

Lesson Overview

Thank you for helping the Western District of New York celebrate its 125th Anniversary. This page will provide an overview of the lesson about *West Virginia State Board of Education v. Barnette* (1943), as well as a few key reminders and tips. The following pages include a detailed lesson plan.

Primary Objectives of the Lesson

1. Teach students about the First Amendment and its application to their lives, using an everyday activity that students are familiar with – the recitation of the Pledge of Allegiance.
2. Encourage student participation in the 125th Anniversary essay contest and optional moot argument competition, which offers cash awards. Essays must be submitted by 11:59 p.m. on March 9, 2025.

Steps in the Lesson

- I. Introduction (5 minutes)—Establishing a relationship with students.
- II. Preparation (5 minutes)—Prepare students by helping them remember what they already know.
- III. Presentation of Examples (5 minutes)—Discuss examples of the First Amendment in action.
- IV. Comparison (15 minutes)—Read and analyze excerpts from *Barnette* (Jackson & Frankfurter).
- V. Expression (15 minutes)—Students debate the positions & learn about the essay contest.

Resources for the Lesson

- Lesson Plan (incl. “Conversation Starters” Question List)
- Handout 1—“The Constitution and the First Amendment” (for use during Steps II & III)
- Handout 2—“With Liberty and Justice for All” (for use during Steps IV & V)
- Handout 3—“Supreme Court Justice Robert H. Jackson” (for use during Step V)
- Handout 4—Essay Contest Flyer
- Teacher’s Guide and the *Barnette* decision itself (posted on the website)

Classroom Reminders/Tips

Please attempt to adhere to the lesson plan and suggested time frames. However, it is possible that you will not have time to get through the entire lesson. Ultimately, the *quality* of your interaction with students is more important than the *quantity* of information you dispense. Classroom discussion/student engagement should be prioritized over addressing in detail every portion of the lesson plan.

Please pass out all handouts associated with the Lesson Plan even if you didn’t get to them. They are still educational and good reference material for students in preparation for the essay contest/moot argument.

The Teacher’s Guide that we have developed to accompany this lesson provides far more detail than you need to teach this lesson, but it is a thorough resource we have designed to provide you with ample background information should you desire and if time permits.



Lesson, p. 1

I. Introduction (5 minutes): Establishing a relationship with students.

A. Visiting attorneys

- i. Does anyone know what a lawyer / attorney does?
- ii. Review different areas of law, including your specific area of practice.
- iii. Optional: Let the students know you'll reserve some time at the end for more general Q&A about what a lawyer does, how to become a lawyer, pros and cons of the profession, etc.

B. The Court: Here on behalf of the United States District Court for WDNY.

- i. Ask: What happens in a US District Court?
- ii. Criminal trials when defendant is accused of breaking federal law.
- iii. Civil trials. Will likely need to explain what a civil case is: Civil cases usually involve disputes between people or organizations while criminal cases allege a violation of a criminal law.

C. The objectives for today's session

- i. Learn about the First Amendment and how it affects your life.
- ii. Encourage you to participate in the WDNY 125th Anniversary essay / moot argument contest.

II. Preparation (5 minutes) - USE HANDOUT 1 HERE: Preparing the students by making them aware of what they already know.

A. What is the First Amendment?

- i. Amendment to what? What the Constitution is, and what the Constitution is for, generally.
- ii. What was the Bill of Rights? How many Amendments?
- iii. Substance of the First Amendment. How many freedoms from the First Amendment can you name? Generally, what does each mean? "Congress shall make no law . . .
 1. Respecting an establishment of religion, or prohibiting the free exercise thereof;
 2. Or abridging the freedom of speech,
 3. Or of the press;
 4. Or the right of the people peaceably to assemble,
 5. And to petition the Government for a redress of grievances.
- iv. Who and what does it protect? The individual / private citizen(s) against government action.

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Lesson, p. 2

III. Presentation of Examples (5 minutes) - BOTTOM HALF OF HANDOUT 1: Discuss examples of the First Amendment in Action.

- A. Fill in the blank on the bottom of the worksheet indicating which right of the First Amendment is invoked.
- B. Why is having First Amendment rights important for you and the everyday citizen? Discuss.
- C. What is the role of the Courts in protecting these rights?
- D. TRANSITION QUESTIONS: [If necessary, *SEE CONVERSATION STARTERS, p.1*]
 - i. Should students have First Amendment rights at school? Why or why not?
 - ii. Do students have First Amendment rights at school?

