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Electronic Surveillance: Unlawful Invasion of Privacy or Justifiable Law Enforcement

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Introduction

“This will be the best security for maintaining our liberties . . . a nation of well-informed men, who have been taught to know and prize the rights which God has given them, cannot be enslaved, It is in the regions of ignorance that tyranny begins.”

The above quote containing the words and visions of Benjamin Franklin exhorts citizens of the newly-formed republic to be aware in order to preserve personal freedoms and it clearly underscores the goal of this unit.

The founding fathers were acutely aware of the results of tyranny and sought to prevent abuses of the enormous power of government. The United States Constitution and the Bill of Rights are a testament to the seriousness with which they approached the difficult task of constructing a society in which every citizen could live free of governmental restraint.

Electronic surveillance, when utilized as a tool for national security, law enforcement, industrial espionage, or domestic relations can limit and ultimately negate the citizens right to be let alone. The history of the indiscriminate uses to which this technology has been applied on the domestic level, suggests that American citizens are highly vulnerable to attacks on rights to personal privacy. The first, third, fourth, fifth, sixth, ninth, fourteenth and the eighteenth amendments, to some extent, prohibit indiscriminate and illegal invasions to privacy, however the fourth amendment particularly states:

“The right of the people to be secure in their persons, houses, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The fourth amendment appears to establish specific rules for the protection of rights to ownership, and makes plain that warrants be issued by a detached and impartial judge with reasonable cause. The amendment further stipulates that the warrants be specific with regard to location or material objects and particular persons to be seized. This amendment, more than any other, forms the basis for privacy rights under the United States Constitution. (A similar provision is attached to the Connecticut Constitution). ¹ Violations of the fourteenth amendment have been cited in decisions of the Supreme Court because it requires the states to

honor and protect the constitutional rights of all United States citizens and contains the all important “due process” clause. It is largely due to the Supreme Court’s interpretation of these amendments in matters relating to personal privacy that the spectrum of civil rights has expanded. It is true, however, that the first amendment was and is the basis for privacy in reference to free speech, associations, and rights to dissent. The fifth amendment might be useful because it guards against self-incrimination and includes the right to remain silent yet the court has held that defendants are not compelled to speak by law enforcement officers in electronic surveillance matters; that any speech overheard is given freely. Only the first and sixth amendments have been applied to decisions of the court related to the issues of invasion of privacy. ² But may yet play important roles in coming decisions. (See 18th amendment)

This unit provides a framework for having students acquire a broad base of knowledge concerning the use of electronic surveillance and rights to privacy. This unit is designed for use with students in grades six through twelve. For example, teachers can apply this unit to the study of the Fundamental Orders and State Constitution as part of Connecticut History. The topic, electronic surveillance, can lead to a wider understanding and appreciation of the intent of the framers of both important documents. At the middle school level this unit can be used in social studies to study and observe American culture, ideas, and institutions. On the high school level, this unit can be adapted for use in the study of United States history and current events. It is possible to use the unit to improve students’ reading and writing ability in all of the above grade levels. Much depends on the particular skill areas of the unit emphasized by the teacher and the immediate and long range goals of instruction. As much can be said of the length of time needed to complete the plan of instruction to be outlined—although four to five weeks is the suggested time allotment. Although most high school level textbooks contain documents and facts necessary and helpful to meet the goals of the unit, other sources are suggested which may require duplication of brief excerpts of selected material.

The Devices and Their Uses

The use of electronic devices to keep watch over a person has advantages for law enforcement. It can be a means to prevent detection so as to be able to freely observe and gather information on dangerous or suspicious individuals and organizations. On the level of espionage, it can aid in the accumulation and assessment of information foretelling hostile actions directed against the United States. Manufacturing and corporate concerns have used electronic devices to gain trade and marketing secrets as well as to monitor employees. Intense competition and jealousy have provided the rationale for electronic snooping among private citizens. Large-scale gambling operations could suffer at the hands of a better privy to otherwise inaccessible information. The same could be said for the campaigning officials and the stock market. In essence, electronic surveillance offers the possibility to gather information on anyone, at anytime, for any duration. An identification of five such devices may provide a basis for the conclusion.

