



Judges in the Classroom

Rights in Conflict

Source:

Tarry L. Lindquist, educational consultant, adapted this lesson from material under the same title from Justice Education Teaching Strategies K-6 (JETS-5), Pennsylvania Department of Education; the lesson is used with permission. Cases are taken from *Lawmaking*, Law in Action Series, Riekens-Mahe, West Publishing Company. Staff at the Washington State Administrative Office of the Courts (AOC) edited the lesson and updated it in 2019. For more information, contact AOC, Temple of Justice, 415 12th Ave SW, PO Box 41174, Olympia, WA 98504-1174. For an electronic copy of this lesson, or to view other lesson plans, visit Judges in the Classroom on the Washington Courts Web site at: www.courts.wa.gov/education/.

Objectives:

1. Students will analyze three different case studies, which involve conflict situations, and will identify the rights in conflict in each case.
2. Students will decide what to do when the rights of two or more people conflict.

Grade Level:

Grades 4-6

Time:

One class period (approximately 50 minutes)

The teacher should have spent a minimum of two class periods prior to the arrival of the judge studying the Bill of Rights and its meaning.

Materials:

One copy of Handout 1 (Rights in Conflict Case Studies) for each student

Procedures:

1. **Begin the class by introducing yourself** to the students and telling a little bit about what you do, if this is your first class.
2. **Tell the students they will participate** in small group discussions after you model the focus of the discussion. Explain that each group will be given a conflict situation. Then, each group will need to figure out which rights are in conflict in the situation. Finally, they will decide as a group how to solve the conflict.

3. Read the following to the class:

The guns of World War II were blazing. From 1941 to 1945, the United States was in the middle of the fighting. Many Americans thought it was important to show loyalty to the country. One state, West Virginia, ordered its teachers and students to salute the flag every school day. They also had to say the Pledge of Allegiance every school day. Any student who refused would be sent home from school. The student would not be allowed to return until he or she agreed to obey the order.

A religious group called Jehovah's Witnesses objected. They asked to have their children excused from the flag ceremony. The group said this was against their beliefs. Jehovah's Witnesses believed the law of God was higher than the laws of any government. They thought that God's law forbade the worship of any man-made thing or sign. So they believed it was wrong for them to say a pledge to a flag. The Jehovah's Witnesses offered instead to say a pledge of allegiance to God and to respect the United States flag.

West Virginia school officials refused to accept this offer from the Jehovah's Witnesses. School officials sent the children home from school. The officials warned that the parents would be arrested. They also said the children would be sent to reform school.

The Jehovah's Witnesses brought their case to court. They said they had been denied their freedom of religion. They added that the order to recite the pledge also denied their freedom of speech. This case eventually went to the United States Supreme Court.

4. Ask students the following questions, giving ample time for thought.

- Did the school officials' order limit the right to freedom of religion for the Jehovah's Witnesses? Why or why not?
- Did it limit their right to freedom of speech? Why or why not?
- Would the rights of other people be hurt in any way if the Jehovah's Witnesses did not take part in the flag ceremony?
- How would you have decided this case? Why?

Note: You might probe for more depth in the answers. For example, you could ask: What makes you think that? Can you give an example? Can anyone else say that another way?

5. Share the United States Supreme Court's decision.

"We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."

"The decision of this Court in *Minersville School District v. Gobitis* [310 U.S. 586 (1940)] . . . [is] overruled and the judgment enjoining enforcement of the West Virginia Regulation is affirmed."

West Virginia Board of Education v. Barnette, 319 U.S. 624, 642 (1943)

Approximately 15 minutes of time should have elapsed.

6. **Set up the next step** in the lesson by asking:

Q: What is the Bill of Rights and why do we have these rights?

A: The Bill of Rights lists certain basic rights given to the people by the United States to protect from an abuse of power by the government.

Note: Most students do not understand that the Bill of Rights protects us from the federal government, not from principals, playground supervisors, baby sitters, or parents. It is through the Fourteenth Amendment's due process clause that most of the first ten amendments have been incorporated to apply against the states. In this way, principals, teachers, police and others acting with authority from the state are limited by the Bill of Rights.

7. **Continue by discussing** how problems arise when one person's rights come into conflict with another person's rights. For example, you might say you are free to wave your hands wildly anytime you want. But when would this right to wave your arms stop?

Major questions dealing with peoples' rights in conflict present some of the hardest problems for society. People come to a better understanding about what is fair if they have to decide what should be done when the rights of two or more people conflict.

8. **Pass out Handout 1** (Rights in Conflict Case Studies) to the class. Explain that the cases on the handout offer examples of basic rights in conflict. Tell the students they will work in groups to identify what the basic rights are for each person in each story; then, each group will make a decision. Ask students to read the cases quietly to themselves.
9. **While students read the handout**, write on blackboard or project with a docu-camera the following:

Rights of Side A

Rights of Side B

Decision

Case 1

- 10. Count off the class in threes.** Tell the students you are using a technique called the "goldfish bowl." Ask the "ones" to bring their chairs to the center of the classroom and form a circle with you. They are the "goldfish." The rest of class will quietly listen to them identify the rights of each side in Case 1 and decide the case. Then the "twos" will come into the "bowl" for the second case and so on. Plan on about 10 minutes for each group in the fishbowl. It will speed things up if the first group of students leave their chairs in the circle and they simply exchange places with the next group coming to the "fishbowl."

Note: The fishbowl strategy allows students to hear others think aloud and encourages full participation by all students. If you notice some students not speaking during their stint in the fishbowl, you might prompt them by saying: We haven't heard from you yet. What's your idea?

