



Understanding the Significance of the Nationalization of the Bill of Rights

Curriculum Unit 95.03.02
by Gary Highsmith

General Statement:

' . . . the quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of the criminal law.' (*Miranda v. Arizona* , 1966).

One aspect that is paramount to a civil society is the presence of laws which are fair to all, irrespective of one's station in life or understanding of the law. It is, however, instructive to note here that the presence of fair laws does not, in and of itself, reflect ordered or civilized society. For instance, if severe economic, or political inequalities exist concurrent with an extremely fair dispensation of jurisprudence, then one can certainly maintain that order and/or civility have yet to be attained by that society. In short, procedural justice is something, but not everything.

Further, it is safe to conclude that neither social, political, economic or legal utopias exist in America. Hence, there will be criminals and therefore a need for a criminal justice process. If a nation is to live up to its pronouncements of democratic and virtuous ideals in regard to how its citizens are to be treated under the law, then the same must also apply to those who are suspected, accused and convicted of crimes. Even criminals have civil liberties which should be beyond abuse by government agents.

Because each of the 50 states has enacted its own code of criminal laws, the federal Government, by way of the United States Constitution, has granted authority to the Supreme Court to review cases from the state level in matters pertaining to the United States Constitution and federal statutes.

UNIT STATEMENT

In 1787, American leaders wrote a document that would serve as the law of land, the United States Constitution. The Constitution was imperfect. American leaders in 1787 could not predict what would happen in 1812 or 1960. As a result, the Constitution has been amended to address new legal problems facing the nation. The first ten of these Amendments to the United States Constitution are commonly known as the Bill of

Rights. The Bill of Rights were enacted as limitations solely upon the federal government. [*Barron v. Baltimore* (1833)]. Though American leaders, after having gained independence from what they considered a tyrannical British government, wanted to ensure that governmental tyranny and despotism would not rule the day in America, they also found it necessary for the national Government to address the issue of crime, irrespective of whether or not this could be construed as an infringement upon the sovereignty of state governments. When we consider that of the 23 separate rights noted in the first eight Amendments, 12 concern criminal procedure, we begin to see the relevance that the issue of criminal justice has always played in American society.

The Fourth Amendment guarantees the right of the people to be secure against unreasonable searches and seizures and prohibits the issuance of warrants unless certain conditions are met. The Fifth Amendment requires prosecution by grand jury indictment in all infamous crimes (except certain military prosecutions) and prohibits placing a person in double jeopardy or compelling the person to testify against him/herself. This Amendment also prohibits deprivations of life, liberty, or property without due process of the law. The Sixth Amendment lists several rights which are applicable in all criminal prosecutions; the right to a speedy trial, to a public trial, to an impartial jury of the state and district where the crime was committed, to notice of the nature and cause of the accusation, to confrontation of opposing witnesses, to compulsory process for attaining favorable witnesses, and to the assistance of counsel. The Eighth Amendment adds a prohibition against requiring excessive bail and cruel and unusual punishment.

WHAT THIS UNIT WILL DO:

This unit will explore the nationalization of the Bill of Rights in regards to criminal procedure in American society. It will cover the Amendments listed above and demonstrate that the Fourteenth Amendment, particularly in areas concerning due process, was used to nationalize the Bill of Rights. The nationalization of the Bill of Rights is an important legal and historical development because it gives students insight into various areas of the American criminal justice process generally and issues concerning civil liberties in particular. Many students may take the civil liberties they now possess for granted.

This unit will also demonstrate that the Civil Rights era of the 1960's helped to bring to the fore the abuses of government agents. This era focused greater attention upon the Fourteenth Amendment as well. While more modern attempts (1960's) to nationalize the Fourteenth Amendment have brought about more expansive interpretations of the Bill of Rights, not much attention has been paid to the fact that in most cases, those making challenges based upon the aforementioned Amendments have been non-Whites. This is a glaring omission, especially when one considers the centrality of the Civil Rights Era in discussions of history generally, and Black history in particular.

