

Forty-five Words of Freedom
THE FIRST AMENDMENT • KEEP IT STRONG
Teacher's Guide

INTRODUCTION

The key words for presenting this unit on the First Amendment are “ADOPT and ADAPT.” The objectives, information and activities have been designed for use in Grades 8-12. That covers a wide range of student capabilities, and it is therefore necessary for each teacher to customize the material to meet the particular needs of students at the appropriate grade level.

On the surface, a unit on the First Amendment seems particularly relevant to English, journalism and social studies courses, but it can certainly be applied in other disciplines as well. For example, in music classes discussion may focus on controversial songs and censorship. In science, the religious controversy of teaching the Darwinian theory of evolution in the public school classroom still raises debate in some areas of the country. (Recall the 1925 trial of John Thomas Scopes, the “Scopes Monkey Trial?”) Would it be a violation of the First Amendment for a governing body to prohibit educators from teaching a scientific theory of evolution simply because a majority of the community wants to promote the theory of creationism instead? More recently, the editors of the world’s leading scientific journals said that they would delete details from published studies that might help terrorists make biological weapons. Would it be a violation of the First Amendment if our government were to require editors to censor scientific data or if the government would force scientists to adopt a top-secret classification system similar to that used by military and government intelligence agencies? The First Amendment is relevant to every subject of the curriculum and to every topic of school interest.

The purpose of this unit is to offer a panoramic view of the First Amendment and to inspire students and others to honor it as an essential protection of individual freedom and American democracy. By understanding the substance and spirit of the First Amendment, students should develop a greater appreciation for the importance of diversity and they should develop a greater sense of ethical issues in decision-making. They should learn about the awesome power that words can have, about noble ways of dealing with controversy, about the importance of accepting the other perspectives for consideration in the marketplace of ideas, about balancing rights and responsibilities, and about how the First Amendment supports freedom and contributes to a safe environment for everyone.

The unit may be divided into six parts:

Page 1 of this First Amendment curriculum presents survey information regarding awareness and application of the First Amendment and lists topics to be examined.

Part I: “The First Amendment in Context.” This lesson provides a brief background of the Bill of Rights, allows students to see the First Amendment in the context of the entire Bill of Rights, and introduces the substance and spirit of the First Amendment. (Page 2)

Part II: “The Five Freedoms.” This lesson examines the five freedoms — religion, speech, press, assembly and petition — protected by the First Amendment. (Page 3)

Part III: “The Parameters of Freedom.” This lesson illustrates the nine categories of unprotected speech. (Page 4)

Part IV: “Interpretation.” This lesson presents examples of how the Supreme Court has interpreted the First Amendment. (Page 5)

Part V: “In Pursuit of Virtue.” This lesson focuses on ethical considerations of the First Amendment. (Page 6)

Part VI: “Adapting Speech to School.” This lesson presents an overview of the status of the First Amendment in our public schools and it gives examples of how freedoms may be adapted to the school setting. (Page 7)

Page 8 presents a list of Internet sites that can help teachers discover First Amendment lesson plans and activities and can help students research First Amendment issues. An essay on Page 8 focuses on the need for schools to embrace the First Amendment via practice rather than as distant theory.

Teachers have many options for constructing a timeline for presenting the unit on the First Amendment. The sequence of topics is arranged in a logical pattern that allows teachers to combine lessons in order to accommodate the time they choose to assign for the unit. For example, Parts I and II (Bill of Rights and Five Freedoms of First Amendment), Parts III and IV (Unprotected Speech and Court Decisions), and Parts V and VI (Ethics and School Application) may easily be combined for presentation in a three-day unit. The recommended length of time for presenting each individual lesson is 45 minutes, but that, too, may be changed to fit a customized design. As a teacher determines strategy for adapting this unit, the teacher is encouraged to spend at least some time on all six topics in order to present the First Amendment in a broad perspective that emphasizes relevancy in the school arena.

The goals listed on the page of each lesson may be qualified to meet the ability range of each grade level. Teachers may arbitrarily assign goals, modify them or offer new ones.

The activities suggested in this guide may be complemented by or replaced with activities found on various Internet sites listed on Page 8. Many of those sites present excellent lessons on the First Amendment.

I. FIRST AMENDMENT IN CONTEXT

(Page 2)

Activities

(1) As an anticipatory activity, give a pretest on the First Amendment. The provided pretest measures students' knowledge of some of their First Amendment rights, and it sets the stage for some of the concepts that will be covered in the unit. Grade the test in class and discuss what students discovered about themselves by taking the test.

(2) What would it be like without the First Amendment and the Bill of Rights? Individually or in small groups, assume the role of a dictator and censor a newspaper. Take the newspaper, and using a magic marker, cross out every story or item that contains critical information about the government, every story that could cause citizens to become upset with the government, and every other story that a dictator would not want published. Compare results with other individuals or groups. Discuss the rationale used in deleting stories. How does this kind of censorship hurt the welfare of citizens and the nation?

(3) Have students use their creative art/design skills to build a scale model or draw a blueprint of a First Amendment "fortress." The fortress could have five walls, each wall representing a freedom — religion, speech, press, assembly, petition. The center could represent the individual or the people whose rights are being protected.

(4) Here's an activity to help students appreciate the right of free expression. Divide the class into groups of six or seven. Select three members of each group and send them into an isolated area where they cannot hear what is being said in class.

First talk to the groups of three. Tell each group of three that they are to argue different positions on an issue in an attempt to get their entire group to adopt their individual position. Perhaps the issue is how to best celebrate a homecoming pep rally. Individual #1 will argue for a bonfire; individual #2 will argue for a fireworks display; individual #3 will argue for a pep rally in the football bleachers with the game ball being delivered by an Army helicopter with soldiers repelling down to the field with the ball.

