Claims)

Misdemeanors, civil actions up to \$15,000 and suits against the state



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