1. Wiretapping—The deliberate use of electronic or electrical equipment to intercept the oral communications of non-consenting parties by a third party. Although the means vary, the most sophisticated techniques involve a connection to the wires that conduct the communication at a central junction box, allowing the tapper the luxury of an extension to the desired wire.
2. Bugging—Involves the placement of a miniature electronic device to overhear conversations. It is attractive because, unlike wiretapping, it can pick up many conversations if strategically planted.
3. Pen register—is an electronic device that can be placed on a telephone line and identifies the telephone number of calls made from a suspects phone. This device is frequently used by

telephone companies to detect fraud and harassment.

4. Photographic surveillance—refers to the use of audio-visual equipment to photograph individuals. The Abscam scandal and others furnish a vivid illustration of the use of circuit television to gather incriminating evidence.

5. Wired agents and informers—this technique involves the “wiring” of an agent, informer, or consenting party to overhear and sometimes record conversations. Controversy centers around the manner in which the wired individual gathers evidence. The Supreme Court in its *U.S. vs. White* 401 US 745, 1971 majority decision held that consent by an involved party, did not violate the fourth amendment nor required a warrant because the suspect had no reason to expect privacy.

There are numerous devices employed, too long to list here. It is hoped that reader will refer to Westin’s *Privacy & Freedom* for a fuller description.

Goals and Strategies

This section discusses the goals and strategies for this unit. Beyond the overall goal of an enlightened understanding of civil rights, performance or skill objectives are of equal importance. The term skill objective is meant to describe those skills students will acquire through interaction with the material and they may vary. The lesson plans suggested are developmental and sequentially based and are not steadfast. They have meant to direct teachers to an approach which is largely value-oriented.

The basic strategy to meet the goals of awareness and skill development will include a varied sort of activities discussed below.

1) Student Survey

A survey will be utilized to assess attitudes, values and knowledge concerning rights to life and liberty. This instrument will have a two-fold purpose; diagnosis and evaluation. The manner in which the survey is constructed and the content should be reflective of the goals of instruction. On the performance level such surveys can be used to enhance standardized test-taking proficiency. It can be used with the answer sheets usually employed in criterion—referenced testing and can have a reasonable time limit. Moreover, analysis of results can aid the student to 1) speak publicly with confidence; 2) listen courteously; 3) distinguish fact and opinion 4) develop empathy for the plight of other 5) think critically and hypothetically; and 6) among other skills, make generalizations. An important intellectual development area used with this survey is the ability to focus. In this case the student examines his or her values, attitudes, and knowledge with regard to personal privacy.

2) Implementation

Implementation of a writing workshop in which students employ specific writing forms.

Grade-level considerations will color the forms of written expression. For example, lower grade teachers may

be concerned with structure and form whereas upper grade teachers may focus on expository writing and research skills. Journals can be used, poetry can be written, songs composed and newspaper articles generated. It is suggested that teachers develop a checklist of forms to be mastered so as to allow for individual needs. When a student masters a specific form in expressing his ideas he moves on to the next exposure. Academic skills include:

1. vocabulary development
2. increased options for students in selection of appropriate modes for written expression
3. use of dictionary and other references materials
4. ability to proofread
5. Listing and
6. classifying information

The key intellectual development here is organization. It is vital for teachers to provide the needed motivation for written expression by fostering an accepting classroom environment which features lofty expectation and emphasizes effort and creativity.