This unit will also demonstrate the impact of social and political consciousness upon the expansion or contraction of civil liberties in America. For example, did the Civil Rights Era influence the United States Presidents to appoint more liberal Supreme Court Justices with more expansionist philosophies of the Fourth, Fifth, Six, Eighth and Fourteenth Amendments? Or did the appointments themselves give rise to a more liberal political and social atmosphere which strengthened the Civil Rights Movement? Perhaps the two are interconnected pieces of the same legal and political puzzle. What is certain, however, is that the impact of certain constitutional provisions are dependent upon how they are interpreted by the judiciary in the course of adjudicating individual cases.

Finally, this unit will discuss the significance of due process and its resulting effects upon the American criminal justice system. It will also discuss the recent attempts to constrict search and seizure laws for criminal defendants by giving police officers more leeway in their use of reasonable suspicion. It will also discuss the validity of evidence obtained without a warrant.

OVERVIEW

Initially, the Constitution had only a few provisions relating to the administration of criminal law. As originally constructed, the Bill of Rights, the first ten Amendments to the Constitution, was created to check national governmental powers. For nearly two hundred years, the Bill of Rights was seen primarily as binding upon the federal government. That is, it was commonly maintained that the Bill of Rights was not applicable to the states. This ideology was created by several beliefs. Primary among them was the American government's staunch belief in states' rights, partly due to the belief that local governments are easier for the people to control and influence, and partly because it represented a compromise to the Southern slavocracy regarding the maintenance and institutionalization of slavery in that region. Two hundred years of what may now be characterized as conservative political behavior also have influenced state's rights advocacy. While the adoption of the Fourteenth Amendment in 1868 significantly extended federal constitutional controls over the actions of state governments, several additional points must be addressed concerning the issue of states' rights, for this issue was central to the nationalization of the Bill of Rights.

State courts will undoubtedly decide issues of federal law. When they do, the Supreme Court of the United States has the power to review their decisions. The United States Constitution makes the power of the Supreme Court clear in this regard by Article VI which reads: 'This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, and any Thing in the Constitution or Laws of any state to the Contrary notwithstanding . . . ' While Article VI appears to provide clarity on the issue of states' rights where the courts are concerned, the power of the Supreme Court to review cases at the state level has been constantly challenged. The Supreme Court's power to review, and more importantly to reverse, decisions at the state level was 'in fact one of the first great issues of federal-state conflict in this country. Some states and their courts, . . . bitterly resisted such review by the Supreme Court as an intrusion on their independence.' ¹

The states' rights argument held that the highest court in each state was fully capable of interpreting and applying federal law without supervision from federal government authorities. Besides, the argument continued, did Americans not just win a war to be free from such despotic intrusions? Also, did not the United States Constitution imply that by appointing courts at the state level, that state courts were competent in interpreting federal law? Does the mere presence of a Supreme Court, a 'big brother' by today's standards, anticipate either incompetence or abuse, or both, at the state level? If this is the case, is that any way to operate a court of law? Does not the anticipation of abuse and/or incompetence by the state court strip these courts of any real power?

Are the questions posed above interesting? Certainly. Are they relevant? Apparently so. Do they possibly give rise to sophisticated legal philosophies? Perhaps. The First Congress, however, sought to put an end to such legal speculation with one of the very first statutes it enacted. The Judiciary Act of 1789, written primarily by Oliver Ellsworth of Connecticut, who later became Chief Justice of the Supreme Court, gave the Supreme Court

of the United States power to review state decisions regarding federal questions. Though the Supreme Court was provided for in the United States Constitution, it (the Court) did not exist at the time. Does it therefore follow that American leaders, who not long before the Judiciary Act of 1789, sought to end governmental oppression and limit the power of national government, were in fact guilty of practicing governmental tyranny themselves? One might suggest, as many states' rights advocates did, that the federal government was against despotism only if they were not the ones benefiting from it.

