



Curriculum Units by Fellows of the Yale-New Haven Teachers Institute
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The Death Sentence Remains A Question

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Recent opinion polls would have us believe that a majority of American citizens support the death sentence for capital offenses. Who is being polled? The Court, distinguishes two groups of citizens, who make up the polled groups. One group is 'far removed' from the actual experience of capital punishment and the other group constitutes an 'informed public.' Can we, as an informed public continue to sanction a practice which shows so little regard for human life? Do we, as a nation draw distinction between the immorality of a capital crime by an average American citizen and the immorality of a capital execution by the American Government?

It is my contention that when the punishment for a capital offense is a sentence of death, the government is acting equally irresponsibly with the life of the accused, as did the accused with the life of his victim. I can hold no support for such an irrevocable form of punishment, particularly when justice can be well served through other forms. Without regard for any of the circumstances that relate to the crime, the emphasis first should be the value of human life. That life should not be taken under the guise of justice.

I am not suggesting that capital crimes go unpunished, or that they be treated as minor offenses. My concerns speak to the Arbitrary practices of punishment for capital offenses and the careless manner in which this country disposes of its human potential. While the death penalty offers a final solution that does rid society of a particular criminal element, it is fraught with mistakes of discrimination, uncertainty and subjectivity. More importantly, it is an inhumane approach to punishing a fellow human.

This position does not consider the nature of the crime, race, gender, religion, intelligence or the economic status of the accused or of the victim. The only consideration that needs to be made, when punishing for a capital crime is this is a human life that is being assigned to death. If by some moral act, we can assign a different value to human life, then likely unlawful and lawful killings would cease.

RATIONALE and OBJECTIVES

The unit is planned for seventh grade students, who have been identified as Gifted and whose core curriculum is Future Studies. In conjunction with a co-teacher, I meet with approximately twenty-five students, in a Resource Room Program, one day per week. Due to the structure of the program, this course will run as a mini unit of study, for two hours per day, over an eighteen week period.

This unit aims to explore some of the popular arguments surrounding the system of capital punishment in America and seeks the abolition of the death penalty in support of a more humane punishment of life imprisonment for capital offenders.

The topic of capital punishment is presented as a future problem to which alternatives must be sought. This unit is therefore designed as a course in future problem solving. Students will be offered various tools and techniques for examining the past, evaluating the present and forecasting the future of the system of capital punishment in America.

The purpose of the unit is to put the issues of capital punishment in a national perspective, as well as help students think intelligently about how their own futures fit into this perspective. Throughout the study, students will be encouraged to express their opinions on issues of the Eighth and Fourteenth Amendments of the Constitution, as they relate to the moral, social and political arguments surrounding the death penalty.

Students will be asked to make value judgments and use deductive reasoning skills in determining moral issues that are raised within the unit content. They will be invited to use the given tools to challenge and evaluate their own views, as well as those of the Supreme Court, as they examine the landmark decisions that were rendered in the cases of *Furman v. Georgia* and *McClesky v. Kemp*.

I find the topic appealing because it requires examination of the Constitution. It raises questions of right and wrong, of discretionary judgment and of law enforcement practices. I feel that students will enjoy the open-ended discussion activities, as well as the drama and video ideas. In all, it makes for interesting debate.

STRATEGY

This unit is divided into three lessons. I have chosen to develop, only Lesson two, as a part of this unit. Lessons one and three have been partially developed through ideas for activities and as a reading outline for the contents of the unit. The lesson ideas follow:

Lesson 1: Reading and Video Drama is designed so that students are introduced to the reading, have some opportunity to examine their feelings about capital punishment, share information and feelings about current capital cases, with which they are likely familiar and experience what it might be like to issue or receive the death penalty sentence or the punishment through role play.

Readings: Position Statement (preface to unit)

Introduction

Taking Issue

A Look at Capital Punishment

Lesson 2: Research and Debate invites students to take a moral position on the issue of the death penalty. Ideas for writing, research, drama and debate, as well as steps for preparing to debate have been outlined in the lessons and activity segment of the unit.

Readings: A Look Back

Cruel and Unusual Punishment

From Concept to Law

Interpreting the Clause

Little known Facts

Lesson 3: Scenario Writing allows students a chance to work through the problem solving process in order to create new laws in a society that has abolished capital punishment. Their future scenarios will incorporate the new laws.