Tell the advocates to think about their strategy and rationale, and then go back to the classroom. In the classroom, tell all the groups that when the student advocates return, each group is to subtly agree with the position of student #1 (bonfire). The group members are to subtly argue against position #2 (fireworks display is too expensive, too dangerous, environmentally not good, etc.). Finally, the student who is arguing for the Army helicopter should be totally ignored. Don't take a stand on the helicopter; just don't give the person a chance to argue that case. If he starts, quickly raise a question or make a comment about the other two positions.

The purpose of the exercise is to let students discover how it feels to have an "unpopular" (bonfire) idea rejected and another idea (helicopter) totally suppressed or ignored. The student who couldn't get a word in (helicopter advocate) probably felt the worst. Relate the experience to the First Amendment, which protects the right of all individuals to have their views considered in the marketplace of ideas.

(5) On each of 10 index cards, write one of the first ten

amendments (the Bill of Rights). Create groups of two or three in the class, and give each group an index card. Each group then creates a skit to illustrate the amendment it was assigned. (The teacher may need to help groups with Amendments 9 and 10.)

(6) Go through a newspaper and label every article that in any way may be related to one of the first ten amendments. Be sure to identify the amendment and tell how it is relevant to the newspaper article. Discuss why old history (the Bill of Rights was ratified in 1791) is still relevant today.

(7) Review the cartoon page in a newspaper and cut out every cartoon that even remotely could be related to one of the Bill of Rights amendments. For example, a cartoon showing an employee complaining to his boss could be an illustration of "petitioning ... for a redress of grievances." Discuss how cartoons can carry political messages that are protected by the First Amendment.

(8) The First Amendment protects the minority from a tyranny of the majority. Cut out examples from a newspaper that illustrate stories, photos, or cartoons that carry a message the majority of people probably do not agree with. Would many like to see these stories suppressed? Why? How could they upset the "majority?"

(9) Invite an attorney, a judge, a newspaper editor, or a member of the American Civil Liberties Union to address the class on the First Amendment and the Bill of Rights.

(10) Create a panel that could include the principal, a teacher, a parent, and two students to discuss what school officials are doing to recognize and protect student rights. Allow the class members to ask questions of the panel.

Goals

The suggested responses to learner goals are not inclusive. The learner may correctly provide other information that satisfies an objective.

THE LEARNER WILL ...

• Explain the purpose of the Bill of Rights.

The purpose of the Bill of Rights is to provide an important check on government. The first ten amendments to the Constitution define many individual liberties, and they protect those liberties by setting limitations on the power of government.

• Cite five facts on the background of the Bill of Rights.

(1) The Bill of Rights was ratified (added to the Constitution) on Dec. 15, 1791, two years after the Constitution itself was ratified;

(2) The Federalists promised the Bill of Rights after the Anti-Federalists complained that the proposed Constitution did not contain an explicit list of individual freedoms;

(3) James Madison (who was called the "Father of the Constitution," because he helped delegates to the Constitutional Convention reach compromises) supported the Bill of Rights;

(4) the first 10 amendments are collectively known as the Bill of Rights;

(5) the Bill of Rights provides an important check on government by protecting citizens from government abuse.

• Be able to match each of the first ten amendments with a description of its contents.

Amendment 1: Freedom of Religion, Speech, Press, Assembly, Petition;

Amendment 2: Right of People to Keep and Bear Arms;
Amendment 3: Quartering Troops in Homes;
Amendment 4: Search and Seizure;
Amendment 5: Rights of the Accused;
Amendment 6: Right to a Public Trial;
Amendment 7: Jury Trials in Civil Cases;
Amendment 8: Cruel and Unusual Punishment;
Amendment 9: Rights of the People;
Amendment 10: Powers of States and People.

• **Write a paragraph showing how the Bill of Rights provides an important check on government power.**

Student may provide a specific example, such as “Under the First Amendment, government can not prohibit a person from exercising religious freedom so long as such exercise does not interfere with the rights of others.”

Student may respond in a more general manner, such as “By protecting many individual liberties, the Bill of Rights keeps the power of government under control and the reins of government in the hands of the people.”

• **Give five specific examples to show how our individual liberties would be in jeopardy without the First Amendment.**

- (1) Freedom of religion could be restricted;
- (2) Freedom of speech could be suppressed;
- (3) People could be denied the opportunity to learn important information from a free press;
- (4) People could be prohibited from organizing in opposition to government policies;
- (5) People could be denied the right to criticize government policies. Other examples could involve the integrity of other amendments, such as “Without the First Amendment, people may be suppressed from criticizing the way a government official interprets the Fourth Amendment on search and seizure. (Without First Amendment protection, an individual could be prohibited from questioning whether a police officer truly had “reasonable” cause to search his car?)

• **Paraphrase the quotation from the U.S. Supreme Court decision in *Tinker v. Des Moines*.**

The entire quote that begins “Students in school as well as out of school are ‘persons’ ...” means that within the parameters of safety, law, order, and legitimate educational concerns, students do have the right to express themselves in school, even if that expression may cause discomfort to school authorities or may not agree with the attitudes and perspectives held by school authorities. But students have obligations to the state, as well. In exercising their First Amendment freedoms, students must stay within the boundaries of protected speech.

• **Explain why the First Amendment particularly serves the downtrodden, the powerless, the minorities.**

People of power have greater means for expressing their views than people who lack power. Furthermore, because they hold power, these people are likely to face less resistance for expressing an unpopular viewpoint. On the other hand, a person who lacks power needs to be protected from those who would abuse their power to prevent opposition or to deter other inconveniences caused by unwelcome expression. In a democracy of majority rule, minorities must be protected from a majority that would deny minority rights.

• **Provide one example of “tyranny of the majority.”**

Opinion polling confirms that a majority of Americans are strongly opposed to the viewpoints of the American Nazi Party. But to deny the right of members of the Nazi Party to express their views would be to exercise the same tyranny that most Americans see in the Nazi Party and want to suppress. “Tyranny of the majority” occurs when the majority uses its power to silence those who have different views.