3) Learning Activities

Learning activities are experiences which involve students in the material. Students learn in a variety of ways, (for example, visual or graphic aids, auditory, manipulation, etc.) and every attempt to accommodate the varying needs of the learner should be employed. Examples of such activities are viewing films, field trips, speaker bureaus, interviewing, role-playing, visual art work, display counters, demonstrations, etc. Students are encouraged to take advantage of these activities and experiences not only to increase their knowledge of themselves and the society they live in but to become informed participants. Discussion admittedly should be used to reveal and clarify facts, ideas and concepts, and not always a teeth pulling evaluative exercise. Students should learn higher level thought processes through discussion. Examples include extrapolating, abstracting, formulating hypotheses, generalizing, analyzing, categorizing, reaching conclusions, etc. The development of these skill areas are not limited to discussion but other learning activities as well. Obviously, one must sequence discussion and other learning activities in incremental fashion moving from the concrete to more advanced areas.

Background

Electronic surveillance refers to the overhearing or seeing of individuals and employing electronic or electrical devices to do so. The evidence or information, usually predominately innocuous, is used to determine if probable cause exists to warrant further action. The use of varied methods of this technology dates back to the mid-19th century. Since that time, it has been used by state and congressional investigative committees, the National Security Agency, the U.S. Postal Service, the Treasury Department, Internal Revenue Service, the military establishment, the Central Intelligence Agency, manufacturing and corporate concerns, private

detective services, and private individuals. As the technology gravitates to greater heights, the concomitant debate centers on a compelling state interest versus the need for safeguards to ensure the provisions of both federal and state constitutions. This debate reached a crescendo during the post-Watergate era resulting in new legislation and adherence to the laws governing the use of electronic surveillance. Abscam reminds us that electronic surveillance is still very much a tool in the government's arsenal to ferret outlaw-breakers and to detect and prevent crime. The basic question seems to be the extent to which the intelligence community can employ non-conventional methods of law enforcement to check crime while at the same time preserve domestic tranquility—and not trample upon constitutional rights. A major argument against the use of these extraordinary means suggests that electronic surveillance violates the very rights it purports to protect.

In actual terms, what is electronic surveillance? Webster defines electronic as

1. Of an electron, 2. Operating, produced, or done by the actions of electrons or by devices dependent on such action. Surveillance according to Webster is: 1. Watch kept over a person esp. one who is a suspect or prisoner 2. Supervision or inspection.

The use of electronic or electric methods to keep watch over persons or organizations, termed "physical surveillance", has obvious advantages for law enforcement. It is a means to prevent detection so as to be able to observe suspected individuals in normal, uninhibited states to gather possibly useful datum. The techniques and methods of electronic eavesdropping, offer the possibility of gathering evidence which would otherwise be unobtainable.

The interception of wire communications is almost as old as the inventions of the telegraph and telephone. Some evidence suggests interception of where communication had occurred before the Civil War, when both Confederate and Union agents tapped telegraph lines. The late 1800's witnessed the inventions and use of the microphone, dictograph recorder, and hidden cameras to conduct surveillance, usually by private detective agencies. As the number of immigrants traveling to the United States increased (roughly thirteen million between 1880-1940) concern arose over foreign subversion particularly during the Bolshevik Revolution. Private detective agencies and vigilantes were employed to monitor specific European groups and radical dissenters. Labor conflicts increased tensions along with bombings and other incidents of sabotage culminating in the Post World War I Palmer raids when the government rounded up as many as 6,000 enemy aliens and supposed subversives on evidence gathered largely through electronic surveillance means. Wiretapping was the principal source of gathering data by police during prohibition and under Harding's corrupt administration, was used by the Federal Bureau of Investigation for partisan political purposes. As the attention of the 1930's was focused on radical politics and foreign activities abroad, the FBI was given sole authority to conduct electronic surveillance on the domestic front. Wiretapping, under Roosevelt's direction, became widespread with no effective legislation to control its use. After World War II, domestic intelligence was institutionalized. Wiretapping and other forms of electronic surveillance became big business as manufacturing concerns produced more elaborate and efficient means of eavesdropping. Moreover, planted bugs and wiretapping were used extensively in the 1940's and 50's to monitor the threat of internal subversion at the hands of Communists. President Truman reaffirmed the intelligence gathering function of the FBI with a directive in 1950 which broadened the agency's authority to conduct electronic surveillance. In 1953, the Internal Security Section, directed by J. Edgar Hoover, was elevated to divisional status as Eisenhower issued an executive order which essentially strengthened that of his predecessor.