However, as mentioned earlier, one of the prerequisites of a civilized nation is fairness to all in the dispensation of law. One might counter the states' rights view by suggesting that there must be uniformity in the administration of federal law. For if the administration of law is to differ drastically from state to state, and these interpretations cannot be reviewed by the federal government, then what exists is not federal law but state level interpretation of federal law—two extremely different, and at times diametrically opposed legal entities.

Clearly, state court interpretation of federal laws must have supervision if there is to be any semblance of uniformity. There must be uniformity in the application of federal law if there is to be fairness for all people. Left solely within the purview of state governments, federal law becomes more like state law in which redress, especially in cases where federal law has been blatantly violated, simply is not possible.

To avoid the hundreds, if not thousands of different interpretations and applications of the same federal laws at the state level, the Bill of Rights had to be nationalized. One of the greatest ironies in regards to the nationalization of the Bill of Rights is that while the Bill of Rights intended to limit the power of the federal government where the administration of law was concerned, it apparently increased the power of the federal government, due in part to Article VI and the Fourteenth Amendment.

There appear to be two integral and interconnected segments of legal philosophy that form the basis for the nationalization of the Bill of Rights. The first, as addressed previously in this paper, deals with states' rights issues concerning guarantees in the Bill of Rights that had to be made applicable to the state proceedings. The first criminal guarantee made applicable to the states was the *Powell v. Alabama* case in 1932. The second concerned a more expansive or liberal interpretation of individual rights found in the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments. An expansive interpretation of the Constitution's criminal procedure guarantees, however, is not new. In fact, few interpretations are as broad as the expansionist decision concerning the Fourth Amendment in *Boyd v. U.S.* (1886).

What has emerged, historically, in the debate over the nationalization of the Bill of Rights are three primary viewpoints: 1) Fundamental Rights; 2) Total Incorporation; and 3) Selective Incorporation. The Fundamental Rights interpretation 'finds no necessary relationship between the content of the Fourteenth Amendment and the guarantees of the Bill of Rights.'² This viewpoint held sway from [Hurtado (1884)], until the early 1930's, when the Supreme Court began to show more interest in criminal proceedings. The Total Incorporationist viewpoint argued that the Fourteenth Amendment should be more broadly interpreted so as to incorporate the entire Bill of Rights, without reaching any further. This would make all of the guarantees of the Bill of Rights applicable to state proceedings.³ The Selective Incorporationist viewpoint ' . . . accepts the basic premise that the Fourteenth Amendment encompasses rights that are 'of the very essence of the scheme of ordered liberty.'⁴ This view, advanced by Justice Brennan in 1961, also recognizes that not all rights enumerated in the Bill of Rights are necessarily fundamental and that others may be fundamental even though they are not found in the first eight Amendments.⁵

In the early 1930's, the court recognized that elements of some of the rights guaranteed by the first Eight Amendments were also protected by the Fourteenth Amendment. *Powell v. Alabama*. (1932). This was an important change in direction for the court because it was one of the first steps away from the Fundamental Rights interpretation and towards a more expansionist interpretation of the Bill of Rights and the Fourteenth Amendment .

Over the past three decades, as a result of the arrival of what may now be characterized as a liberal Supreme Court in the 1960's, laws governing criminal procedure have undergone an extensive change due in large part to a more systemic expansionist interpretation of the Bill of Rights and the Fourteenth Amendment. This process was carried out in part by a more liberal interpretation of the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments in particular. As a result, the Fundamental Rights viewpoint lost majority support.