Readings, The Furman Decision

The McClesky Decision

Conclusion

Background Reading and Scenario Information

You can help students think about their own futures by engaging them in discussion of questions like: What are your ideas about making the future a better place for all people? In what ways might you motivate people to strive for equality in a new society? What laws should be modified, abolished or kept in place?

INTRODUCTION

Like many U.S. citizens, the U.S. Supreme Court continues to struggle with questions surrounding the death penalty. Like many citizens, the Court has not fully accepted the idea of a penalty of 'death' as a legal, humane or fair sentence against an accused person.

Periodically, the Court finds itself searching to answer questions about the current practice of capital punishment. Was it indeed 'cruel and unusual' punishment a violation of the Constitution's Eighth Amendment, when Georgia's Courts convicted and sentenced William Furman to death for murder? In a 5 to 4 decision, the U.S. Supreme Court ruled that this sentence of death was cruel and unusual and therefore unconstitutional.

Even after the Furman ruling, questions remained regarding the humaneness of such a punishment and the fairness of the courts in deciding upon who receives a death sentence. The question of fairness was examined by the U.S. Supreme Court in the 1996 case of McClesky v. Kemp. The Court ruled 5 to 4 against Warren McClesky's claim that racial considerations enter into capital sentencing in the courts.

While the debate continues in the courts, in the communities and in the media, executions are being carried out across the country and capital punishment is taking on new life in many states.

A LOOK AT CAPITAL PUNISHMENT

Anthony Amsterdam refers to capital punishment as a fancy phrase for legally killing people. The term refers to death by beheading of the accused. It takes its meaning from the Latin term 'capita', meaning head. Since its early beginnings, the system of capital punishment was continually revised to reflect the ever-changing list of capital crimes, new forms of punishment for capital offenses, various degrees of murder punishable by death and sentencing regulations.

Exactly what are the crimes that require a government to put so many of its own to death and with such public support from its people? America's early experimentation with capital punishment unquestionably viewed murder and treason, as crimes punishable by death. Since that time, many states have adopted a list

of crimes which are considered as capital crimes and are punishable by death or by life imprisonment. In some states, particularly North Carolina and Georgia, the list became so extensive that it was considered, by many as excessive, in violation of the Eighth Amendment.

As the nation grew and ideas and values changed, the list of capital offenses was reduced to an acceptable seven offenses that were upheld by the courts. More recently, the list was further revised to include: treason, rape, murder (aggravated, 1st degree, while in prison), kidnapping (resulting in death), aircraft hijacking, certain drug offenses and armed robbery (laws and crimes vary by state).

Executions for capital crimes were carried out by hanging, shooting, gassing and electrocuting. Each of these forms have been argued at some point as cruel and unusual punishments. Each have been argued from the point of their constitutionality and based upon a variety of positions from theological, moral, emotional, social, practical and legal views. Many have been successfully defended by the courts and advocated by supporters of the death penalty.

TAKING ISSUE

At the center of the controversy over capital punishment is the question of whether capital crimes could be punished effectively without executing the death sentence. 'If we resume use of the death penalty, we will be killing some people by mistake and some without application of comprehensible standards, and we will go on doing these things until we give up the death penalty.' (Black, '81.)

Proponents of the death penalty will argue that it should be in place to serve as a deterrent to crime (others will hesitate to commit the same crime.) Many arguments will speak to the nature of the crime or to the fact that the accused should be removed from society for the safety of the public. Still others will make arguments for retribution (if a person takes the life of another, that person should pay for that act by giving up his own life.)

Opponents of the death penalty counter. There is no definitive evidence that those states which carry the death penalty have lower crime rates or less heinous crimes because of that practice. It has not been proved that having the death penalty in place stops people from committing the crime, nor does lawful execution do anything to improve the status of the original victim of the crime or make the suffering easier for his family. What we are left with, in this system is a second wrong (committed by the government) coupled with the first wrong (committed by the accused) and more than one life taken, through this system of justice.

There can be no absolute certainty of guilt in the sentencing of, or in the execution of the death sentence for the accused, because of the subjective judgment of lawyers (prosecuting and defending), the judge and the jury. There are also aggravating and the mitigating factors to be considered. There are race relations and political gains that are factored in and there is the all important concern of capitalism to be protected. Above all of the aforementioned, there is the desire of the dominant group to maintain control.

