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ABSTRACT

This guide provides teachers with materials and resources to develop basic legal concepts within the existing social studies curriculum. Drawing on the descriptions of sociology, philosophy, political science, and history, legal concepts and processes are studied in a societal context. The conceptual approach to law as a social institution uses the inquiry method to consider several important aspects of the law: What is the nature of law? What are its social functions? What are its limits? How does law work? Four teaching modules, each of which deals with a basic concept of the legal system, are included. The core of each module is contained in a statement of understandings to be gained through the study. An explanation for the teacher follows the statement, providing a background of legal knowledge and delineating the importance of each understanding. Objectives, general questions useful in reaching the understanding, and suggestions for use of visuals are listed. Classroom strategies are described and resources are noted. The bibliography includes written source materials, films and filmstrips, with information concerning sources for purchasing or renting.

(Author/SHM)

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TEACHING ABOUT BASIC LEGAL CONCEPTS

in the
junior
high
school

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TEACHING ABOUT BASIC LEGAL CONCEPTS
IN THE JUNIOR HIGH SCHOOL

The University of the State of New York/The State Education Department
Bureau of Secondary Curriculum Development/Albany/1973

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FOREWORD

Many schools have requested assistance in improving teaching about the law in the secondary classroom. This publication is intended to suggest ways that respect for the rule of law may be developed by bringing understanding of its function into the life of our everyday living.

Teaching About Basic Legal Concepts does not impose a requirement for another course of study at the junior high level. Some schools will find the modules useful in consonance with the eighth grade program in United States History. In other cases, the school may wish to give emphasis to this area in the total curriculum by using the modules in building minicourses or as a course of study.

While still a student at Cornell University Law School, A. Bruce Campbell, now attorney at law with the firm of D. B. Campbell and Stubbs, Denver, Colorado, was impressed with the need for materials to help the teacher better handle topics concerning the law. Many secondary school students held misconceptions and misunderstandings because so little time was devoted to this area.

Assisted by Cornell University Law School faculty and administrative staff of the Ithaca public schools, he developed teaching modules about the law. These modules were prepared by Mr. Campbell; Professor Robert Summers of Cornell University Law School; Mrs. Gail F. Hubbard, Ithaca High School; and John P. Bozzone, DeWitt Junior High School, Ithaca, under State Department sponsorship. Hillis K. Idleman, associate, Bureau of Secondary Curriculum Development, served as liaison for the project during the development and field testing stages.

Rose Mary Flihan, chairman of Social Studies, Barker Road Junior High School, Pittsford, developed additional teaching materials and identified a variety of resources for student use, drawing upon her own experience and the reports of other teachers who had tested the original modules. Donald H. Bragaw, chief, and John F. Dority and Jacob I. Holchkiss, associates, Bureau of Secondary Curriculum Development, reviewed the manuscript and made helpful suggestions concerning its revision. Janet M. Gilbert, associate, Bureau of Secondary Curriculum Development, had general charge of the publication project, and prepared the manuscript for printing.

GORDON E. VAN HOOFT
*Director, Division of
School Supervision*

FOREWORD

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Legal Concepts does not impose a requirement for another course of study at the junior high school level. The modules useful in consonance with the eighth grade program in United States History. In others, however, give emphasis to this area in the total curriculum by using the modules in building minicourses or a one-term

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GORDON E. VAN HOOFT
*Director, Division of
School Supervision*

OVERVIEW OF UNDERSTANDINGS

The four modules are designed to develop the following understandings:

MODULE I: THE LAW - WHO NEEDS IT?

PEOPLE LIVING IN A MODERN SOCIETY NEED LAW TO:

- . PROVIDE RULES AND PROCESSES FOR RESOLVING DISPUTES FAIRLY AND RATIONALLY
- . GUIDE AND COORDINATE THEIR ACTIVITIES
- . DISCOURAGE ANTISOCIAL BEHAVIOR SUCH AS ASSAULTS AND THEFTS

MODULE II: TOOLS OF THE LAW

AS LAW DEALS WITH SOCIAL NEEDS AND PROBLEMS, OFFICIALS AND CITIZENS USE A LIMITED NUMBER OF TECHNIQUES OR TOOLS:

- . THE BENEFIT DISTRIBUTION TECHNIQUE
- . THE REGULATION TECHNIQUE
- . THE PENAL TECHNIQUE
- . THE PRIVATE REMEDY TECHNIQUE
- . THE PRIVATE ARRANGEMENT TECHNIQUE

THE EFFECTIVENESS OF LAW IN DEALING WITH SPECIFIC SOCIAL NEEDS AND PROBLEMS DEPENDS IN PART APPROPRIATE LEGAL TECHNIQUE(S) TO WORK.

NONLEGAL SOCIAL CONTROLS MAY MAKE IT POSSIBLE FOR LEGAL TECHNIQUES TO WORK MORE EFFECTIVELY

MODULE III: LEGAL PROCESSES - HOW THE LAW PLAYS THE GAME ALSO COUNTS

SINCE NOT ONLY THE OUTCOMES OF LAW'S OPERATIONS ARE IMPORTANT, BUT ALSO HOW LAW OPERATES IS PROCESSES BY WHICH LAW REACHES AN OUTCOME ARE SUBJECT TO EVALUATION IN TERMS OF:

- . THEIR EFFECTIVENESS IN REACHING THE DESIRED OUTCOME
- . THEIR VALUE AS SOUND PROCESSES

SINCE MERELY HAVING RULES FOR SOUND PROCESSES IS NOT, BY ITSELF, A GUARANTEE THAT THE PROCESSES FOLLOWED BY OFFICIALS, LEGAL SYSTEMS NEED EFFECTIVE WAYS OF ASSURING THAT OFFICIALS WILL FOLLOW PROCESSES.

MAINTAINING SOUND LEGAL PROCESSES MAY NOT BE POSSIBLE WITHOUT INCURRING SOME SOCIAL COSTS.

MODULE IV: SOME LIMITS OF LAW

IN SITUATIONS WHERE LAW ATTEMPTS TO PROMOTE LEGITIMATE INTERESTS THAT CONFLICT, LAW IS LIMITED BY ITS CAPACITY TO PROMOTE BOTH.

THE EFFECTIVENESS OF LAW AS A SOCIAL CONTROL MAY BE LIMITED IF THE LAW IS UNSUPPORTED BY FACTORS SUCH AS MORALITY AND THE INSTINCT OF SELF-PRESERVATION.

SINCE LAW CANNOT READILY CONTROL THOUGHTS AND BELIEFS, TO BE EFFECTIVE, THE LAW MUST IDENTIFY BEHAVIOR OR ACTIVITY TO REGULATE.

IN PROVIDING REMEDIES FOR THE HARM WHICH ONE PERSON DOES ANOTHER, LAW MAY CONFRONT SOME KINDS OF HARM WHICH ARE BEYOND ITS LIMITED POWER TO REPAIR OR COMPENSATE.

ALTHOUGH LAW USES MANY RULES AND PROCEDURES TO RESOLVE DISPUTED FACTS RATIONALLY AND FAIRLY, IT MAY LIMIT THE ABILITY OF JUDGES AND JURORS TO DETERMINE THE FACTS.

OVERVIEW OF UNDERSTANDINGS

are designed to develop the following understandings:

THE LAW - WHO NEEDS IT?

PEOPLE LIVING IN A MODERN SOCIETY NEED LAW TO:

- PROVIDE RULES AND PROCESSES FOR RESOLVING DISPUTES FAIRLY AND RATIONALLY
- GUIDE AND COORDINATE THEIR ACTIVITIES
- DISCOURAGE ANTISOCIAL BEHAVIOR SUCH AS ASSAULTS AND THEFTS

TOOLS OF THE LAW

AS LAW DEALS WITH SOCIAL NEEDS AND PROBLEMS, OFFICIALS AND CITIZENS USE A LIMITED NUMBER OF DISTINCT LEGAL TECHNIQUES OR TOOLS:

- THE BENEFIT DISTRIBUTION TECHNIQUE
- THE REGULATION TECHNIQUE
- THE PENAL TECHNIQUE
- THE PRIVATE REMEDY TECHNIQUE
- THE PRIVATE ARRANGEMENT TECHNIQUE

THE EFFECTIVENESS OF LAW IN DEALING WITH SPECIFIC SOCIAL NEEDS AND PROBLEMS DEPENDS IN PART ON PUTTING THE APPROPRIATE LEGAL TECHNIQUE(S) TO WORK.

NONLEGAL SOCIAL CONTROLS MAY MAKE IT POSSIBLE FOR LEGAL TECHNIQUES TO WORK MORE EFFECTIVELY.

LEGAL PROCESSES - HOW THE LAW PLAYS THE GAME ALSO COUNTS

SINCE NOT ONLY THE OUTCOMES OF LAW'S OPERATIONS ARE IMPORTANT, BUT ALSO HOW LAW OPERATES IS IMPORTANT, THE PROCESSES BY WHICH LAW REACHES AN OUTCOME ARE SUBJECT TO EVALUATION IN TERMS OF:

- THEIR EFFECTIVENESS IN REACHING THE DESIRED OUTCOME
- THEIR VALUE AS SOUND PROCESSES

SINCE MERELY HAVING RULES FOR SOUND PROCESSES IS NOT, BY ITSELF, A GUARANTEE THAT THE PROCESSES WILL BE FOLLOWED BY OFFICIALS, LEGAL SYSTEMS NEED EFFECTIVE WAYS OF ASSURING THAT OFFICIALS WILL CONFORM TO SOUND PROCESSES.

MAINTAINING SOUND LEGAL PROCESSES MAY NOT BE POSSIBLE WITHOUT INCURRING SOME SOCIAL COSTS.

SOME LIMITS OF LAW

IN SITUATIONS WHERE LAW ATTEMPTS TO PROMOTE LEGITIMATE INTERESTS THAT CONFLICT, LAW IS LIMITED IN ITS CAPACITY TO PROMOTE BOTH.

THE EFFECTIVENESS OF LAW AS A SOCIAL CONTROL MAY BE LIMITED IF THE LAW IS UNSUPPORTED BY CERTAIN NONLEGAL FACTORS SUCH AS MORALITY AND THE INSTINCT OF SELF-PRESERVATION.

SINCE LAW CANNOT READILY CONTROL THOUGHTS AND BELIEFS, TO BE EFFECTIVE, THE LAW MUST IDENTIFY SOME OVERT BEHAVIOR OR ACTIVITY TO REGULATE.

IN PROVIDING REMEDIES FOR THE HARM WHICH ONE PERSON DOES ANOTHER, LAW MAY CONFRONT SOME KINDS OF HARM THAT ARE BEYOND ITS LIMITED POWER TO REPAIR OR COMPENSATE.

ALTHOUGH LAW USES MANY RULES AND PROCEDURES TO RESOLVE DISPUTED FACTS RATIONALLY AND FAIRLY, CIRCUMSTANCES MAY LIMIT THE ABILITY OF JUDGES AND JURORS TO DETERMINE THE FACTS.

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HOW TO USE THIS GUIDE

PURPOSE

This guide provides teachers with materials and resources to develop basic legal concepts within the existing curriculum or within the schools K-12 social studies curriculum program. Drawing on the descriptions of sociology, political science, and history, legal concepts and processes are studied in a societal context. The conceptual approach institution uses the inquiry method to consider several important aspects of the law: What is the nature of law? What are its functions? What are its limits? How does law work?

The use of such legal curriculum materials in the schools may prove important for two reasons. First, the guide is a resource to supplement education about the dynamics of modern society. Second, legal problems and literature are resources for developing intellectual skills and the methodology of inquiry.

The teaching of substantive rules of law is not the goal of these modules. Rather, it is to enable teachers to discuss with students about the role of law in society. When specific legal rules or processes are suggested for study, that the particular rule or process is a vital one about which students should learn for its own sake. Particular processes are presented only for illustrative purposes, and as a basis for teacher and student understanding of the concepts that they illustrate.

DESCRIPTION

This guide includes four teaching modules, each of which deals with a basic aspect of the legal system. While it is possible that all modules may be taught during the course of the year, each of the units is usable independently. The modules may be taught in a single block, or spaced according to the needs of the individual class. Field test experience has shown that each module takes approximately 2 or 3 weeks to teach.

The core of each module is contained in the understandings. An explanation for the teacher follows the state of the understanding. This rationale not only provides a background of legal knowledge for the teacher, but, in addition, defines the understanding. It is NOT intended for student use as written; the teacher may draw upon information contained in the understanding, but there has been no attempt to translate it to junior high level. Objectives, general questions useful to reach the understanding, and some suggestions for use of visuals are listed. On the double-columned pages, there are detailed descriptions of strategies to reach the understanding, with notes for the teacher to explain the validity of the strategy and to provide points to observe in using them. Resources which can be used for these strategies are grouped together at the end of each module but are cross-referenced (by case name, statute, or other appropriate designation, and by page) in the detailed description of the teaching procedure. In many instances, the resource listing for a case will include a brief description of the case and an excerpt from the decision is given. If either description or decision is available in a number of the inexpensive sources now available for secondary classroom use, those sources are cited.

The bibliography includes not only written source materials, but also films and filmstrips, with information on how to purchase or rent them.

WHEN TO TEACH THESE MODULES

The modules in this guide can be incorporated into the social studies curriculum in a number of ways. They can be added as an additional course of study, but, rather, as providing a more meaningful organization to the teaching of the total social studies program.

Some schools may wish to use the modules in their entirety and consecutively, perhaps adding additional case studies to make a one-semester course of study. Some will find them useful to incorporate into a minicourse program. Since each module

HOW TO USE THIS GUIDE

Provides teachers with materials and resources to develop basic legal concepts within the existing social studies curriculum in the schools K-12 social studies curriculum program. Drawing on the descriptions of sociology, philosophy, political history, legal concepts and processes are studied in a societal context. The conceptual approach to law as a social inquiry method to consider several important aspects of the law: What is the nature of law? What are its social functions? What are its limits? How does law work?

Legal curriculum materials in the schools may prove important for two reasons. First, the law provides a context for student education about the dynamics of modern society. Second, legal problems and literature are themselves effective in developing intellectual skills and the methodology of inquiry.

The mastery of substantive rules of law is not the goal of these modules. Rather, it is to enable teachers to reach understanding about the role of law in society. When specific legal rules or processes are suggested for study, it is not implied that the rule or process is a vital one about which students should learn for its own sake. Particular legal rules are presented only for illustrative purposes, and as a basis for teacher and student understanding of the broader concepts involved.

The guide includes four teaching modules, each of which deals with a basic aspect of the legal system. While it is suggested that they be taught during the course of the year, each of the units is usable independently. The modules may be used and spaced according to the needs of the individual class. Field trial experience has shown that each module, as designed, may require 2 or 3 weeks to teach.

Each module is contained in the understandings. An explanation for the teacher follows the statement of each understanding. The rationale not only provides a background of legal knowledge for the teacher, but in addition, delineates the important concepts. It is NOT intended for student use as written; the teacher may draw upon information contained to answer questions. There is no attempt to translate it to junior high level. Objectives, general questions useful to reaching the understanding, and suggestions for use of visuals are listed. On the double-columned pages, there are detailed descriptions of classroom strategies for use with the understanding, with notes for the teacher to explain the validity of the strategy and to indicate particular points in using them. Resources which can be used for these strategies are grouped together at the end of the strategies. Each resource (by case name, statute, or other appropriate designation, and by page) in the detailed description of the strategy. In many instances, the resource listing for a case will include a brief description of the circumstances, for some cases the decision is given. If either description or decision is available in a number of the inexpensive case collections for secondary classroom use, those sources are cited.

The guide includes not only written source materials, but also films and filmstrips, with information concerning sources for obtaining them.

USE MODULES

The modules in this guide can be incorporated into the social studies curriculum in a number of ways. They should not be seen as a separate course of study, but, rather, as providing a more meaningful organization to the teaching of concepts basic to the social studies program.

Teachers may wish to use the modules in their entirety and consecutively, perhaps adding additional case studies to build a course of study. Some will find them useful to incorporate into a minicourse program. Since each module is designed to

stand independently of teachers, they can be used to build one or two offerings of this type. Such treatment gives an important role of law in our society.

For many schools, however, they will be most useful to add a realistic dimension in teaching the mandated topics of Federal and state government in grades 7 and 8.

The following table in the use of the modules as a part of the State program for Social Studies 8, United States, has been suggested by a teacher who worked on their development:

Module I: "The Law-Who Needs It" as an introduction to the entire eighth grade program since it gives the student an understanding of the necessity for law, and of the United States, a people with a government of laws.

Module II: "Tools of the Law" is related to the first understanding in Topic 8 (p. 127 in the syllabus).

KNOWLEDGE OF THE CONSTITUTION OF THE UNITED STATES IS NEEDED AS A BASIC FOUNDATION FOR UNDERSTANDING THE FUNCTIONS OF THE FEDERAL GOVERNMENT.

In addition, the understandings in the same topic related to interrelationships among the levels of government and their responsibilities (p. 131) are more effectively taught through the use of this module.

In addition, module II stresses the effectiveness of law in dealing with specific social needs and problems, and is useful for developing understandings related to prohibition and current social problems, as well as the changing civil government relationship brought by the New Deal (p. 116).

Module III: "Legal Processes — How the Law Plays the Game Also Counts," is well suited as a vehicle for teaching illustrative understandings from the eighth grade course of study:

THE FRAMEWORK OF GOVERNMENT UNDER THE CONSTITUTION IS BASED UPON IMPORTANT POLITICAL PRINCIPLES. (p. 127)

MOST AMENDMENTS WERE ADDED TO THE CONSTITUTION TO MEET THE NEEDS OF OUR SOCIETY IN PARTICULAR PERIODS OF HISTORY.

By emphasizing the fundamental importance of fair process values (participation, fairness, legitimacy), module III teaches these and other understandings related to the Bill of Rights and the development of civil and political life in American history. A discussion of two approaches in dealing with the Bill of Rights and process values is discussed on page 125.

The value of fair and rational processes would also be a helpful concept for students to understand because they are involved in many situations in their study of United States history in which process values are at the core of major controversies: McCarthyism, the Warren Court (rights of poor defendants, reapportionment), and the Alien and Sedition Acts.

By stressing process values, module III will be particularly useful in teaching understandings related to the rights of blacks in American history. Several illustrative examples of understandings from the syllabus related to this area are:

THE LOUDLY PROCLAIMED PREWAR CONCERN FOR HUMAN JUSTICE OF NORTHERN LIBERAL AND RADICAL OPPONENTS OF SLAVERY CARRY THEM THROUGH THE LONG STRUGGLE NEEDED TO SECURE THE BASIC RIGHTS FOR NEGROES AFTER 1865. (p. 99)

LONG OVERDUE PROGRESS ON CIVIL RIGHTS FOR NEGROES HAS ACCELERATED SINCE THE END OF WORLD WAR II. (p. 125)

Module III contains a wealth of legal materials, including many important court cases, to help teachers plan lessons on a pressing issue that still faces our country today.

Module IV: "Limits of Law" contains several ideas that have not been taught before in any systematic way. They seem, might be taught late in the year so that the teacher could draw on many examples from American history that illustrate the several limits of law: Prohibition (law unsupported by morality); controversies over loyalty oaths, the Pledge of Allegiance, and Bible readings (law cannot readily control thoughts and beliefs).

Finally, the legal materials can also help students develop social studies skills including respect for factual information, logical argument about matters of social principle, and capacity for sound value analysis.

For others, they can be used to build one or two offerings of this type. Such treatment gives emphasis to the law in our society.

However, they will be most useful to add a realistic dimension in teaching the mandated topics concerning government in grades 7 and 8.

Useful in the use of the modules as a part of the State program for Social Studies 8, United States History, is a teacher who worked on their development:

"Law-Who Needs It" as an introduction to the entire eighth grade program since it gives the student an understanding of law, and of the United States, a people with a government of laws.

"The Law" is related to the first understanding in Topic 8 (p. 127 in the syllabus).

THE CONSTITUTION OF THE UNITED STATES IS NEEDED AS A BASIC FOUNDATION FOR UNDERSTANDING THE FUNCTIONING OF FEDERAL GOVERNMENT.

Understandings in the same topic related to interrelationships among the levels of government and civic responsibility are more effectively taught through the use of this module.

Module II stresses the effectiveness of law in dealing with specific social needs and problems and, therefore, it is useful in understanding related to prohibition and current social problems as well as the change in citizen-government relations by the New Deal (p. 116).

"Legal Processes — How the Law Plays the Game Also Counts," is well suited as a vehicle for teaching the following understandings from the eighth grade course of study:

THE WORK OF GOVERNMENT UNDER THE CONSTITUTION IS BASED UPON IMPORTANT POLITICAL PRINCIPLES. (p. 127)

AMENDMENTS WERE ADDED TO THE CONSTITUTION TO MEET THE NEEDS OF OUR SOCIETY IN PARTICULAR PERIODS OF HISTORY. (p. 129)

The fundamental importance of fair process values (participation, fairness, legitimacy), Module III can be helpful in developing understandings related to the Bill of Rights and the development of civil and political liberties in American history. One of two approaches in dealing with the Bill of Rights and process values is discussed on page 99 of this guide.