The Warren Court (i.e. The Court of Chief Justice Earl Warren), put into place more expansive interpretations of the said Amendments and thus provided an impetus for the opening of the floodgates where the nationalization of the Bill of Rights is concerned. This had a major impact upon criminal cases, calling into question the conduct of government authorities and agents, (in particular, abuses perpetrated by police officers), as well as a defendant's right against self-incrimination and the right to a fair trial. As well, investigative aspects of the criminal justice system were more tightly scrutinized by the courts. The right to legal counsel, made a national issue in part due to the infamous *Powell v. Alabama* and *Norris v. Alabama* cases respectively, also received greater attention. In short, every major stage of the criminal justice process is today subject to significant constitutional standards developed in the past 35 years.

The Selective Incorporation approach found fundamental the following Bill of Rights guarantees: the freedom from unreasonable searches and seizures and the right to have excluded from criminal trials any evidence obtained in violation thereof, *Mapp v. Ohio* (1961), and *Ker v. Cal.* (1963); the privilege against self-incrimination, *Malloy v. Hogan* and *Miranda vs. Arizona* (1964); the guarantee against double jeopardy, *Benton v. Md.* (1969); the right to the assistance of counsel, *Gideon v. Wainwright* (1963) and *Escobedo v. Illinois*; the right to a speedy trial, *Klopper v. N.C.* (1967); the right to jury trial, *Duncan v. La.* (1968); the right to confront opposing witnesses, *Pointer v. Tex.* (1965); the right to compulsory process for obtaining witnesses, *Washington v. Tex.* (1967); and the prohibition against cruel and unusual punishment, *Robinson v. Cal.* (1962).

One of the benefits of more expansive interpretations of both the Bill of Rights and the Fourteenth Amendment is that abuse by government authorities possibly becomes grounds for the reversal of a conviction. While it is not clear that more expansive interpretations actually decrease abuses by government authorities, namely police officers, prosecutors and magistrates, expansionist interpretations appear to provide some remedy to government corruption. Obviously, others will argue that 'criminals', that is those who are convicted of crimes, may be set free by liberalizing the Bill of Rights and the Fourteenth Amendment. Frankly, some who commit crimes will go free under the expansionist doctrine. However, one must ask several questions in this regard: 1) Are American citizens ready to sacrifice civil liberties by allowing the police and other federal agents to show a callous disregard for the United States Constitution in pursuit of evidence or apprehension?; 2) Isn't it true that some people who commit crimes will go free even if the interpretation of the Bill of Rights and the Fourteenth Amendment are more restricted?; There is no evidence to quantify the assertion that more restricted interpretations result in higher ratios of indictments and convictions; and 3) Is it not true that expansionist interpretations arose from the abuses of federal and state officials in general, and especially from the abuses of state and local police officers?

As Supreme Court rulings become more expansionist, the administrative burdens placed upon the criminal justice process increase substantially. More money has to be spent to handle the increase in appeals and hearings. More government lawyers must be hired. More court personnel must be hired. The list continues. As a result, many might suggest that the expansionist view is not cost-effective. In fact, some could argue that said view puts additional stress on an already over stressed criminal judicial system whose results cannot but be excessive plea bargaining. It is difficult to argue with budgetary concerns at a time when deficits seem insurmountable and grow by millions of dollars each day. Yet, on the other hand, budgetary concerns pale in comparison to administering justice. That is, it is simply wrong for the courts to consider budgetary concerns over and above the pursuit of justice, which is its exclusive concern. This is not to suggest that there can be courts without the financial wherewithal to run them. What is brought into question here are both the priorities and the purpose of courts. For example, what if an individual has been convicted of murder in a state where his/her particular crime is punishable by the death sentence, yet the individual was found to be legally innocent during his/her third appeal? If the individual convicted uses every legal means at his/her disposal and costs the state one million dollars, were the administrative costs too high? Should there be some cut-off above which the state and federal governments will no longer pay court costs for indigents convicted of a crime? Does this not lead to a greater gap between the haves and the have-nots?