F Y I

For quick points of reference, a brief summary of the charges and sentences of William Furman and Warren McClesky cases, along with the Eighth and Fourteenth Amendments precede the discussions within the text of this unit.

FURMAN V. GEORGIA

William Furman, a black man was convicted and sentenced to death for the murder of a white man. After unsuccessful appeals in the Georgia Courts, the U.S. Supreme Court reviewed his case and ruled in his favor.

McCLESKY V. KEMP

Warren McClesky, a black man was convicted of two counts of armed robbery and one count of murder. His victim was white. He was sentenced to death in the Georgia court. The Georgia Supreme Court affirmed the convictions and sentence. U.S. Supreme Court affirmed the convictions and sentence of the lower courts.

AMENDMENT EIGHT

‘Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.’

AMENDMENT FOURTEEN

‘All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside.’

‘No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within it’s jurisdiction the equal protection of the laws.’

A LOOK BACK

As individuals, we are asked to make choices in helping to determine our future. In an attempt to understand our present status and evaluate the future of capital punishment in America, it is necessary to understand some of its distinguishable trends of the past. Each trend in the history of capital punishment represents the struggle between retentioniststhose who would maintain capital punishment and abolitionists, who oppose lawful death by the American government.

America's earliest recorded legal execution dates back to 1622 in the Colony of Virginia. Since Daniel Frank's execution for theft, an estimated 20,000 people were lawfully put to death over the next three centuries. About half as many were lynched in the street. (There was no penalty for street lynchings.) Questions were raised by concerned citizens regarding the morality of the practice and about the methods of punishment that were used, but the practice continued.

As early as 1892, the Supreme Court had need to rule on the idea of cruel and unusual punishment. It was not until 1910 in *Weems v. U.S.*, the Supreme Court ruled that 'the proscriptions of cruel and unusual punishments forbids the judicial imposition of them as well as their imposition by the legislature.' The Court's decision acknowledged that its opinion of the proscription of cruel and unusual punishment was not fastened to the obsolete (earlier practices of law and method could be changed).

By 1967, efforts were under way to persuade the Supreme Court that 'the infliction of death by law violated the national Constitution in particular the Eighth Amendment, which forbids the infliction of cruel and unusual punishments.' (Black, '81.)

In a 1972 landmark decision, the U.S. Supreme Court was persuaded that the practice was unconstitutional in the case of *Furman v. Georgia*. In a 5 to 4 decision the Court ruled that the death penalty, as presently administered was unconstitutional, with trial judges and juries having too much discretion in choosing a life sentence or the death penalty. The decision did not declare capital punishment unconstitutional, however.

After the *Furman* decision was announced, it became apparent that the controversy over the death penalty would continue with a degree of urgency to answer other questions surrounding its usefulness and its practices. The decision was neither a clear victory for retentionists or abolitionists.

Although, the decision effectively voided the death sentences of six hundred-thirty-one persons on death row and in thirty-two states, it did not settle the question of whether this society should have a penalty of death as a form of punishment. Although personal opposition to capital punishment was expressed by eight of the nine Supreme Court Justices, only two of the nine thought that the death penalty in any form was unconstitutional.

In that same year, in a 1972 press conference, President Richard Nixon announced his support of the death penalty, for certain crimes and took decisive action to restore it. Also in that same year, California passed Proposition 17 to restore a mandatory death penalty for several crimes and to prevent judicial review of such legislation. One year after the *Furman* decision, bills had been introduced to restore capital punishment in thirty-six state legislatures. A Gallup poll indicated that 57% of the adult public ('far removed' or 'informed public') supported the death penalty in some form.

Two years after *Furman*, twenty-eight states had new death penalty legislation and more than one hundred persons in seventeen states had been sentenced to death under these new laws, although none were actually executed. Despite the moratorium on executions, the country was still unwilling to abolish the death penalty.

In only four years, after the *Furman* decision, more than four hundred people were on death row in thirty-two states. Already, the U.S. Supreme Court had begun review of its next death penalty case, '*Fowler v. North Carolina*.'

Wherein many thought that *Furman* had signaled an end to the system of capital punishment, it was merely an interruption in the practice of lawful killing. In essence, it may have had an opposite effect. *Furman* signaled a frenzy of legal activity. In order to reinstate the death penalty, state laws were written in

compliance with the Furman ruling. Clearly the objective was to maintain the death penalty.