Order and rational processes would also be a helpful concept for students to understand because they will be confronted with them in their study of United States history in which process values are at the core of major controversies such as the Supreme Court (rights of poor defendants, reapportionment), and the Alien and Sedition Acts.

Process values, module III will be particularly useful in teaching understandings related to the quest for equality in American history. Several illustrative examples of understandings from the syllabus related to this area are:

UNPROCLAIMED PREWAR CONCERN FOR HUMAN JUSTICE OF NORTHERN LIBERAL AND RADICAL OPPONENTS OF SLAVERY DID NOT PREVENT THROUGH THE LONG STRUGGLE NEEDED TO SECURE THE BASIC RIGHTS FOR NEGROES AFTER 1865. (p. 99)

THE PROGRESS ON CIVIL RIGHTS FOR NEGROES HAS ACCELERATED SINCE THE END OF WORLD WAR II. (p. 125)

A wealth of legal materials, including many important court cases, to help teachers plan lessons on this most important issue still faces our country today.

"The Law" contains several ideas that have not been taught before in any systematic way. This module, it would be useful to include in the year so that the teacher could draw on many examples from American history that illustrate one of the purposes of law: Prohibition (law unsupported by morality); controversies over loyalty oaths, the Pledge of Allegiance, and the government's inability to readily control thoughts and beliefs).

Legal materials can also help students develop social studies skills including respect for fact, capacity for rational analysis of social principle, and capacity for sound value analysis.

BACKGROUND INFORMATION ABOUT THE LEGAL SYSTEM FOR TEACHERS

Understandings about law and the legal system concern conceptual ground familiar to the social studies teacher. The nature, functions and limits of our law and legal system is largely a study of the operation of government. This section contains a review of fundamental background information about the structure of the legal system.

Four aspects of the legal system are presented below. They include (1) kinds of law, (2) kinds of official legal proceedings, and (4) the court system.

1. KINDS OF LAW

Laws may be categorized according to their origin. Those types of laws that comprise the body of law in our country are (a) statutory law, (b) common law, (c) administrative law, and (d) constitutional law.

Statutory Law. Statutory law includes the law that is made by legislatures. At the Federal level, such laws are statutes passed by the Senate and House of Representatives with the assent of the President. At the New York State level, law is made by the Senate and Assembly with the assent of the Governor. Local ordinances, the counterpart of state laws, are acted by local legislatures, such as a city council, with the assent of the appropriate local executive.

Common Law. Common law is judge-made law. Its source is the precedents established in the decisions of past cases. American common law dates back to court cases from the beginning of this country and even before to the case of *Marbury v. Madison*. Common law supplements statutory law by providing judicial interpretation of statutes and constitutions as they apply to particular cases. Other common law exists independently; for example, the rules for making a simple valid contract which are not in statutes, but in cases of past legal history.

Administrative Law. Administrative law is made neither by legislators nor judges, but by administrative agencies. Examples of administrative regulations include the rules promulgated by the New York State Commissioner of Education for teacher certification, rules promulgated by the New York State Commissioner of Motor Vehicles concerning the requirements for acquiring a driver's license, and rules promulgated by the New York State Tax Commissioner concerning the filing of tax returns.

Constitutional Law. The constitutional law of our Nation and states has its source in the written documents of the Federal and state governments. This law establishes the boundaries within which governments can legitimately operate. It is to structure government and to limit the powers of officials in order to protect the governed from potential tyranny. When a legal system operates under the restraints of constitutional law, one may speak of it as a "government of laws" rather than a "government of men." The latter is a legal system without viable constitutional limits on the powers of officials. The only restraints on those in positions of official power are self-imposed restraints and the threat of potential punishment.

2. KINDS OF OFFICIAL TASKS

The day-to-day operation of the legal system is entrusted to legal officials and private citizens who perform various tasks: (a) making legal rules, (b) carrying out legal rules, and (c) adjudicating disputes under legal rules.

Making Legal Rules. An important part of the jobs of many legal officials is making legal rules. Legislators make laws in the form of statutes. Judges make legal rules by deciding cases. Part of the job of administrators is making rules such as the regulations of the New York State Commissioner of Education. The executive makes rules in the form of orders such as President Kennedy's famous executive order which requires all Federal officials to discourage discrimination in housing. Private individuals also make many enforceable legal rules in the form of contracts, leases, and wills.

INFORMATION ABOUT THE LEGAL SYSTEM FOR TEACHERS

Information about law and the legal system concern conceptual ground familiar to the social studies teacher because the study of the structure and limits of our law and legal system is largely a study of the operation of government in a free society. This is a review of fundamental background information about the structure of the legal system.

The types of law and the tasks of the legal system are presented below. They include (1) kinds of law, (2) kinds of official tasks, (3) kinds of courts, and (4) the court system.

Laws are categorized according to their origin. Those types of laws that comprise the body of law in our legal system include (a) common law, (c) administrative law, and (d) constitutional law.

Statutory law includes the law that is made by legislatures. At the Federal level, such law is composed of laws passed by the Senate and House of Representatives with the assent of the President. At the New York State level, statutory law is passed by the Senate and Assembly with the assent of the Governor. Local ordinances, the counterpart of state statutes, are enacted by local legislatures, such as a city council with the assent of the appropriate local executive.

Common law is judge-made law. Its source is the precedents established in the decisions of prior cases. The origin of common law dates back to court cases from the beginning of this country and even before to the case law of England. Some courts supplement statutory law by providing judicial interpretation of statutes and constitutions as they are applied in specific cases. Common law exists independently; for example, the rules for making a simple valid contract which are usually found in cases of past legal history.

Law. Administrative law is made neither by legislators nor judges, but by administrative officials. Familiar administrative regulations include the rules promulgated by the New York State Commissioner of Education concerning teacher certification, rules promulgated by the New York State Commissioner of Motor Vehicles concerning qualifications for a driver's license, and rules promulgated by the New York State Tax Commissioner concerning the form in which the annual tax return is filed.

Law. The constitutional law of our Nation and states has its source in the written documents that provide for our governments. This law establishes the boundaries within which governments can legitimately operate. Its purposes are to define the powers of government and to limit the powers of officials in order to protect the governed from potential oppression by government. The legal system operates under the restraints of constitutional law, one may speak of it as a "government of laws" rather than a "government of men." The latter is a legal system without viable constitutional limits on the powers of the government, where the only restraints on those in positions of official power are self-imposed restraints and the threat of potential revolution.

LEGAL TASKS

The operation of the legal system is entrusted to legal officials and private citizens who perform the following types of tasks: (a) making legal rules, (b) carrying out legal rules, and (c) adjudicating disputes under legal rules.

Rules. An important part of the jobs of many legal officials is making legal rules. Legislators make legal rules in the form of statutes. Judges make legal rules by deciding cases. Part of the job of administrators is promulgation of regulations. The executive makes rules in the form of executive orders. President Kennedy's famous executive order which requires all Federal officials to discourage discrimination in carrying out their duties relative to private housing. Private individuals also make many enforceable legal rules in private legal arrangements, contracts, leases, and wills.

Carrying Out Legal Rules. Legal officials are also charged with the carrying out of legal rules. Taxing, some aspects of legal action are implemented by officials of administrative agencies. Criminal laws are enforced by police. Private citizens also play key roles in carrying out diverse kinds of legal rules. For example, private citizens and government implement many legal rules (teachers carry out mandates of the education law, private contractors carry out laws concerning highways). Private citizens carry out many legal rules in making private, legal arrangements among themselves (etc.) Legal rules concerning civil liability are carried out only after private individuals initiate lawsuits.

Adjudicating Disputes Under Legal Rules. Adjudication of legal disputes is primarily a task of judicial officials. Many legal disputes are adjudicated in hearings before administrators. Disputes concerning drivers' licenses are most often adjudicated before educational administrators. Drivers' licenses are suspended in hearings before the motor vehicles commissioner. Labor disputes go before labor department administrators. Such administrative actions are subject to ultimate judicial adjudication through the process of judicial review. Legislative adjudication also occurs in certain circumstances; for example, when a legislator is censured by fellow legislators.

3. KINDS OF LEGAL PROCEEDINGS

Although the mention of legal proceedings often brings to mind the activities of the courtroom, judicial proceedings of several kinds of legal proceedings in which legal officials engage. In this section, we will consider (a) judicial proceedings, (b) legislative proceedings, and (c) administrative proceedings.

Judicial Proceedings. One familiar sort of judicial proceeding is the trial, a legal proceeding where a judge, an impartial third party to resolve many kinds of disputes. In a *civil lawsuit*, a private party may seek relief from a wrong that has been done to him by another private party or by improper official action. In a *criminal case*, the government or a district attorney or prosecutor may bring an accused private party to trial to seek redress for a wrong supposedly committed at large. Another sort of judicial proceeding is carried on in appeals courts where judges review the propriety of the trial court level. If the appeals court judges find that the trial judge has made a serious mistake, they may reverse the trial court's decision and send the case back for a new trial.

Legislative Proceedings. There are two main kinds of legislative proceedings—passage of laws and the investigation to passage of laws. The methods by which a bill may become a law are familiar. Most of the work of the legislature is done in investigatory hearings and in research where background information for lawmaking is collected and considered. Legislative proceedings are carried out primarily by legislative committees and their staffs.

Administrative Proceedings. Elements of judicial proceedings and legislative proceedings are present in administrative proceedings. Administrative officials investigate and promulgate regulations under powers granted them by legislative action. Administrative officials serve as a third party to resolve disputes that arise under administrative regulations.

4. THE COURT SYSTEM

Because our legal system is a Federal system of coexistent National and State Governments, we have coexistent courts. This system is diagrammed on the following page.

Questions of which courts have jurisdiction over what cases are extremely complicated. A few simplified generalizations are helpful here. Federal courts generally handle cases involving citizens from different states or questions of Federal law. Federal courts may be started in either State or Federal court. In the Federal courts, cases start at trial in the Federal district court. There is a right to one appeal which is generally to a Federal Court of Appeals. The U.S. Supreme Court, highest Court, may not agree to hear a second appeal.

In the New York State courts, cases start at trial in the supreme court or in a local court that handles the case. If the case starts in a local court, the right to one appeal is to the State Supreme Court. If the case starts in the supreme court, the right to one appeal is to the U.S. Supreme Court.

ules. Legal officials are also charged with the carrying out of legal rules. Taxing, spending, and regulatory are implemented by officials of administrative agencies. Criminal laws are enforced by police officials. y key roles in carrying out diverse kinds of legal rules. For example, private citizens who are employed by legal rules (teachers carry out mandates of the education law, private contractors carry out much law con- te citizens carry out many legal rules in making private legal arrangements among themselves (contracts, wills, ning civil liability are carried out only after private individuals initiate lawsuits.

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EDINGS

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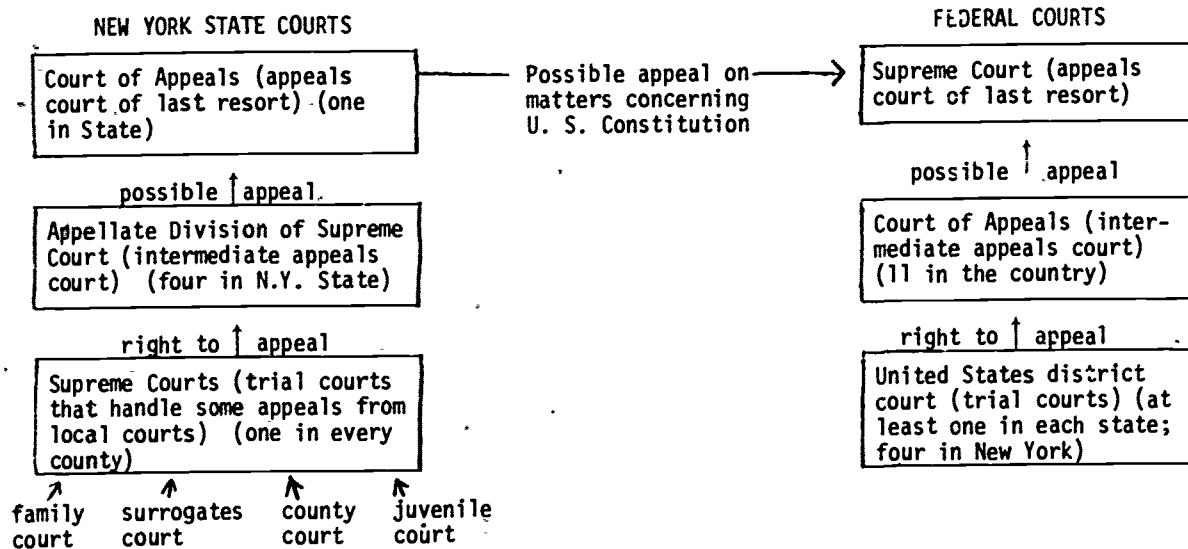
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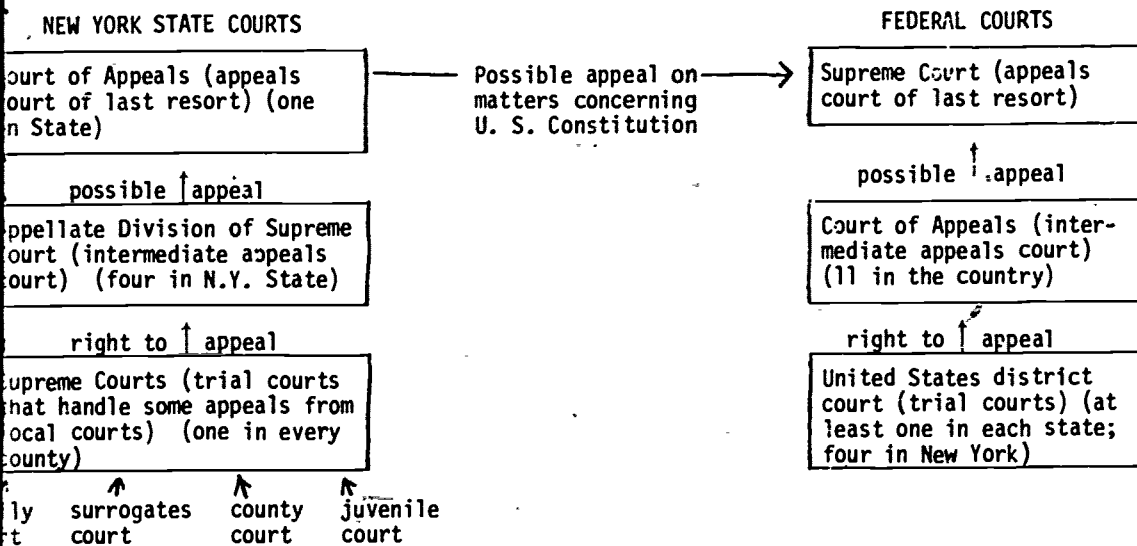
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Supreme Court, the right to one appeal is to one of the four Appellate Division Courts. The New York Court of Appeals Supreme Court, may grant an additional appeal. The only time a case may be appealed from a state to a Federal court of last resort to the U.S. Supreme Court, provided that a Federal law is involved and that the U.S. Supreme Court grants the case.



ent to one appeal is to one of the four Appellate Division Courts. The New York Court of Appeals, like the U. S. Court of Appeals, is the court of last resort in the state. It is possible to have an additional appeal. The only time a case may be appealed from a state to a Federal court is from the state to the U.S. Supreme Court, provided that a Federal law is involved and that the U.S. Supreme Court agrees to take the case.



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COLLECTING RESOURCE MATERIALS FOR CLASSROOM USE

Use of primary legal resource material has proven to be extremely effective in the classroom. Students of all levels responded well to adapted versions of actual cases and statutes. Many of the cases are available in materials already in secondary students' use. Any one of the casebooks included in the bibliography of casebooks in the bibliography would be useful. References in the modules list the location of the cases in the secondary school level.

In order for the teaching of these modules to be meaningful, teachers should not overlook contemporary issues and situations related to the concepts being developed. *The New York Times Index* and *The Readers Guide to Periodicals* are both useful to students and teachers in searching for sources of detailed accounts about new material for class consideration.

LOCATION AND ADAPTATION OF CASES

Court decisions are suggested as resources at various points in this guide. Court decisions exist in two types of materials: casebooks and case reports. The characteristics and advantages of each are discussed below.

Casebooks are edited collections of court decisions on particular subjects which are prepared for law school study, general reading, and, in a few instances, for secondary school study. (See the casebook listing in the bibliography.) They offer two advantages. First, a single casebook collects in one place numerous cases on a related subject that may be used in a class. Second, most cases require substantial editing of case language and length prior to use in a class. In a casebook, the editing is done, as cases appearing in casebooks are usually shortened versions of actual cases.

The most complete source of court decisions exists in the case reports. The decision in a court case is handed down by the court or judges as a written opinion. As enough new decisions are handed down by a particular court to fill a volume, they are collected together, and the new volume is added to the multivolume series that constitutes the case reports of that court. For the United States Supreme Court, the reports are collected in a series of volumes, known as the *United States Reports*, which consist of 400 volumes. One case suggested for classroom study is the New York Regents prayer case, *Engel vs. Vitale*. In the citation for this case appears "vol. 370 *U.S. Reports*, p. 421 (1962)." Thus, the Supreme Court decision for the case of *Vitale*, which was handed down in 1962, is located in volume 370 of the *United States Reports* at page 421.

While the *United States Reports* contains U.S. Supreme Court cases, cases from other courts (or groups of courts) are collected in other series of volumes. The diagram of the court system below indicates the names of the reports in which the particular courts are collected.

	NEW YORK COURTS	FEDERAL COURTS	
<u>New York Reports</u>	Court of Appeals (court of last resort)	Supreme Court (Court of last resort)	<u>U.S. Reports</u>
<u>New York Appellate Division Reports</u>	Appellate Division of the Supreme Court (four in state)	Court of Appeals (11 in the country)	<u>Federal Reporter</u>
<u>New York Miscellaneous Reports</u>	Supreme Court (one in each county)	United States District Courts (at least one in each state)	<u>Federal Supplement</u>

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MATERIALS FOR CLASSROOM USE

Legal resource material has proven to be extremely effective in the classroom. Students of all ability levels adapted versions of actual cases and statutes. Many of the cases are available in materials already prepared for use. Any one of the casebooks included in the bibliography of casebooks in the bibliography would have many of the cases in the guide. References in the modules list the location of the cases in the secondary school level case collections.

For the teaching of these modules to be meaningful, teachers should not overlook contemporary issues in pertinent cases related to the concepts being developed. *The New York Times Index* and *The Readers Guide to Periodical Literature* are helpful to students and teachers in searching for sources of detailed accounts about new material for class consideration.

CHOICE OF CASES

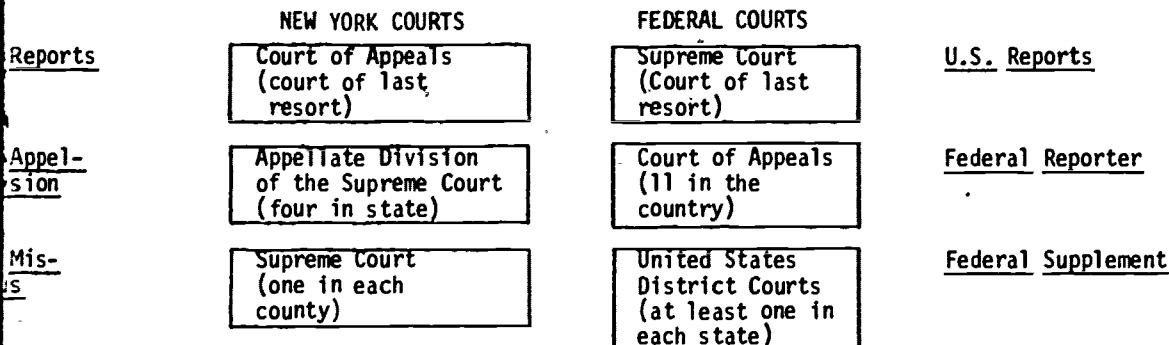
Cases are suggested as resources at various points in this guide. Court decisions exist in two types of publications, casebooks and reports. The characteristics and advantages of each are discussed below.

Casebooks are limited collections of court decisions on particular subjects which are prepared for law school use, undergraduate use, and, in a few instances, for secondary school study. (See the casebook listing in the bibliography.) Casebooks

First, a single casebook collects in one place numerous cases on a related subject that may be used in class. They require substantial editing of case language and length prior to use in a class. In a casebook this job is partially done. The cases in casebooks are usually shortened versions of actual cases.