The Civil Rights Movement during the sixties and the Vietnam War protests of the late sixties and early seventies involved the extensive use of physical surveillance to monitor alleged subversives, particularly those suspected of having links to foreign powers. In 1967, for example, Attorney General Ramsey Clark

fearing a grand scheme to overthrow the government, created the Interdivisional Intelligence Unit (I.D.I.U.). It's main function was to utilize computer facilities to assemble data on organizations and individuals. Governmental agencies used electronic surveillance techniques including surreptitious entry on the domestic scene to initiate and carry out special programs directed against supposed subversives. Such includes the FBI, CIA, and Army, aided by the Treasury Department, Internal Revenue Service, and Postal Service. State and federal legislative bodies have also saw fit to use the technology to gather information.

The public indignation generated by post-Watergate revelations led to a decrease in intrusive operations and forced the Attorney General to scrap his list of targeted subversive persons to be interned if violent overthrow appeared imminent. The CIA was limited to foreign affairs, ⁵ and the IRS directed its field offices to not use snooping equipment. The other agencies also made visible policy changes or were limited to specific criminal investigations.

The Reagan administration has attempted to renew the use of the intelligence machinery to combat terrorism, Soviet encroachment, and internal subversion. More importantly measures have been proposed to:

1. Limit the effectiveness of the Freedom of Information and Privacy Act
2. establish a standing congressional counter-subversive legislative committee to deal with matters of internal subversion such as the House Un-American Activities Committee.

This shift will undoubtedly ease restraints placed on the warrantless use of electronic surveillance and will have the effect of encouraging manufacturers of such devices to refine and further advance present technology. The history of wiretapping and bugging illustrates that 1) during periods of internal or foreign dissent, this technology has been vigorously applied with greater prevalence and frequency; and 2) as advances in snooping unfold, there is an increased need for legislation and judicial restraint to protect innocent citizens.

The Supreme Court and Federal Legislation

The Supreme Court in *Olmstead v. United States* 277 U.S. 438 SCT. 564 72 L.ED. 944 (1928), held that wiretapping was not a violation of the fourth amendment. The petitioner had also cited violation of the fifth amendment, arguing that he was not allowed to exercise his right to silence with regard to self-incrimination. The 5-4 majority in an opinion written by Justice Taft, reasoned that since no physical entry upon the physical premises occurred, no search had been conducted, The 4th amendment, in the majority view, was limited to objects seized, not as intangible as conversation. The opinion held that there was no fifth amendment violation because the defendant was not compelled to talk and in fact, never relinquished the right to remain silent. The rule of physical intrusion upon constitutionally protected areas guided the reasoning of the court in subsequent cases, however, it is important to mention the dissenting opinions expressed by Justices Brandeis and Holmes. Brandeis in his dissenting opinion acknowledged the eventual sophistication of methods of law enforcement and questioned whether the constitution afforded protection against invasions of privacy. Brandeis insisted that wiretapping was indeed a search and the words overheard had been seized. Justice Holmes described the practice as "dirty business" and warned that the government should not resort to such practices to preserve the freedom. In *Olmstead* the court declined over justice's Brandeis and Holmes dissent, to apply a literal interpretation of the 4th amendment. Evidence gathered through the use of hidden devices

was not deemed a search and physical trespass of a constitutionally protected area was vital to find a fourth amendment violation.