- 11. Start the "ones" off** by asking them to identify the two sides of the Botein case. Encourage each student to speak. Have the teacher record responses on the board or docu-camera. When you feel the students have identified the rights, review what has been said and then ask students what decision they think would be fair. When you feel the students have exhausted their ideas or have come to consensus, share the Court's decision and your explanation of it.

Case 1: No case name identified

Mr. Botein could not find his Mac Pro Apple anywhere. A neighbor said the Conleys, a family that lived across the street and had teenage boys, had an Mac Pro Apple that looked just like the Botein Mac Pro Apple. Mr. Botein got mad and called the police. He demanded that the police look in the Conley house for his computer.

Does Mr. Botein have the right to have the police search the Conley house? Why or why not? Whose rights are in conflict here? What if one of the neighbors said they had seen one of the Conley boys take the computer across the street from Mr. Botein's house into his own home?

Issue: What right should the law hold most important—the right of the Conleys to privacy or the right of the Boteins to get their property back?

Information: The courts have set down certain regulations to ensure people's rights to privacy. By law, a search warrant issued to a police officer by a judge would be needed before a police officer could search the Conley house. There must be good evidence to prove the Botein Mac Pro Apple was actually in the Conley house and it was there illegally before a search warrant could be issued. The rules arise from the way the U.S. Supreme Court has interpreted the Fourth Amendment.

- 12. Ask the students: How might this decision affect your lives?**

Repeat the "goldfish bowl" strategy with groups two and three.

Case 2: *Tinker v. Des Moines School District*, 393 U.S. 503 (1969)

John and Mary Beth Tinker decided to wear black armbands to school as a protest. The school allowed the students to wear symbols like political buttons, but the principal told the Tinkers they would not be allowed in school wearing armbands. They decided to go to school wearing the armbands anyway. Their armbands stood for their feelings against the Vietnam War. Some students just outside of the school got angry at John and Mary Beth for wearing armbands. The principal sent John and Mary Beth home and refused to let them come back to school if they wore their armbands.

Should the Tinkers be allowed to wear armbands to school if they want to wear them? The Tinkers did not say any words of protest. Does the First Amendment apply to wearing armbands? Do you think it should? Why or why not? Whose rights are in conflict here?

Issue: What right should the law hold more important—the right of the Tinkers to express freely their ideas or the right of the school to protect good order?

Information:

The U.S. Supreme Court ruled in favor of the Tinkers, since it was an orderly and symbolic expression of free speech. Justice Fortas said: "It can hardly be argued that either students or teachers shed their rights to freedom of speech or expression at the schoolhouse gate." He also stated "that any conduct by students which materially disrupts or causes a substantial disorder or invasion of the rights of others, is, of course, not protected by the Constitutional guarantees of freedom of expression."

Case 3: *Louisiana ex rel. Frances v. Resweber*, 329 U.S. 459 (1947)

Several years ago Willy Allen was convicted of armed robbery and murder and sentenced to die in the electric chair. They strapped Willy into the chair and pulled the switch. Willy Allen did not die. The electric chair failed to work.

Is it right to try again to execute Willy Allen? Why or why not? Whose rights are in conflict here?

Issue: What right should the law hold most important—the right of Willy not to suffer cruel and unusual punishment granted to him by the Eighth Amendment or the right of society to be protected adequately from criminals like Willy?

Information: In 1947, the U.S. Supreme Court decided to carry out the sentence and electrocute Willy Allen. Recently, the Court has strictly regulated the use of capital punishment. Whether or not capital punishment should be used against people convicted of very serious crimes continues to be a controversy in our society. Many states are choosing to abolish the death penalty. In Washington State in 2018, the State Supreme Court ruled that the death penalty as currently carried out is unconstitutional. The court

stated that the death penalty was applied in an arbitrary and racially biased way. *State v. Gregory*, 192 Wash.2d 1.

13. **Wrap up the lesson** by thanking the students for their participation and asking if they have any additional questions.

HANDOUT 1

Rights in Conflict Case Studies

Directions: Read the cases and answer the questions at the end of each case. Identify the basic rights for each person in each case; then, make a decision in each case.

CASE 1

Mr. Botein could not find his Mac Pro Apple computer anywhere. A neighbor said the Conleys, a family that lived across the street and had teenage boys, had a Mac Pro Apple computer that looked just like the Botein computer. Mr. Botein got mad and called the police. He demanded that the police look in the Conley house for his computer.

Does Mr. Botein have the right to have the police search the Conley home? Why or why not? Whose rights are in conflict here?

What if one of the neighbors said they had seen one of the Conley boys take the computer across the street from Mr. Botein's house into his own home?

CASE 2

John and Mary Beth Tinker decided to wear black armbands to school as a protest. The school allowed the students to wear symbols like political buttons, but the principal told the Tinkers they would not be allowed in school wearing armbands. They decided to go to school wearing the armbands anyway. Their armbands stood for their feelings against the Vietnam War. Some students just outside of the school got angry at John and Mary Beth for wearing armbands. The principal sent them home and refused to let them come back to school if they wore their armbands.

Should the Tinkers be allowed to wear armbands to school if they want to wear them?

The Tinkers did not say any words of protest. Does the First Amendment apply to wearing armbands? Do you think it should? Why or why not? Whose rights are in conflict here?

CASE 3

Several years ago Willy Allen was convicted of armed robbery and murder and sentenced to die in the electric chair. They strapped Willy into the chair and pulled the switch. Willy Allen did not die. The electric chair failed to work.

Is it right to try again to execute Willy Allen? Why or why not? Whose rights are in conflict here?