The primary source of court decisions exists in the case reports. The decision in a court case is handed down by the judge in an opinion. As enough new decisions are handed down by a particular court to fill a volume, they are bound together in a volume. A new volume is added to the multivolume series that constitutes the case reports of that court. For example, the cases of the Supreme Court are collected in a series of volumes, known as the *United States Reports*, which contains just over 500 cases. The case suggested for classroom study is the New York Regents prayer case, *Engel vs. Vitale*. In the "Resources" section, the case appears as "vol. 370 *U.S. Reports*, p. 421 (1962)." Thus, the Supreme Court decision for the case of *Engel vs. Vitale*, handed down in 1962, is located in volume 370 of the *United States Reports* at page 421.

The *United States Reports* contains U.S. Supreme Court cases, cases from other courts (or groups of courts at the same level) in a series of volumes. The diagram of the court system below indicates the names of the reports in which cases from each court are collected.



In addition to the case reports of the various Federal and State courts, the important decisions of all 50 states are selected for publication in the regional reporters. These reporters are *Atlantic Reporter*, *Northeastern Reporter*, *Reporter*, *Southeastern Reporter*, *Northwestern Reporter*, *Southwestern Reporter*, and *Pacific Reporter*. For example, New York courts are collected in the *Northwestern Reporter* along with cases from Indiana, Illinois, Massachusetts,

Case reports are available in every county courthouse library, in large public libraries, and in college or university libraries. The libraries of practicing lawyers contain some case reports. Although the case reports are the most complete source of decisions, casebooks are more easily used in the preparation of materials for secondary students.

As they appear in the case reports or in casebooks, court cases normally will require editing before they are suggested in this guide. Since courts often devote large portions of a decision to discussing technical points of no importance for secondary school adoption, most cases can be shortened. Where vocabulary is too difficult for students, they may also want to paraphrase to clarify the cases.

LOCATION AND ADAPTATION OF STATUTES

Selected legislation passed by the United States Congress or by the New York State Legislature is suggested at various points in this guide. These suggestions refer to some of the hundreds of statutes passed each year by the legislatures on scores of topics. These laws are consolidated by subject (codified) in statute books. For example, laws on motor vehicles are collected in a single place, all the laws on crimes are collected in a single place, etc. All New York law is periodically codified and updated in approximately one dozen volumes called the *United States Code*, containing laws in various areas called titles. The entire code as well as each of the separate titles is indexed reasonably well. All New York law is codified by subject in a series of statute books called *McKinney's Consolidated Laws of New York*. In this multi-volume statute law of the State is consolidated under 70 different subjects, and indexed well by topic through the entire

The *United States Code* and the *Consolidated Laws of New York* can be found in any county court house, and may also be found in college, university, or public libraries. Practicing attorneys generally have copies of the Federal and state statute books in their libraries.

As with cases, editing will usually be necessary before using statutes for classroom study. The text of the statutes can be reduced in length, language can be simplified, and technical legal material can be deleted.

A LAW RESOURCE SUPPLEMENT FOR SOCIAL STUDIES RESOURCE CENTER

Compilation of student materials from primary sources involves use of some resources that may be unfamiliar or not available in the school or public library. One means of facilitating the process of compiling student materials is to have the school district to acquire books for a law source supplement to the social studies resource center. A list of book titles and other relevant resource materials is found in the bibliography. Acquisition of one book from each of the suggested categories will provide a "mini" resource collection that would facilitate locating classroom materials for study.

THE ATTORNEY IN THE CLASSROOM

The New York State Bar Association and several local bar associations have expressed an interest in assisting with the teaching of law in the schools. This resource should not be overlooked when assistance is needed in the locating of legal materials. If a law library is not available, local attorneys generally possess a comprehensive collection of legal materials. Once resource material is located, the attorney may prove useful in the process of adapting it for student use.

Many classes will not be able to have legal talent available for more than one or two occasions. However, a teacher may wish to "adopt" your classes over a period of time, providing several members who could be available at different times during the duration of the study of the legal concepts. If a visit to court is arranged as part of such a program it is part

case reports of the various Federal and State courts, the important decisions of all 50 state court systems are collected in the regional reporters. These reporters are *Atlantic Reporter*, *Northeastern Reporter*, *Southern Reporter*, *Northwestern Reporter*, *Southwestern Reporter*, and *Pacific Reporter*. For example, selected cases from the *Northeastern Reporter* along with cases from Indiana, Illinois, Massachusetts, and Ohio.

are available in every county courthouse library, in large public libraries, and in college or university libraries. Practicing lawyers contain some case reports. Although the case reports are the most complete source of court cases, they are more easily used in the preparation of materials for secondary students.

In the case reports or in casebooks, court cases normally will require editing before they are used for procedures in the classroom. Since courts often devote large portions of a decision to discussing technical points of law that may be of little interest to the secondary school adoption, most cases can be shortened. Where vocabulary is too difficult for students, the teacher can edit the phrase to clarify the cases.

USE OF STATUTES

Legislation passed by the United States Congress or by the New York State Legislature is suggested as resource material in this guide. These suggestions refer to some of the hundreds of statutes passed each year by the Federal and state legislatures on a wide variety of topics. These laws are consolidated by subject (codified) in statute books. For example, all the laws on crimes are collected in a single place, all the laws on crimes are collected in a single place, etc. All Federal legislation is collected and updated in approximately one dozen volumes called the *United States Code*, containing 50 main subject areas. The entire code as well as each of the separate titles is indexed reasonably well. All New York State legislation is collected in a series of statute books called *McKinney's Consolidated Laws of New York*. In this multivolume series, the entire code is consolidated under 70 different subjects, and indexed well by topic through the entire series.

The *United States Code* and the *Consolidated Laws of New York* can be found in any county court house, and may also be available in law libraries or public libraries. Practicing attorneys generally have copies of the Federal and state statutes in their offices.

Editing will usually be necessary before using statutes for classroom study. The text of the statute can be reworded so that the language can be simplified, and technical legal material can be deleted.

PROCEDURE FOR SOCIAL STUDIES RESOURCE CENTER

Acquiring student materials from primary sources involves use of some resources that may be unfamiliar or are not readily available in the school or public library. One means of facilitating the process of compiling student materials is for the school or library to acquire books for a law source supplement to the social studies resource center. A list of books that collect relevant materials is found in the bibliography. Acquisition of one book from each of the suggested categories would provide a good selection that would facilitate locating classroom materials for study.

USE IN CLASSROOM

The State Bar Association and several local bar associations have expressed an interest in assisting the development of legal education in the schools. This resource should not be overlooked when assistance is needed in the location or adaptation of legal materials. If a law library is not available, local attorneys generally possess a comprehensive collection of the legal literature. If the material is located, the attorney may prove useful in the process of adapting it for student use.

It will not be able to have legal talent available for more than one or two occasions. However, a bar association may be able to provide classes over a period of time, providing several members who could be available at different times throughout the year. If a visit to court is arranged as part of such a program it is particularly helpful to the student.

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have an attorney to brief the class before the visit, and to answer questions afterwards. In addition, if a law library is accessible, the teacher may find that a local attorney would have casebooks and other resources which he could borrow.

Live resources, perhaps even more than written and audiovisual materials, require careful planning in order to realize their potential. Some planning procedures which help both attorney and class to work effectively together include:

- . discussion of the specific topics for which the attorney's expertise is needed, well in advance of the date the attorney will be present. Some questions which students have raised concerning these topics would provide helpful guidance.
- . a brief but specific statement concerning the course of study, including what has been discussed in class prior to the attorney's participation.
- . the loan to the participating attorney of any curriculum materials being used to structure the classwork, and the provision of copies of related student material.
- . provision for the attorney to identify misconceptions which students may have about the legal processes to be discussed. The attorney may wish to question students before he works with the class. A student committee could call on him to help with this task.

the class before the visit, and to answer questions afterwards. In addition, if a law library is not easily find that a local attorney would have casebooks and other resources which he could borrow.

As even more than written and audiovisual materials, require careful planning in order to realize their full procedures which help both attorney and class to work effectively together include:

Specific topics for which the attorney's expertise is needed, well in advance of the date when the attorney come questions which students have raised concerning these topics would provide helpful guidelines for him
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Module 1

MODULE I: THE LAW-WHO NEEDS IT? *

1. *The Main Focus.*

What is law? Is it necessary to modern society? The consideration of these questions is a logical place for beginning thinking about the role of law in modern society. As this module develops, the main focus will be on three of law's functions that are necessary to a modern society: laws provide a process by which many disputes can be resolved rationally; guidance in complex human activity that might otherwise be chaotic or unsafe; laws protect people from antisocial conduct who might harm them.

2. *Why This Focus?*

Developing these understandings about the social necessity for law will provide the means to examine a number of conceptions about the law and about the purpose of the legal system.

First, some students may think that the fact that we have so much law in our complex society is mere happenstance. Legal processes are not really social necessities. Providing rational processes for dispute resolution, providing social guidance, and providing protection from antisocial conduct are by no means the only necessary social functions of law, but in studying law that fills these fundamental social functions, students may perceive how law is in fact a social necessity.

Second, most students will think law exists mainly to punish people for doing bad things. Even students who understand the social necessity are apt to think that only the criminal law is really essential. This exaggerates law's restrictive functions. Law exists primarily to *facilitate* social life. The necessity for many laws and legal processes does not rest on the existence of lawbreakers. Law would be needed in society as we know it even if all citizens were men of good will at all times.

A third fundamental misconception about the nature of law treated in this module is that all law consists of rules that lawmakers make which tell people what to do. Rather, laws are responses to particular social needs. And they include more than rules. The legal system also includes legal processes and legal officials. This is necessarily so because rules are not self-applying, or self-changing.

A fourth common misconception is that legal processes are merely ritualistic technicalities. The failure of law to meet social needs that have called it into play can be explained in several ways: the need may be beyond law's effective capacity (a need for fellow man), the rule may be unwise (a speed limit can be set too high or low), or the process may be ill-designed (court claims are backed up in some urban courts as much as 5 years). Existence of defective legal processes fosters the misconception. The part of many that legal process is necessarily only technical ritual that interferes with operation of rules. Although legal processes may be well or ill designed, legal process is essential to provide a structured, rational means of getting rules changed, or applied in specific circumstances.

3. *Outline of the Teaching Sequence.*

To show how law is a social necessity, this module treats: the law as supplier of processes for resolving conflicts that actually arise (Understanding I), the law as guider and coordinator (Understanding II), and the law as protector (Understanding III). Stated in another way, the module is designed to show the student that some laws are responses to society's basic needs, the "process" of law, some responses to its basic need for the "guidance" of law, and some responses to its basic need for protection. While in most instances where law operates, these three uses of law interact, this module directs attention to the importance of each.

In addressing the necessity for law, students may be very much inclined to focus first and only on crimes. This module postpones consideration of the need for laws to protect persons and property from others until the end. It is helpful to direct student interest away from criminal law by pointing out the variety of other familiar subjects with which law is concerned. A simple, but dramatic way to demonstrate this is to bring a volume of statutes or case reports into the classroom. In examining tables of subjects covered in either of these original sources, one discovers that criminal matters are only a small part of the subjects treated by law.

*Material on this page is background information for the teacher.

MODULE I: THE LAW-WHO NEEDS IT? *

Is it necessary to modern society? The consideration of these questions is a logical place for students to begin their study of the role of law in modern society. As this module develops, the main focus will be on three of law's social functions in a modern society: laws provide a process by which many disputes can be resolved rationally, laws provide a means of controlling human activity that might otherwise be chaotic or unsafe, laws protect people from antisocial conduct of others.

These understandings about the social necessity for law will provide the means to examine a number of common misconceptions about the law and about the purpose of the legal system.

Students may think that the fact that we have so much law in our complex society is mere happenstance—that law and order are not really social necessities. Providing rational processes for dispute resolution, providing social guidance, and protecting people from antisocial conduct are by no means the only necessary social functions of law, but in studying how law fulfills its social functions, students may perceive how law is in fact a social necessity.

Students will think law exists mainly to punish people for doing bad things. Even students who view law as a means of social control are apt to think that only the criminal law is really essential. This exaggerates law's restrictive functions. Laws exist to facilitate social life. The necessity for many laws and legal processes does not rest on the existence of evil, but on the evil needed in society as we know it even if all citizens were men of good will at all times.

A fundamental misconception about the nature of law treated in this module is that all law consists of rules that rule people and tell people what to do. Rather, laws are responses to particular social needs. And they include more than rules; they include legal processes and legal officials. This is necessarily so because rules are not self-creating, self-enforcing, and self-maintaining.

A common misconception is that legal processes are merely ritualistic technicalities. The failure of law to meet the needs of society is called it into play can be explained in several ways: the need may be beyond law's effective capacity (respecting the rule may be unwise (a speed limit can be set too high or low), or the process may be ill-designed (auto accident cases in some urban courts as much as 5 years). Existence of defective legal processes fosters the misconception that the legal process is necessarily only technical ritual that interferes with operation of rules. Although legal processes are often ill designed, legal process is essential to provide a structured, rational means of getting rules made, and to apply them in specific circumstances.

Teaching Scheme.

If law is a social necessity, this module treats: the law as supplier of processes for resolving fairly disputes (Understanding I), the law as guider and coordinator (Understanding II), and the law as protector (Understanding III). In other words, the module is designed to show the student that some laws are responses to society's basic need for the law, some responses to its basic need for the "guidance" of law, and some responses to its basic need for the "threat" of law. In instances where law operates, these three uses of law interact, this module directs attention to the independent

When studying the necessity for law, students may be very much inclined to focus first and only on crimes. To avoid this, the module encourages consideration of the need for laws to protect persons and property from others until the end. Initially, it is suggested that student interest away from criminal law by pointing out the variety of other familiar subjects with which law deals. Another way to demonstrate this is to bring a volume of statutes or case reports into the classroom. In examining the material covered in either of these original sources, one discovers that criminal matters are only a *small* fraction of the law.

Background information for the teacher.

Module 1

SUMMARY OF UNDERSTANDINGS

PEOPLE LIVING IN A MODERN SOCIETY NEED LAW TO:

- PROVIDE RULES AND PROCESSES FOR RESOLVING DISPUTES FAIRLY AND RATIONALLY
- GUIDE AND COORDINATE THEIR ACTIVITIES
- DISCOURAGE ANTISOCIAL BEHAVIOR SUCH AS ASSAULTS AND THEFTS

UNDERSTANDING I

PEOPLE LIVING IN A MODERN SOCIETY NEED LAW TO PROVIDE RULES AND PROCESSES FOR RESOLVING DISPUTES FAIRLY AND RATIONALLY.

A. *Explanation of Understanding I*

The focus of this understanding is on the law as a process, the function of which is to resolve disputes on the basis of principles rather than by use of sheer power or other arbitrary means. To understand this process, the students must first recognize that (1) conflicts are not limited to "bizarre" circumstances where a "good" person confronts a "bad" one, but are commonplace among all members of society; (2) while many of these conflicts can be ironed out by negotiation, goodwill, forgetting about them, etc., some are sufficiently serious to require help from society in resolving them fairly and efficiently; (3) one of the functions of law is to provide this help; and (4) that for the law to carry out its function, it must follow fair and reasonably efficient procedures itself. The teaching materials suggested are designed to help achieve this understanding by considering how good-faith conflicts naturally arise, how people live together, by examining some alternative methods of resolving such conflicts, and how the judicial system sets about this task of resolving disputes.

B. *Teaching Understanding I*

OBJECTIVES

- The student can develop awareness of the universality of disputes by observations of disputes around him as well as through directed viewing of selected cases.

SUMMARY OF UNDERSTANDINGS

PEOPLE LIVING IN A MODERN SOCIETY NEED LAW TO:

- PROVIDE RULES AND PROCESSES FOR RESOLVING DISPUTES FAIRLY AND RATIONALLY
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Understanding I

This understanding is on the law as a process, the function of which is to settle disputes on the basis of principles rather than by use of sheer power or other arbitrary means. To understand this, students must first recognize that (1) conflicts are not limited to "bad" people or "good" person confronting a "bad" one, but are commonplace among all members of society; (2) not all conflicts can be ironed out by negotiation, goodwill, forgetting about the problem, or simply ignoring; (3) it is often necessary and justly serious to require help from society in resolving them fairly and rationally; (4) the function of law is to provide this help; and (5) that for the law to carry out this job, it must have reasonably efficient procedures itself. The teaching materials suggested below are designed to give this understanding by considering how good-faith conflicts naturally arise when people interact, by examining some alternative methods of resolving such conflicts, and by demonstrating the law's role in setting about this task of resolving disputes.

Understanding II

Students can develop awareness of the universality of disputes by observations of the world as well as through directed viewing of selected cases.

Module 1

- The student can indicate the need for structuring in the resolution of conflict by identifying the rules that pertain to any resolution and by assessing the effectiveness of these rules in leading to a successful settlement of the dispute.

QUESTIONS TO REACH UNDERSTANDING

- Even if there were no people who would purposefully do harm to others, given a chance would our society like ours need some official process for dispute resolution? The question can be asked of pupils: "Must there be laws and penalties even in a utopia?"
- Why is it important that official bodies for dispute resolution (courts) have some rules? *how* they will go about settling disputes? Relate to the pupils' family lives: Are disputes settled through violent action or through a calm, logical, reasoning, "talk" session? Are disputes followed in such a "talk" session? Is there a followup to determine how the penalties will be meted out?

USE OF VISUALS

- Students may take pictures or cut pictures from newspapers and magazines which portray a confrontation between two or more persons, in which a dispute seems imminent.
 - What is (might be) the subject of the dispute?
 - What cues are there, that one or more people is (are) angry or upset by the confrontation?
 - How does the information you can get about the scene (from newspaper or from interviews with participants) compare with what you thought was happening?
 - Are there any rules that the participants seem to follow in discussing the question?
- The cartoons on pages 6, 7, and 9 can be analyzed, using the questions above.
- Study pictures, such as those produced by Documentary Photo Aids can be helpful also (see additional visual sources in bibliography.)

can indicate the need for structuring in the resolution of conflict by identifying the rules that pertain to any resolution and by assessing the effectiveness of these rules in achieving a successful settlement of the dispute.

UNDERSTANDING

1. If there were no people who would purposefully do harm to others, given a chance, would a society still need some official process for dispute resolution? The question can be asked: "Should there be laws and penalties even in a utopia?"

2. How important are official bodies for dispute resolution (courts) that have some rules regulating how to go about settling disputes? Relate to the pupils' family lives: Are disputes usually resolved through violent action or through a calm, logical, reasoning, "talk" session? What "rules" govern such a "talk" session? Is there a followup to determine how the penalties are carried out?

3. Have students take pictures or cut pictures from newspapers and magazines which portray a dispute between two or more persons, in which a dispute seems imminent. (What might be the subject of the dispute?)
4. Are there, that one or more people is (are) angry or upset by the confrontation?
5. What information can you get about the scene (from newspaper or from interview of participants) compare with what you thought was happening?
6. What are the main rules that the participants seem to follow in discussing the question?

7. The material on pages 6, 7, and 9 can be analyzed, using the questions above.

8. Materials, such as those produced by Documentary Photo Aids can be helpful also. (See additional sources in bibliography.)

Module 1

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Some disputes, even among men of good faith, create a need for legal process.

The following are suggested classroom strategies that may be used to prove this statement.

- (a) Divide the class into three groups and let each group determine the cause and possible resolution of the following hypothetical cases:
 - Jones has stolen Smith's watch and sold it to Clark who innocently believed it was Jones' to sell. Jones is nowhere to be found, and now Smith and Clark lay claim to the watch. (Rule: The owner of property has a right to possession.)
 - Green and White have had a head-on collision in which each was seriously injured and had hospital bills of \$10,000. Each honestly believes the accident was caused by the other's presence on the wrong side of the road and should be paid for by the other. (Rule: If a person's negligence causes injury to another, he must compensate him for the harm.)
 - Jackson has an agreement with Washington that requires him to build a house. The contract

Initially, the teacher might raise the question: Is it enough to have rules of law? By presenting some very basic rules of law and presenting good-faith conflict situations to which the rules might be applied for resolution, the teacher should see that additional rules are needed to set up processes for fair application of the rules to specific dispute situations. Even good-faith disputants who agree on a rule may be unable to come to an agreement on how the rule should be resolved.

The three sample good-faith disputes show three separate ways in which honest men may find themselves locked in conflict. Case one, the watch, shows that honest men of good faith may disagree on *their interpretations* of the rule in question to determine what the rule means. Here, some process is needed to determine what the rule in question to determine what property ownership.

Case two, the head-on accident, shows that honest men of good faith may have *their facts wrong*. Some process is needed to make a rational attempt at determining what the facts are. Here, good faith disputing parties has his

Case three, the building contract, demonstrates that honest men may have *differing judgments*. Some process is needed to decide, given the facts, what perception of what constitutes "standard workmanship" is the more reasonable.

