

ELEVENTH ANNUAL

MARSHALL-BRENNAN CONSTITUTIONAL LITERACY PROJECT

CONSTITUTION DAY TEACHING MODULE



TOPIC: The First Amendment and Social Media

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Lesson Plan Teacher Introduction

The purpose of the 2015 Constitution Day Lesson is for students to understand the restrictions on the First Amendment. The lesson will provide an in-depth description of the First Amendment and the accompanying balancing test that determines if speech should be prohibited. The lesson will then demonstrate how social media creates as a new platform for cyber bullying and cyber harassment. The next lesson will provide an analysis of internet threats and how they are viewed in the eyes of the law. The lesson will ask students to form their own opinions on internet threats, read the Supreme Court's opinion on internet threats, and apply the Supreme Court ruling to a specific example.

TEACHER'S GUIDE to the First Amendment Lesson

Note: Students should already be familiar with the U.S. Constitution and the Bill of Rights before beginning this lesson plan.

Introduction

This section of the 2015 Constitution Day Lesson Plan will provide an in-depth description of the First Amendment of the United States and the balancing test courts use to determine if prohibiting that particular speech violates the First Amendment.

The First Amendment is important because it establishes that there are liberties related to individual and group expression that are protected under the Constitution. These liberties include freedom of religion, speech, press, assembly and the freedom to petition the government. While the First Amendment includes a right to freedom of speech, that speech is limited. An individual may not slander, libel, promote obscene material, or cause incitement to commit a crime.

These limitations stretch further when applied to student expression while in school. Students are restricted from using speech or expression that can reasonably be expected to cause a substantial disturbance in the school environment. However, school officials may not silence student expressions simply because they disagree with it, but rather they must evaluate the speech for potential disruption and/or its ability to impinge on the rights of others in the school. Sometimes, schools are permitted to regulate speech that does not occur in the classroom, but nonetheless evinces a strong possibility for interfering with the school environment. This lesson plan will demonstrate different forms of internet speech that will be restricted by schools and the rationale for that restriction.

Materials (1 per student)

- T-shirt Worksheet
- Text of the First Amendment Worksheet
- The First Amendment in Our Own Words Worksheet
- Poster Paper (1 per group)
- Markers (2 per group)
- Offensive Language Worksheet
- Highlighters
- *Bethel School District No. 403 v. Fraser* Case Summary

Objective-Students will be able to:

- List and explain the First Amendment protections
- Understand First Amendment limitations as applied in school
- Explain what kinds of social media posts can be construed as threats

Classroom Procedure

Motivating Activity/Do Now

- T-shirt Worksheet
 - Pass out the worksheet as the kids enter the classroom. Have the students decide whether or not the shirts provided should be allowed in a school setting. This should be done individually. Go over the answers by calling on multiple students for each shirt.
 - Be sure to ask students questions to facilitate discussion. (i.e. Why is this offensive, why is this not offensive, who would this be offensive to, would any individuals in this classroom be offended by this, have any students ever seen slogans or shirts like this, how did the slogans make you feel, what do these slogans mean to you, what do you think these slogans are intended to mean, etc.)
 - Provide enough time to allow students to communicate and understand why and what can be offensive regarding each shirt.

Core Lesson:

- **First Amendment Text**
 - Building off of the T-Shirt conversation, have the student brainstorm what limits may arise regarding the First Amendment protection of Free Speech. (i.e. cannot yell fire in a crowded movie theatre). Have the students write their responses on the board.
 - Pass out the First Amendment worksheet. Allow the students to briefly read over the Text and Vocabulary section. *Ask the student **not** to answer the “Questions to Consider” section.*
 - Go over each definition as a class.
 - Next, have the students work in small groups and answer the “Questions to Consider” at the bottom of the page. It is not necessary for students to write down their answers, the main objective is to have the students think over the text.
- **Put the First Amendment In Your Own Words**
 - Ask each group to either (1) create a tweet explaining the First Amendment protections or (2) draw a picture for reflecting an Instagram post that communicates First Amendment protections.
 - Allow time for each group to share out to the rest of the class.
- **Bethel School District No. 403 v. Fraser Case Summary**
 - Pass out the worksheet and provide each student with a highlighter. Have the students popcorn read the case summary. While the students are reading have them highlighting the most important parts of the case.
 - Inform the students that the important parts are: (1) what behavior was at issue, (2) who sued whom, (3) how the school responded to that behavior, (4) why the student won or lost and (5) what the decision means for students.