Another example of “tyranny of the majority”: A minority political party wants to register new voters in a public park, but the majority political party — which controls the city council — denies permission to organize a voter registration drive there (right of assembly), because it fears the event would help the minority party to gain strength.

The First Amendment protects minority speech even when that speech is offensive to the majority. Time has shown that many ideas that begin as minority views later become the views of the majority.

• **Explain the quotation of Zechariah Chaffee Jr.**

The idea is that the majority can be wrong. (The majority once thought the world was flat.) By allowing freedom of speech, the majority must tolerate the expression of views it does not hold. As “unpopular” views are aired and criticism and dissent allowed, the majority gains new perspectives that help reveal truth.

• **Show how an individual can help “protect” the power of the First Amendment.**

By guarding the rights of others, even though you may strongly disagree with their perspectives, you protect your own rights, because everyone belongs to a minority on some issues and in some arenas. Everything you do to support the spirit and substance of the First Amendment makes it stronger for the time when you will rely on it to protect your rights.

II. THE FIVE FREEDOMS

(Page 3)

Activities

(1) Clip from a daily newspaper examples of stories or photos that deal with each of the five freedoms protected by the First Amendment: religion (church meetings, religious celebrations, religious issues, etc.); speech (speaker addressing an audience, letters to the editor, columnists, etc.); press (editorials, stories about press conferences, interviews, etc.); assembly (stories of meetings, demonstrations, parades, etc.); petition (articles dealing with citizens protesting governmental policy, with citizens criticizing government officials, with people organizing in opposition to those in authority, etc.).

Summarize in a sentence or two the nature of each example. Discuss why the press covers these types of stories.

(2) Have a 5-person panel where each panelist represents the role of one of the “five freedoms.” The narrator of the panel will ask each panelist questions relevant to the freedom being portrayed.

For example, “Mr. Freedom of Assembly, under what circumstances may the government prevent you from holding a meeting? What regulations may the government legally impose on your gatherings? Why are you so important in a democracy? How do you protect the rights of an individual? Why should the right of people to organize be protected?”

Have the narrator share the questions in advance so panelists may prepare. Let the audience ask questions and at the end of the event, discuss things that students learned.

(3) Divide the class into small groups. Give each group a couple of newspapers. Remind the class how newspapers are a powerful instrument of freedom and how the First Amendment protects the press from censorship. Tell the students to take the newspapers they were given and fold them in some way that symbolically represents the power of the press or the power of the First Amendment. (For example, the paper could be folded into a “Courageous Club of Freedom,” into the shape of a “Star of Enlightenment,” into a “Megaphone of Speech,” into a “Shield of Protection,” etc. Have each group present the rationale for their design.

(4) Have students give examples of movies, TV shows, or books that have as part of the theme any of the First Amendment’s five freedoms. Have at least one example for each of the five freedoms.

(5) Individually or in small groups, have students write a “school” scenario for each of the five freedoms of the First Amendment. For example, a “religion” scenario could have students gathered around the flagpole in a before-school prayer service, or a student could be reading a bible in study hall.

(6) Invite the editor of your local paper to talk to the class about how the newspaper uses the protection of the First Amendment to access and disseminate information. What are the current First Amendment issues the editor is concerned about. How does the newspaper work to protect the five freedoms?

(7) Draw a poster or make a collage illustrating any or all of the five freedoms of the First Amendment. You may incorporate clippings from a magazine or newspaper if you desire.

(8) Divide the class into groups. Have each group form a circle. Give each group a soft Nerf ball. The ball is tossed back and forth to members of the group. The person who tosses the ball shouts out one of the five freedoms, and the person who receives the ball gives an example of an issue involving that freedom. For example, if the sender shouts, “Press,” the receiver may respond, “Libel is not protected,” or “Should the press be allowed to broadcast trials on television?”

(9) Have students participate in a scavenger hunt, finding “props” that illustrate each of the five freedoms. This could be done individually or in small groups, inside the classroom or on a silent field trip led by the teacher around the school. The students would record the “prop” they see by listing it on paper. For example, props could include a book (press), auditorium (assembly), suggestion box (petition), a public address system speaker (speech), a religious icon worn by a student (religion). See which person or group has the largest list. Discuss.

(10) Divide the class into groups of two, three, or four. Have each group decide if they had to give up one of the five freedoms, which one would it be? Each group gives its rationale for its decision. Could the groups reach consensus? Did the different groups come up with the same freedom?

Goals

The suggested responses to learner goals are not inclusive. The learner may correctly provide other information that satisfies an objective.

THE LEARNER WILL ...

- List the five freedoms of the First Amendment.

-- Religion (no law prohibiting an establishment of religion or prohibiting the free exercise thereof);

-- Speech (no law abridging [curtailing] the freedom of speech);

-- Press (no law abridging freedom of the press);

-- Assembly (no law abridging the right of the people peaceably to assemble);

-- Petition (no law abridging the right of the people to petition the Government for a redress of grievances).

• Indicate Roger Williams’ contribution to freedom of religion in America.

In 1636 Roger Williams founded Rhode Island allowing full religious freedom. Other colonies were more restrictive.

• Give a specific example of a law that would violate the “establishment” clause.

Teacher should be prepared for a large variety of responses. One example is provided here. If a school district declared a holiday to celebrate the birth of Jesus Christ, such a “day off” would be illegal, because it would be promoting a particular religion. Under the First Amendment, every government entity must remain neutral on matters of religion.

• Provide some background about how freedom of speech evolved in the colonies.

In the early days of the colonies, freedom of speech was reserved to only a powerful few, including royal governors and clergymen. As elected colonial assemblies gained power, the common man more frequently expressed his views as a participant in government. Finally, when independence was won and the Bill of Rights ratified, the First Amendment protected the right of all citizens to exercise freedom of speech.

• Comment on two current issues involving freedom of speech.