ION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

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means. Here, some process is needed to further refine
the rule in question to determine what constitutes
property ownership.

Case two, the head-on accident, shows that men
of good faith may have *their facts* wrong; one has his
facts wrong in this case. Some process is needed to
make a rational attempt at determining which of the
good faith disputing parties has his facts right.

Case three, the building contract, demonstrates
that honest men may have *differing judgments*. Some
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perception of what constitutes "standard quality
workmanship" is the more reasonable.

Module 1

DETAILED DESCRIPTION OF STRATEGIES

requires "standard quality workmanship." A week after Washington moves in, the area suffers the worst rain in 50 years; a cellar wall cracks. Each, Jackson and Washington, believes that under their agreement the other should bear the expense of repairing the wall. (Rule: When one fails to perform his promise under a contract, he must put the other party in the position he would have been in if the promise had been performed.

Have each group elect a group leader who will present the case and conduct discussion. Each group leader will report back to the entire class the possible solutions. Teacher should draw together all discussion with final conclusions.

- (b) Present to the class one of the above-listed hypothetical cases with basic premise and solution. Then divide class into teams of five to seven pupils to devise their own case and solution. Have team leaders cite case they have devised. See if other groups can break the deadlock before leader gives his solution.

DISCUSSION OF STRATEGIES AND RESOURCES

In each of these three cases, some rational process for fair dispute resolution in law attempts to meet this need by substantive rules, third parties (courts) the dispute, and procedures for courts.

The teacher might construct hypothetical situations like those outlined above for material for classroom discussion. A student might better grasp the notion of a good-faith conflict which defies private law if they are called upon to work in small groups and construct such situations themselves.

Presenting a good-faith conflict situation in the form of a skit may increase student participation and provide an excellent starting point to the question: What are various ways in which a conflict might be resolved when disputants are unable to reach an agreement? With a little direction from the teacher, a classroom discussion may evaluate alternatives of arbitration, mediation, etc. and the need for an official mechanism of dispute resolution—a judicial process.

Cases included in *Judgment Case Studies* and *Tort Cases in the Classroom* would all be applicable here. The "Background for Teachers" leaflet helps the teacher understand the law involved.

"The Case of the Missing Ring" in *The Law and the Courts* is also applicable.

ION OF STRATEGIES

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DISCUSSION OF STRATEGIES AND RESOURCES

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stantive rules, third parties (courts) to resolve
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might be resolved when disputants are deadlocked?
With a little direction from the teacher, class dis-
cussion may evaluate alternatives of coin flipping,
etc. and the need for an official method of dispute
resolution—a judicial process.

Cases included in Judgment Case Study No. 11, *Using
Tort Cases in the Classroom* would also be useful
here. The "Background for Teachers" section of this
leaflet helps the teacher understand the points of
law involved.

"The Case of the Missing Ring" in the pamphlet,
Courts and the Law, is also applicable.

Module 1

DETAILED DESCRIPTION OF STRATEGIES

- (c) Have teacher select pupils in the class to play the roles in each of the following skits —first without, then with the benefit of the legal process. Ask class to consider, while watching skits, whether the matter could conceivably be solved without the legal process. It would be interesting to have the pupils chosen do it extemporaneously to see what direction they would take.

—Photographer Smith takes a picture of a famous actress in town while she is mowing the lawn with a new Torch Lawnmower. The picture appears in the morning newspaper with a caption of the actress extolling the merits of the lawnmower and encouraging all to buy one as soon as possible. The actress immediately sues the newspaper stating she never endorsed that product. The photographer states that she used it in public so that he was within his rights in making the assumptions that he did.

—Mrs. Smith claims that her son Johnny's fifth grade teacher, Miss Jones, is always calling him slow. He has developed an inferiority complex and as a result she intends

DISCUSSION OF STRATEGIES AND RESOURCES

A cartoon has been omitted here of copyright restrictions. It New Yorker Magazine, 1971. dra J. Mirachi

Drawing by J. Mirachi; © 1971 The Magazine, Inc.

See text, p. 3.

ION OF STRATEGIES

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See text, p. 3.

Module 1

DETAILED DESCRIPTION OF STRATEGIES

to sue Miss Jones. In checking Johnny's record, it is discovered by the principal that his marks have always been below average.

- (d) In a general class discussion, ask pupils to evaluate (1) how equitable it would be to solve a problem in each of the following ways and (2) whether the dispute would irrevocably be settled:

- . Coin flipping
- . Fighting
- . Turning to a friend of one of the disputants
- . Taking the dispute to an official court

- (e) Have each of four pupils do research on how legal decisions were arrived at in various cultures based on various codes or documents. Each pupil should report on one of the following to the class:

- . Code of Hammurabi
- . The Koran
- . Code of Napoleon
- . Soviet Constitution

The book, *Treasury of Law*, by Richard Nice, publisher: Philosophical Library, 1964, is an excellent source for materials giving the pupil a "broad sampling of man's legal tradition." (Excerpts from this text will be quoted later on in

DISCUSSION OF STRATEGIES AND RESOURCES

A cartoon has been omitted of copyright restrictions. the April 6, 1963 issue of Review, Inc. (drawn by He

See text, p. 3.

DESCRIPTION OF STRATEGIES

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- Coin flipping
- Fighting
- Turning to a friend of one of the disputants
- Taking the dispute to an official court

Each of four pupils do research to show how legal decisions were arrived at in various cultures based on various laws or documents. Each pupil should report on one of the following to the class:

- Code of Hammurabi
- The Koran
- Code of Napoleon
- Soviet Constitution

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DISCUSSION OF STRATEGIES AND RESOURCES

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See text, p. 3.

Module 1

DETAILED DESCRIPTION OF STRATEGIES

this first module.) However, if the above mentioned book is unavailable, references such as *The Human Adventure* include excerpts from one or more of these documents.

2. The need for rules regulating how courts will go about resolving disputes.

- (a) Divide the class into five groups. Have each group prepare and present a vignette showing the consequences if a judge or jury resolved a dispute without taking into consideration one of the following:
- rules requiring that *both* sides be notified that the court is going to act on the dispute
 - rules allowing both sides the chance to be heard
 - rules that try to assure that judges are qualified
 - rules allowing the loser to appeal when he feels the third party has made a mistake
- (b) Have pupils examine provisions for the establishment and operation of a court system including provisions for some necessary processes if courts are to resolve disputes fairly. To familiarize them with the New York State constitution,

DISCUSSION OF STRATEGIES AND RESOURCES

Having arrived at a need for some legal help resolve disputes, suggested procedures attempt to show that if the court does this job properly they must follow certain principles.

The teacher might propose resolution of disputes the class has already considered in an imaginary court that places very little emphasis on procedural processes. This court might not notify the losing party, might not listen to the disputing party, or might have judges who are patently incompetent to do their jobs.

Statutory and constitutional provisions for the New York court system and outlining procedural rules of court are suggested that American courts try to conform to (Examples of edited or abridged statutes are in module IV, pages 158-159). If the teacher wishes to use these original statutory and constitutional resource materials, he should freely edit and paraphrase such materials for student use. He may wish to check with an attorney or a court representative concerning whether a change in wording changes the intent of the statute.

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OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

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Having arrived at a need for some legal process to help resolve disputes, suggested procedures and re- sources attempt to show that if the courts are to do this job properly they must follow certain procedures themselves.

The teacher might propose resolution of one of the disputes the class has already considered in an imaginary court that places very little value on such processes. This court might not notify the other party, might not listen to the disputant's arguments, or might have judges who are patently unqualified to do their jobs.

Statutory and constitutional provisions setting up the New York court system and outlining a few basic procedural rules of court are suggested to demonstrate that American courts try to conform to fair processes. (Examples of edited or abridged statutes are included in module IV, pages 158-159). If the teacher chooses to use these original statutory and constitutional resource materials, he should freely edit and para- phrase such materials for student use. However, he may wish to check with an attorney or bar associa- tion representative concerning whether his changes in wording change the intent of the statute.

Module 1

DETAILED DESCRIPTION OF STRATEGIES

you might have them look up the particular articles summarized on pages 11 and 12.

- establishing uniform court system
- starting a case by notifying the other side
- qualifications and removal of judge
- provision for courts to hear appeals from lower courts

(c) Have class view a videotape, film, or filmstrip on the organization of our courts. Some examples:

- . "Structure and Organization of American Courts." Encyclopedia Britannica Films. b/w, 30 min.
- . On videotape, from the WNBC-TV, Our Legal Profile series—
Programs 10-24, "Attorney at Law";
10-25, "Bench and Bar"; 10-26,
"Conscience of the State."

3. Actual dispute resolution in court.

(a) As a class, visit a local court to see a case at trial similar in subject matter to a dispute discussed in class. (Contact the city court clerk or county court clerk to make arrangements.) If it is not possible to take a large group,

A cartoon has been omitted here because of restrictions. It is from the March Review.

Students may benefit from seeing a case like one they have discussed was argued in court. If they visit a trial, it might be very helpful in explaining the role in resolving private disputes. If an opinion is examined, students will

ION OF STRATEGIES

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Students may benefit from seeing how a dispute
like one they have discussed was actually settled
in court. If they visit a trial, a clerk or judge
might be very helpful in explaining the trial court's
role in resolving private disputes. If an appellate
opinion is examined, students will see law's dispute-

Module 1

DETAILED DESCRIPTION OF STRATEGIES

perhaps certain select members of class might go and report back to the total group.

- (b) Discuss with class an appellate court decision of an actual case that addressed a dispute similar in its facts to that on which the students did a skit. Make use of synthesized version of such cases as *Carroll v. Bouley* (p. 12), *O'Connor v. Clark* (p. 13), *Steas v. Leonard* (p. 14).
- (c) Invite a local attorney to speak to your class on the role of the judicial process in resolving private disputes fairly. (Ask the local bar association to help find a speaker. In some cities, the bar association has a program already in progress.) Have a panel to question the speaker when he completes his talk.
- (d) Have class view a filmstrip or movie on a lawsuit. One possibility is "The Witness to an Accident" (30 min. b/w).

This film documents and dramatizes a civil lawsuit based on an automobile injury case. Delineates roles played by lawyers for plaintiff and defendant.

DISCUSSION OF STRATEGIES AND RESOURCES

resolving process at a level after a already rendered a decision. The party brought the appeal is challenging the a mistaken application of the law. opinion is used, it will need substantial editing. (See "The Attorney in the Courtroom" p. xiii). A local lawyer might be well with the editing if the teacher feels called for.

A visit from an attorney to discuss litigation by the courts could be very interesting to students. Such a visitor might be more if the teacher is able to focus his presentation on informing him of the students' course of action he speaks to the class. (See p. xiv)

Students who wish to read detailed description of the role of each of the principals in a lawsuit will find such a description in Chapter 1 of *The American Judicial System*.

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DISCUSSION OF STRATEGIES AND RESOURCES

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informing him of the students' course of study before
he speaks to the class. (See p. xiv.)

Students who wish to read detailed descriptions of
the role of each of the principals in a court case
will find such a description in Chapter 1, Starr,
The American Judicial System.

Module 1

RESOURCES *

New York State Constitution

Article VI - Section I

...states information about the Supreme Court -- how set up -- what the judicial districts are -- number of justices -- how they will be chosen -- that the legislature may alter the judicial number after a Federal census -- that they may increase the number of justices except that the number of justices in each district shall not exceed one for each 60,000 people.

Article VI - Section IV

"The official terms of the justices of the supreme court shall be fourteen years from and including the first day of January next after their election." ...governors may appoint someone to fill vacancy until next election occurs.

Article VI - Section XX

"The testimony in equity cases shall be taken in like manner as in cases at law. The legislature shall have the same power to alter and regulate the proceedings and jurisdictions in law and in equity that it has exercised before."

Article VI - Section XXII

...states that any judge of the court of appeals, justice of the supreme court, judge of the court of claims, county court, surrogate's court, (or) family court removed for cause or forced to retire because of mental or physical disability that prevents fulfillment of his judgeship -- only, however, after notice and hearing proceedings by the court of the judiciary. -- further states the members that will be on the court of judiciary for hearings. -- an affirmative vote of at least four members will result in justice's removal.

*Direct quotations from statutes are indicated by the use of quotation marks. Other summaries or paraphrases of the statute listed.

RESOURCES *

State Constitution

- Section I

Provides information about the Supreme Court -- how set up -- what the judicial powers are -- number of justices -- how they will be chosen -- that the legislature may alter the judicial number after a Federal census -- that they may increase the number of justices except that the number of justices in each district shall not exceed one for each 60,000 people.

- Section IV

"The official terms of the justices of the supreme court shall be fourteen years beginning and including the first day of January next after their election." ...governor may appoint someone to fill vacancy until next election occurs.

- Section XX

"Testimony in equity cases shall be taken in like manner as in cases at law... The legislature shall have the same power to alter and regulate the proceedings in all jurisdictions in law and in equity that it has exercised before."

- Section XXII

Provides that any judge of the court of appeals, justice of the supreme court, judge of the court of claims, county court, surrogate's court, (or) family court may be removed from office for cause or forced to retire because of mental or physical disability which prevents fulfillment of his judgeship -- only, however, after notice and proper legal proceedings by the court of the judiciary. -- further states the members of the court of appeals shall be on the court of judiciary for hearings. -- an affirmative vote by at least four members will result in justice's removal.

References from statutes are indicated by the use of quotation marks. Other statements are paraphrases of the statute listed.

Module 1

Article VI - Section XXIII

--states specifically that the State Assembly has the power of impeachment of Governor or Lieutenant Governor by a majority vote -- states that the State Senate shall conduct the actual trial itself -- a two-thirds vote is needed for conviction.

McKinney's Consolidated Laws of New York - "Civil Practice Law and Rules." Vol. Section 304.

--states that a civil proceeding is begun and jurisdiction secured by a summons. A special proceeding is commenced by serving a notice of petition or order to show cause. However, this above stated law should not be misconstrued to mean that unless a service of process is obtained, there can be no proceedings. According to section 103, "civil judicial proceedings shall not be dismissed solely because it is not brought in the proper form, but the court shall make whatever order is required for its proper prosecution."

Carroll v. Bouley, in Vol. 338, Massachusetts Reports, p. 625, (1959).

(An auto accident claim)

An action against an administrator of an estate for injuries sustained by the plaintiff. When she was riding in an automobile stopped near intersection of streets on a clear dry morning, another automobile entered and crossed the intersection from the opposite direction against a red traffic light and, moving at a speed of 35 miles an hour, struck and broke the post of the traffic light and then crossed the street and struck the automobile occupied by the plaintiff. She maintained that she saw the other automobile coming and "did not observe the driver's seat before it hit the post," and there was evidence that within 5 minutes after the collision between the two automobiles, the defendant's seat was found lying on the floor of the other automobile, alone and suffering serious

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Module 1

from a heart attack of which he died shortly thereafter. It was learned that, operating the automobile normally, he had experienced a sudden and unforeseeable physical seizure depriving him of the capacity to control his automobile before he entered the intersection, so that he was exonerated from responsibility for its operation thereafter, and the plaintiff had no case.

O'Connor v. Clark, in Vol. 32, Atlantic Reporter, p. 1029, (1895)

(The right to property sold by a nonowner)

The owner of a wagon (O'Connor) allowed another individual (Tracy) to print his name and occupation on the wagon making the public think it belonged to Tracy. An individual (Clark), in good faith, bought the wagon. The first owner (O'Connor) cannot recover his original property.

From appeal statement by judge: "It is contended that...defendant (Clark) purchased the property in question from Tracy in the honest belief that he was in fact the owner thereof; that the name and occupation of Tracy—viz. 'George Tracy, Piano Mover'—were on the wagon when he offered it for sale, and that fact was referred to as indicating his ownership of the property, etc.; that Tracy being a stranger to the defendant was specially careful to inquire and inform himself that the person who was in possession of and offering to sell the wagon was the George Tracy whose name and occupation were painted thereon; that Tracy's name and occupation were put on the wagon with the knowledge of O'Connor, the original plaintiff, and himself, and in the direction of the former, for the purpose of creating the impression and inducing the public to believe that the property belonged to Tracy, and was being used by him in his business as a piano mover. ...that the original plaintiff, for his own interest and benefit, was a party to the arrangement whereby Tracy's name was put on the wagon for the purpose of misleading the public into the belief that the property was owned by Tracy, and that defendant, acting with due caution and in good faith, was thus misled into purchasing the property, and purchased the same from Tracy. ..."

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Module 1

Stees v. Leonard, in Vol. 20, Minnesota Reports, p. 494, (1874).

(Unforeseen circumstances complicating performance of a contract)

Plaintiffs Charles Leonard et al (and others) sued the architect company of Stees for not completing a three-story business house in accordance with the specifications of the contract. The defendants maintained that they could not fulfill their part of the contract because the plaintiffs had promised to drain the land on which the house had been built before, but the house had collapsed. The court ruled that there was no reason why the contract couldn't have been fulfilled because the agreement with the plaintiffs was nudum pactum, that is, was a bare agreement, an agreement made without any money being promised to the plaintiffs in consideration of draining the land.

Additional cases:

Public Issue Series: Harvard Social Project - *Rights of the Accused*.

(Case study which centers on an automobile case; the issues involved on arraignment, trial appeal, and constitutional law are also raised.)

_____. *The Lawsuit*.

(A series of cases useful for the purpose)

Abt Associates have prepared a simulation, *Innocent Until*, related to the case described in *The Lawsuit*.

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law*.
Lexington, Mass. Ginn and Co. 1973.

Unit I, Chapter I includes one lengthy case and other materials on the need for fair dispute settlement.

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Module 1

UNDERSTANDING II

PEOPLE LIVING IN A MODERN SOCIETY NEED LAW TO GUIDE AND COORDINATE THEIR ACTIVITIES.

A. *Explanation of Understanding II*

A more sophisticated way of expressing this concept is to say that some law is a system that guides people to do things by providing useful guidelines for cooperation. A clearer way of formulating this concept is to reflect on superhighways. Cars on American superhighways speed along at 70 m.p.h. in the right hand lanes; cars on British superhighways speed along at 70 m.p.h. in the *left* hand lanes. How fast can you be able to go safely and efficiently on any superhighway if there were no law establishing directions for traffic in superhighway lanes? Even if you could move at all. Neither left nor right is any more just a suggestion, but if the law does not establish one or the other as the rule, no one will be able to move either rapidly or safely.

This understanding, which looks at the need for the guidance of law, treats subjects that are familiar to students as crime. However, the coordinating-guiding-directing role is likely to be familiar, and is less likely to be perceived by the student even though the subject (e.g., traffic) is very familiar.

Fundamental societal needs in a modern, complex society go beyond processes for fair distribution and protection of persons and property from bad acts. Needs such as public health, safety, education, and coordination of commercial activities, to list only a few, call for some sort of control to set standards and coordinate activity of large number of people living together; if we do our own thing in acting in the absence of such standards, the result will be, at best, significant inconvenience; at worst, massive chaos.

Perhaps the best way to approach the guidance of law function with students is to examine situations where law's guidance directly affects them. It is important to point out that here is a vast body of law that is only very misleadingly characterized as concerned primarily with discouraging bad behavior. These laws are not obeyed primarily in response to the threat of law (Understanding III). For example, if we accept the guidance of law as meeting our needs for structured interaction without ever considering that we might be punished should we refuse the guidance, how many drivers ever would even think of driving the wrong way on a superhighway even if there were no legal punishment whatever for doing so? While laws have a role in preventing drivers from doing bad things, their most important role is to let drivers know what they should do.

ING IN A MODERN SOCIETY NEED LAW TO GUIDE AND COORDINATE THEIR ACTIVITIES.

Understanding II

A sophisticated way of expressing this concept is to say that some law is a system for helping by providing useful guidelines for cooperation. A clearer way of formulating the idea is to use the example of superhighways. Cars on American superhighways speed along at 70 m.p.h. in the *right* hand lanes. On British superhighways they speed along at 70 m.p.h. in the *left* hand lanes. How fast would anyone drive on any superhighway if there were no law establishing direction of travel in the highway lanes? Everyone would have to creep along at 2 m.p.h. dodging traffic coming from the opposite direction. Indeed, they could move at all. Neither left nor right is any more just than the other. If the law does not establish one or the other as the rule, no one will be able to drive anywhere safely.

Understanding, which looks at the need for the guidance of law, treats subjects that are as serious as crime. However, the coordinating-guiding-directing role is likely to be less serious and less likely to be perceived by the student even though the subject (e.g., traffic movement)

and societal needs in a modern, complex society go beyond processes for fair dispute resolution and protection of persons and property from bad acts. Needs such as public health, safety standards, regulation of commercial activities, to list only a few, call for some sort of social coordination and coordinate activity of large number of people living together; if we each "did our own thing" in the absence of such standards, the result will be, at best, significant confusion and disorder, at worst, massive chaos.