In *Goldman v. United States* 316 U.S. 129, 62 SCT 993, 86 L.E.D. 1322 (1940) the court applied the doctrine of physical trespass in concluding that a non-telephonic device placed against a wall was not intrusion upon a constitutionally protected area. The *Olmstead-Goldman* doctrine guided the courts reasoning in subsequent decisions relating to the use of electronic surveillance to gather evidence. This doctrine prevailed until the *Katz* decision in 1967.

The Supreme Court undoubtedly looked to Congress to enact legislation which would regulate and at least clarify the allowable uses of electronic surveillance. In 1934, six years after *Olmstead*, Congress enacted 47 U.S.C., section 605 of the Federal Communications Act, which provided that “no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect or meaning of such intercepted communication to any person.” Section 501 provided that it was a criminal act to willfully and knowingly violate the act punishable by one year’s imprisonment for a first offense and two years for subsequent offenses. Clearly this law was a federal prohibition against the interception and divulgence of contents of wire communications.

This measure, which not preceded by a comprehensive legislative inquiry, failed for a number of reasons to counter the growing use of electronic surveillance technology. In the first instance it was limited to wiretapping and radio broadcasts and transmission and neglected to encompass the advancements in eavesdropping capability. Secondly, it left to the states the discretion to allow the use of wiretapping if so stated in the state’s statutes or constitution.

However, the decisions in the *Nardone* cases (302 U.S. 379 (1937) and 308 U.S. 338 (1939), the court made clear that 605 prohibited federal, state, and local officers as well as private individuals from engaging in illegal electronic surveillance. The court acknowledged in these cases, the state laws forbidding wiretapping as grounds for inadmissibility of incriminating evidence. The court, in effect, established an exclusionary rule although such a rule was not expressly contained in the language of 605. In *Benante v. United States* 355 U.S. 96 2 L. Ed. 2nd 126, 78 SCT. 155 (1957) the court held that evidence gained through state approved electronic eavesdropping was not admissible in federal prosecutions. This particular case concerned the forwarding, by state officers, information to federal authorities although the evidence was not expressly included in the state’s wiretap warrant. The court held that evidence gathered in this manner did not meet the specifications of section 605 and was therefore inadmissible. In *Weiss v. United States* 308 U.S. 321, 84, L.Ed. 298, 60 SCT 209 (1939) the court held that 605 could be applied to intrastate and interstate communications as well. The third instance of inadequacy can be viewed in terms of Justice department and Federal Bureau of Investigations interpretation of 605. The Justice Department and Bureau believed that disclosure of information to other bodies within the federal government was not in violation of the “divulgence rule” established by the statute. Hence, it was necessary for a defendant to prove both interception and divulgence in order to be granted relief. However, in *Schwartz v. Texas* 344, U.S. 199, (1952), state wiretappers in testimony divulged contents of information gathered through wiretapping. The Supreme Court in this case held that such testimony was admissible even though it was a violation of section 605.6 The court overruled the *Schwartz* decision in *On Lee v. Florida* 392 U.S. 378 (1963) holding that wiretapping by state officers violated section 605 and state officers (i.e. judges, prosecutors, law enforcement officials) and private citizens must adhere to the restrictions of federal law.

A related case *Silverman vs. United States* 365 U.S. 505 (1961) is noteworthy because a unanimous court held

that a spike microphone placed into a heating duct to overhear incriminating evidence was an illegal search and seizure. Moreover, the *Katz v. United States* 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed. 2d 576 (1967) decision involves the placement of a microphone outside a public telephone to overhear incriminating evidence, constituted a violation of the privacy that the defendant “justifiably relied” upon while using the public telephone. The fourth amendment was cited in both cases as the basis for rights to privacy. The courts had eroded the Olmstead-Goldman doctrine and followed the reasoning of Brandeis in the dissenting opinion in Olmstead. The court held that the fourth amendment protected oral statements whether or not as Silverman indicated, physical intrusion upon the premises occurred. ⁷