Teacher should be prepared for a large variety of responses. The newspaper is an excellent source as well as via the Internet and examining what is on the Supreme Court calendar.

• Explain one function of the press that contributes to our democratic society.

The press contributes to democracy in many ways. To name a few: it helps define issues and provides information useful in analyzing the issues; it serves as a check on those in authority; it promotes citizen participation in government; and it promotes the general education of citizens, making them more effective decision makers.

• Tell what right freedom of assembly protects.

It protects the right of people to organize in opposition to government policies or to gather for other lawful purposes.

• Explain the statement: “The First Amendment must be for everyone, or else it is for no one.”

This statement means that we must honor the protection of the First Amendment not only when it is used in promoting our own views but also when it is used to promote views that we detest. If we don’t honor each other’s rights under the First Amendment, then no one will be protected.

• Tell why tyrants want to prevent people from exercising freedom of speech.

Tyrants want to control public opinion in order to retain their power. By suppressing free expression, they hope to silence any opposition.

• **Define what makes a statement libelous.**

Libel is published communication that falsely and maliciously harms a person's reputation.

• **Paraphrase "... to petition the government for a redress of grievances."**

"... to criticize the government and its public officials."

III. THE PARAMETERS OF FREEDOM

(Page 4)

Activities

(1) Draw a chart illustrating one or all of the nine categories of speech not protected by the First Amendment. The chart may include a definition, an example (without actually engaging in the prohibited speech), and anecdotal information (such as relevant court case or interesting facts) for each category.

(2) Search a newspaper or magazine for illustrations, pictures, and other graphics that in some way can be used to help convey each of the nine categories of unprotected speech. Display the clippings on a poster board.

(3) Using a newspaper or a magazine, find an example of "conflicting rights." (For example, a photo of a demonstration that impedes traffic—the right to assemble vs. the right to use a public road. For another example, a story of the poor parenting practices of the parents of a murder suspect—freedom of the press vs. the right to privacy.)

(4) Work in a group to create and perform a skit that reflects the concept of "unprotected speech." The skit should inspire the audience to appreciate why the freedoms of the First Amendment are not absolute, why every right has certain limitations. (Be sure the skit is in good taste, appropriate for a school audience.)

(5) Research your school policy on plagiarism, and relate that offense to copyright violation. What are any similarities and differences? Report to the class.

(6) Using Internet sites listed in this First Amendment curriculum, research student dress code issues in the context of "expression on school grounds that causes a material and substantial disruption of school activities." Hold a mock "trial" with some students defending the right of the student to dress in his own "style" and another group representing school administrators who believe the style constitutes a "substantial disruption." Have a third group be judges who render a decision.

(7) Using Internet sites listed in this First Amendment curriculum, research court cases involving categories of unprotected speech. Students present the facts and arguments of cases to the class, and the class votes on each case. Compare class vote with actual court decision and discuss.

(8) Examine Hollywood film archives and select a movie that portrays the issue of unprotected speech. Defamation is perhaps one of the more common of films made involving any of the nine categories of unprotected speech. Show the film in class and discuss.

(9) Video tape area principals on the criteria they use to define what expression on school grounds causes a material and substantial disruption of school activities. Compare and contrast the interviews.

(10) Invite the advertising editor of your local newspaper to address the class on the topic of deceptive or misleading ads.

Goals

The suggested responses to learner goals are not inclusive. The learner may correctly provide other information that satisfies an objective.

THE LEARNER WILL ...

• **List nine categories of unprotected speech.**

- (1) Obscenity;
- (2) Defamation;
- (3) Expression intended and likely to incite imminent lawless action;
- (4) Fighting words;
- (5) Unwarranted invasion of privacy;
- (6) Deceptive or misleading advertisements or those for illegal products or services;
- (7) Clear and immediate threats to national security;
- (8) Copyright violations;
- (9) Expression on school grounds that causes a material and substantial disruption of school activities.

• **Match categories of unprotected speech with examples.**

(1) Obscenity: A book has no socially redeeming quality and offends the reader with lustful thoughts that inspire uncontrolled or illicit sexual desire.

(2) Defamation: A newspaper prints a letter to the editor that falsely accuses the junior high basketball coach of getting drunk at a town tavern every night. The writer, who is upset that his son sits the bench during basketball games, knows the information is false. The coach's reputation is damaged by the letter.

(3) Expression intended and likely to incite imminent lawless action: During a highly emotional rally, a peace activist urges fellow demonstrators to throw rocks at police and set cars on fire.

(4) Fighting words: A racist confronts an African American citizen on a public sidewalk and shouts provocative, racial insults at him, causing the citizen such distress that he wants to punch the speaker;

(5) Unwarranted invasion of privacy: A businessman prints your clearly identifiable picture in an ad without your consent.

(6) Deceptive or misleading advertisements or those for illegal products or services: An advertiser publishes a picture showing a high quality leather chair when, in fact, the product he is selling is a much lower quality vinyl chair.

(7) Clear and immediate threats to national security: During a time of war, a publisher prints the names of CIA agents who are working in the enemy's country.

(8) Copyright violations: A bakery decorates cakes with an official likeness of Mickey Mouse without first gaining permission from Walt Disney Co.

(9) Expression on school grounds that causes a material and substantial disruption of school activities: A student stands up in the lunch room and encourages his classmates to walk out of school for the rest of the day to protest the poor food.

• **Explain a quotation of Oliver Wendell Holmes Jr.**

"The most stringent protection ..." quote means that protection for freedom of speech is limited. Shouting "fire" in a theatre when there is no fire can cause a panic and injuries. Such speech, maliciously expressed, would not be protected by the First Amendment. When he said, "The right to be let alone is indeed the beginning of all freedoms," he likely meant that the right of privacy is one of the most basic and cherished freedoms of man.