- When the reading is completed have each student go up to the board and write pieces that they deemed important under each of the 5 categories. Make sure no student writes the same thing. Next, go over the statements on the board and discuss why each statement is important and how the case creates a balancing test to determine if prohibiting speech is violating a student's freedom of speech.
- **Applying the First Amendment**
 - After going over the First Amendment text and questions, have the students apply the information about the First Amendment to their original thoughts about First Amendment limitations during the T-Shirt activity and discussion. Let's see if they have changed their minds!
 - Ask the students to stand in the center of the room. Inform the students that you will read each of the limits they generated aloud. Identify the sides of the room that represent agreement and disagreement with the limitation.
 - Read each limit aloud from the board and have the students go to which ever side they now agree with. Students can disagree with a limitation they originally wrote on the board. Call on two students from each side to give a reason as to why they agree. Ask the students to reference their worksheet or specific elements of the class discussion in their responses.

Name: _____

Directions: In your opinion write if the shirts below should be allowed in schools. Explain why.



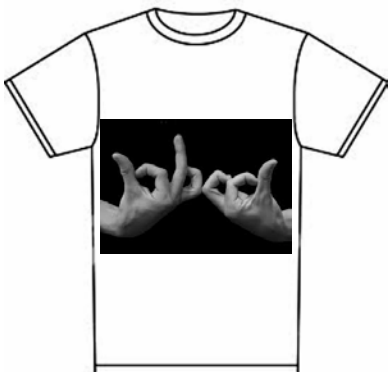
1.) _____



2.) _____



3.) _____



4.) _____

Name: _____

Date: _____

Directions: Read the below text and provide short answers to the questions beneath.

The First Amendment

“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.”

U.S. Const.

Vocabulary:

Religion: a set of beliefs concerning the cause, nature, and purpose of the universe generally agreed upon by a number of persons or groups

Grievances: a real or imagined wrong, especially unfair treatment

Redress: remedy or payment for a grievance

Peaceably: not argumentative or hostile

Assemble: to gather together in one place for a common purpose

Questions to Consider:

-What basic freedoms are protected by the First Amendment?

-How much do you think schools should be able to restrict a student's freedom of speech?

-Do you think freedom should be restricted in schools? Explain why or why not.

Bethel School District No. 403 v. Fraser

Facts

At a school assembly of approximately 600 high school students, Matthew Fraser made a speech nominating a fellow student for elective office. In his speech, Fraser used what some observers believed was a graphic sexual metaphor to promote the candidacy of his friend. As part of its disciplinary code, Bethel High School enforced a rule prohibiting conduct which "substantially interferes with the educational process . . . including the use of obscene, profane language or gestures." Two teachers were aware of the contents of the speech and told Fraser beforehand that the speech was inappropriate and should not be delivered or could lead to severe consequences. During the delivery of the speech, some students hooted and yelled; some by gestured graphically while others appeared to be bewildered and embarrassed by the speech. One teacher reported that on the following day, she found it necessary to forgo a portion of the scheduled class lesson in order to discuss the speech with the class. The following morning, Fraser was suspended from school for two days. Through his parents, Fraser sued the school district alleging violation of his First Amendment right to freedom of speech.

Question

Does the First Amendment prevent a school district from disciplining a high school student for giving an indecent speech at a high school assembly?

Answer and Reasoning

No. The Court found that it was appropriate for the school to prohibit the use of vulgar and offensive language. Schools must prepare students for citizenship, and therefore must balance the undoubted freedom to advocate an unpopular and controversial view in schools and classrooms against society's interest in teaching students the boundaries of socially appropriate behavior. The Court distinguished between political speech which the Court previously had protected in *Tinker v. Des Moines Independent Community School District* and the supposed sexual content of Fraser's message at the assembly noting that *Tinker* upheld the right for students to engage in a non-disruptive passive expression of a political viewpoint that did not intrude of the work of the school or rights of other students. In this case, the sexual innuendo in Fraser's speech was offensive to both teachers and students and by glorifying male sexuality, the speech was particularly insulting to teenage girl students.

Teachers Guide to the Threats Lesson Plan

Objective- Students will be able to:

- explain the dangers and consequences of cyber bullying.
- analyze the constitutionality of punishing students for engaging in online harassment.
- identify the factors of cyber bullying.
- distinguish the legal difference between threats and hate speech.