The best way to approach the guidance of law function with students is to examine some areas where the law directly affects them. It is important to point out that here is a vast body of familiar law that is very misleadingly characterized as concerned primarily with discouraging bad acts. Also, law is obeyed primarily in response to the threat of law (Understanding III). For the most part, people obey law as meeting our needs for structured interaction without ever considering that they should refuse the guidance. How many drivers ever would even think of going the wrong way on a superhighway even if there were no legal punishment whatever for doing so? While motor vehicle law is primarily preventing drivers from doing bad things, their most important role is letting good drivers know what they should do.

Module 1

B. *Teaching Understanding II*

OBJECTIVES

- The student may develop a perception of the law as a necessary guide to everyday activities by reviewing situations around him in which guidance is needed for successful interaction and by examining pertinent legal cases.
- Given pictures and case histories portraying situations in daily life, the student will identify situations in which obedience of law is prompted more by recognition of need for standards than by fear of punishment.

QUESTIONS TO REACH UNDERSTANDING

- What kinds of familiar activity would be less safe or more confused if law did not provide standards to provide guidance?
- Even if there were no people who would purposefully do harm to others if given a chance, a society like ours need some rules for standards and guidance in complex social interaction.

USE OF VISUALS

- Have some students view several films or film loops which portray oncoming traffic from a driver's perception point. (The driver education teacher may help you identify such films.) Students should list those situations in which drivers are bound by limits or standards of law. They can then discuss with the class or another group of students what would be the result of each instance if no standards were set.
- Individual students or student committees can review the pictures on page 20 and discuss with the class how each portrays a situation in which the people concerned accept the need for standards.
- As a culminating activity, students may take photographs or draw caricatures to portray situations showing the need of law to coordinate the activities of man's daily life.

standing II

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TEACH UNDERSTANDING

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Module 1

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

Some laws that illustrate the guidance function of law in action.

- (a) Discuss with class the need for rules of law that set standards and give directions concerning fire safety to the people who run public schools. (Before examining the State fire safety standards for schools, students might use the following role play: Have one student act as State school commissioner. He appoints a committee to draw up a recommended list of fire safety rules for schools.)
- Consider why we have these kinds of rules; what if we did not?
 - Have a student committee investigate and report to the class on its school's compliance with selected fire regulations. The principal or vice principal is usually knowledgeable about these matters. So too, is the head custodian. They may be willing to be present, when the committee presents its report, to answer any additional questions pupils may have.
- Throw open for discussion the question as to whether pupils would less likely obey laws if possible penalties did not exist and there was no threat of police action.
- Invite the local fire chief to discuss the question of enforcement of fire safety rules. (See pages 19-20.)

Resources concerning the need for law function may lack the degree of inherent interest that is enjoyed by material conflict and need for its fair resolution (Understanding I) or materials concerning the nature of crimes (Understanding III). and presentation of classroom material in Understanding II presents a particular challenge to be met by emphasis on active student participation in the design and development of the standards (a student committee to investigate and develop standards).

A caution at this juncture: In this necessity for law is unfolded by a conceptual scheme—needs for *dispute settlement* and *threat* of law. Law's function in these three needs is treated in separate understandings. This approach is not intended to suggest overlap in the three "types" of law. Law's primary functions to give guidance and efficient travel. However, law's primary functions may *secondarily* be called on to require conformity to this guidance. Of course, the threat of penal action may *secondarily* join in the conception of mutual advantage that leads to the acceptance of law's guidance in regard to the right.

The three significant needs for law are treated separately. Students will probably find that these needs are not mutually exclusive.

OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

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Resources concerning the need for law's guidance function may lack the degree of inherent appeal to students that is enjoyed by materials concerning conflict and need for its fair resolution (Understanding I) or materials concerning the need for prevention of crimes (Understanding III). Thus, choice and presentation of classroom material in Understanding II presents a particular challenge which might be met by emphasis on active student participation in the design and development of the content (e.g., a student committee to investigate conformity to fire standards).

A caution at this juncture: In this module, the necessity for law is unfolded by a threefold conceptual scheme—needs for *dispute settling*, *guidance*, and *threat* of law. Law's function in meeting these three needs is treated in separate understandings. This approach is not intended to suggest there is no overlap in the three "types" of law. For example, a law saying we must keep to one side while driving primarily functions to give guidance in safe and efficient travel. However, law's process may sometimes *secondarily* be called on to resolve disputes over conformity to this guidance. Or law's threat of penal action may *secondarily* join with the perception of mutual advantage that leads people to accept law's guidance in regard to driving on the right.

The three significant needs for law are treated separately. Students will probably notice that these needs are not mutually exclusive. However,

Module 1

DETAILED DESCRIPTION OF STRATEGIES

- (b) Examine the need for and function of laws regulating standard time.
- Look at the New York law which requires all business of public officers in the state to be performed under the same scheme for telling time.
 - Have the class discuss why we have these kinds of rules.
 - Have some of the pupils in class design a hypothetical problem that might arise if officials of each town, city, or county went about conducting business according to daylight or standard time as they saw fit. (See page 22.)
- (c) Discuss with pupils the need for and function of laws regulating conservation of natural resources and wildlife. (In this and each of the following areas of guidance and regulation, one or more activities might be used if time permits:
- 1) Examine appropriate statutes;
 - 2) discuss why these laws and regulations exist;
 - 3) design hypothetical problems in each area; and
 - 4) invite speakers or take field trips for more indepth study.

Since the problems connected with pollution today are very much in the limelight, the pupils should enjoy this particular topic. (See pages 22-23.)

DISCUSSION OF STRATEGIES AND RESOURCES

acknowledgement of this fact should development of the understanding of settling, guidance, and threat of sary functions of law.

In using any of the suggested procedures to unfold the need for the direction of law, initial inquiry what would happen if we had no laws on such subjects. Such laws are of to people's perception that conform advantageous. Because people just students may question whether they *necessary*. But the assumption that necessary whenever they are general out a legal threat is misconceived guidance, people would often not know. The teacher might deal with this by structing a concrete hypothetical presents the need for a law that is without the potential threat of law.

For example, in using the New York law when Eastern Standard Time and Saving Time shall be in force across the state, the teacher could pose this hypothetical

A given state has no law like New York so that each county or town has its own standard or daylight time as it wishes. In this state Ed Smith and Jones had an auto accident. Smith was driving in Thompson County where the accident occurred, claiming Jones ran a red light and struck Smith's car broadside. Trial was held in Thompson County for 1 p.m.

ON OF STRATEGIES

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In using any of the suggested procedures and re-
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what would happen if we had no laws giving guidance
on such subjects. Such laws are obeyed mainly due
to people's perception that conformity is mutually
advantageous. Because people just accept such laws,
students may question whether they are really
necessary. But the assumption that laws are un-
necessary whenever they are generally accepted with-
out a legal threat is misconceived. Without legal
guidance, people would often not know what to do.
The teacher might deal with this assumption by con-
structing a concrete hypothetical situation which
presents the need for a law that is simply accepted
without the potential threat of law's punishment.

For example, in using the New York State law specify-
ing when Eastern Standard Time and when Daylight
Saving Time shall be in force across the state, the
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A given state has no law like that of New
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In this state Ed Smith and John Jones have
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in Thompson County for 1 p.m. Tompkins

Module 1

DETAILED DESCRIPTION OF STRATEGIES

- (d) Discuss with pupils the need for and function of laws providing for traffic control devices and signs:
- Observe an intersection with a stop sign. Without police present, do most people stop?
 - Have a group of pupils in class design a questionnaire asking drivers if they would observe traffic signs and devices if they knew they wouldn't be caught. Then have all pupils fill out questionnaire and, in turn, take one home and have parents fill out. It might be interesting to compare parent vs. pupil response. (See pages 23-24.)
- (e) Examine the need for and function of laws setting minimum safety and sanitation standards for building construction. Throw open for class discussion the following questions:
- What would our school be like if there were no safety and sanitation standards?
 - Would your home, the local movie theaters, and businesses be any different without standards?
- (See page 26.)
- (f) Examine need for and function of laws specifying qualifications for public school teachers. Have class make comparison with the colonial school teacher. (See page 27.)

DISCUSSION OF STRATEGIES AND RESOURCES

County is on daylight time. Jones from Browne County which is on standard time. Jones shows up to defend himself at what he thinks is 1 p.m., but the Judge is not there. The bailiff tells Jones, "You've already lost; you're an hour late. The Judge gave Smith judgment for \$10,000 Smith claimed necessary to pay his doctor and rent bills. The Judge asked if you had notified of this suit and concluded you had and didn't show, you did not to contest this case..."

Once students begin to perceive the negative laws, it may be effective to have stories of what might happen in a given area were no laws for direction, guidance or standard setting. Role playing might be used to illustrate disputes caused by the law.

The above listed procedures and resources to the teacher some of the kinds of areas to be examined to reveal the need for law, direction, and coordination. The teacher might select a subject area of interest to a given group of students. The same sort of inquiry as outlined in the initial two procedures for use would be appropriate.

An alternative technique to the selected two demonstrative subject areas to teaching II would be to present several such

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Once students begin to perceive the need for direc-
tive laws, it may be effective to have them construct
stories of what might happen in a given area if there
were no laws for direction, guidance, coordination,
or standard setting. Role playing might also be used
to illustrate disputes caused by the lack of guidance
by law.

The above listed procedures and resources may suggest
to the teacher some of the kinds of areas that might
be examined to reveal the need for law's guidance,
direction, and coordination. The teacher might chose
from these or select a subject area of particular
interest to a given group of students. In any case
the same sort of inquiry as outlined in more detail
under the initial two procedures for Understanding II
would be appropriate.

An alternative technique to the selection of one or
two demonstrative subject areas to teach Understand-
ing II would be to present several such areas on a

Module 1

DETAILED DESCRIPTION OF STRATEGIES

- (g) Examine need for and function of laws requiring that certain subjects be taught in the public school curriculum. (See page 27.)
- (h) Examine need for and function of laws setting standards regarding air and water pollution. (See page 28.)

A cartoon has been omitted here because of copyright restrictions. It is from the April 11, 1970 Saturday Review, and was drawn by Cliff Roberts.

Caption:

"The neighbors don't like it."

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Used by permission of Cliff Roberts.

See text p. 16.

DISCUSSION OF STRATEGIES AND RESOU

time-line. After basic notions of capacity are conveyed to students, draw a time-line for 1 day in an e life on the board. The time-line with student suggestions as to are might come in contact with law's g example, breakfast cereal meets pu bus drivers qualify to hold specia morning traffic is coordinated by devices; school starts at 8:30 a.m. qualified teachers offer directed drills are held according to safet ing is regulated a ording to cons TV programs broadcast according to waves, etc. After identifying suc should consider why laws about the such laws are necessary, and why s generally obeyed.

A cartoon has been omitted here bec of copyright restrictions. It is fr the May 4, 1963 Saturday Review.

See text, p. 16.

OPTION OF STRATEGIES

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11, 1970 by Saturday Review, Inc. Work of Cliff Roberts.

DISCUSSION OF STRATEGIES AND RESOURCES

time-line. After basic notions of law's guidance capacity are conveyed to students, the teacher might draw a time-line for 1 day in an eighth grader's life on the board. The time-line could be filled in with student suggestions as to areas where a student might come in contact with law's guidance role. For example, breakfast cereal meets pure food standards; bus drivers qualify to hold special driver's licenses; morning traffic is coordinated by traffic control devices; school starts at 8:30 a.m. standard time; qualified teachers offer directed curriculum; fire drills are held according to safety standards; hunting is regulated according to conservation standards; TV programs broadcast according to regulation of air waves, etc. After identifying such subjects, students should consider why laws about these areas exist, if such laws are necessary, and why such laws are generally obeyed.

A cartoon has been omitted here because of copyright restrictions. It is from the May 4, 1963 Saturday Review.

See text, p. 16.

Module 1

R E S O U R C E S *

McKinney's Consolidated Laws of New York - "Education Law." Book 16.

(Fire safety standards for schools)

"It shall be the duty of the commissioner of education, in the case of public schools, and director of the division of fire safety, in the case of private schools, to ascertain annually whether the inspection of school buildings required by this section have been made and the reports of the inspection have been filed in their respective offices. The commissioner of education in the case of public schools and the director of the division of fire safety in the case of private schools shall review the reports of inspection filed pursuant to this section and may make recommendations to the school authorities with respect to any problem relating to school fire safety noted in such reports. The commissioner of education in the case of public schools may inspect or cause to be inspected at any reasonable time for fire prevention and fire protection purposes the school buildings required to be inspected. ..."

New York Official Compilation of Codes, Rules and Regulations - "Regulations of the Commissioner." Vol. 8, Education, Chapter II, (selected sections).

Section 155.3

There shall be at least two means of egress remote from each other leading from each floor of pupil occupancy for all school buildings...

Exit doors shall not be locked, chained, or otherwise rendered inoperative from the inside at any time...

Corridors and passageways shall be kept clear at all times...

Fire extinguishers shall be so located in corridors and in areas of unusual hazard that no point in such area or corridor is more than 100 feet from a fire extinguisher.

*Direct quotations from statutes are indicated by the use of quotation marks. Other statements are summaries or paraphrases of the statute listed.

RESOURCES *

City's Consolidated Laws of New York - "Education Law." Book 16.

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Module 1

McKinney's Consolidated Laws of New York - "General Construction Law." Book 21,

(Regulating standard time)

"The standard time throughout this state is that of the seventy-fifth meridian longitude west from Greenwich, and all courts and public officers and legal official proceedings shall be regulated thereby."

McKinney's Consolidated Laws of New York - "Conservation Law." Book 10.

(Conservation regulations and guidance)

The following is one of a variety and number of laws regulating natural resources and wildlife in New York State:

"Misdemeanors under any section of the Fish and Game Law involving the illegal taking of a deer prior to the first day of the open season or after the last day of the open season in the county where taken, or involving the illegal taking of a doe deer or involving the taking of a deer by the aid of an artificial light punishable as follows:

- a) for a first conviction by imprisonment for more than one year or by a fine of not less than one hundred dollars nor more than five hundred dollars or by both such fine and imprisonment
- b) for a second conviction within five years of a first conviction for such offenses, by imprisonment for not more than one year or by a fine of not less than three hundred dollars or by both such fine and imprisonment
- c) for a third or subsequent conviction within five years of the first or more previous convictions for such offenses, by imprisonment for not more than one year or by a fine of not less than five hundred dollars nor more than fifteen hundred dollars or by both such fine and imprisonment..."

's Consolidated Laws of New York - "General Construction Law." Book 21, Section 52.

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- a) for a first conviction by imprisonment for more than one year or by a fine of not less than one hundred dollars nor more than five hundred dollars or both such fine and imprisonment
- b) for a second conviction within five years of a first conviction for such offenses, by imprisonment for not more than one year or by a fine of not less than three hundred dollars or by both such fine and imprisonment
- c) for a third or subsequent conviction within five years of the first of two or more previous convictions for such offenses, by imprisonment for not more than one year or by a fine of not less than five hundred dollars nor more than fifteen hundred dollars or by both such fine and imprisonment..."

Module 1

New York Official Compilation of Codes, Rules and Regulations - "Conservation."

--set up rules and regulations regarding natural resources and wild life in New York State, e.g., a) stipulation when and in what areas deer may be hunted -- number of permits to be issued for each section of the state; b) trapping sea regulations; c) fishing regulations (even to include the size of trout in certain counties) -- trout not less than six inches in length may be taken during the season provided in the waters situated within the Counties of Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Oneida, Oswego, Saratoga, St. Lawrence, Warren and Washington.

McKinney's Consolidated Laws of New York - "Vehicle and Traffic Law." Book 62A.

(Traffic control guidance)

The following constitute excerpts from the many hundreds of rules and regulations set up by the state of New York:

"No person shall stand in a roadway for the purpose of soliciting a ride or solicit or sell to an occupant of any vehicle."

"No person driving or in charge of a motor vehicle shall permit it to stand attended without first stopping the engine, locking the ignition, removing the key from the vehicle and effectively setting the brake and when standing upon a grade, turning the front wheels to the curb or side of the highway, provided however the provision for removing the key from the vehicle shall not require the removal of keys hidden from sight about the vehicle for convenience or emergency."

"No person shall drive across or upon a sidewalk, driveway, parking lot or private property or otherwise drive off a roadway in order to avoid an intersection or traffic."

Official Compilation of Codes, Rules and Regulations - "Conservation." Vol. 6.

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No person shall drive across or upon a sidewalk, driveway, parking lot or private property or otherwise drive off a roadway in order to avoid an intersection or traffic."

Module 1

New York Official Compilation of Codes, Rules and Regulations - "Motor Vehicle

--rules and regulations of the state motor vehicle division which deal in detail with all aspects connected with the operation of a motor vehicle either directly or indirectly; e.g., drivers' license, license registration, equipment in car itself, point system and departmental driver improvement clinics, and uniform traffic control devices.

Specific examples:

Tail lamps or lamps and reflectors - All 1952 and earlier model vehicles have at least one lamp on the rear which shall display a red light. All vehicles and later must have at least two lamps, one on each side which shall display a red light. All vehicles must have at least one red reflector on the rear.

Horn - All motor vehicles must be equipped with a horn in good working order. Such horn shall not be unnecessarily loud or harsh.

McKinney's Consolidated Laws of New York - "Public Health Law." Book 44.

(Standards for sanitation and building)

The following is only a brief excerpt from many rules and regulations of the State of New York to maintain better sanitary and health conditions in either private or public domain:

"Every hotel shall furnish each guest with clean linen or cotton individually folded in each room occupied by such guest and also in the public lavatories and restrooms of such hotel and with clean sheet and pillow slips for the bed, bunk or cot occupied by such guest.

"...Each sheet shall be ninety-one inches long, minimum length after being washed and laundered and of sufficient width to completely cover mattress and springs. ...all sheets and pillow slip must be laundered and ironed before being furnished to the next guest.

Official Compilation of Codes, Rules and Regulations - "Motor Vehicles." Book 15(A).

rules and regulations of the state motor vehicle division which deal in great detail with all aspects connected with the operation of a motor vehicle either directly or indirectly; e.g., drivers' license, license registration, equipment on car itself, point system and departmental driver improvement clinics, and uniform traffic control devices.

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The following is only a brief excerpt from many rules and regulations of the state of New York to maintain better sanitary and health conditions in either private or public domain:

Every hotel shall furnish each guest with clean linen or cotton individual towels in each room occupied by such guest and also in the public lavatories and washrooms of such hotel and with clean sheet and pillow slips for the bed, bunk or cot to be occupied by such guest.

...Each sheet shall be ninety-one inches long, minimum length after being hemmed and laundered and of sufficient width to completely cover mattress and spring and ...all sheets and pillow slip must be laundered and ironed before being furnished to the next guest.

Module 1

"It shall be unlawful to furnish or serve in any public eating or drinking establishment any straw, tube or similar device for drinking out of glasses, cups or containers of any type unless such drinking devices are...completely enclosed in a wrapper which will keep out bacteria or, if unwrapped in a sanitary dispenser. ...no single serving paper containers, cups, spoons may be re-used... ."

New York Official Compilation of Codes, Rules and Regulations - "State Sanitation Code"
Vol. 10(A) Health, Part 1.

--State has set forth an all-encompassing series of rules, codes, and regulations as far as maintaining good health conditions is concerned -- ranging from areas such as communicable diseases, swimming pools, barber and beauty shops, maternal and child health, migrant labor camps to transportation of dead bodies.

Some specific examples would include regulations relating to beauty and barber shops.

Sanitation of equipment and implements:

- a) Hair brushes, combs, and all other implements used on a customer must be kept clean and sanitary at all times and shall undergo thorough cleansing after serving each customer
- b) After handling a customer affected with an eruption, or whose skin is broken out or is inflamed, the instruments shall be effectively cleaned then rinsed with water having a temperature of at least 170 degrees Fahrenheit or allowed to remain for five minutes in alcohol (70 percent - 80 percent) or some other equally efficient disinfectant.

The use of shaving brushes, mugs, and finger bowls is prohibited. The use of finger bowls is prohibited unless a separate sanitary inner paper liner of each cup is used for each customer and discarded immediately after use.

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Official Compilation of Codes, Rules and Regulations - "State Sanitation Code."
10(A) Health, Part 1.

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Module 1

McKinney's Consolidated Laws of New York - "Executive" Article 375 - "State Building Code"
Book 18.