• **Provide a specific example of “conflicting rights.”**

The right to freedom of the press vs. the right to a fair trial. Massive pretrial publicity may prejudice a community and jeopardize a defendant’s right to a fair trial (see Sheppard v. Maxwell, 1966.)

• **Provide a specific example to illustrate that First Amendment rights are not absolute.**

The First Amendment does not protect speech that is libelous or slanderous. (See Page 4 for other examples: the nine categories of unprotected speech.)

• **Paraphrase “... appeals to a prurient interest in sex” by portraying “sexual conduct in a patently offensive way.”**

“... attracts a lustful interest in sex through the promotion of uncontrolled and/or illicit sexual desire in an openly, repulsive way.

• **List the four things needed to prove defamation.**

- (1) Publication;
- (2) Identification;
- (3) Harm;
- (4) Fault.

• **List the four different kinds of privacy complaints.**

- (1) Public disclosure of private and embarrassing facts;
- (2) False light;
- (3) Intrusion;
- (4) Misappropriation.

• **Create a specific example to illustrate a right that consumers have under the First Amendment.**

If a consumer counts eight cherries in a picture of a single slice of cherry pie on the cover of a frozen pie box, he has the right to hold the manufacturer of that pie accountable if the slice is deceptive and falsely represents the number of cherries in the pie.

• **Give an example of speech that would likely cause “imminent or immediate physical disruption or the commission of unlawful acts” in school.**

A protest by students who stage a “sit-in” in the principal’s office would probably not be protected under the First Amendment. A student who stood up in the cafeteria during lunch and encouraged other students to stage a “walkout” because of some issue likely would not be protected by the First Amendment.

IV. INTERPRETATION

(Page 5)

Activities

(1) Search the newspaper for stories that include a court’s interpretation of the law. What was the issue at hand, and how did the court rule?

(2) Work in a group to create and present a skit illustrating a case presented on Page 5. Follow the skit with a class discussion of the case. How many agree with the court’s decision?

(3) Invite a local lawyer or judge to discuss First Amendment law and the rationale behind court decisions. Hold a press conference and ask the guest speaker relevant questions about the interpretation of the First Amendment.

(4) Most court cases that involve an interpretation of the law have issues that pose a dilemma. A “dilemma” is generally defined as a serious problem where a choice has to be made between two or more bad alternatives. Search the newspaper for an example of a dilemma. How would you go about resolving

the particular dilemma you found?

(5) Hold a mock judicial hearing on a First Amendment case. Research the case, assign a panel of judges to hear the case, attorneys for both plaintiffs and defendants, and other court personnel. Present the arguments for both sides, and have the judges decide the case and issue an opinion.

(6) Divide the class into small groups, and have each group illustrate a chart that shows the three levels of our federal court system — District Court, Court of Appeals, and Supreme Court — and how a case flows through those courts.

(7) Arrange a field trip to a federal or local court. Have a judge explain his role in interpreting the law.

(8) Have students debate whether flag burning as a manner of protest should be protected by the First Amendment. Have student research flag desecration cases on the internet and report to the class on how the court has ruled.

(9) Have students debate whether students should be allowed to wear Confederate Flag T-shirts in school if many students are offended by it. Check the internet for court rulings. Do different courts interpret the First Amendment differently?

(10) Identify five issues in your school that involve student expression where many students disagree with current school policy. For each issue, define the student position and then define the administration position. How do the differing positions conflict or agree with your interpretation of First Amendment protection? Provide rationale for your interpretation.

Goals

The suggested responses to learner goals are not inclusive. The learner may correctly provide other information that satisfies an objective.

THE LEARNER WILL ...

• **Research one of the cited cases and write a 500-word report on the background, legal questions, decision, and opinion of the court.**

Complete court decisions may be accessed via the Internet.

• **Be able to answer questions about the cited cases.**

See “Defining Moments Quiz.”

• **Identify which of the five freedoms of the First Amendment is relevant to each case.**

- Tinker v. Des Moines, speech, press;
- Hazelwood School District v. Kuhlmeier, speech, press;
- New York Times v. Sullivan, speech, press;
- New York Times v. United States, speech, press;
- Branzburg v. Hayes, press;
- Miller v. California, speech, press;
- Texas v. Johnson, speech;
- Abington School District v. Schempp, religion;
- R.A.V. v. City of St. Paul, speech.

III. IN PURSUIT OF VIRTUE

(Page 6)

Activities

(1) Examine the ethical issues that follow and engage in the suggested activity.

ISSUE #1: When is a newspaper justified in censoring one of its columnists or cartoonists?

ACTIVITY: Find what you consider to be the most controversial column and/or cartoon in your newspaper. Write three arguments that could be raised against printing the them. Then write three reasons why they should be allowed in the newspaper. Meet in groups of 3 or 4 to discuss your rationales and to try to reach consensus on what the editor should decide to do. What standards should be developed regarding the appropriateness of certain columns/cartoons in the newspaper?

ISSUE #2: Should cartoons with political messages be printed on opinion pages rather than in comic/entertainment section of the newspaper?

ACTIVITY: Go through the comic pages of your newspaper. List all the cartoons that you consider purely entertaining; list those that regularly carry a political message; list those that are basically entertaining but occasionally carry a serious political message. Meet in small groups to share and compare lists and to discuss the following questions:

- 1) Does the average reader consciously recognize cartoons that carry sensitive and/or subtle political messages as opposed to those cartoons which are more “entertainment” in purpose?
- 2) How subtly are “political” messages delivered in the comic section?
- 3) What dangers, if any, are there in subliminally influencing reader attitudes via the comic pages?
- 4) What kind of cartoons are found on the newspaper’s opinion pages, and how do those cartoons differ in nature from those on the comic pages?

ISSUE #3: Should front page stories reflect what people “should read” or what people “want to read”?