IV. Comparison (15 minutes) - USE HANDOUT 2 HERE: Examine the excerpts from the *Barnette* decision.

- A. Brief overview of the Pledge of Allegiance and Francis Bellamy
- B. Set-up background of *Barnette*. Do NOT give away who prevails, just indicate the situation: West Virginia passed a law requiring the Pledge, Jehovah's Witnesses challenged the law in court as violating their First Amendment right, and stiff penalties for non-compliance.
- C. Give the students 5 minutes or so to read the excerpts. Note that one of the excerpts was written by Justice Robert Jackson, born in Jamestown, New York, a one-time member of the WDNY bar.
- D. ASK: [Do NOT get into which view prevailed at this Step. If necessary, *SEE CONVERSATION STARTERS, p.1*]
 - i. What is at issue here: Freedom of Speech, or Freedom of Religion?
 - ii. Why might some students find that requiring the pledge violates their religious beliefs or freedom of speech?
 - iii. What do the two excerpts share in common?
 - iv. How do they differ?
 - v. Try to summarize each excerpt.

V. Expression (15 minutes) - USE HANDOUTS 2–4 HERE: Examine the excerpts from the *Barnette* decision.

- A. Quick show of hands: Who thinks requiring the Pledge should be legal? Who disagrees?
- B. Get a volunteer judge . . . You pick or ask the teacher to pick (or be the Judge)

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Lesson, p. 3

V. Expression, CONT'D (15 minutes) - USE HANDOUTS 2–4 HERE: Examine the excerpts from the *Barnette* decision.

A. DEBATE. Attorney facilitates with questions (volunteer judge can jump in), such as:

- i. Should minors have the same free speech rights as adults?
- ii. Why does free speech matter at school?
- iii. What is the school's interest? Are there legitimate reasons for the school to limit a student's speech? To require student speech of certain kinds?
- iv. Is fostering patriotism or love of country a legitimate government interest?
- v. Is there a difference between compelling a student to speak, and compelling a student to listen to a particular viewpoint? Is there a difference between whether a school can do either?
- vi. What is the proper balance between individual liberties and public safety? Between individual liberties and student learning?

[If necessary, SEE CONVERSATION STARTERS, p.2]

B. DECIDE. First, ask the Volunteer Judge who wins. Close with revelation that the Justice Jackson view (Viewpoint 2) ended up prevailing in *Barnette*. **Distribute HANDOUT 3** on the life of Justice Jackson.

C. PROMOTE. **Distribute HANDOUT 4** and promote the essay contest.

If time left over, open the floor to questions about what you do, how a person becomes a lawyer, etc.? You may also want to have a back-up story or two about interesting things that have happened to you during your career as a lawyer, or why it's an important profession.



Conversation Starters, p.1

Stuck with a quiet, non-responsive classroom? Use these questions to spark a conversation . . . Pose them to the group, or to your attorney co-teacher. We have grouped these questions by the section of the lesson to which they are most relevant.

Lesson p.2, III.D

- Why is having an understanding of the First Amendment important?
- Why is free speech important?
- Why is freedom to exercise religion important?
- Why is freedom of assembly important?
- Why is freedom to petition the government important? What does the right to petition the government mean? Are there any restrictions?
- The Bill of Rights states there can be no law “abridging the freedom of speech.” The wording seems to suggest that all speech is protected from rules Congress might pass. Does that mean anyone can say anything at any time?
- Are there any types of speech not protected under the First Amendment?
- Under what conditions is some speech limited and other speech protected?

Lesson p.2, IV.D

- How does the right to free speech conflict with our responsibility to consider the rights of others?
- The Constitution also seeks to “establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.” What if one person wants to say something that disturbs the general welfare or someone else’s tranquility?
- Ask students to summarize the meaning of the Pledge of Allegiance. Note that the inclusion of words, “under God,” happened only in 1954. Debate whether school officials infringed on students’ First Amendment rights of freedom of religion and freedom of speech when they compelled students to pledge allegiance to the flag.
- What does the American flag represent to you? Does the flag have a single meaning or multiple meanings? If someone decides to sit out a flag salute, does it diminish the meaning of the flag in your eyes? Does it diminish the person in your eyes? What reasons might a student have for not joining in a flag salute?



Conversation Starters, p.2

Lesson p.3, V.A

- Why does the First Amendment matter in schools?
- Do kids have the same free speech rights as adults?
- Does the First Amendment apply in public schools?
- Does the First Amendment apply in private schools?
- Is there a right against “compelled listening”?
- What happens when a government entity, such as a school, compels a person to say or do something they don’t want to?
- Can public school students protest during the Pledge of Allegiance or national anthem?
- What is the proper balance between individual liberties and public safety?
- Do you agree that national unity is a basis for national security?
- If so, should the government be able to compel national unity by requiring the Pledge of Allegiance?
- How do judges decide between competing values like Patriotism and Freedom of Speech?
- Should the Courts protect individual rights even if that means risking public safety to interfere with the military’s efforts to combat terrorism?
- Should Courts decide what laws are good, and what laws are bad? What laws are wise, and what laws are silly?
- What do you see as the proper role of the Courts in protecting individual rights?
- When, if ever, should there be restraints on the role of the Courts in regard to individual rights?
- Ask students to discuss what other events may have influenced public opinion about this case. Did the Court made the correct decision?
- How does this decision impact your life as a student even today? How do you think your life as a student would be different had Viewpoint 1 (Frankfurter’s dissent) prevailed?