Nothing is more important than the truth. The criminal justice system has many responsibilities, yet the most important is the discovery of truth. Theoretically, budgetary concerns are not within the purview of the courts, though politics and the criminal justice system are inseparable, particularly where finances are concerned.

Finally, the expansionist doctrine that led to the nationalization of the Bill of Rights had benefited the pursuit of true democracy. When interpretations are restricted, so to are the legal remedies of those accused and convicted of crimes. It is not the existence of expansionist interpretations that may help a 'criminal' go free. What in many cases causes the administrative burdens placed upon courts in regards to expansionist interpretations of the Bill of Rights and the Fourteenth Amendment are abuses perpetrated by government authorities that run counter to the United States Constitution. In the real world, it is as important for those who are called upon to protect and serve to obey the laws set forth in the Constitution as it is for those who are convicted.

UNIT PLAN

The Nationalization of the Bill of Rights

Gary Highsmith

Grade 11

Subject: American History

Starting Date: Sept. 30, 1995

Duration: Three Weeks

General Objectives

- To gain knowledge of the impact of the Nationalization of the Bill of Rights upon criminal law.
- To instill in students an understanding of the importance of civil liberties.
- To analyze opposition to expansionist viewpoints that could possibly create more checks and balances on the state courts.
- To realize that though the American system of jurisprudence has consistently exhibited both race and class based discriminatory behaviors, there have been Black people, and poor of different cultures who have successfully fought for equality for all under the law.
- To analyze the role of the prevailing political atmosphere upon Supreme Court decisions.
- To encourage students to gain a more comprehensive understanding of the law.
- To develop critical and analytical thinking skills.
- To analyze the validity of the state's rights viewpoint.
- To instill in students a desire to make laws fair for all people.
- To gain an understanding of the Nationalization of the Bill of Rights not only within the context of the law, but also in regards to the Civil Rights Movement of the 1950's and 60's.
- To comprehend the persistence and desire necessary to bring about social, legal and political change in the United States.

Behavioral Objectives:

- Students will read, analyze and respond to opinions of the Supreme Court judges in some of the cases relevant to the unit.
- Encourage discussion and debate on whether the Nationalization of the Bill of Rights positively or negatively effects the American public.
- Develop laws that will address different aspects of issues around Nationalization of the Bill of Rights.
- Students will discuss the of crime in regards to what can be done to prevent crimes from happening in the first place.
- Students will interview and record (via Camcorder or tape recorder) adults to ascertain whether expanding rights that protect against any possible governmental abuse (i.e. exclusionary rule) helps or hurts the society as a whole.
- Discuss the importance of the political atmosphere in regards to Supreme Court decisions (i.e. When the perception is that crime is on the rise, should police have greater latitude in seizing evidence?).

- Critique the expansionist view. (Should taxpayers have to pay for individuals who are accused and/or convicted of committing crimes?)
- Write a letter to the Supreme Court which discusses their concerns about the law and how the court should respond.
- Construct a 'Students Bill of Rights' which deals with civil liberties for young people.
- Debate the expansion vs. the constriction of the Exclusionary Rule.

Activities:

- Field Trip to the Federal Courthouse to see the Nationalization of the Bill of Rights at work. (Developmental).
- Jeopardy style oral group examination
- Debate (Motivational)
- Critique of expansionist view (analytical)
- Guest Speakers
- Construct Student Bill of Rights (culminating)

LESSON PLAN: CLASS #1

Readings:

1. *The Bill of Rights: How We Got It and What It Means.* (Introduction).
2. Overview of the Bill of Rights (Done orally by teacher in more simplified language).

Accompanying Activity:

Pre-lesson evaluation to gauge student knowledge of the Bill of Rights and the United States Constitution.

Objectives:

1. To introduce the Bill of Rights to students.
2. To provide students with insight into the United States Constitution .