ACTIVITY: Students are provided with a list of 10 headlines representing stories from the morning newspaper. Students select five headlines for front page placement and rate each of the five in priority for appearing on page 1. Students meet in small groups to compare lists and strive for consensus on which five headlines should appear on page 1. Have someone from each group present rationale for choices. Hold class discussion on the ethics of placing stories in the paper. Sample questions:

- 1) What responsibility does an editor have to emphasize “important” informational stories on front page?
- 2) What responsibilities does the editor have to satisfy business interests of the paper by putting “sensational” stories on page 1 to help “sell” the paper?
- 3) Is there a proper balance the editor can achieve between emphasizing what the reader “should read” and what the reader “wants to read”?

After the discussion, distribute the newspaper and let students compare their placement of headlines with placement that editors actually assigned. As a final follow-up, students could develop five rules of ethics regarding story placement in the paper.

ISSUE #4: What constitutes a “conflict of interest” between a journalist and a story to which he/she is assigned?

ACTIVITY: Select any news story from the newspaper. Contrive a hypothetical situation in which a conflict of interests occurs involving a reporter and his story. Give the reporter’s hypothetical background and list two or three reasons a “conflict of interest” could exist and therefore compromise the reporter’s objectivity in covering the story. Meet in small groups and make a list of things that could effect a reporter’s objectivity. Discuss: How “objective”

must a reporter be? How objective can he be? Is it always necessary for a reporter to have an emotional detachment from the story? Should a reporter be allowed to hold elective office? How can a newspaper guard against those reporters who would use their position for selfish motives or unworthy purposes?

ISSUE #5: When does interpretative reporting become editorializing?

ACTIVITY: In your newspaper, find an interpretative news story. Is the story labeled as “analysis” or “interpretative”? List the indisputable facts in the story. List the information based primarily on the reporter’s interpretation of the facts. Finally, list any information you feel is based upon the reporter’s personal opinion without any factual evidence to support the validity of the opinion. Meet in small groups to discuss such questions as:

- 1) Is there truly a need for “interpretative” reporting?
- 2) How does interpretative reporting differ from editorializing?
- 3) Does interpretative reporting confuse the reader as to what is actually fact and what is opinion? Cite examples from your readings.

ISSUE #6: Should “unidentified sources” be used in a newspaper?

ACTIVITY: In your newspaper, find a story in which an unidentified source is quoted. Protecting (and concealing) the identity of their informants is a real concern for journalists, and one on which their livelihood might well depend, but it also distinguishes the journalistic from the academic product. Without identifiable sources, the account cannot be reviewed or corroborated by others with specialized knowledge of the subject. Errors may thus remain uncorrected. Based on the story you find in the newspaper, discuss the following questions in a small group:

- 1) How significant was the unidentified source to the content of the story?
- 2) What was the nature of the quote or reference?
- 3) Where was the quote referred to in the story? (Was it in the lead?)
- 4) Would the story have been printed without the quote?
- 5) Was the quote critical or complimentary?
- 6) Is there a clear and compelling need to protect the identity of the source?

ISSUE #7: Should letters to the editor be checked for factual accuracy before publication?

ACTIVITY: Turn in your paper to the letters to the editor section. Underline verifiable factual information as opposed to opinion. As editor of the newspaper, would you feel ethically compelled to check the accuracy of the information, knowing that inaccurate information could be just as “influential” as accurate information? How much would it cost in time and money to verify? Would you contact the sender to confirm the source of the letter?

Would or should a small newspaper with less resources than a large, metropolitan newspaper take similar precautions? Develop in a small group a list of ethical practices for printing letters to the editor.

ISSUE #8: Should subliminal ads be allowed in a newspaper?

ACTIVITY: Subliminal advertising is advertising that delivers an influential message but beneath the conscious level of a reader’s perception. Find in your newspaper possible examples of subliminal advertising.

Discuss in small group work:

- 1) Is there a danger to consumers in subliminal advertising?
- 2) Why do advertisers occasionally resort to this type of ad?
- 3) How widespread is it?
- 4) How much time do you consciously devote to trying to understand why a particular ad may be appealing to you?
- 5) Is subliminal advertising ethically fair, or is it something that causes a significant disadvantage to the consumer? What would be the disadvantage?

ISSUE #9: Should pretrial publicity, including photographs, be printed in the newspaper?

ACTIVITY: Some countries, such as Great Britain, put significant limitations on the amount of pretrial publicity that is allowed. Check your newspaper. Identify all the stories about people being charged with a crime; identify all the stories about trials currently in session; and identify stories of trial results or follow-ups. How many stories have accompanying pictures? How does pretrial publicity affect jury selection? Is such bad publicity fair to a person who is later cleared or found innocent? What is the need for pretrial publicity?

ISSUE #10: When does a person's right to privacy outweigh the news value?

ACTIVITY: In your newspaper find examples of photos that capture private persons in embarrassing, emotional, or otherwise "private" situations. Do reporters often violate the sanctity of what should be a private time? What positive effect does a photograph of a grieving mother serve to the readers of a newspaper? What examples from your newspaper do you feel indicate bad taste on the part of reporters? In which cases were the reporters justified in covering the story? In small groups, develop six or more ethical guidelines to help a reporter's decision-making in such situations where privacy is an issue.

(2) The following case studies are based on actual incidents that occurred in schools. Study the background of each case and discuss the questions. Prepare to provide your ethical rationale for each decision.

CASE #1: A school secretary at the junior high is charged with embezzling \$20,000 from the student activity fund, money used to sponsor class trips and club projects.

QUESTIONS: Should this story be covered in the high school newspaper? The secretary's son is a student at the high school. Should that influence the decision on whether or not to cover the story? The secretary's son is also under psychiatric care for depression. What if the staff decides to cover the story, but the principal threatens to censor it because of his concern for the psychological damage the embarrassment could cause the secretary's son, who is totally innocent. Is there any remedy to the dilemma short of censorship?