'Just as Furman was greeted as the abolition of capital punishment, McClesky has been described as the abandonment of constitutional regulation of the death penalty.' (Black, '81) McClesky suggested a case-by-case approach to reviewing existing death sentences. The claims of racial discrimination brought by McClesky suggested that the system of capital punishment in America is discriminatory in its very nature. The system will exist as long as discretionary judgment is upheld as a necessary part of the procedural process.

CRUEL AND UNUSUAL PUNISHMENT

I am inclined to agree with Supreme Court Justice, Douglas' concurring opinion in the Furman decision which he likens to a statement in *Trop v. Dulles* (1958) and which states ' . . . the Eighth Amendment, must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.' He goes on to state that inflicting the death penalty upon one is indeed 'unusual' if it discriminates against him by reason of race, religion, sex, wealth, social position or class, or if it is imposed under a procedure that allows for such prejudices.

The American concept of cruel and unusual punishment goes back to English history. Early English documents show that the concept was intended to prohibit excessive punishment, rather than modes of inflicting the punishment.

America's laws of punishment appear to follow a similar pattern as the English laws, although the founding fathers intended to interpret it with much broader meaning. Clearly George Mason, author of the Declaration of Rights, the ratifying delegates and those who adopted the laws did not view the amendment clause solely as prohibitive of excessive punishments, but prohibitive of torture and other cruel punishments, as well.

Beginning with the Massachusetts Body of Liberties, concern about torture and punishments were clearly outlined in six articles of the document. However its 1641 adoption did not include legislation restricting cruel and unusual punishment. While there was concern for cruel and unusual punishment, a number of the forms of punishment appeared in colonial America, as they had been practiced in England.

FROM CONCEPT TO LAW

1776 marked a new era in the history of cruel and unusual punishment with the adoption of the Virginia Declaration of Rights. Article 9 of the Declaration stated: 'Excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.'

As the American Revolution began, each of the thirteen colonies made plans for drafting and adopting constitutions. Eight of the thirteen adopted constitutions containing a separate bill of rights. Of these, only Connecticut and Pennsylvania did not include prohibitions against cruel and unusual punishments. Four states scattered individual rights throughout the main texts of their constitutions.

The final document of 1787 contained a bill of rights that stated: ' No cruel and unusual punishment shall be

inflicted.’ Such high regard was held for this concept, that other guarantees like freedom of speech or press, search and seizure and double jeopardy were not enumerated, although were obviously included. In December of 1791 the cruel and unusual clause became the Eighth Amendment to the federal Bill of Rights and thus part of the formal law of the land.

INTERPRETING THE CLAUSE

Although there was some confusion as to which branch of government, (state legislature or the court) the inhibition applied, judicial decision-makers at all levels, uniformly interpreted the clause as restricting certain modes of punishment and they generally agreed upon which of them constituted cruel and unusual punishments. Specifically, prohibited were those crimes that had been practiced in England and in colonial America. The death penalty, however was not prohibited nor were the various means of inflicting it, such as shooting, hanging or electrocuting.

Throughout the nineteenth century, litigation over cruel and unusual punishment was heard in various regions around the country. The twentieth century saw increased litigation over the modes of punishment. Punishments of fines and imprisonment were upheld as not being cruel and unusual, per se, along with hanging, electrocuting, lethal gas and finally, sterilization.

When compared to the practices of the English, American punishments, appear mild and almost harmless. In the spirit of humanity, the method by which one is lawfully killed hardly makes any difference at all. The fact that one is being killed ‘lawfully’ is what poses a question for humanists. The lawful killing of a person as a form of punishment, is inhumane. It was so then in England and is, even more so today in America.

THE FURMAN DECISION

William Furman, a twenty-six-year-old mentally deficient black man, was convicted of the murder of a white householder. Lucious Jackson, a twenty-one-year-old black man of average intelligence was convicted of raping a white woman. Georgia’s state Supreme Court upheld both convictions and death sentences. A third case involved Elmer Branch, a borderline, mentally deficient black man who entered the home of a sixty-five-year-old white woman and raped her. The Texas Court of Appeals upheld the conviction and the sentence of death. The U. S. Supreme Court ruled on Furman as the lead case and overturned the three convictions, by the lower courts.