Materials Needed:

- Markers
- Chalk/dry erase board
- Worksheets
- Pens/pencils
- Student Opinion Questionnaire
- *Hannibal* Case
- Associated Press Article

Classroom Procedure

Motivating Activity

- Ask students to complete the questionnaire
 - Discuss each question and their answers as a class

Core Lesson

- Pass out *D.J.M. v. Hannibal Public School District # 60* summary worksheet. Popcorn read the case or have students read it to themselves.
- Ask the students to answer the questions in pairs after they have read the case.
- Review the answers to the questions as a class
- At the close of that discussion, form small groups.
 - Pass out the Associated Press article and accompanying questions.
 - Allow the students time to apply Hannibal to this article.
 - Review the answers as a class.

Evaluation/Assessment

- Students will craft a tweet (140 Characters or less) warning of the dangers of tweeting threatening lyrics. Extra credit for the most creative hashtag! Students will present their tweets to the class.

Student Opinion Questionnaire¹

Directions: Read the statement in the left column. Decide if you strongly agree (SA), agree (A), disagree (D), or strongly disagree (SD) with the statement. Circle your response.

Statements	Your opinion			
1. Students are the most powerful influence on their school's tone and climate. They decide what kind of behavior is acceptable and unacceptable.	SA	A	D	SD
2. Bystanders have the power to stop or prevent injustice.	SA	A	D	SD
3. Stepping in when you see someone treated unfairly is easier in person than online.	SA	A	D	SD
4. The best way to stop teasing, harassment and bullying is to have a stronger system of enforcement and punishment.	SA	A	D	SD
5. If someone is verbally or physically attacking another student – someone you do not know – the best thing to do is to stay out of it.	SA	A	D	SD
6. It is unrealistic to think that social networks (such as Facebook) can be places where all students are treated fairly and kindly.	SA	A	D	SD
7. If someone is verbally or physically attacking your friend, the best thing to do is to stay out of it.	SA	A	D	SD

¹ Motivating activity from NOT IN OUR TOWN, *Lesson Idea: Students Take on Cyberbullying*, available at <https://www.niot.org/nios/lesson/lesson-idea-%E2%80%9Cstudents-take-cyberbullying%E2%80%9D>.

Name:

Date:

D.J.M. v. Hannibal Public School District # 60 Summary Worksheet

D.J.M is a student in Hannibal Public High School District #60 (Hannibal) and had recently broken up with a love interest at school, and as many people do, took to venting his feelings and frustration to a friend, C.M online. During the online conversations, D.J.M. expressed the desire to shoot a number of people at Hannibal, and mentioned to C.M. that he in fact could borrow a gun from a friend if he wished to. D.J.M. named specific students and groups of individuals who he "would have to get rid of." The conversations were sprinkled with various Internet shorthand items indicating levity and humor, such as "lol," "haha," and "YAYAYYAY." D.J.M also spoke of committing suicide after completing the shooting, and mentioned that he wanted Hannibal "to be known for something."

C.M. later became concerned about the messages and showed them to an adult, saying that she wasn't sure if D.J.M. was merely depressed and frustrated, or if his planning was serious. The adult suggested that C.M. continue talking to D.J.M. to determine if he was serious. C.M. maintained communication with D.J.M. to get more information. Among the things D.J.M. told C.M. was that if he had a gun, a particular classmate would be shot first, followed by the statement that "anyway, I'm not going to do that[.] [N]ot anytime soon I feel better than I did earlier today." Upon seeing these conversations, the adult concluded that D.J.M. was serious and urged C.M. to show school officials the conversations. C.M. forwarded excerpts of the conversation to the principal, who informed the police. The school initially suspended D.J.M. for 10 days, but later extended the suspension to the rest of the school year. D.J.M.'s parents sued the school, claiming that the suspension violated D.J.M.'s First Amendment right to freedom of speech.

The court decided that D.J.M.'s statements constituted a "true threat." The court defined a true threat as a statement that a reasonable person would interpret as a serious expression of intent to harm or cause injury to another. Also the speaker must have intentionally communicated the statement to another person to be a "true threat." D.J.M. argued that a reasonable recipient of his statements would not view his instant messages as serious expressions of intent to harm. D.J.M. claimed that his violent statements were made out of frustration. The court disagreed and said that the "hate filled comments," as well as the reaction of C.M. and the adult confidant, were proof that the comments were perceived as true threats. The court noted that "[t]he record does not reveal that any person who became aware of D.J.M.'s speech thought he was joking."

The court then turned to a discussion of whether off-campus speech could be punished by the school since the conversation took place online outside of school hours. The court decided that regardless of whether the statements were true threats, the school could punish the speech because it was reasonably foreseeable that the conversations would cause a substantial disruption in school, and because the comments actually did cause a disruption. The court noted that after word about the conversations spread, parents and students expressed concerns for safety and inquired as to what precautions the school was taking. As a result, the school had to impose additional security measures. Parents and students also asked about whether specific names were on a "hit list." Given all of these facts, the court concluded that the "need for a safe school environment" overrode D.J.M.'s free speech rights, and provided adequate basis for the school's punishment.