Section 605 was amended by title III of the Omnibus Crime Control and Safe Streets Act of 1968 outlining specific procedures for the use of electronic surveillance. This act authorized federal courts (judge of competent jurisdiction) to issue wiretap warrants in accordance with federal and state law at the request of the Attorney General when there is “probable cause” that an individual is, has, or is preparing to break any of the laws specified in the act. With respect to national security and reference to executive power, the statute is vague and avoids the question of whether the president has inherent constitutional power to authorize electronic surveillance without judicial approval. ⁸The court in 1972, the Keith Case, U.S. District Court 407, U.S. 297 (1972) held that intelligence-related wiretapping requires a warrant where there is no reason to believe that there is foreign involvement. Title III set standards, optional for states which had more restrictive laws dealing with electronic surveillance and deemed illegal any wiretap conducted without adherence to the provisions set forth. The act provided that individuals could 1) sue for civil damages at the rate of \$100 a day for each day of illegal interception, use, or transfer of information from unauthorized interception, or \$1000 whichever ever is higher; 2) recover punitive damages; and 3) reasonable attorney fees and other associated costs.

The Connecticut Legislature passed electronic surveillance and wiretap statute requiring court orders effective in July 1971. Sections 54-41a to 54-41S. This act pursuant to Title III provided for court-approved electronic surveillance only to the state police. This act repealed the previous law of 1899 dealing with electronic eavesdropping which read in part: It is a state crime for anyone to listen “to the transmission of telegraphic dispatches or telephone messages to which he is not entitled.” (53-140 Connecticut General Statutes.) There are no reported cases of prosecution under this statute. The word entitled raises questions and the lack of legislative history furthers the ambiguity. The current Connecticut statute limits the use of electronic surveillance to state police while implicitly restricting local police departments from using electronic surveillance. Moreover, it requires the state’s attorney to comply with 4th amendment requirements in its application to a panel of three superior court judges. Individual who have been illegally tapped, bugged, etc. can 1) sue for civil damages against anyone who intercepts, discloses, or uses the communication and 2) can recover \$100 per day for each day of violation or \$1000 whichever ever is higher and 3) recover attorney fees and reasonably associated costs.

Conclusion

Both the Federal Communications Act of 1934 and the Omnibus Crime Control and Safe Street Act of 1968 were major pieces of legislation used to control the use of electronic surveillance devices. Title III of the Safe Streets Act allowed wiretapping, bugging etc. under limited conditions and made it a tort to illegally engage in electronic surveillance—allowing the victim to recover damages. Some of the problems associated with admissible evidence under 605 have dissipated under Title III due largely to the warrant requirement. And most state laws have been updated to conform with the limitations of Title III.

The Supreme Court in disallowing illegally obtained evidence, has been instrumental in forging adherence to 4th amendment restrictions to invasions of privacy in a long line of decisions dating back to 1928. The 14th amendment also has been prominent in these decisions.

One area which has not been dealt with completely involves the presidential authority to authorize electronic surveillance. Readers should view the Foreign Intelligence Surveillance Act of 1978. It makes apparent that there may be sensitive matters concerning the National Security whereby the presidency possesses the discretion to authorize intelligence gathering of foreign embassies, countries, individuals, etc. It is clear, that the wording is meant to discourage the use of electronic surveillance against private U.S. citizens.

The New Haven Wiretap Case

A series of five *Journal Courier* articles began on January 24, 1977 revealed that instances of wiretapping was conducted between 1966-1971 in New Haven. There is little doubt, according to the New Haven Board of Police Commissioner's Report on illegal wiretapping (1978), and the articles of Houlding, that electronic surveillance was conducted by the New Haven Police Department in cooperation in some instances, with the FBI, and aided by the local telephone company. Wiretapping was conducted using pen registers and tape recorders. ⁹A civil case in federal court relative to this matter is presently pending which should yield readily available information.

Lesson Plans

Lesson 1

Objective The student will be able to state values and to analyze them and the values of other students as it relates to the issue of individual privacy.

Materials teacher constructed survey—writing tools, chalk, blackboard.

