

Colorado Law Constitution Day 2013

Presenter Outline Long Classes

Materials

1. Student Handouts (enough for each student)
 - a. First Amendment Cases
 - b. Hypothetical
2. Presenter Outline
3. Pocket Constitutions (optional)
4. Reward Candy (if you wish; also discuss with teacher)
5. Computer with PowerPoint presentation (if applicable)
 - a. If you are not using the PowerPoint presentation, write the text of the First Amendment on the board for all students to see.

Tip: Email the teacher in advance to find out how many students are in the class so you will have enough handouts.

Tip: If you are giving more than one presentation, collect the student handouts at the end of class so you can re-use them. Tell students beforehand and ask them not to write on the handouts.

Warm-Up Activity (10 minutes)

1. Briefly introduce yourself to the class: your name, what you do, etc.
2. Instruct students to stand up and get ready to move around.
3. Explain the activity before you begin
 - a. You will ask a question, and everyone in the class will answer by moving to one side of the room or the other.
 - b. Give an example: "I might ask you if you think that the First Amendment protects your freedom of speech. I would then tell you that if you think the answer is yes, you should walk to the ____ side of the room (*walk to that side of the room as you say this*). But if you think the answer is no, you should walk to the ____ side of the room."
 - c. Ask the students if they have any questions on what they are supposed to do.
4. Ask the following questions, with the students answering by walking to one side of the room or the other. After each question, ask a specific student on the correct side why they answered that way. Give candy to them if you want.
 - a. Stand on the ____ side of the room if you think that freedom of speech means you can say anything you want, anytime you want. Stand on the other side of the room if you think there are limits to what you can say.
 - i. Follow-up question for those who answered correctly: What are examples of things you can't say?
 - b. Stand on the ____ side of the room if you think that your right to free speech is different inside of school than it is outside of school. Stand on the other side if you think there isn't a difference.

Tip: If your classroom is not conducive to students getting up and moving around, they can stay in their seats and instead raise their hands with either a thumbs-up or thumbs-down. Make sure all students have their hands up.

- i. Follow-up: What are things you can say outside of school that you can't say in school?
- ii. Follow-up: Why do you think there is a difference?
- iii. This is a good place for the Constitutional Coat analogy.
 - 1. An analogy we have found useful in the past to explain the difference between speech in school and out of school is the "Constitutional Coat." If you think of your constitutional rights as a jacket that you wear all the time, that jacket is thick and strong outside of school—like a heavy-duty winter coat. It isn't a complete shield against the elements, but it is pretty darn strong. Once students step inside their school, the jacket transforms into material that is thinner and more easily penetrated—like a light spring jacket. It provides some protection from the elements, but you wouldn't want to be caught in a blizzard with it.

Tip: Schools can restrict student speech when: it materially and substantially interferes with the school operation or the rights of others, it is offensively lewd, it bears the imprimatur of the school and there is a legitimate pedagogical reason for censorship, or it can reasonably be interpreted as promoting illegal drug use.

- c. Stand on the ____ side of the room if you think that freedom of speech means that Wal-Mart can't kick you out of a store for saying rude things to its employees?
 - i. Follow-up: Could the police arrest you for saying rude things to Wal-Mart employees? *It depends on what is said, so get students to give you examples of what is okay and what's not (threats, fighting words, inciting others to violence).*

Overview (5 minutes)

- 1. Lesson overview
 - a. Explain to class:
 - i. Today, we're discussing the First Amendment to the Constitution.
 - ii. First, we'll start by hearing from you about what you already know about the Constitution and the First Amendment
 - iii. Next, we'll talk about some real court cases that we can learn from.
 - iv. Then, you get to be the lawyers. We'll talk about a hypothetical lawsuit (one that could happen, but hasn't) and you get to be the lawyers arguing the case.
- 2. Bill of Rights Basics
 - a. Ask students:
 - i. What important document is the Bill of Rights part of?
 - ii. What are some examples of rights that we are given in the Bill of Rights?
 - iii. Who or what do these rights protect us against?
 - 1. Review:
 - a. The state action requirement

Tip: If students don't answer you right away, wait at least 10 seconds after you ask the question, then call on a student and ask them to answer the question.