DJM v. Hannibal Public School District # 60 Worksheet

Directions: Please answer the questions below on your own in at least 2-3 sentences.

1. Now that you know the definition of a True Threat, do you agree with the court that D.J.M's speech was a threat?

2. Do you think that there is a difference between saying you want to hurt someone and saying that they will be harmed?

3. In your opinion, should a person have to intend words to be a threat for them to be considered a threat? Why or why not?

DJM v. Hannibal Public School District # 60 Worksheet [ANSWER GUIDE]

1. Do you think D.J.M's speech was a threat?

Teacher Tip: This is an opinion question but student's answers should apply the definition of "true threat." They should also include why this speech was or was not a threat

2. Is there a difference between saying you want to hurt someone and saying that they will be harmed?

Teacher Tip: Student must explain the difference if there is one. A good answer will give an example.

3. In your opinion, should a person have to intend words to be a threat for them to be considered a threat? Why or why not?

Teacher Tip: This is an opinion question but try to get the students to focus on why intent is important.

Name:

Date:

Directions: Read the article and answer the questions below comparing the *Hannibal* case.

Army dismisses soldier who recorded violent rap song²

Associated Press

Wire Report

Monday, April 19, 2010

BAGHDAD — The U.S. Army has dismissed a soldier who threatened fellow troops and sent the Pentagon a violent rap song he wrote to protest his Iraq redeployment orders, officials said this weekend. The dismissal for misconduct means Spc. Marc A. Hall will avoid criminal charges but lose all military benefits earned over at least four years of service, including an earlier tour in Iraq. Army spokesman Lt. Col. Eric Bloom said on April 17 that top brass decided to discharge Hall instead of taking him to trial in part because he admitted his guilt. “He understood the threats he made to his fellow soldiers,” Bloom said. “With the loss of his benefits, the time he’s already done in jail and his reduction in rank, that’s justice served.”

Hall had been jailed since Dec. 11. He was charged with the military offense of communicating a threat after telling his battalion commander that he might shoot or otherwise attack a fellow U.S. soldier, according to Army lawyers. But it was a CD recording of a rap song that Hall wrote and sent to the Army’s personnel office in July 2009 that gained negative attention.

On the recording, Hall criticized the Army for some of its policies, specifically one known as “stop-loss.” He rapped about opening fire with his military-issue M-4 rifle:

“I got a (expletive) magazine with 30 rounds, on a three-round burst, ready to fire down.” “Still against the wall, I grab my M-4, spray and watch all the bodies hit the floor. ... I bet you never stop-loss nobody no more, in your next lifetime of course. No remorse.”

Hall’s civilian attorney, David Gespass of Birmingham, Ala., says that while some of Hall’s words may have seemed threatening to the Army, he’s convinced the soldier never intended to harm anyone. “The song was a way for him to sort of vent,” Gespass said. “He was, I think, less and less happy about the idea even of having a weapon and using it.” Gespass said soldiers appearing as witnesses at Hall’s Article 32 hearing, similar to a civilian grand jury, testified “they thought he was a joker and they didn’t take him seriously.”

² Full article available at <http://www.firstamendmentcenter.org/army-dismisses-soldier-who-recorded-violent-rap-song>

Although he felt Hall would likely have been found not guilty, Gespass said he and Hall's military lawyer feared the soldier would have remained deployed in Iraq after his trial, and decided the best thing for Hall was to agree to a discharge. Had he lost at trial, Hall could have faced up to 15 years in jail. Still, the case was far from a slam dunk: Army lawyers concede that Hall never took physical action against any troops

“We are really happy that he's coming home,” Gespass said. “We think it's the best solution for all concerned.”

Critics have called the case a free-speech issue, saying Hall should not be punished for venting his anger. Others counter that threat came the month after Maj. Nidal Hassan allegedly killed 13 people in a shooting spree at Ft. Hood, Texas and the Pentagon was right to take extra precautions about potentially violent soldiers.

1. Do you think the soldier was making a threat?
2. What could he have done to make his words appear less threatening to others?
3. Based on your reading of *Hannibal*, do you think the First Amendment would protect a student writing lyrics like these about her or his school? Consider the elements of a “true threat.”

Extension Activity Worksheets

Craft a tweet (140 Characters or less) warning of the dangers of tweeting threatening lyrics.
Extra credit for the most creative hashtag! We will present the tweets to the class.