These three cases came to the attention of the U.S. Supreme Court, just four months after the case of *People v. Anderson* in which the California Supreme Court, by a six to one decision held that ‘the infliction of capital punishment, per se, constitutes cruel and unusual punishment.’ This decision by the U. S. Supreme Court came to be known as the Furman decision. In short, the Court announced, ‘the imposition and carrying out of the death penalty . . . constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.’ (Berkson, ’75)

The Furman decision could well have signaled the end of capital executions in this country. But the political playing field was not yet ready for such new ground to be broken. The decision set a precedent for conviction

and sentencing in capital crimes. While it abolished the infliction of the death penalty, the decision left open an acceptability of the continued practice of capital punishment, if it were fairly applied.

The phrase 'if fairly applied' would have meant mandatory death for all who were convicted of capital crimes or limitations to discretionary judgment by a prosecutor to seek the death penalty, over a plea bargain to a lesser crime; by a jury to find the accused guilty of the capital crime, rather than a lesser crime, for which the sentence might be life imprisonment, and by the judge who instructs the jury in what their findings could be.

All nine justices wrote separate opinions in the decision representing a variety of rationale on both sides. The one consistent idea that ran throughout the majority's opinion was the death penalty had been applied in an arbitrary manner and thus constitutes cruel and unusual punishment. The opinion of the minority was equally consistent. They agreed that judicial self-restraint should be exercised in the present case and that the ultimate determination should be made by the legislature.

It was necessary for Justice Marshall, in making his decision to construct four standards against which the death penalty should be measured. A penalty may be considered cruel and unusual for any one of the following reasons: (1) if it involves so much pain and suffering that civilized people cannot tolerate it; (2) if it was previously unknown for a given offense; (3) if it was excessive and served no legislative purpose; and (4) if it is abhorred by popular sentiment. (Derkson)

THE McCLESKY DECISION

How does one determine who should or should not receive a death sentence? Herein lies the question of fairness of the entire system of capital punishment. Gross and Mauro, in their book *Death and Discrimination*, delicately phrase their opinion on the issue. They write, 'It is no small comment on our society that we openly and consciously tolerate a system in which race frequently determines whom we execute and whom we spare.'

Following various failed attempts in the Georgia Courts, Warren McClesky's case was reviewed by the U.S. Supreme Court. McClesky, a black man convicted for the murder of a white person was sentenced to the death penalty. Armed with the findings of the Baldus Study (a statistical study of death sentence patterns in eight states, from 1976-1980), McClesky accused the Georgia courts of racial discrimination in its death penalty sentencing violating the Eighth and Fourteenth Amendments.

The data presented in the study was rejected by the U.S. Supreme Court and it affirmed the findings of the lower courts. The Court acknowledges that race continues to play a role in capital sentencing, but has decided to do nothing toward correcting it and refuses to hear future claims on the subject. Justice Powell writes in delivery of the Court's opinion 'Implementation of these laws necessarily requires discretionary judgments.'

I am sure that there is little disagreement that discretionary judgment is necessary. However, we know that the Court cannot regulate the thoughts, ideas or prejudices of any one person, including its own, who is directly involved in the process. Because there is no sure way of eliminating personal sentiments regarding race and other social variables, the death penalty should be abandoned in the interest of fairness.

The position taken by the court in McClesky dealt not with the claims brought by McClesky, but rather the evidence that was presented in defense of his claim and the position in which the court would be placed if it ruled in his favor. In the Court's opinion, 'a defendant who alleges an equal protection violation has the burden

of proving the existence of purposeful discrimination.'

The Court held that statistical evidence of racial discriminationthe type of evidence presented in the Baldus Study was insufficient to establish an unconstitutional pattern of capital sentencing under the Eighth or Fourteenth Amendment. Since McClesky could offer no proof of discrimination in his own case, the Court did not have to entertain his claim or any that would likely follow.

Further McClesky claimed and offered Baldus' statistics as proof, that most of the cases in which the victim was white and the defendant black more often received the death penalty (6.6 % or 51/773). In cases where the victim was black and the defendant was also black, the death penalty was not applied as often (0.7% or 10/1,345). In Georgia's Middle Judicial Circuit where the population was 40% black, 77% of black defendants received death penalty rulings.

McClesky also suggested that the State violated the equal protection law by adapting capital punishment and allowing it to exist despite claims of its alleged discriminatory practices. The opinion of the concurring justices skirted around truthfulness about the Georgia system. They cited findings in other casesFurman, Gregg and others as precedents and they noted that Georgia had strengthened its system by adopting laws which were in compliance with post-Furman practices. However to agree with McClesky would mean that the entire system of capital punishment in America was unconstitutional, per se.