General Statement:

After American leaders led a successful revolution against Britain, they wanted to ensure that the federal government would not become tyrannical, as they felt the British government had done in its relationship with the American people. As a result, American leaders crafted the Bill of Rights, the first ten amendments to the United States Constitution. The Bill of Rights were initially enacted as limitations solely upon the federal government. For years, this belief held sway because many adhered tightly to the notion that the states had rights which could not be compromised by the federal government. This state's rights viewpoint was prominent primarily for two reasons: 1) The belief that local governments are easier for the people to control and influence, and 2) It represented a compromise to the Southern slavocracy regarding the maintenance and institutionalization of slavery in that region.

Vocabulary:

Slavocracy, Tyrannical, State's rights, Revolution.

Teaching Strategy:

Entry Point A:

Inform the class that we will be starting a unit on the Bill of Rights and that they are now going to answer this brief survey so that the teacher can assess their knowledge of this topic. Teacher should remind students that these evaluations will not be graded. (2-3 minutes).

Entry Point B:

Teacher distributes evaluation and has students complete them. (See attached). (10 minutes).

Entry Point C:

Teacher instructs each student to read one of his/her responses on the evaluation. Teacher collects evaluations. (10-15 minutes).

Entry Point D:

Teacher then gives oral overview of the creation of the Bill of Rights and answers any questions students may have on the issue. (15 minutes).

Homework:

Read pages 1-15 in *The Bill of Rights: How We Got It and What It Means*.

SAMPLE STUDENT EVALUATION

PLEASE ANSWER ALL QUESTIONS TO THE BEST OF YOUR ABILITY. THIS IS NOT A TEST, BUT IT WILL BE COLLECTED AT THE END OF CLASS. THIS EVALUATION WILL HELP ME DEVELOP INTERESTING AND USEFUL MATERIAL.

1. When was the United States Constitution written?
2. What is the Bill of Rights?
3. Why would the American people need a Bill of Rights?
4. How many amendments to United States Constitution are you familiar with?
5. How many Amendments are there in the Constitution?
6. What do you think people mean when they say something is 'Nationalized'?
7. What does the federal Supreme Court do?
8. How many Justices sit on the Supreme Court? How long do they sit?
9. What is meant by the term 'state's rights'?
10. Does the Constitution provide protection under the law for those who are accused and/or convicted crimes? If you answered yes, give one example.

Lesson Plan: CLASS #2

Readings:

1. Everyone Deserves Fairness (5 minutes)
2. Justice seems to be only for the Criminals. (5 minutes)

Accompanying Activity:

Discussion of two conflicting points of view. (35 minutes)

Objectives:

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1. To show that people hold different beliefs on the same subject and that these beliefs can always be debated but must always be respected.
2. To help students gain an understanding of how volatile the issue of criminal justice is in America.
3. To gain knowledge of various points of view concerning the criminal justice system.
4. To sharpen oratory skills.

General Statement:

Debates concerning limitations upon the rights of the accused gain a greater sense of urgency when the public perceives crime as out of control and intrusive to their everyday schedules. There are those who suggest that the rights of the accused are not of primary concern. Many of these same people believe that the law must protect, first and foremost, the innocent, law-abiding citizens, (that is those who are not convicted or accused of crimes). Others, however, believe that prosecutors, magistrates, police officers and other state agents must be reigned in by close scrutinizing of their behavior.

Vocabulary:

Volatile, Magistrates

Teaching Strategy:

Entry Point A:

Have the class read the two essays 'Everyone Deserves Fairness' and 'Justice Seems Only to be for the Criminals'. (Both written by Gary Highsmith).

Entry Point B:

Divide the class into three groups: A) Those that agree with essay #1, those that agree with #2 and those who agree with both.

Entry Point C:

Discussion among all three sides.

Homework:

Students will write a one page argumentative essay which discusses the strengths of the argument which they oppose. These will be read aloud in the classroom during the next class.

EVERYONE DESERVES FAIRNESS

All my life I have lived in America. From the time that I entered through the school doors I have been told that American democracy is the greatest on earth and that no other nation in this world can claim to have the success that we do in this country.