Procedure Teacher—

1. Administers survey
2. Tabulates responses on the board
3. Uses responses to initiate discussion or written responses.

Same questions relating to values clarification:

1. What did the driver do?
2. What do you think were the authorities reasons for wanting to administer a blood test even though the driver was hurt and unconscious?
3. What do the reasons you gave tell about what is important to them?
4. If you were the driver how would you feel if you were given a blood test without knowing about it?

5. What does this show about what you think is important?
6. What is the difference between your thinking and those of the authorities? How are they the same?

Survey

The following items are designed to find out how you feel and think about personal rights to privacy. Write *A* if you agree with the statement— *SA* if you strongly agree, *D* if you disagree and *SD* if you strongly disagree and *U* if undecided.

1. ___ A driver responsible for a serious accident should be given a blood test even if he is unconscious to see if he is drunk.
2. ___ Police in New Haven and other cities have a right to listen to telephone conversations only when they have reasons to believe that a crime is involved.
3. ___ Telephone companies should have a right to say no to police officers who want them to listen in on telephone conversations.
4. ___ It is alright for a parent or teacher to secretly tape record a child or students' conversations.
5. ___ The people across the street have a right to use binoculars to watch people in my house if they wish.
6. ___ People should never be stopped by police and searched unless the police has eyewitnesses to the crime.
7. ___ Young people who commit crime seem to always get off easy.
8. ___ The police should have the right to use my house or parent's car if it helps them stop or solve a crime.
9. ___ People in this country have really never had to worry about being watched by police.
10. ___ The press should tell people everything they hear even when they are not sure that some of the information is true.
11. ___ People arrested for committing serious crimes should be forced to tell the truth. ___
12. The only person who should have the authority to allow someone to listen to another's conversation is the president.
13. ___ The Constitution of the U.S. has rights which protect citizens.

Lesson Plan

Lesson 2

Objective Students will develop constitutional provisions which address issues relating to privacy with particular reference to item (s) on the survey.

Materials paper, writing tools, chalk, blackboard, surveys

Procedure Students select item which they find problematic and design provision or law which deals with the issue. Students should be told to consider specific criterion in their writing, for instance, precision in wording, acceptability by majority, consequences of enforcement or non-enforcement, possible or real conflicts with existing laws, possible historical references, means of enforcement, alternative ways of dealing with the matter, and extent of jurisdiction, etc. Students should then write the provisions, allowing the teacher to circulate about the clarifying issues and suggesting modes of written expression.

Lesson Plan

Lesson 3

Objective Students are given opportunity to examine aspects of the U.S. Constitution to gain knowledge of the Bill of Rights and criminal procedure as background for future assignments. Students should compare the following laws with the laws which they have devised for comparison and contrasts. Further, students should be able to apply criterion established for the writing of this law to those in the Constitution and to identify the areas of conformity or non-conformity. Hence students will draw conclusions about the manner in which laws are constructed and the probable causes of ambiguity.

Materials Handout which consists of Constitutional laws of criminal procedure and privacy.

Procedure Teacher asks students to take out laws which they have constructed. Teacher reviews criterion with class telling them to be aware of them when reading laws of the U.S. Constitution or other students. Teacher collects student products and handout sheet. Teacher and student read it over for clarification purposes then reads some of the products. Students should identify which law on the sheet has to do with the same issue stated. Teacher and student should apply criterion to both "laws" to state contrasts, comparisons, adequacy, etc.

Suggested Handout

1. People have a right to not have their persons, houses, papers, and effects unreasonably searched or seized by the federal government.
2. Search warrants and arrest warrants can be issued to federal officers only on probable cause. The officer seeking the warrant must swear or affirm that the information he is giving in order to receive the warrant is true. 4th amendment.
3. The federal government may not suspend the writ of habeas corpus ("you have the body") for persons whose freedom is limited by federal power. There is one exception. The writ may be suspended if 1) there is either rebellion or invasion, 3) during such rebellion or invasion the public safety requires its suspension. (Art. 1 Sec. 9.)