It was the job of the dissenting justices to offer an opinion that was more closely related to truth about the system of capital punishment as questioned in this case. Justice Brennan who opposes the death penalty notes that Georgia has long practiced a dual system of criminal justice. He also wrote '... Georgia's legacy of a race-conscious criminal justice system, as well as this courts own recognition of the persistent danger that racial attitudes may affect criminal proceedings, indicate that McClesky's claim is not a fanciful product of mere statistical artifice.'

CONCLUSION

The decision to create change, throughout the history of capital punishment, was too often predicated on questions of what method of death would be easier, quicker or cheaper to administer to the accused? What method of death would least offend the public? What deterrent to crime would we have if we abolished this system? More accurate questions might have been'What is most humane for our time? What other forms of punishment might be useful in deterring crime? Do we abolish the death penalty for all crimes, in the name of humanity, or do we merely seek new forms of inflicting death?

Although the country continues its struggle with menacing questions and concerns over capital punishmentthose who support and those who oppose, from the highest law of the land, we get this bit of wisdom regarding the death penalty. 'The infrequency of its application, suggests that among those persons called upon to actually impose or carry out the death penalty, it is being repudiated with an ever increasing frequency.' Can we, opponents of the penalty get excited in thinking that this position suggests an unacceptability of such a practice in our society, at this time?

Supreme Court Justice Marshall offers these reasons why citizens (informed public) would reject the death penalty: it is imposed discriminatorily against certain classes of people, there is evidence that some people

have been executed before their innocence can be established and the death penalty wrecks havoc with our entire system of criminal justice. I concur with Justice Marshall.

LITTLE KNOWN FACTS

American Society for the Abolition of Capital Punishment formed-1846

William Kremmler was first criminal to be put to death by electricity.

In 1935, 199 people were lawfully executed in the U.S..

The last public executions were: Rainey Bethea, black male, for rape, Kentucky, 1936, 28,000 spectators

Rosco Jackson, white male, (crime unknown) Missouri, 1937, 500 spectators

Gary Gilmore was executed in Utah, by firing squad—1977

Oklahoma was first to pass lethal injection bill—1977

Territory of Michigan abolish hanging in favor of life imprisonment, for all crimes except treason—1846

Of 3,944 persons lawfully executed (1930-1989), 2,113 were black.

LESSON I READING AND VIDEO DRAMA

OBJECTIVES

Students will be able to

Articulate their moral positions on the death penalty

Demonstrate their understanding of the moral questions being raised about the death penalty.

PROCEDURE

Introduce the unit by discussing the position paper found at the beginning of the unit. Poll the class to see what their feelings are about the death penalty. Encourage students to share information about the cases and their ideas of punishments for O.J. Simpson and Susan Smith. This might be a good time to summarize and discuss the statistical data and ideas presented in the McCLESKY DECISION.

Read the INTRODUCTION to the unit and let the students read the segment A LOOK AT CAPITAL PUNISHMENT. When you are satisfied that the ideas are clear to the children, ready your video camera and invite them to participate in an impromptu drama activity for the camera.

Follow the drama with a discussion, art or writing activity that focuses on how they felt in their roles.

LESSON 2: LIBRARY RESEARCH AND DEBATE

OBJECTIVES:

Students will be able to demonstrate an understanding of arguments for and against capital punishment.

Write a persuasive argument that defends their personal positions on the death penalty.

Stage a formal debate in defense of their position on the death sentence.

PROCEDURE

Tempt students with the idea of staging a formal debate. Have them know that it will require readings and class discussions, research, writing and oral speaking. For an added bonus, tell them they will be invited to do some role playing as a part of the total study project.

Begin this phase of the unit by reading and discussing the section TAKING ISSUE. Follow the reading with a discussion that summarizes the information and helps students to define their positions on the issue. (see 2-1)

After you've given students an opportunity to discuss their positions on the issue, engage them in dialogue about maintaining or abolishing the system of capital punishment.