CASE #2: The local Community Club is a hub of town activity, but in its 77-year history it has never had a woman member. The club promotes community projects and social activities and also has political influence. Knowing that some women would like to join the club, a reporter for the student newspaper wants to interview club officers and find out why no women have ever been admitted as members. The superintendent of schools, a past president of the club, asks the editors to postpone covering the story until after the town votes on a school referendum two months away. He is afraid a controversial

story about the club could cause some people to vote against the referendum in retribution.

QUESTIONS: Should the editors agree to delay coverage? How can they justify their decision? What are the advantages and disadvantages of delaying coverage? What risks do editors take if they go ahead with the story despite the superintendent's request? Should a school newspaper cover this kind of community issue?

CASE #3: A columnist for the student newspaper said he witnessed the principal physically removing a student (for misconduct) from the stands at a football game. Although the student was obeying the principal's request to get up and leave, the columnist said the principal grabbed the student by the arm, embarrassing him in front of his peers. The columnist writes an opinion piece on the incident, personally attacking the principal for his poor judgment in "manhandling" a student. The principal denies he used physical force.

QUESTIONS: As editor, do you allow the columnist editorial freedom to personally attack the principal for using poor judgment? To the editor's knowledge, the principal had never before been accused of being physical in administering discipline. Should that fact have any relevancy about how this story should be handled? Should the editor require the columnist to "tone down" his article? What could be the advantages and disadvantages of editing the article in a way that would tone down the personal nature of the attacks on the principal? Would other teachers and school staff members feel threatened that if they made a simple mistake, they would be criticized in the newspaper? When is criticism of an administrator or teacher justified in the student newspaper? When is it not?

CASE #4: Two months after being elected homecoming king, a student is expelled for stealing science equipment.

QUESTIONS: Should this story be covered in the student newspaper? Since expulsion hearings are held in executive session of the board of education and students are not identified to the public by name, how could such a story be covered without the risk of libel? When is the newspaper justified in printing the names of students involved in incidents of discipline or crime? What should be the criteria for covering such stories?

CASE #5: The wrestling coach learns that the student newspaper is planning to print an action picture of one of his wrestlers in a match that he lost. The wrestling coach summons the photographer and demands that the photo she took not be used. The picture shows the two wrestlers in an upright position with neither at an advantage. However, the winning wrestler from the visiting school is a girl.

QUESTIONS: Should you ever run a photo of a home team wrestler losing to an opponent? What if the photo doesn't show the opponent having the advantage? What if the match is for the state championship? Should the fact that the victor is a girl have any relevancy? Should the photographer or editor be concerned that the photo could be embarrassing to a boy defeated by the girl? Should the newspaper allow a coach to censor a photograph? How should the newspaper respond to the coach's attempt to censor the photograph? What may be the consequences if the photo is run? If it is not run?

CASE #6: The principal is arrested for operating a motorboat while under the influence. The story's covered in the local

newspaper. Students are talking about the incident at school, but they don't all have the correct facts. The principal is very popular with students and cooperates with the newspaper staff in a very supporting way.

QUESTIONS: Should this story be covered in the weekly student newspaper? If yes, how? Page 1? Editorial? Letters to the editor? Walter Cronkite once said, "Truth knows neither friend nor enemy, nor should those who pursue it." How may that statement apply to the case at hand? Is it worth covering this story if it will mean the wrath of the faculty? What criteria should be used in determining whether a story embarrassing to the school should be run?

(3) Examine different codes of ethics for professional organizations and then develop a code of ethics for yourself or for students and/or teachers at your school. This may be done in small groups.

Goals

The suggested responses to learner goals are not inclusive. The learner may correctly provide other information that satisfies an objective.

THE LEARNER WILL ...

• **Provide examples of how the protection of the First Amendment can be used for "good" or "bad."**

Any time somebody qualifies an action as "good" or "bad," he is invoking his personal values, which may be challenged by a person who holds another perspective. In matters of ethics, each person judges the righteousness of behavior for himself. Nevertheless, society does set standards, such as codes of ethics, to help educate the conscience and guide people toward noble goals.

People can unintentionally make "bad" choices because of a lack of awareness or error in judgment. Some issues pose dilemmas, where any choice may have significant disadvantages. Motivation is an important factor in judging what is "good" or "bad." If the motivation for an action is selfish and the action causes harm or injustice to others, an ethicist likely would classify the action as "bad" or "wrong."

For example, while the First Amendment may protect a journalist from revealing his sources in most cases, it would be wrong to conceal the identity of a source who is prejudiced against the subject of a story and makes unsubstantiated accusations against that person. As the Code of Ethics of the Society of Professional Journalists says, "The public is entitled to as much information as possible on sources' reliability."

Another example of using the protection of the First Amendment in a "bad" way would be to stereotype by race, gender, age, religion, ethnicity, geography, sexual orientation, disability, physical appearance, or social status (SPJ Code of Ethics).

• **Define ethics, and relate the definition to the First Amendment.**

"Ethics" is a system of moral principles; the process for determining what is good or bad, right or wrong.

• **Explain two significant differences between law and ethics.**

Law is socially determined and socially enforced. Ethics is personally determined and personally enforced. (Society makes and enforces the laws, but individuals determine their own ethics

and values and decide whether or not to follow their conscience). Law tells us what we can do; ethics tells us what we should do.

• **Explain the quotation of Walter Cronkite.**

Cronkite means that a person who seeks to identify "truth" should not be influenced by how the truth may effect a friend or an enemy. For example, a reporter should not abandon an important story simply because the truth may embarrass a friend, nor should he pursue a story simply for the purpose of revealing information that would hurt an enemy.

• **Tell the purpose of a Code of Ethics.**

To help guide members as they make decisions by offering a set of principles relevant to particular issues of the profession.

• **Write a paragraph showing how the Code of Ethics of the American Society of Newspaper Editors is organized.**

Access via internet:

Preamble;

Article I – Responsibility;

Article II – Freedom of the Press;

Article III – Independence;

Article IV – Truth and Accuracy;

Article V – Impartiality;

Article VI – Fair Play.