"The state building construction code shall be designed to effectuate the general purposes of this article and the specific objectives and standards hereinafter set forth:

- 1) To provide reasonably uniform standards and requirements for construction materials, in tune with accepted standards of engineering and construction practices
- 2) To set up standards and requirements so that adequate performance results
- 3) To permit use of modern technical methods, devices and improvements to reduce the cost of construction and yet not sacrifice the reasonable requirements for the health, safety and security of the occupants or users of buildings
- 4) To encourage, within reason, the standardization of construction practices, methods, equipment, materials and techniques
- 5) To eliminate restrictive, obsolete, conflicting and unnecessary building regulations and requirements which tend to increase unnecessarily construction costs or prevent the use of new materials or give unwarranted preferential treatment to types or classes of materials or products or methods of construction

New York Official Compilation of Codes, Rules and Regulations - "Executive" - "Building Construction Code." Vol. 9, Part 600, Chapter 1.

--the state sets up some very definitive regulations regarding new and existing buildings as far as space, structural, fire safety and equipment requirements. e.g., "Landings - The swing of a door opening on a stairway shall not overlap top step. Where landings are provided for, their width shall not be less than the width of the stair of which they are part."

Manney's Consolidated Laws of New York - "Executive" Article 375 - "State Building Code."
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Module 1

McKinney's Consolidated Laws of New York - "Education Law." Book 16.

(Guidance in qualifying public school teachers)

Qualifications of teachers

No person shall be employed or authorized to teach in the public schools of state who is:

- 1) Under the age of 18 years
- 2) Not in possession of a teacher's certificate issued under the authority of this chapter or a diploma issued on the completion of a course in a state college for teachers or state teachers college of this state
- 3) Not a citizen. The provisions of this subdivision shall not apply, however, to an alien teacher now or hereafter employed provided such teacher shall make due application to become a citizen, and within the time prescribed by law shall become a citizen.

McKinney's Consolidated Laws of New York - "Education Law." - Book 16.

(Curriculum guidance standards)

According to rules and regulations set up by the state of New York, certain subjects are to be taught to all pupils over 8 years of age. This includes the following:

"...courses of instruction in patriotism and citizenship and in the history, meaning and significance and effect of the provisions of the Constitution of the United States, the amendments, the declaration of independence, the constitution of the state of New York.

"...courses of instruction in physical education so designed to aid in the well-rounded education of pupils and in the development of character, citizenship, physical health and the worthy use of leisure

"...nature of alcoholic drinks and their effect on the human system shall be taught in connection with various divisions of physiology and hygiene

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Module 1

"...courses of study beyond the first full eight years of school shall provide instruction on the nature and effects on the human system of narcotics and habit forming drugs

"...courses of instruction are prescribed in highway safety and traffic regula

Air Quality Control Act, in United States Code, Title 42 - "The Public Health and Welfare" Chapter IV.

(Air and water pollution guidance standards)

The above resource explains how the Environmental Protection Agency of the Federal Government has given subsidies for air pollution control programs and solid waste disposal projects.

Specific details are also delineated for the manufacture and use of a smoke in a guide.

The Federal Government also pledge, through set activities, to prevent, control and abate air pollution from any of its Federal buildings by means of certain performance standards and techniques of measurement.

All companies must register any fuel additives that they begin to use.

Finally, all air quality control regions and control techniques are listed.

Water Quality Act in United States Code, Title 33 - "Navigation and Navigable Waters" Parts 1 to end.

Again, the Federal government has set very definite standards and practices regarding waterways all around the United States which directly or indirectly will affect the prevention of pollution; e.g., Limits for Fish Pounds and Traps on Atlantic Coast, Norfolk District Bays and Estuaries; Areas Available for Fish Traps--New England

Specific limits and boundaries of dumping areas only with permission of district engineer; definite specifications as far as quantities of release of water from specific reservoirs. Flood control regulation in various sections of country.

Additional Resources

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law*. U.S. Chapter II. "Our laws and legal processes -- Do we need them?" Lexington, Massachusetts and Co. 1973. (Includes examples of "guidance laws" and treats this type of law)

"...courses of study beyond the first full eight years of school shall provide for instruction on the nature and effects on the human system of narcotics and habit-forming drugs

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Again, the Federal government has set very definite standards and practices regarding waterways all around the United States which directly or indirectly will affect the prevention of pollution; e.g., Limits for Fish Pounds and Traps on Atlantic Coast of Norfolk District Bays and Estuaries; Areas Available for Fish Traps--New England Division.

Specific limits and boundaries of dumping areas only with permission of district engineer; definite specifications as far as quantities of release of water from specific reservoirs. Flood control regulation in various sections of country.

Additional Resources

Timmers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law*. Unit I - Chapter II. "Our laws and legal processes -- Do we need them?" Lexington, Mass. Ginn and Co. 1973. (Includes examples of "guidance laws" and treats this type of law.)

Module 1

UNDERSTANDING III

PEOPLE LIVING IN A MODERN SOCIETY NEED LAW TO DISCOURAGE ANTISOCIAL BEHAVIOR SUCH AS AND THEFTS.

A. *Explanation of Understanding III*

This understanding, which looks at the need for the threat of law, treats aspects of subject-crime. The teacher can direct students to this need for law by first having them explain reasons for having *rules* concerning actions like rape, assault, theft, murder, and arson; i.e. "protection of persons and property from 'bad actors.'" Then an inquiry into whether the security of property could be effectively attained by rules alone, with some *means of coercively policing* of those rules, should bring the student to the need for the effective threat of law. Nonlegal social control, such as personal morality, custom, religion, or perception of mutual advantage, cannot deter aggressive antisocial acts of most men. However, it is doubtful that in any large modern society forces alone, without the coercive threat of law, could preserve a satisfactory degree of personal security. At least no such society has ever been known.

B. *Teaching Understanding III*

OBJECTIVES

- Given examples of law codes in earlier periods in history, the student may classify wrongdoing for which society considered the threat of punishment necessary as a deterrent.
- The student may demonstrate understanding of the effectiveness of threat by listing punishment which society considers adequate to prevent wrongdoing.

QUESTIONS TO REACH UNDERSTANDINGS

- Why do we need laws that prohibit and punish certain acts?
- Why is the role of a police force important to a legal system?
- If there were no people who would purposefully do harm to others given a chance, would prohibition and punishment be necessary?

III LIVING IN A MODERN SOCIETY NEED LAW TO DISCOURAGE ANTISOCIAL BEHAVIOR SUCH AS ASSAULTS.

of Understanding III

Understanding, which looks at the need for the threat of law, treats aspects of a familiar. The teacher can direct students to this need for law by first having them examine the *rules* concerning actions like rape, assault, theft, murder, and arson; i.e. securing protection and property from "bad actors." Then an inquiry into whether the security of persons and property is effectively attained by rules alone, with some *means of coercively policing the enforcement* should bring the student to the need for the effective threat of law. Nonlegal forces of law such as personal morality, custom, religion, or perception of mutual advantage, work to deter antisocial acts of most men. However, it is doubtful that in any large modern society these forces without the coercive threat of law could preserve a satisfactory degree of personal security. No society has ever been known.

Understanding III

Examples of law codes in earlier periods in history, the student may classify types of offenses for which society considered the threat of punishment necessary as a deterrent.

Student may demonstrate understanding of the effectiveness of threat by listing types of offenses for which society considers adequate to prevent wrongdoing.

REACH UNDERSTANDINGS

Do we need laws that prohibit and punish certain acts?

Is the role of a police force important to a legal system?

If there were no people who would purposefully do harm to others given a chance, would criminal justice and punishment be necessary?

Module 1

USE OF VISUALS

- Students may collect newspaper pictures which illustrate the threat of the law as a deterrent to wrongdoing. These may then be analyzed as to the effectiveness of the threat.
- Television dramas frequently focus upon crime or attempts to prevent crime. Such episodes may be reported by students, and then discussed, as to how representative of real life situations they are.
- Compare the effectiveness of the threat implied in the pictures below and on page 34.

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Module 1

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Need for rules prohibiting antisocial conduct.

- (a) Consider with your class the effect criminal activity has on personal security.
- Have students list all crimes that could be committed in and around school.
 - Have students check local newspapers and TV to report on crime in the community.
 - Have a group of students interview local police officials about local crime rates.
- (b) Locate or identify rules concerning security of persons and property.
- What are some nonlegal sources of such rules (church, family, personal morality, etc.) serving to discourage criminal activity? (See page 35.)
 - Examine with the class, selections from the New York Penal Law describing certain crimes (e.g., murder, larceny, rape, etc.). Pass out selections cited, and have roundtable discussion with pupils as to the fairness of the descriptions, in their estimation. (See page 35.)
 - Examine some criminal laws through history (e.g., Code of Hammurabi, Ancient Greece and Rome, a medieval

Teaching Understanding III (need for and enforcement machinery) is conceptual step process. First, students should understand importance of simply having some rules prohibiting certain antisocial activity. Paradoxically, most fundamental freedoms of physical persons and property presuppose restriction or prohibition of certain activity. But second conceptual step—mere prohibition (laws) is not enough. There is also need for enforcement machinery that poses a threat to those who purposefully interfere with others.

Here, unlike dispute-settling law (Understanding II), the threat of guidance law (Understanding II), the threat is of primary significance. Here, also, unlike dispute-settling or guidance law, society would not have any kind of law if society had no men inclined to take advantage of others given the opportunity.

Dispute-settling and guidance laws perform their necessary functions as long as people voluntarily submit disputes to rational procedure and accept direction in social interaction. Law's coercive threat is only secondary to help enforce civil judgments; the threat of school official who disregards fire safety. However, to the extent society consists of people who are willing to respect the rights of others, criminal law is in large part superfluous. The threat of criminal law is in large part superfluous to the extent that the antisocial element of society that is not deterred by criminal law into play. And this threat of criminal law factorially help meet the need to protect

DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Need for rules prohibiting antisocial conduct.

Consider with your class the effect of antisocial activity has on personal responsibility.

Have students list all crimes that could be committed in and around school.

Have students check local newspapers and TV to report on crime in the community.

Have a group of students interview local police officials about local crime rates.

Identify or identify rules concerning responsibility of persons and property.

What are some nonlegal sources of such rules (church, family, personal morality, etc.) serving to discourage criminal activity? (See page 35.)

Examine with the class, selections from the New York Penal Law describing certain crimes (e.g., murder, larceny, rape, etc.). Pass out selections cited, and have roundtable discussion with pupils as to the fairness of the descriptions in their estimation. (See page 35.)

Examine some criminal laws through history (e.g., Code of Hammurabi, ancient Greece and Rome, a medieval

Teaching Understanding III (need for criminal laws and enforcement machinery) is conceptually a two-step process. First, students should consider the importance of simply having some rules prohibiting certain antisocial activity. Paradoxically, the most fundamental freedoms of physical security of persons and property presuppose restriction and prohibition of certain activity. But there is a second conceptual step--mere prohibition (criminal laws) is not enough. There is also need for coercive machinery that poses a threat to those who would purposefully interfere with others.

Here, unlike dispute-settling law (Understanding I) or guidance law (Understanding II), the threat of law is of primary significance. Here, also unlike dispute-settling or guidance law, society would not need this kind of law if society had no men inclined to take advantage of others given the opportunity.

Dispute-settling and guidance laws for the most part perform their necessary functions as people voluntarily submit disputes to rational processes for resolution and accept direction in social interaction. Law's coercive threat is only secondary (the sheriff to help enforce civil judgments; the sanction for the school official who disregards fire safety standards). However, to the extent society consists of men who are willing to respect the rights of others, the criminal law is in large part superfluous. It is the antisocial element of society that calls the need for criminal law into play. And this law can satisfactorily help meet the need to protect others by

Module 1

DETAILED DESCRIPTION OF STRATEGIES

society). In possible classroom discussion, pose the question as to whether these "laws" could work in 20th century America: Do strains of these codes exist in any segment of our society today?

DISCUSSION OF STRATEGIES AND RESOURCES

preventing antisocial acts *only* if coercive force to threaten and deter "bad actors."

Students are well aware of the existing laws. Initial materials (considering could be committed around school and coverage of criminal activity) are procedures to direct students to the no prohibitions of criminal law exist reason--to protect persons and property.

Certainly everyone is not inclined to acts. Examination of nonlegal rules (official sanctions) may help explain prohibitions of criminal laws are not dis members of society, most of the time.

The fundamental reason for criminal treated by examining some actual criminal history. This section might conclude reading some current criminal statutes. If such statutes are presented they stantial teacher editing.

2. Need for the coercive threat of law.

- (a) Examine with pupils state statutes and local ordinances providing for the establishment of police forces. Consider these areas:

—What need is being met by such organizations?

The last four suggested procedures for coercive machinery to back up law. From this perspective, the necessity of police force is presented. Here, students interested in seeing the actual law for establishment of police forces duties. It might be pointed out to

DESCRIPTION OF STRATEGIES

(society). In possible classroom discussion, pose the question as to whether these "laws" could work in 20th century America: "Do strains of these codes exist in any segment of our society today?"

DISCUSSION OF STRATEGIES AND RESOURCES

preventing antisocial acts *only* if it is backed by coercive force to threaten and deter activities of "bad actors."

Students are well aware of the existence of criminal laws. Initial materials (considering crimes that could be committed around school and local news coverage of criminal activity) are suggested as procedures to direct students to the notion that the prohibitions of criminal law exist for an affirmative reason--to protect persons and property

Certainly everyone is not inclined toward criminal acts. Examination of nonlegal rules (rules without official sanctions) may help explain why the prohibitions of criminal laws are not directed at most members of society, most of the time.

The fundamental reason for criminal laws might be treated by examining some actual criminal laws in history. This section might conclude with students reading some current criminal statutes of interest. If such statutes are presented they will need substantial teacher editing.

2. Need for the coercive threat of law.

Examine with pupils state statutes and local ordinances providing for the establishment of police forces. Consider these areas:

What need is being met by such organizations?

The last four suggested procedures concern the need for coercive machinery to back up law's prohibition. From this perspective, the necessity for an official police force is presented. Here, students may be interested in seeing the actual laws that provide for establishment of police forces and outline their duties. It might be pointed out to students how

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DETAILED DESCRIPTION OF STRATEGIES

- What are some alternatives to filling this need with an official police force (e.g., national police force or army, local vigilante group, self-policing)? (See pages 39-40.)
- (b) Assign a research project where pupils might examine problems in a community on the "lawless" western frontier. In their project, they should discuss recent films and TV programs which have handled this topic. (See page 41.)
- (c) Have pupils write a TV program depicting what might happen in each of the following situations:
 - What might happen if your town police force went out on strike.
 - Suppose that all enforcement of school rules and laws of any kind are suspended at your school; examine the possible consequences. (See pages 40-41.)
- (d) Have pupils conduct a debate on this topic: schools need fewer rules but more enforcement of these rules. Pupils should do preliminary research before tackling the class debate. (See page 40.)

DISCUSSION OF STRATEGIES AND RESOURCES

those particular laws are guiding rather than threatening in function. It might be of interest to consider the role that various aspects of law other than penal law play in arbitrating neighborhood disputes. The flow of traffic are familiar. The social needs beyond threatening potential and pursuing actual ones.

The importance of effective coercive laws might be best conveyed with case studies hypothesizing its absence. From this students might study some examples of the western frontier of the 1800's. If the enforcement machinery was removed from the community.

An alternative approach to presenting the material might be to work through the process in reverse order. The teacher could begin with a town or school, first with no rules and no hurtful acts, and second, with such rules but without any coercive machinery to police them. After considering the need such circumstances demonstrate for penal laws and enforcement, students might consider some criminal acts and in history.

DISCUSSION OF STRATEGIES

Are there some alternatives to meeting this need with an official police force (e.g., a national police force or army, a vigilante group, self-policing)? (See pages 39-40.)

As a research project where students might examine problems in lawlessness on the "lawless" western frontier. In their project, students should discuss recent films and television programs which have handled the lawless frontier topic. (See page 41.)

Pupils write a TV program depicting what might happen in a town if the following situations occurred:

1. What might happen if your town's police force went out on strike.

2. Suppose that all enforcement of school rules and laws of any kind were suspended at your school; discuss the possible consequences. (See pages 40-41.)

Pupils conduct a debate on this topic: Do schools need fewer rules but more enforcement of these rules. Pupils do preliminary research before entering the class debate. (See page 40.)

DISCUSSION OF STRATEGIES AND RESOURCES

Those particular laws are guiding rather than threatening in function. It might also be of interest to consider the role that police play in aspects of law other than penal law: police roles in arbitrating neighborhood disputes and guiding the flow of traffic are familiar. The police help meet social needs beyond threatening potential criminals and pursuing actual ones.

The importance of effective coercive machinery of laws might be best conveyed with case studies hypothesizing its absence. From this perspective, students might study some examples of law on the western frontier of the 1800's. Alternatively, they might consider probable results if all enforcement machinery was removed from the school or community.

An alternative approach to presenting Understanding III might be to work through the procedures in reverse order. The teacher could begin by positing a town or school, first with no rules proscribing hurtful acts, and second, with such rules but without any coercive machinery to police such rules. After considering the need such circumstances would demonstrate for penal laws and enforcement machinery, students might consider some criminal laws today and in history.

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DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCE

- (e) Show your class a film on the need for law. Discuss this question: Does the film examine the need for law from a different perspective than this module? (Check your local library or film center for possible titles.) One possibility is "An Imaginary They" which explores the need for rules and laws and shows who makes them.

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~~OPTION OF STRATEGIES~~

DISCUSSION OF STRATEGIES AND RESOURCES

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Module 1

RESOURCES*

The Bible - Deuteronomy. Chapters 5-11.

(Use any translation or quoted passages in any western civilization book of readings.)

Codes of the Boy and Girl Scouts of America.

McKinney's Consolidated Laws of New York - "Penal Law." Book 39.

The following are key examples from New York Penal Law describing certain crimes:

A. Murder (Class A Felony)

A person is guilty of murder in the following instances:

- 1) when with intent to cause the death of another person he causes the death of such person or of a third person
- 2) when he recklessly engages in conduct which creates a grave risk of death to someone else and results in the death of another person
- 3) when he either acts alone or with the company of others to commit burglary, robbery, kidnapping, etc. and in the process causes the death of someone other than the participants
(Extenuating circumstances such as extreme emotional disturbance, whether accused was armed, whether there was deliberation [pre-meditation] could enter into degree of plea of defendant as of murder or possibly a lesser charge of manslaughter.)

B. Larceny

A person commits larceny when he wrongfully takes or withholds another's property in any of the following ways:

- 1) by trickery, embezzlement, or obtaining property by false pretenses
- 2) by acquiring lost property that he knows has been wrongfully taken from another
- 3) by issuing a bad check

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- 4) by falsely promising to perform certain services as a result of receiving certain property
- 5) by extortion; i.e., forcing a person to hand over certain property through instilling fear in that party by threatening certain actions such as:
 - (a) causing damage to his property
 - (b) causing physical harm to the individual
 - (c) by accusing the person of a crime or threatening to bring criminal charges against him
 - (d) by threatening to expose some secret or certain facts about an individual which will result in hatred, ridicule, or contempt of that individual
 - (e) by causing a strike, boycott, or other group labor action which might be injurious to that person's business

C. Kidnapping (Class A Felony)

(a) First Degree Kidnapping

A person is guilty of this type of kidnapping when he abducts another person and his reasons and resulting actions might be the following:

- 1) main purpose to force a third party to pay or deliver ransom or property of some sort
- 2) he represses the person he has kidnapped for more than 12 hours with intent to:
 - (a) cause him physical injury or abuse him sexually
 - (b) carry out a felony
 - (c) frighten him or a third party
 - (d) in some way interfere with the accomplishment of a governmental or political function
- 3) The party that was kidnapped dies before he is returned or is to return to safety

(b) Second Degree Kidnapping

A person is guilty of kidnapping in the second degree when he abducts another person

[The theory behind this new degree structure is that although a person is just as culpable in this particular instance, it is not quite

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heinous as the behavior exhibited in first degree kidnapping. Some examples that would be indicative of second-degree kidnapping are:

- 1) a childless woman stealing an infant from a hospital nursery because of her desire to have a baby of her own
- 2) putting out of circulation for awhile a security officer in a business place by threats of violence until a robbery has been committed
- 3) confining a young woman for a number of hours in a hidden place so that she will not be able to get married.]

Nice, Richard, W. Treasury of Law. Philosophical Library. 1964.

(Text modified for easier reading.)

Code of Hammurabi

The only thoroughly complete pre-Hebrew code of law was that compiled by the King of Babylonia, Hammurabi, about the year 2100 B.C. Some excerpts from this code include:

"...If a man has accused a man and has charged him with manslaughter and and then has not proved (it against) him, his accuser shall be put to death.

"...If a man has come forward in a case to bear witness to a felony and there has not proved the statement that he has made, if that case (is) a capital one that man shall be put to death."

"...If a man kidnaps the infant (son) of a (free) man he shall be put to death."

Ancient Rome: Laws of the Twelve Tables

The Twelve Tables constitute the earliest Roman code of laws. They were drawn in 451-450 B.C. and published in the Roman Forum on tablets of bronze or wood.