Divide the class into small groups. Tell them that each group will read one of the given readings and serve as a panel of experts in a fifteen minute discussion of the information from their readings. (If a video camera is available, tape their presentations.) The remainder of the class will serve as the studio audience with related questions or comments. Use the readings A LOOK BACK, CRUEL AND UNUSUAL PUNISHMENT and FROM CONCEPT TO LAW to discuss the ideas presented in each. Other readings, within the unit's text can be chosen as they relate to the selected debate topics.

Either as a class assignment or independent study assignments, ask students to research one of the ideas that are listed in the activity segment (see 2-2) and prepare to share their findings with a selected audience. Much of the planning and preparation for this activity can be done orally and with minimal supervision.

Define the debate groups by their interest in the issues (some ideas may not be applicable for topics, but may be used in other ways.) Assign teams and help them plan the research. (see 2-3)

LESSON 3: SCENARIO WRITING

OBJECTIVES:

Students will be able to

Identify laws that have developed in response to social conditions

Determine the assumptions underlying particular events

Use the problem solving method to plan alternatives forms of punishment

Write an original future scenario.

PROCEDURE

By now you would have discussed the cases of Furman and McClesky in relation to the Eighth and Fourteenth Amendments. You have had the students complete research of some of the suggested ideas, now you want to help them analyze what they have learned.

Begin by reading the unit's CONCLUSION and recapping some of the information that has been covered, up to this point. Have each student complete the BACKGROUND READING (see 3-1) and discuss how they feel about the new laws that are being developed most of which are directed at their age groups.

Students are now ready to complete the cross impact matrix. (see 3-2) Explain that the matrix is a forecasting technique for analyzing how events impact upon each other. Use activity (3-1) for information to complete the matrix.

Divide students into groups of four or five and tell them that they are going to serve as lawmakers, for this activity. Tell them that once their group has worked through the problem solving approach to finding alternative forms of punishment to the death penalty, they each will be asked to create their own future scenario based on the information given for the scenario (3-3) and the alternative solutions from the previous activity. (Note: The problem solving process is easily located in various resources, as is scenario writing. I recommend *Teaching About-the future* (see unit Bibliography).

SCENARIO BACKGROUND READING 3-1

Much of the social, political, economic and religious values of a society are reflected in its legal system. As a society changes, so do the methods by which its people are governed. As population increases and equal opportunity decreases, so does the rate of crime increase, as all citizens compete for the limited goods and services that are available to a nation. The increase in crime rates is problematic to all of society. In an attempt to remove many of its criminal elements from society, the country is seeking more effective forms of punishment.

Some of the changes being sought target juvenile offenders, (ages fourteen and fifteen) who commit violent crimes to be punished as adults. Others involve reinstatement of the death penalty, in a number of states or revisions to already existing laws against capital crimes. Still other efforts are underway to require longer prison stays for repeat and violent offenders.

Most recently, we have seen the approval for the hiring of more police officers to patrol the streets, community policing, a bill up for passage to grant authority for police to conduct warrantless searches (clear violation of Fourth Amendment) and the institution of curfews for teenagers, in some of the country's larger cities.

It will take some time before we are able to measure the effects of these changes. However, history tells us that tougher laws, even the threat of the death sentence have not effectively deterred crime.

SCENARIO INFORMATION 3-3

This is Anytown, USA1999. Present-day America finds itself faced with an unprecedented wave of crime. The immediate task for you, the newly formed group of lawmakers is to look for ways to help prevent crime and to seek alternative forms of punishment, now that the death penalty has been abolished.

Your aim is to effectively rehabilitate those who are imprisoned and try to create an environment that will help deter those who seem to be at risk for potential criminal behavior. Your ideal society is one that works toward racial balance, economic freedom for the people, as well as for the government, and an educational system that produces critical and creative thinkers who are also humanitarians. Above all, education must be accessible to all. Remember that the rules of equality in the law is an underlying principle.

CROSS IMPACT MATRIX 3-2 (figure available in print form)

(figure available in print form)

VIEWPOINTS 2-1

Issue—

- * Describe one point of view about this issue.
- * What are the strongest arguments that support this view?
- * List any facts or events that support this view.
- * Describe an opposite point of view on the issue.
- * What are the strongest arguments that support the opposing view?
- * List any facts or events that support the opposing view.
- * Which point of view do you support and why?

A FEW GOOD IDEAS 2-2

The following ideas can be used as topics for RESEARCH, DEBATE, WRITING and DISCUSSION

The practice of the death penalty violates Amendments 8 and 14 of the U.S. Constitution.