- b. Examples of state actors: police, public school teachers, the legislature
- iv. Does anyone know what rights the First Amendment protects? (religion, speech, press, assembly, and petition for redress of grievances). *After they answer, review the text of the First Amendment on the board.*

Case Law Review

1. Explain to the students before you get started:
 - a. “Today, we will be discussing some mature topics. We will be discussing profanity. Our hypothetical lawsuit deals with people expressing their opinions on gay rights. These topics can be uncomfortable. However, they are real topics in your lives and we want you to be able to have a discussion in respectful and mature way. Before we begin we need to set some expectations about having a conversation respectfully and with maturity. Please turn and talk to your neighbor for 30 seconds and be ready to share with the class - what does a mature and respectful conversation sound and look like?”
 - b. After 30 seconds, regroup the class and ask the class what they came up with, such as: we listen to each other, we take turns, we have a calm tone of voice, we accept that not everyone thinks the same way. After the list is written on the board, ask each student to give a thumbs up if they can agree to follow those guidelines for the rest of the lesson. Then clearly let students know if they are not following the guidelines you will give them a warning, ask them to re-read the list and they will need to follow the guidelines.
2. Pass out copies of the First Amendment Cases Student Handout.
 - a. Talk about why we care about these old cases. For example, *Chaplinsky* is over 70 years old; how does it affect us today? What is precedent and why does it matter? One reason: it is part of a lawyer’s toolkit; we can rely on the reasoning and rulings made by those who studied the issue and came up with rules that have now worked for 70 years. Part of a lawyer’s “toolkit” is prior case law and looking at statutes. What’s not in that toolkit: our personal opinions.
 - b. Talk about the structure of our court system and relate it to precedent.
3. Discuss each of the cases
 - a. Have students read the cases silently. Call on individual students to give you a summary of the facts, the rule, and the reasoning in each case. If you are not using the PowerPoint, be sure to make notes on each case on the board for students to refer to during the hypothetical.
 - b. *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)
 - i. Here, you’ll want to discuss the historical context, otherwise students won’t really understand why calling someone a fascist was such a big deal. Explain

Tip: Your students may be English language learners or in a special education program. Discuss this with your classroom teacher in advance to know whether students will be able to read and comprehend on their own. If not, put them in their small groups in advance, and have them read in small groups, one case per group.

Tip: As students are reading, walk around and select students to present each of the cases—the facts, the rule, and the reasoning.

that this is during WWII. The fascist governments in Germany (Hitler) and Italy (Mussolini) were our enemies. Today, this might be similar to saying that someone was one of the 9/11 terrorist bombers.

c. *Cohen v. California*, 403 U.S. 15 (1971)

- i. This is a good place to talk about the importance of protecting speech, and even speech like profanity. Why do Americans believe freedom of speech is so important? What benefit is there to our society that we can speak freely? How does it help us to hear from those who disagree with us? What might happen if the government was allowed to punish us for speech it didn't like, such as profanity? How can profanity help or hurt in expressing our opinions?

d. *Ware v. Denver*, 511 P.2d 475 (Colo. 1973)

- i. This is a good place to briefly point out how the Colorado Supreme Court was bound by precedent.

Hypothetical Argument

1. Pass out the Hypothetical Student Handout.
2. Have students read it to themselves or in small groups.
3. If students get to keep the handouts, have them underline or highlight the facts that sound similar to what happened in the four cases they just learned about.
4. Divide the class into small groups (if you haven't already done so). Assign half of the groups to represent the student, and assign the other half to represent the government prosecuting the student.
5. Explain that they should use the cases you just discussed to argue for their side. They should explain how the rule from each case applies and how the hypothetical case is similar to/different from what happened in the court cases.
6. Give students 10 minutes to discuss this in small groups.
7. Have the smaller groups join up with the other groups on the same side and compare arguments. Tell them they should try to reach agreement on what are the best arguments for their side and then rank the arguments from strongest to weakest. Give them 10 minutes to do this and then to pick a speaker for their side.
8. Allow each side 5 minutes to present their argument. After initial arguments, allow other students to either bring up points that weren't mentioned, or to respond to the other side's argument.
9. Once you are running out of time, or the arguments become repetitive, call time.
10. Presenters can then give what they think are the best arguments for each side and explain how they think the Court would rule on the issue. Don't worry about coming to agreement on this—it's okay for students to see that there isn't necessarily one right answer.

Tip: While students are discussing the hypothetical in groups, walk around to each group and listen to their arguments. If they are missing key issues, or not using one of the cases, ask them questions about how those apply.

Tip: To keep the argument portion from getting chaotic, explain to the students that they are not allowed to interrupt the other side. If they have a counter-argument, they can write it down, and you will give them a chance to respond. Set the expectation that they should raise their hands and wait to be called on.

Conclusion (5 minutes)

1. Ask students if they felt uncomfortable at all with the language. Presenters can/should raise their hands if they were uncomfortable as well.
2. Talk about how, with the law, we often have to set aside our personal feelings and follow the law. Judges are not supposed to decide a case based on whether they like the people or what they did, but what the law is.
3. If time allows, let students ask additional questions.
4. On a parting note, *only if you are comfortable*, write your email address on the board for students to follow-up. Teachers have told us that students really appreciated it when presenters have done this in the past.

Tip: Students may ask questions like, “My cousin was arrested last week because . . . isn’t that wrong/illegal?” Not only do you not need to answer these, you shouldn’t. A good deflection technique is to tie your answer back into legal topics you have just discussed.