"Law III - Parents shall have the right to sell their children thrice and then they shall be their authority."

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"Law XL - The dead shall not be burned or cremated within the city."

"Law XXVI - If a man does wrong to another, the penalty shall be twenty-five pieces of money."

"Law XXIII - If a four-footed animal causes damage, there shall be an action at law against the owner of that animal."

A more complete quotation can be found in Eisen and Filler, The Human Adventure, Vol. I, pp. 19-20; and in Fenton, 32 Problems in World History, pp. 22-24. See also: The Justinian Code: Good, The Shaping of Western Society, pp. 48-50; The Law of the Twelve Tables, The Human Adventure, Vol. I, pp. 58-61.

McKinney's Consolidated Laws of New York - "Executive Law" - "Division of State Police", Book 18, Article 11.

According to Executive Law of 1909 the Division of State Police was set up.

"The division of state police in the executive department shall be known as the 'New York State Police'. The head of the New York State Police shall be the superintendent of state police who shall be appointed by the governor by and with the advice and consent of the senate and hold office during his pleasure. The superintendent shall receive as salary such sum as may be appropriated by the legislature. If, prior to his appointment, the superintendent shall have served as a member of the State Police for a period of ten years or more, he shall, provided he is not eligible for retirement, upon termination of his service as superintendent be reappointed, without examination, as a member of the state police in the grade held by him prior to his appointment as superintendent notwithstanding the absence of any vacancy in such grade. For the purpose of determining the annual salary to be paid upon such reappointment the period of service as superintendent shall be counted as service in the grade to which reappointed."

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McKinney's Consolidated Laws of New York - "Unconsolidated Laws" - Town Police Department
Book 65, Chapter 11.

The above source has clearly stated the regulations set up by the state of New York for a chief of police in setting up his town force.

"In a police force having no less than four members the one in charge of management shall not assign any patrolman who may be on duty in the open air, on the street or other public place to more than one tour of duty; such tour of duty shall not exceed eight consecutive hours of each consecutive twenty-four hours; except in emergency...or for the purpose of changing tours of duty. ...Each uniformed member after having served one year in the police force shall be allowed an annual vacation of not less than fourteen consecutive days..."

Clark, Gerald. "What Happens When the Police Strike." New York Times Magazine.
November 16, 1969. pp. 45, 176.

"...there had been no forewarning, no build-up. The morning newscasts had carried...the report that police were to meet at 9:00 A.M. to hear the results of an arbitration board's findings on wages and other issues that had remained unsettled for almost a year. But no one had anticipated a walkout; it was illegal for policemen and firefighters to strike.

"Thus, on Oct. 7, the largest city in Canada and one of the most civilized cities in the world, found what it was like to be without police protection during a day and a night. Before it was over, a psychologist would shoot and kill a burglar; another man--a provincial police corporal--would be slain; and 49 persons would be wounded or injured in rioting. Nine bank holdups; almost a tenth of the total for the whole of last year, would be committed along with 17 other robberies at gunpoint.

"Ordinarily disciplined, peaceful citizens would go wild, smashing 1,000 plate glass windows in the heart of the city and looting shop displays. The losses and damage would exceed \$1 million.

"Essentially it was not the rise in professional crime--12 times the normal--that counted. It was the way political grievances and private and group frustrations shot to the surface when no one was around to enforce the law."

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"One Touch of Anarchy." Newsweek. Vol. 74. October 20, 1969. p. 71.

Another description of the 1-day strike by the Montreal policemen and firemen of the resultant rioting and looting. A taxi-cab driver's remark points out very well the disastrous consequences that can result when law and order forces are nonexistent--"I mean just plain people committed offenses they would not dream of trying if there was a policeman standing on the corner."

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"They May Sue." Editorial in the Schenectady Gazette. August 28, 1972. p. 26.

"Let us say you leave the key in your car and the car is stolen and the thief injures somebody with your car. You think you're exempt from responsibility for harm done to that third party? Not in New Jersey. A state appeals court in Trenton ruled that the car owner who leaves a car unlocked and the key in the ignition may be sued by anyone who is injured by the actions of the thief who steals the car. The court said there's a very clear relationship between keys left in the ignition and the accidents that follow the theft of those cars. And the court said it makes no difference whether the municipality has or does not have an ordinance prohibiting the leaving of keys in ignition.

"In other words, it's not just to help protect you somewhat against theft of your car; it's to help guard against damage to other people or to property by the car thief. So, why take the chance? Lock up!"

Reprinted by permission of the Schenectady Gazette.

ABA. "Liberty Under Law: Anarchy Totalitarianism--This is the Choice," p. 72 (1970) reprinted in M. Manoni, The Law Society; Where Could I Fit In? (exp. ed., 1970)

This work considers an example from real life.

"The most recent experiment in educational anarchism has been going through the experience of relearning and rethinking the significance of authority in an interesting way. It has been taking place in Toronto where an eighteen story anarchic college, Rochdale College, opened this year. Each resident was declared free 'to do his own thing.' What happened? Elected councils found themselves declared to be without authority. A motorcycle gang invaded the college and

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expropriated the kitchen, while the residents tried to define a collective decision for calling the police. Two men seized the elevators and rode up and down all evening, playing their guitars. Preachers, pyromaniacs and peddlers of drugs pervaded the premises. And then, in desperation, the Rochdale collegia voted to give the nightwatchman authority to make his own decisions about crashes. Anarchy prepared the road for the dictatorship for the nightwatchman."

Additional Resources

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law.* Unit I, Chapter III. "Our laws and legal processes -- Do we need them?" Lexington, Mass. Ginn and Co. 1973.

Films

Due Process of Law Denied. McGraw-Hill.
(From last part of film, *The Oxbow Incident.*)

An Imaginary They. Modern Learning Aids.

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See text, p. 49.

Module 2

MODULE II - TOOLS OF THE LAW*

1. *The Main Focus.*

How does law work? What difference does it make to junior high school social studies students? Laws can be viewed as simply a series of tools or techniques of social control that *may* be put to work on improving the world. But like most other tools, laws don't work automatically; they are used by men. Thus, like most tools, laws can be overused or misused. By surveying legal tools or techniques, this unit attempts to convey understandings about the dynamics of our government and legal system.

2. *Why This Focus?*

The reasons for teaching about this subject are fourfold. First, the various legal tools or techniques show *how* law does what it does. This tells students about the nature of law—gives them a more accurate picture of what the law does, and the rules prohibiting and restricting activity but various resources to facilitate social interaction and to ameliorate social problems.

Second, by looking at the ways law can work on a problem, students should understand better why a system is short of its goals, for example: (1) some laws may be unsound, (2) sound laws may be unfairly applied, (3) the legal system may put the wrong resources to work on a problem or (4) law may fail to get necessary support from nonlegal resources.

Third, ours is a complex legal system in which the role of the individual citizen appears frustratingly small. By surveying the various techniques by which law works, one may more accurately identify the roles of private individuals in influencing, activating, and operating aspects of our legal system. As some of law's resources work, the role of the individual is realistically quite remote; in the case of others, his role is critical.

Finally, by examining legal techniques at work on a difficult social problem, students may get a more accurate picture of the complexity of social problems and the limits of law in solving them. Social problems are not always readily ameliorated through any single legal technique or combinations of techniques.

3. *Outline of the Teaching Scheme.*

This module treats three understandings: that there are five kinds of legal techniques which may be put to work on a social problem; that the effectiveness of law in treating a given problem may in large part depend on whether the legal system call on the appropriate combination of legal techniques; and that law is not the only social control resource—problems—that is, law depends heavily on nonlegal factors in doing its work.

*See footnote on page 1, Module 1.

MODULE II - TOOLS OF THE LAW*

work? What difference does it make to junior high school social studies students? Laws exist for people. Law is a series of tools or techniques of social control that *may* be put to work on improving the quality of life. Tools, laws don't work automatically; they are used by men. Thus, like most tools, laws can be used effectively. By studying legal tools or techniques, this unit attempts to convey understandings about the dynamics of the operation of the legal system.

Objectives for teaching about this subject are fourfold. First, the various legal tools or techniques surveyed represent a variety of techniques. This tells students about the nature of law—gives them a more accurate picture of what law is: not merely a means of restricting activity but various resources to facilitate social interaction and to ameliorate social problems.

Looking at the ways law can work on a problem, students should understand better why a system of law may fail. For example: (1) some laws may be unsound, (2) sound laws may be unfairly applied, (3) the managers of the legal system may lack the resources to work on a problem, or (4) law may fail to get necessary support from nonlegal forces.

Law is a complex legal system in which the role of the individual citizen appears frustratingly insignificant. In studying the techniques by which law works, one may more accurately identify the roles of private individuals in the legal system, and operating aspects of our legal system. As some of law's resources work, the role of a private citizen is remote; in the case of others, his role is critical.

By examining legal techniques at work on a difficult social problem, students may get a more accurate picture of the problems and the limits of law in solving them. Social problems are not always readily amenable to solution by a single legal technique or combinations of techniques.

Teaching Scheme.

This unit treats three understandings: that there are five kinds of legal techniques which may be put to work on a given problem; that the effectiveness of law in treating a given problem may in large part depend on whether the managers of the legal system use the appropriate combination of legal techniques; and that law is not the only social control at work on social problems. Law depends heavily on nonlegal factors in doing its work.

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SUMMARY OF UNDERSTANDINGS

- I. AS LAW DEALS WITH SOCIAL NEEDS AND PROBLEMS, OFFICIALS AND CITIZENS USE A LIMITED NUMBER OF DISTINCT LEGAL TECHNIQUES OR TOOLS:
 - . THE BENEFIT DISTRIBUTION TECHNIQUE
 - . THE REGULATION TECHNIQUE
 - . THE PENAL TECHNIQUE
 - . THE PRIVATE REMEDY TECHNIQUE
 - . THE PRIVATE ARRANGEMENT TECHNIQUE
- II. THE EFFECTIVENESS OF LAW IN DEALING WITH SPECIFIC SOCIAL NEEDS AND PROBLEMS DEPENDS IN PART ON PUTTING THE APPROPRIATE LEGAL TECHNIQUE(S) TO WORK.
- III. NONLEGAL SOCIAL CONTROLS MAY MAKE IT POSSIBLE FOR LEGAL TECHNIQUES TO WORK MORE EFFECTIVELY.

UNDERSTANDING I

AS LAW DEALS WITH SOCIAL NEEDS AND PROBLEMS, OFFICIALS AND CITIZENS USE A LIMITED NUMBER OF DISTINCT LEGAL TECHNIQUES OR TOOLS:

- . THE BENEFIT DISTRIBUTION TECHNIQUE
- . THE REGULATION TECHNIQUE
- . THE PENAL TECHNIQUE
- . THE PRIVATE REMEDY TECHNIQUE
- . THE PRIVATE ARRANGEMENT TECHNIQUE

A. *Explanation of Understanding I*

For each of the five legal techniques, a key example will be used to show how law deals with two serious social problems: highway safety and pollution. To help the teacher direct the students, suggested questions, topics, and additional resources will be found in section B. As the impact of each legal technique on highway safety and pollution is discussed, these questions might be considered:

- . How does each legal technique work on a social problem?

SUMMARY OF UNDERSTANDINGS

I. AS LAW DEALS WITH SOCIAL NEEDS AND PROBLEMS, OFFICIALS AND CITIZENS USE A LIMITED NUMBER OF DISTINCT LEGAL TECHNIQUES OR TOOLS:

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- . THE PRIVATE REMEDY TECHNIQUE
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II. THE EFFECTIVENESS OF LAW IN DEALING WITH SPECIFIC SOCIAL NEEDS AND PROBLEMS DEPENDS IN PART ON PUTTING THE APPROPRIATE LEGAL TECHNIQUE(S) TO WORK.

III. NONLEGAL SOCIAL CONTROLS MAY MAKE IT POSSIBLE FOR LEGAL TECHNIQUES TO WORK MORE EFFECTIVELY.

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- E REGULATION TECHNIQUE
- E PENAL TECHNIQUE
- . THE PRIVATE REMEDY TECHNIQUE
- . THE PRIVATE ARRANGEMENT TECHNIQUE

Understanding I

of the five legal techniques, a key example will be used to show how law attempts to solve problems: highway safety and pollution. To help the teacher direct the discussion of technique works on these problems, suggested questions, topics, and additional examples will be on B. As the impact of each legal technique on highway safety and pollution is examined, might be considered:

Does each legal technique work on a social problem?

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- Who initiates use of each technique and who actually operates it?
- How large is the role of the private citizen in it?
- How can each legal technique fail to perform the social function it sets out to

However, before taking up a specific social problem and showing how the tools of work on it, the legal techniques scheme will be summarized as follows:

- A brief general description of each legal technique
- An explanation of the reasons for using this relatively unfamiliar scheme in the how the government and legal system operate
- A chart which may be helpful in showing the legal techniques scheme at a glance

The benefit distribution technique. A legal system may collect taxes and then convert monies into public benefits; e.g., public highways, welfare assistance, public education. involves governmental action and is called a legal technique because the raising of tax money and conferral of such public benefits is always shaped and ordered in important ways by law.

The regulation technique. A legal system may permit certain wholesome behavior but order to curb abuses. It is obviously desirable to have manufacturers process food, but food also comply with standards of purity. It is desirable for people to drive cars, but cars be licensed in accordance with standards of safety. When a legal system induces officials standards and see that manufacturers, drivers, etc. comply with them, the system utilizes the regulation technique.

The penal technique. Some conduct, as such, is wholly antisocial; e.g., murder. the penal technique to prohibit and punish such conduct in an attempt to discourage its occurrence.

The private remedy technique. This basic technique is most familiarly known in the lawsuits to force defendants to pay compensatory damages (money) to those they have harmed the course of daily life.

The private arrangement technique. A legal system leaves a great many problems to private arrangements, and private administration. These private activities may be carried out by groups, organized bodies, corporations, etc. The private arrangements involved may include property transfers, employment relations, and so on. But the law plays important enough a part in private activities for this to be thought of as a distinct legal technique. First, law permits private activities. Second, it facilitates them by specifying in the law itself how valid corporate activities are formed, and how lawful property transfers are made. Third, and so on.

initiates use of each technique and who actually operates it?
What is the role of the private citizen in it?
In each legal technique fail to perform the social function it sets out to perform?

Before taking up a specific social problem and showing how the tools of law may be put to legal techniques scheme will be summarized as follows:

A brief general description of each legal technique
A brief explanation of the reasons for using this relatively unfamiliar scheme in teaching
How the government and legal system operate
A chart which may be helpful in showing the legal techniques scheme at a glance.

Redistribution technique. A legal system may collect taxes and then convert these tax benefits; e.g., public highways, welfare assistance, public education. This operation is a redistributive action and is called a legal technique because the raising of tax monies and the distribution of public benefits is always shaped and ordered in important ways by law.

Regulation technique. A legal system may permit certain wholesome behavior but regulate it in certain ways. It is obviously desirable to have manufacturers process food, but foodstuffs should meet certain standards of purity. It is desirable for people to drive cars, but cars and drivers should conform to standards of safety. When a legal system induces officials to make such regulations that manufacturers, drivers, etc. comply with them, the system utilizes what is here called a regulation technique.

Prohibition technique. Some conduct, as such, is wholly antisocial; e.g., murder and theft. We use the law to prohibit and punish such conduct in an attempt to discourage its occurrence.

Private remedy technique. This basic technique is most familiarly known in the form of court actions that require defendants to pay compensatory damages (money) to those they have harmed in some way in their daily life.

Private arrangement technique. A legal system leaves a great many problems to private decision, private contracts, and private administration. These private activities may be carried on by individuals, families, groups, bodies, corporations, etc. The private arrangements involved may include contracts, marriages, employment relations, and so on. But the law plays an important enough role in these activities that it is for this to be thought of as a distinct legal technique. First, law *permits* these activities, and, second, it *facilitates* them by specifying in the law itself how valid corporations are formed, how trusts are formed, and how lawful property transfers are made. Third, and of great importance,

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when such arrangements break down (e.g., when a contract is broken), the law usually steps in to correct the arrangement by awarding monetary damages for the loss sustained by the wronged party to the contract.

Separation of powers analysis provides a scheme that is traditionally utilized in the operation of American government. This unit, however, proposes an analysis of the legal system as a systematic survey of a limited number of distinct legal techniques. The obvious difficulty in moving from a familiar teaching scheme to a less familiar one calls for some justification.

When the government of the United States was formed, three separate branches were created within this governmental framework, specific limited powers were assigned to the legislature, the executive, and the judiciary. The primary rationale for such separation of powers was that each branch of government should serve as a check on the others, thus protecting the governed from the potential oppression of a concentration of governmental power. American history illustrates that the authors of the Constitution were perceptive in designing a government of separate powers to help protect the government. And teaching this function of a constituted government of separated powers is a common pedagogical purpose. Yet the separation of powers scheme is commonly used for an additional pedagogical purpose—government operates. Students traditionally learn that the legislative branch makes and checks the executive branch enforces laws; and the judicial branch interprets and applies laws. Tidy as this scheme may be, it is not an accurate and informative way to analyze the operation of American government. However, the legal technique scheme takes into account the available tools or techniques of individuals and government use to solve social problems.

A survey of the operation of various legal techniques presents a more refined picture of government officials of various kinds do than does the analysis of the government branch by branch. The separation of powers notions in this context suggest that law is made by one branch of government, enforced by another, and interpreted by yet another. This simply is not accurate. While the power to legislate rests with the legislature, in a very real sense courts, administrative officials, and the executive branch all change law in performance of their constituted duties. Judges and administrative officials are part of the executive's law enforcement functions. Laws are interpreted and applied in concert by administrators as well as judges.

Separation of powers analysis has a serious gap. The entire administrative-regulatory government is missing. These government officials, whose positions are normally created by and filled by the executive, are neither part of the legislative, executive, or judicial branches (e.g., Federal Communications Commission, Federal Power Commission, etc.).

ments break down (e.g., when a contract is broken), the law usually steps in and *backs up* by awarding monetary damages for the loss sustained by the wronged party to the broken

on of powers analysis provides a scheme that is traditionally utilized in teaching about American government. This unit, however, proposes an analysis of the legal system through the use of a limited number of distinct legal techniques. The obvious difficulties involved in changing a familiar teaching scheme to a less familiar one calls for some justification.

When the government of the United States was formed, three separate branches were constituted. In this framework, specific limited powers were assigned to the legislature, the executive, and the judiciary. The primary rationale for such separation of powers was that each branch of government would check on the others, thus protecting the governed from the potential oppression of too great a governmental power. American history illustrates that the authors of the United States Constitution were perceptive in designing a government of separate powers to help protect the governed from the potential oppression of too great a governmental power. And teaching this function of a constituted government of separated powers is important. The separation of powers scheme is commonly used for an additional pedagogical purpose—to view how the government works. Students traditionally learn that the legislative branch makes and changes laws; the executive enforces laws; and the judicial branch interprets and applies laws. Tidy and simple as this may seem, it is not an accurate and informative way to analyze the operation of American government. A more refined technique scheme takes into account the available tools or techniques of law that both the legislature and the government use to solve social problems.

The analysis of the operation of various legal techniques presents a more refined picture of what government branches do than does the analysis of the government branch by branch. Separation of powers in this context suggests that law is made by one branch of government, enforced by another, and interpreted by yet another. This simply is not accurate. While the power to legislate rests exclusively with the legislature, in a very real sense courts, administrative officials, and the executive make and enforce the law. The performance of their constituted duties. Judges and administrative officials share a major part of the law enforcement functions. Laws are interpreted and applied in conflict situations by the courts as well as judges.

The analysis of powers analysis has a serious gap. The entire administrative-regulatory branch of government is missing. These government officials, whose positions are normally created by the legislature and controlled by the executive, are neither part of the legislative, executive, or judicial branch (Federal Reserve Commission, Federal Power Commission, etc.).

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Separation of powers analysis unrealistically separates in a rigid way the structure from the operation of law. The government is not only structured by law, but law provides the mechanism by which government operates. On the other hand, the legal techniques analysis turns the focus from the structure of government to analysis of structure in the context of operational processes, with attention on processes.

The proposed legal techniques approach to the legal system helps put law in a proper perspective as a subject for humanities or social studies. The legal techniques are the tools in government to use a limited number of resources that can be used or misused in working on the problems of improving the quality of life.

The legal technique scheme has relatively strong organizing power for systematic and comprehensive analysis of traditionally fragmented concepts concerning the operation of government. For example, the legal techniques scheme provides an opportunity, systematically and realistically, to consider the role of the legal system in the operation of the legal system more so than does the separation of powers analysis. For example, the role of the private citizen is designed to be more remote in operating the distribution of funds than in operating the remedial technique. The individual citizen has little direct voice in the distribution of dollars are spent, yet the legal system will take action to remedy a private wrong only when the individual with a grievance initiates a lawsuit.