I have also been told that in this country, everyone is treated fairly under the law. Rich or poor, Black or White,

Christian or Muslim, everyone has basic legal rights that should not be violated, even if a person has broken the law.

This is why I believe with all my heart that those who commit crimes deserve a fair trial and a lawyer. And if the cops get evidence illegally, the state should not be allowed to use it against them. Just because someone is a cop does not mean that they should be allowed to break the law, a law that they are paid to uphold.

Don't get me wrong, I do not condone criminal behavior. But blanket statements like 'if you do the crime, you have to do the time' are too simplistic. To suggest that everything is cut and dry all the time is terrible and at times puts people in jail when they clearly do not belong there.

Supreme Court rulings that began to give the accused more rights in the 1960's happened because the government, especially the police, overstepped their boundaries so much that what they were doing was in fact criminal. They planted evidence, went into homes without a warrant and without reasonable suspicion and searched in places not even on the warrant! I don't need to mention how many times they illegally interrogated people and forced them to confess, especially poor people, and especially poor members of racial and ethnic groups.

More and more each day I am beginning to feel as though people are guilty until proven innocent by a criminal justice system that only cares about getting the cases done, and not about justice for all. People are constantly convicted in the media before a trial ever starts. Its a shame, really a shame.

If police officers, prosecutors and magistrates are not watched closely, and do not have certain legal restrictions which govern their actions, then they will be able to do anything to anybody, even 'lawabiding citizens' like you and me. Putting more power in the hands of the government, and especially the police, is a scary thought to me because I am afraid that 'we the people', will never be able to get the power back if the government abuses it (which they will do). Finally, when you, Mr. or Mrs. 'Law Order,' have your civil liberties violated by the police, and you find that there is nothing you can do about it, then I'm sure you will have a better understanding of my point of view.

JUSTICE SEEMS TO BE ONLY FOR THE CRIMINALS

America used to be the greatest nation in the world. But today, this country is going to hell in a hand basket because of all the crime. Crime is out of control and no one seems to know how to stop it.

There are too many so called liberals who scream and yell about the criminals getting a raw deal from the police and courts. They talk about how everyone has rights and that even criminals are protected by the constitution. What about the rights of the law-abiding people like you and me? Who or what is going to protect us from them?

Criminal rights, yea right! Once you commit a crime you give up your rights. Why should someone have any rights if they cannot respect the rights of others? Why should the Constitution protect those who break the law? That is ridiculous!

Fairness for everyone. I am all for fairness if the criminals are going to be fair too. If they are not, then the government should not be fair to them. If the cops get evidence illegally, why should it be thrown out of court? If the person never committed the crime, there would be no evidence, now would there? Why should people be allowed to go free just because the cops found evidence they were not necessarily looking for? This country is just too soft on crime and criminals.

Hey, if you do the crime, you do the time. If you don't want to do the time, don't do the crime. Its that simple. If someone murders, they get caught, they go to jail, end of story. I don't care about the constitution, I care about protecting my family from the thugs and murderers. And I'll tell you what, they can't get me from behind bars, that for sure.

I am sick and tired of seeing people arrested for dealing drugs and murdering, and then they're out in a few days. What is going on here! Its like a revolving door, they go in, they come right back out and the taxpayers have to foot the bill for it. And to make matters worse, if they cannot afford a lawyer, we, the taxpayers, have to pay up again. They should have thought about that before they went out and committed a crime. If they knew they had to pay for a lawyer, they wouldn't go out and commit these crimes. The criminals know the law better than most lawyers do. They know how to get around the law. We have to take that power away from them if we are going to end this crime problem that is pulling America down the gutter day by day.