• **Provide an example of conflicting loyalties related to the First Amendment.**

When a reporter promises confidentiality to a news source but a judge orders the reporter to reveal the name of the source, the reporter must decide whether he will be loyal to his word or to the law.

• **Explain "evolving nature" of the First Amendment.**

The First Amendment is a dynamic document that changes in meaning when courts interpret it. Events such as war and terrorism effect the status of the First Amendment. During a national emergency, government officials may tend to be more restrictive in their approach to First Amendment freedoms because of their concern for national security.

• **Show an effective way to promote ethics and fight abuse of the First Amendment.**

The best strategy for promoting ethics and fighting abuse of the First Amendment may be educating the public about the substance and spirit of the amendment. By better understanding the amendment, the public will be more aware of ethical issues and more able to detect cases of abuse.

• **Tell how an ethical approach to decision-making strengthens freedom and democracy.**

In a democracy, the people rule. If the people base their decisions on rationale that is supported by ethical considerations, they will most often make good, right choices. Responsible decisions that serve the public interest will naturally strengthen freedom and democracy.

IV. ADAPTING SPEECH TO SCHOOL

(Page 7)

Activities

(1) Compare and contrast a student newspaper with a professional newspaper. List the major similarities and differences. What conclusions do you reach as a result of your study? This may be done as a group activity.

(2) Make a list showing restrictions reporters for a student newspaper have under the Hazelwood case that professional reporters for a commercial newspaper do not have. Discuss the significance of the different restrictions.

(3) Hold a panel discussion with an administrator, a teacher, two students, two parents, and a professional reporter/editor about student press rights and how best to honor First Amendment principles in school.

(4) Write a letter to the editor of your community newspaper explaining your opinion regarding the issue of censorship and prior review vs. a free and responsible student press in school.

(5) In a small group, discuss the value of a free and responsible student press in school. Define the parameters within which students should have complete control of the content of their publication. Devise a strategy for relieving the principal of the job of making completely arbitrary decisions regarding the content of the student publication. Meet with the principal to see how you can gain his support of a free and responsible student press.

(6) Pass out large, adhesive name badges to students in class. Have each student write a statement of his/her perspective on an issue on the badge. Students may decorate or illustrate the badge. Then have the student wear the badge. Who does not want to wear the badge? Why not? What are the messages? Are all the messages protected speech in school? Are any of the messages offensive to anyone? What are the ethical issues of the messages? Hold a class discussion.

(7) Invite the school librarian to class. Discuss the issue of banned or challenged books. What is the school policy if a book is challenged? What is any school history regarding banned or challenged books? Who selects materials for the library? How do students have input? Create a chart or poster that reflects what you learned.

(8) Examine the school policy on internet filters. Research the pros and cons of internet filters. Hold a class debate on the issue. Students may debate faculty.

(9) Interview the principal and other school officials. See if you can determine exactly what First Amendment rights students have in your school and what First Amendment rights they do not have recognized by school officials. Compare the state of the First Amendment in your school with the state of the First Amendment in other schools.

(10) List as many First Amendment issues as you can for your school, such as dress codes, Internet filters, official student newspaper, underground student newspaper, "banned books," posting messages on bulletin boards, prior review, and club recognition.

Define school policy on each issue. Is policy clear and specific or ambiguous? Debate if the policies could pass constitutional challenges.

Goals

The suggested responses are not inclusive. The learner may correctly provide other information that satisfies an objective.

THE LEARNER WILL ...

• **Explain why we must sometimes adapt our "freedom of speech" in light of special times, places, and circumstances.**

Different circumstances require different decorum. The First Amendment is not license to say whatever you want to say whenever you want to say it. The purpose of the First Amend-

ment is to protect your right to express your views. But if you rise to do so at the theater in the middle of a movie, you may find that your "speech" will be quickly suppressed by an usher who wants to protect the right of patrons to be undisturbed.

• **Recite and explain the "establishment" clause of the First Amendment.**

"Congress shall make no law respecting the establishment of religion" It means that our government should not support nor oppose any particular religion. The government must remain neutral on matters of religion.

• **Summarize the facts and the opinion of the U.S. Supreme Court case of *Bethel v. Fraser*.**

A student delivered a student council campaign speech that contained suggestive language that was vulgar and indecent before a student assembly. The U.S. Supreme Court ruled that while the campaign speech delivered in the student council election may have been protected beyond school walls, it could be censored in a school setting.

• **Describe protection students and teachers have under *Tinker v. Des Moines*.**

Under *Tinker*, school officials could restrict student speech only if it would result in "material and substantial disruption," "invasion of the rights of others," or breach of protected speech. The Court ruled, "Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect"

• **Identify the criterion that *Hazelwood v. Kuhlmeier* added to *Tinker* in determining justification for restricting student speech.**

School officials can restrict student speech if they can show a valid education purpose for their censorship and that the censorship is not intended to silence a particular viewpoint that they disagree with or that is unpopular.

• **Explain what difference between public and private/parochial schools is relevant to the issue of First Amendment protection?**

Public schools are agencies of the state, and they, therefore, have greater First Amendment protection.

• **Relate two legal differences between official student publications and "underground" publications.**

"Underground" newspapers cannot be censored or their staff members disciplined in the absence of exceptionally compelling circumstances. In some jurisdictions, courts have ruled underground newspapers are not subject to prior review (officials cannot require that they be submitted for approval before they are distributed).

• **Present strategy for honoring the substance and spirit of the First Amendment.**

Members of the school community should come to an understanding of the meaning of the First Amendment and how it serves democracy. From that understanding, school officials and students should work in partnership to learn to balance rights and responsibilities and pursue an ethical approach in applying the First Amendment in school. School officials should commit to supporting student rights under the First Amendment and work to correct poor judgment, inaccuracies, abuse, and other deficiencies of freedom of speech in ways less offensive than censorship.