4. A search warrant or arrest warrant issued to a federal officer must specifically describe the place to be searched or the person or things to be seized. (4th amendment)
5. No person charged with committing a federal crime may be placed in jeopardy more than once for the same offense. (5th amendment)
6. No person may be forced by the federal government to be a witness against or incriminate himself (5th amendment)
7. The federal government may not deprive any person of his life, liberty, or property, except with due process of law. (5th amendment)
8. A person charged with a federal crime is entitled to be informed of the nature and cause of the charges against him and to be confronted with the witnesses against him. (6th amendment)
9. A person charged with a federal crime has the right to have the assistance of counsel for his defense. (6th amendment)
10. No state may deprive any person of his life, liberty, or property, except by due process of law. (14th amendment)
11. No state may deny anyone in it's jurisdiction the equal protection of the laws. (14th amendment)
12. The federal government may not take away from any citizen the freedom of speech. (1st amendment)
13. People have a right to peacefully gather to protest. (1st amendment)

Lesson Plan

Lesson 4

Objective Students will be provided with information and will be asked to hypothesize and role play.

Materials Blackboard, paper, writing tools

Procedure After discussing the concepts which underlay civil rights, students are asked to select 1-3 of the rights they find most essential in an open society and to imagine that they did not exist. Students list one problem which could arise for each right. Teachers could role-play or allow the students to stage a circumstance involving the presence and absence of these rights and possible consequences.

Teachers could prepare questions which elicit responses that Predict outcomes, specifically in a society when rights were continually violated or non-existent. This can be a written or discussion assignment.

Sample Questions

1. Can you think of a society or situation where a person's rights are limited?
2. Do you think people are better/worse off? Why?
3. Over a period of time what changes negative or positive may result?
4. What do you think citizens would have to do in a situation where no rights were recognized? Why?
5. How did you feel when ? (role-players)

Notes

1. See Connecticut Constitution.
2. See *Laird v. Tatus* 408 U.S. 1 (1972) Note the letters U.S. indicate that this case was decided by the United States Supreme Court, and can be found in the United States Reports. The numbers indicate the case is located in volume 408 of the U.S. reports at page 1, and it was decided in 1972.
3. It would certainly be useful to review opinions and decisions of *Rowe v. Wade* 410 U.S. 113 and *Griswold v. Connecticut*, 381 U.S. 479.
4. See Frank G. Carr— *History of Electronic Surveillance* , Alan F. Westin—*Privacy and Freedom*, and Richard Blum— *Surveillance and Espionage in a Free Society* for a further description of the technology employed in electronic surveillance matters.
5. The Central Intelligence Agency can operate in the United States by way of a Presidential directive issued December 4, 1981.
6. Other related cases include *U.S. V. Coplon* 342 U.S. 920 (1952) and *Berger v. New York* 388 U.S. 41 (1967).
7. See also *Wong Sun v. United States* 371 U.S. 471 (1963).
8. See *Alderman v. United States* 394 U.S. 165 (1969), *U.S. v. Butento* 494 F 2nd 593 (1974), (note this citation means that this case can be found volume 494 of the Federal Reporters, Second Series at page 593 and was decided by the United States Courts of Appeal) *Giordano v. United States* 394 U.S. 310, 313 (1969), *Ivanov v. U.S.* 419 U.S. 881 (1974), and *Zweibou v. Mitchell* 516 F. 2nd 594 (D.C. Cir. 1975).
9. See *Scott v. United States* 436 U.S. 98 (1978) and *Dalia v. United States*, 441 U.S. 238 (1979)

Also teachers should read *United States v. New York Telephone Co.* 434 U.S. 159 (1977). Teachers should read the Majority and Minority Reports of the National Wiretap Commission. (1976) which examines and analyzes the effectiveness of Title III.

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