Hey, I trust the police. They have always been there when I needed them. Some people make it seem as though all cops are bad. Yea, some are bad, but that is just a small fraction of the total number of police officers. They have a hard enough job without the courts letting the criminals literally get away with murder. The day of the bleeding heart liberal is gone. When America gets tough on crime, criminals will change their behavior. When Mr. and Mrs. 'Fairness for All' get mugged or shot, I would like to see them advocate for their attacker. I bet they will want some law and order then!

Lesson Plan: CLASS #3

Readings:

1. Four Supreme Court cases: (Miranda, Powell, Mapp, Terry).

Accompanying Activity:

Discussion of homework assignment from previous class.

Objectives:

1. To help students develop/sharpen analytical thinking skills.
2. To enhance oratory skills.
3. To foster respect for different points of view.
4. To help students develop argumentative skills.
5. To foster cooperation among students in regards to finding fair solutions to the problems which currently exist in the criminal justice system.

General Statement:

In order to provide a comprehensive education, there must be a healthy respect for different opinions and ideas within the classroom setting. One way to help achieve this is to have students consider the strengths of arguments which run counter to what they believe. In doing so, students are introduced to the idea of cooperation and consensus and learn that the serious issues which people face at time may go unresolved due to a lack of understanding of the opposing viewpoints.

Teaching Strategy:

Entry Point A:

Have each student read his/her homework assignment aloud. Teacher should write down the main ideas of the essays on the board.

Entry Point B:

Teacher should ask follow-up questions in order to ascertain the benefits of such an exercise.

Follow-up / Discussion Questions:

1. Has this assignment changed your opinion on any of the issues raised thus far in the class? If so, how and why? If not, why not?
2. Do you think it is important to have a clear understanding and healthy respect for opposing opinions? Why or why not?
3. Was this assignment difficult for you? Why or why not?
4. Do you think there is a 'middle ground' regarding this issue? If so, what is it?

Homework:

Students will read the four Supreme Court cases listed on the previous page. They should not be required to read the opinions, as they are often times too sophisticated for students. Teacher should advise the students that they will be given a more simplified overview of the opinions in each of the cases. This should be developed by the teacher.

Accompanying Activity:

Students will be instructed to discover the Amendment under which each case would fall (i.e. Fourth Amendment's Warrant requirement, Sixth Amendment Right to Counsel, etc.)

NOTES

1. Anthony Lewis. *Gideon's Trumpet*. (New York: Vintage Books, 1964), p.15.
2. Jerold H. Israel and Wayne R. Lafave. *Criminal Procedure: Constitutional Limitations in a Nut Shell*. (St. Paul: West Publishing, 1993), p.11.
3. *Ibid.* pp.14-17
4. *Ibid.* p.17.
5. Jerold H. Israel, Yale Kamisar and Wayne R. Lafave. *Criminal Procedures and the Constitution: Leading Supreme Court Cases and Introductory Text*. (St. Paul: West Publishing, 1993), pp. 43-45.

TEACHER'S BIBLIOGRAPHY

Alderman, Ellen. *In Our Defense: The Bill of Rights in Action*. New York: Morrow. 1991. Overview of the Bill of Rights and its general usage. Discusses applicability of Bill of Rights to state proceedings. Dry reading.

Dilulio, John. 'The Question of Blacks and Crime.' *The Public Interest*. #117. 1994. Dilulio claims America's crime problem is primarily a problem of urban Blacks, both as perpetrators and victims. Law and Order is the best way to go. Tougher punishments would both prevent crime from spreading.

Goldwin, Robert A. *Why Blacks Women and Jews Are not Mentioned in the Constitution and other unorthodox views*. Washington, D.C.: American Enterprise Institute. 1990. Discussion of views as diverse as who owns the minerals at the bottom of the sea to how nations show an ignorance of the link between property and liberty. The theme consistent throughout this work is that the Constitution is much deeper than most people will ever understand. Good background reading on more controversial issues in Constitution.

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One page argumentative essay developed by students.

Student Bill of Rights. Created by Students.

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