A sentence of death is inhumane.

The death sentence is

- a form of genocide
- a form of suicide.
- a lawful murder.
- a method of population control.
- an ethnic cleansing.
- a just punishment.

The practice of sentencing the poor and selected minorities to the death penalty has been argued as racially discriminatory. Is it race or social class?

The death penalty has not proved to be an effective deterrent to crime.

The death sentence is a necessary form of revenue in a capitalistic economy.

STATEMENTS OF RESOLUTION:

The sentence of death is the best form of punishment for capital offenders.

Capital punishment convictions which result in a sentence of death is a necessary deterrent to crime in this country.

The decision rendered by the U.S. Supreme Court, in the 1986 McClesky case served as sanction for the Georgia State Courts to continue discriminatory practices in capital sentencing.

The death penalty should be abolished in favor of life imprisonment.

DEBATE 2-3

A debate is a persuasive speech. The object is to win the debate by presenting the best, most convincing arguments. Your team will take one side of an issue or question and try to prove to an audience that your view is most convincing. The winning team will be determined by the logic of the arguments, the facts to back up the arguments, and a convincing manner of delivery.

The following steps are outlined to help you prepare for the debate.

1. Choosing a team A debating team consists of three people two debaters and an alternate. The debaters are the speakers and the alternate takes notes and gives advice. All members of the

team must be familiar with the information and the strategy. In the absence of a debater, the alternate will speak.

2. Select resolution The topic of a debate is stated in the form of a resolution or proposition. The resolution statement should have teacher's approval.

3. Select positions The team who argues for the resolution is the affirmative team. You argue that the resolution should be adopted or that it is advantageous to society. The negative team will argue against the resolution. You will try to prevent the adoption of the resolution by defending the present condition or situation.

4. Research Gather as much current information on your subject as possible. Your information should include facts, figures and expert opinions, as well as your own. It can be taken from a variety of print and non-print resources. Record the information and its source on note cards (one fact per card.) Remember that there are special rules for quoting someone's opinion.

5. Organize research Your goal is to prove your claim. Combine the evidence from your research with logical reasoning. You will need a few major points and several minor points to help support your reasoning. Use the research information to support the major and minor points. Decide on the most logical order to present the information.

6. Write Presentation The first person to speak has a prepared speech. All other arguments will be presented from organized note cards, including all the information that you are using to support your main points.

7. Prepare refutation You are required to present a convincing argument and counter the arguments of the opposing side. That means you will have to research both sides of the resolution and pay close attention to the points made by your opponents.

8. Practice and Debate

NOTE: your teacher will provide the outline for staging a formal debate. The order in which the teams will speak is outlined here.

Constructive you build your case by introducing arguments and evidence. (10 min. each)

1. First affirmative presents resolution, defines terms, presents justification for accepting resolution.

2. First negative states any objections to definitions, presents opening arguments, outlines major issues.

3. Second affirmative reestablishes position and extends arguments.

4. Second negative continues arguments by reviewing issues.

Rebuttal attack or defend point that were introduced. No new arguments are introduced, but new evidence may be. (5 min. each)

1. First negative continues arguments in development of previously stated issues, refutes affirmative position,
2. First affirmative responds to negative arguments.
3. Second negative presents an overview of strongest points and best arguments that refute the resolution.
4. Second affirmative presents an overview of strongest points in favor of resolution and that best refutes the negative position.

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VIDEO (recommended titles)

WHITE LIE tells the story of a young man who returns to a small southern town in search of truth about the lawful hanging of his father, thirty years earlier. It turns out that at the time of the hanging, local law enforcers knew that he was not guilty, but he was hanged anyway. He was poor and black and this was the South.

SHAWSHANK REDEMPTION is the story of a number of men serving life sentences in prison, or waiting on death row. The lead character's story highlights mistakes in the criminal justice system. He was serving a life sentence for a crime he did not commit. He talks of how he learned to be a criminal after being imprisoned and the kinds of criminal behavior necessary for survival behind bars that of both the inmates and the jailers.

LAST LIGHT focuses on a death row prisoner who feels that he has nothing else to lose. The story highlights the loss of human dignity

for the death row inmate. It appears that the courts did not consider the mitigating circumstances of this man's life as he went in and out of the prison system as a teenager, or those that eventually landed him there on 'The Row.' The movie ends with an execution by electrocution.

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