The legal technique scheme is presented in Summers, R.S., Campbell, A.B., and Bozinger, *Justice and order through law*, Unit II, "Our legal tools", Lexington, Massachusetts, Ginn Press, 1964.

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OUTLINE OF LEGAL TECHNIQUES SCHEME

	LEGAL TECHNIQUE	EXAMPLES OF THE LEGAL TECHNIQUE AT WORK	SOCIAL NEED OR PROBLEM THAT THE LEGAL TECHNIQUE INTO
Benefit Distribution	COLLECTING TAXES and DISTRIBUTING BENEFITS	(a) System of Public Education (b) Social Security System	(a) Preparation of Youth for Productive Adulthood (b) Care for Aged, Otherwise Care for Themselves
Regulation	EXPERT REGULATION OF SPECIFIC ACTIVITY	(a) Federal Communications Commission (b) Food and Drug Administration	(a) Coordination and Quality Radio and TV Airwaves (b) Wholesome Products on the
Penal	PROHIBITING AND PUNISHING CERTAIN BAD ACTS	(a) Statute Making Assault and Murder Crimes Punishable by Imprisonment (b) Statute Making Thefts a Crime Punishable by Imprisonment	(a) Prevention of Violent Acts by Persons (b) Protection of Private Property
Private Remedy	LAWSUITS TO REMEDY DAMAGE DONE	(a) Suit for Assault and Battery (b) Suit for Slander	(a) Remedy Harm, Wrongfully Done (b) Discourage Certain Antisocial Acts (c) Provide for Rational Disputes
Private Arrangement	SUPPORTING PRIVATE ARRANGEMENTS	(a) Tax-Free Status of Charities and Private Schools (b) Enforcement of Contract Promises Between Private Individuals	(a) Encouraging Private Efforts Meeting Social Needs (b) Orderly Private Exchange and Services in Society

OUTLINE OF LEGAL TECHNIQUES SCHEME

LEGAL TECHNIQUE	EXAMPLES OF THE LEGAL TECHNIQUE AT WORK	SOCIAL NEED OR PROBLEM THAT CALLS THE LEGAL TECHNIQUE INTO PLAY
LECTING TAXES and DISTRIBUTING BENEFITS	<ul style="list-style-type: none"> (a) System of Public Education (b) Social Security System 	<ul style="list-style-type: none"> (a) Preparation of Youth for Responsible Productive Adulthood (b) Care for Aged, Otherwise Unable to Care for Themselves
REGULATION OF PUBLIC ACTIVITY	<ul style="list-style-type: none"> (a) Federal Communications Commission (b) Food and Drug Administration 	<ul style="list-style-type: none"> (a) Coordination and Quality in use of Radio and TV Airwaves (b) Wholesome Products on the Market
PREVENTING AND PUNISHING CERTAIN BAD ACTS	<ul style="list-style-type: none"> (a) Statute Making Assault and Murder Crimes Punishable by Imprisonment (b) Statute Making Thefts a Crime Punishable by Imprisonment 	<ul style="list-style-type: none"> (a) Prevention of Violent Acts Against Persons (b) Protection of Private Property
WAYS TO REMEDY HARM DONE	<ul style="list-style-type: none"> (a) Suit for Assault and Battery (b) Suit for Slander 	<ul style="list-style-type: none"> (a) Remedy Harm, Wrongfully Done, and Discourage Certain Antisocial Acts (b) Provide for Rational Dispute Settlements
ENCOURAGING PRIVATE ENGAGEMENTS	<ul style="list-style-type: none"> (a) Tax-Free Status of Charities and Private Schools (b) Enforcement of Contract Promises Between Private Individuals 	<ul style="list-style-type: none"> (a) Encouraging Private Efforts in Meeting Social Needs (b) Orderly Private Exchange of Goods and Services in Society

Module 2

B. *Teaching Understanding I - 1. Benefit Distribution Technique*

OBJECTIVES

- The student may demonstrate his understanding of the different ways in which government officials may use law as a tool by identifying news stories or cartoons which illustrate these techniques.
- The student may demonstrate ability in the valuing process by identifying possible alternatives in the case of a social problem and by being able to justify his choice of an alternative.

QUESTIONS TO REACH UNDERSTANDING

- What necessary social tasks are performed by collection of public monies and distribution of public benefits? How are you and your families benefited by the collection of public monies?
- How do legal officials and private citizens take part in the operation of this legal technique?
- How might the distributive technique as it is used in our legal system be made more effective?

USE OF VISUALS (For all legal techniques)

- Students can collect pictures and cartoons illustrating uses of each of the techniques.
- The cartoons on pages 42, 54, and 67 may be analyzed in terms of the technique used in dealing with the problem.
- The cartoons may also be analyzed with respect to which cartoon reflects understanding on the part of the cartoonist of the various legal techniques.
- A set of study prints concerning pollution can be studied to identify the legal technique which would be applied to remedy the situation.

Understanding I - 1. Benefit Distribution Technique

Student may demonstrate his understanding of the different ways in which government may use law as a tool by identifying news stories or cartoons which illustrate legal techniques.

Student may demonstrate ability in the valuing process by identifying possible alternatives in the case of a social problem and by being able to justify his choice of alternative.

REACH UNDERSTANDING

How are necessary social tasks performed by collection of public monies and distribution of public benefits? How are you and your families benefited by the collection of taxes?

How do legal officials and private citizens take part in the operation of this legal system?

How can the distributive technique as it is used in our legal system be made more effective?

LEARNING OBJECTIVES (For all legal techniques)

Students can collect pictures and cartoons illustrating uses of each of the techniques.

Cartoons on pages 42, 54, and 67 may be analyzed in terms of the technique most effective in dealing with the problem.

Cartoons may also be analyzed with respect to which cartoon reflects understanding of the part of the cartoonist of the various legal techniques.

How can study prints concerning pollution can be studied to identify the legal techniques that could be applied to remedy the situation.

Module 2

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESO

1. The benefit distribution technique at work on a social problem.

Highway Safety

- (a) Have students analyze the chart and graph on pages 55 and 56 showing the proportion and amount of New York State's budget spent annually on highway construction and maintenance. Compare with other expenditures. Which is the greatest? The least? Do they think that the expenditures are fairly allocated?
- (b) Have pupils, through class discussion, identify ways public moneys might be spent on the problem of highway safety. The following are some of the possible ways:
- Construction of safe highways (grants of public funds for highway construction may be conditioned on meeting safety standards)
 - Acquisition and maintenance of road traffic control devices (laws provide for purchasing and maintaining stop signs, red lights, lines in the middle of the road, etc.)
 - Police direction of traffic
 - Research for highway safety improvement
 - Public school driver education

The illustrative problems of high pollution are especially useful in surveying law's basic resources (interests and because these problems and others) are ones on which *all* legal techniques may be put to work. To begin this unit is to present current coverage concerning the extent to which safety or pollution is in fact a problem today.

The suggested content and procedure for legal techniques merely attempt to give some *examples* of legal activity of this kind. Such examples by themselves are little in revealing to students how which law works. Thus, the teacher has particular importance in directing students to inquire into the distinctive features of the legal techniques at work.

In looking at expenditure of public money or prevent a problem (the benefit distribution technique at work), students may see how tax dollars can promote highway safety or pollution. For instance, tax dollars can be used to build a cloverleaf where many accidents occurred at the entrance and exit, or tax dollars can be appropriated for government for everything from yellow paint for the highway to salaries or funds for private highway research and school driver education.

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APPLICATION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. The benefit distribution technique at work on a social problem.

Highway Safety

Students analyze the chart and graph on pages 55 and 56 showing the proportion and amount of New York State's budget allocated annually on highway construction and maintenance. Compare with expenditures on other public services. Which is the most? The least? Do they think the expenditures are fairly allocated?

Pupils, through class discussion, identify ways public moneys might be allocated on the problem of highway safety. Following are some of the possible uses:

Construction of safe highways (grants from public funds for highway construction may be conditioned on meeting safety standards)

Acquisition and maintenance of road traffic control devices (laws provide for purchasing and maintaining stop signs, red lights, lines in the middle of the road, etc.)

Police direction of traffic

Research for highway safety improvement

Public school driver education

The illustrative problems of highway safety and pollution are especially useful for purposes of surveying law's basic resources because of current interests and because these problems (unlike many others) are ones on which *all five* of the basic legal techniques may be put to work. One way to begin this unit is to present current newspaper coverage concerning the extent to which highway safety or pollution is in fact a social problem today.

The suggested content and procedures for each of the legal techniques merely attempt to give students some *examples* of legal activity of a distinctive kind. Such examples by themselves probably will do little in revealing to students different ways in which law works. Thus, the teacher's role is of particular importance in directing class discussion to inquire into the distinctive aspects of each of the legal techniques at work.

In looking at expenditure of public moneys to relieve or prevent a problem (the benefit distribution technique at work), students may consider as examples how tax dollars can promote highway safety or fight pollution. For instance, tax dollars may be used to build a cloverleaf where many accidents have occurred at the entrance and exit of a major highway or tax dollars can be appropriated at various levels of government for everything from road signs and yellow paint for the highway to traffic policemen's salaries or funds for private highway safety research and school driver education programs. In

Module 2

DETAILED DESCRIPTION OF STRATEGIES

- (c) Have pupils check back issues of their local newspapers for stories on spending public money on highway safety and antipollution techniques. Then have them make a bulletin board display of the materials they have located, indicating the relationship of the display to benefit distribution.
- (d) Assign certain pupils in class the task of checking newspapers for stories of highway accidents that were caused at least in part by failure of the legal system to make use of the benefit distribution technique to build "safe" highways for the driving public. Have some of the pupils read their selections in class and call on various classmates to see if they are in agreement as to where the fault lies.
- (e) Teachers should be able to secure a copy of the town or city budget. Using an overhead or an opaque projector, get pupils to point out the amount spent on transportation safety, relating this to benefit distribution.
- (f) To make pupils more aware of highway safety, show them a film or filmstrip on this topic. Use your local film center for possible suggestions if the title listed below is unavailable, or ask the driver education teacher.
—"Autos and All that Traffic." 25 min. Color.

DISCUSSION OF STRATEGIES AND RESOURCES

the field of pollution, tax dollars by law to be spent on waste or garbage plants, or for research on the pollution or to pay the salaries of inspectors

This process of collecting public money and putting it into certain benefits, and distributing it to members of the public is called a benefit distribution technique because the law structures and order in which the benefit distribution *is carried out*. As indicated in section 2, statutes can be presented for illustration to show something of the specific legal benefit distribution technique. The beginning, may need assistance in finding statutes and editing them for student use. An alternative way to emphasize the legal taxing and spending process is to have students play legislators in the process of deciding which problems the state's taxes will

Questions on the Operation of the Benefit Distribution Technique

To show that the benefit distribution technique is a particular, distinctive *legal* response to a problem, students will need to consider questions about the operation of the technique. How does it get at the problem? How is this technique in motion on the problem? Who makes the decision is made, who actually carries out the system's efforts under this technique? What functions does this technique perform? How may this technique fail to solve the problem—what are its limits?

OF STRATEGIES

check back issues of newspapers for stories of public money on highway antipollution techniques. Have them make a bulletin board with the materials they have indicating the relationship of law to benefit distribution.

Assign pupils in class the task of checking newspapers for stories of accidents that were caused in part by failure of the law to make use of the benefit distribution technique to build "safe" roads for the driving public. Have the pupils read their selections and call on various classmates to explain why they are in agreement as to why the law is a default lies.

Students could be able to secure a copy of the town or city budget. Have them read overhead or an opaque projector. Let pupils to point out the items on transportation safety, and how this is to benefit distribution.

Have pupils be more aware of highway safety. Show them a film or filmstrip on highway safety. Use your local film strip. Use possible suggestions if the film is unavailable, or have the teacher read "All that Traffic." 25 min.

DISCUSSION OF STRATEGIES AND RESOURCES

the field of pollution, tax dollars may be set aside by law to be spent on waste or garbage disposal plants, or for research on the pollution problem, or to pay the salaries of inspectors.

This process of collecting public moneys, converting them into certain benefits, and distributing them to members of the public is called a legal technique because the law structures and orders *how the process is carried out*. As indicated in section B-1, statutes can be presented for illustrative purposes to show something of the specific law content of the benefit distribution technique. The teacher, in the beginning, may need assistance in finding such statutes and editing them for student use. An alternative way to emphasize the law content of the taxing and spending process is to have students role-play legislators in the process of deciding for which problems the state's taxes will be spent.

Questions on the Operation of the Benefit Distribution Technique

To show that the benefit distribution technique is a particular, distinctive *legal* resource for treating a problem, students will need to consider further questions about the operation of this technique. How does it get at the problem? Who decides to put this technique in motion on the problem? Once this decision is made, who actually carries out the legal system's efforts under this technique? What other functions does this technique perform in society? How may this technique fail to solve the problem in point—what are its limits?

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DETAILED DESCRIPTION OF STRATEGIES

Pollution

- (a) Have class identify ways public moneys might be spent on the problem of water pollution and air pollution. Some of the following ways should be suggested: (a good technique is to build up a list on the chalkboard as pupils suggest their ideas):
- spending Federal money to assist state sewage construction projects
 - supporting research on new technologies of waste disposal
 - spending state funds to assist localities in the construction and maintenance of sewage treatment plants and sewer systems.
 - spending public money for research and development of solutions to the air pollution problem
 - building fewer roads and more mass transit
- (b) With the great interest and concern about all aspects of pollution today, there are many audiovisual materials today dealing with all aspects of this problem. Use either a movie or film-strip series to help make pupils more aware of the problems, and some of the various remedies suggested.

DISCUSSION OF STRATEGIES AND RESOUR

The benefit distribution technique social problem or meet a social need collecting public moneys and conveying benefits for those who manifest the from the problem.

Generally, legislative bodies rather administrators decide to launch a program in the first place. Legislators statutes, decide how revenues will then decide how to channel the distribution benefits. Executive branch officials cal pressure on legislators, voters opinion and thus influence representative private interest groups lobby and decisions of legislative representatives

But the officials (legislators) who the benefit distribution technique same people who actually carry the Special administrators may direct may do so by employing private parties the ultimate benefit to members of example, influence from voters, in the executive may cause the legislative appropriate dollars for highway projects local highway department (administrators decide how this money should be spent in turn employ a private contractor given project such as the straight The driving public is ultimately through this process.

ION OF STRATEGIES

Pollution

Identify ways public moneys spent on the problem of water and air pollution. Some of the following ways should be suggested: One technique is to build up a list on a chalkboard as pupils suggest (ideas):

Requesting Federal money to assist in sewage construction projects

Supporting research on new techniques of waste disposal

Requesting state funds to assist localities in the construction and maintenance of sewage treatment plants and sewer systems.

Requesting public money for research and development of solutions to the pollution problem

Requesting fewer roads and more mass

There is a great interest and concern about aspects of pollution today, and many audiovisual materials are available dealing with all aspects of this problem. Use either a movie or filmstrips to help make pupils more aware of the problems, and some of the remedies suggested.

DISCUSSION OF STRATEGIES AND RESOURCES

The benefit distribution technique tries to solve a social problem or meet a social need mainly by collecting public moneys and converting them to benefits for those who manifest the need or suffer from the problem.

Generally, legislative bodies rather than courts or administrators decide to launch a distributive program in the first place. Legislators, by passing statutes, decide how revenues will be raised and then decide how to channel the distribution of public benefits. Executive branch officials assert political pressure on legislators, voters express public opinion and thus influence representatives, and private interest groups lobby and thereby influence decisions of legislative representatives.

But the officials (legislators) who decide to launch the benefit distribution technique are rarely the same people who actually carry these efforts out. Special administrators may direct these efforts and may do so by employing private parties to deliver the ultimate benefit to members of the public. For example, influence from voters, interest groups, or the executive may cause the legislative branch to appropriate dollars for highway programs. A state or local highway department (administrators) may then decide how this money should be spent. It might in turn employ a private contractor to undertake a given project such as the straightening of a highway. The driving public is ultimately the beneficiary of this process.

Module 2

DETAILED DESCRIPTION OF STRATEGIES

Below are some of the possible resources:

- "Poll Over Our Cities" b/w
- "Pollution is a Matter of Choice" NBC-TV (54 min. Examines the environmental dilemma of modern man.)
- "Environmental Pollution" "Our World in Crisis" Wards Educational Filmstrips (Series of six color filmstrips.)

(c) The following questions used in class discussion may help to guide pupils to a better understanding of the benefit distribution technique:

- Name some further examples of the benefit distribution technique at work on the problems of highway safety and pollution, and give an example to show how each contributes to safer highways or a better environment.
- Does the benefit distribution technique affect other social needs or problems of society other than highways and pollution? Explain.
- Who do you think first decides to put the benefit distribution to work on certain problems?

DISCUSSION OF STRATEGIES AND RESOURCES

While executives, judges, and legislators are familiar to students, administrative officials probably are not so familiar. Yet officials play a key role in carrying out the legislature's benefit distribution by implementing certain other legal techniques (primarily the regulation technique). Legislators do much of the detailed work of the system. Often they are experts in their fields. Legislatures normally pass laws authorizing the creation of administrative agencies such as the highway department, the internal revenue department, the food and drug administration, the health department, etc. But the executive officials are the administrative officials to fill the positions created by the legislature.

Combating pollution and working for highway safety are by no means the only functions of the benefit distribution technique. Students should be given several other examples of the technique at work on social problems. In addition to combating pollution and highway safety, tax dollars go for education, hospitals, a welfare system, public facilities, conservation, the public defense system, national defense, and even

It is likely that students in discussing legal techniques will readily recognize the given technique, as used, does not work effectively on the problem under consideration (e.g., we do not spend enough tax dollars on pollution), and (2) even if the given

ON OF STRATEGIES

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DISCUSSION OF STRATEGIES AND RESOURCES

While executives, judges, and legislators may be familiar to students, administrative officials probably are not so familiar. Yet administrative officials play a key role in carrying out the legislature's benefit distribution programs and in implementing certain other legal techniques (primarily the regulation technique), too. Administrators do much of the detailed work of the legal system. Often they are experts in their fields. Legislatures normally pass laws authorizing the creation of administrative agencies such as the highway department, the internal revenue service, the food and drug administration, the education department, etc. But the executive then appoints the administrative officials to fill the positions created by the legislature.

Combating pollution and working for safer highways are by no means the only functions that the distributive technique performs. Students should be familiar with several other examples of the benefit distribution technique at work on social problems or needs. In addition to combating pollution and encouraging highway safety, tax dollars go for public health and hospitals, a welfare system, public recreation facilities, conservation, the public education system, national defense, and even space exploration.

It is likely that students in discussing each of the legal techniques will readily recognize: (1) that the given technique, as used, does not in fact always work effectively on the problem under consideration (e.g., we do not spend enough tax dollars to combat pollution), and (2) even if the given technique were

Module 2

DETAILED DESCRIPTION OF STRATEGIES

- What individuals would operate this technique, and how would their influence be felt?
- Why can't the allocation of moneys result in the end of all traffic fatalities and pollution problems?

(Note for teachers: Answers to suggested questions listed above can be found by reading the section "Discussion of Strategies and Resources.")

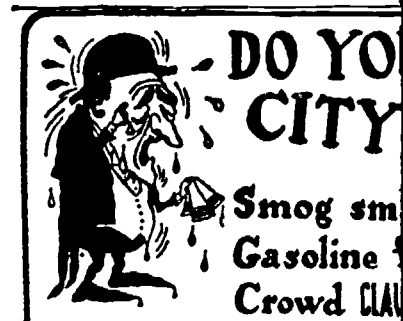
(d) Activities

- Name committee(s) of students to sit as an appropriations or budget committee of the town or state legislature. Have the committee outline a budget and decide what the state's public money should be spent on for the upcoming year. **BE SURE TO HAVE LESS MONEY AVAILABLE THAN IS REQUIRED**, so that students will have to think about criteria for setting priorities. Have the committee hold a hearing where various members of the class role play representatives from interest groups; then have the committee report the budget to the class for discussion before the class, sitting as the legislature, votes it into law or returns it to the committee.

DISCUSSION OF STRATEGIES AND RESOURCES

used as effectively as possible, solve the problem at hand (e.g., highway construction would not en

If students do not raise these points should. They should be pursued that: (1) each legal technique to a legal system that can be well (we might simply spend too much of defense or on education, or we might these expenditures in a wasteful manner); (2) some techniques are others in working on a given problem several techniques work on the same need; (4) even where legal techniques used, some problems are very complex the reach of legal solutions.



DISCUSSION OF STRATEGIES

Individuals would operate
technique, and how would their
be felt?

the allocation of moneys
in the end of all traffic
problems and pollution problems?

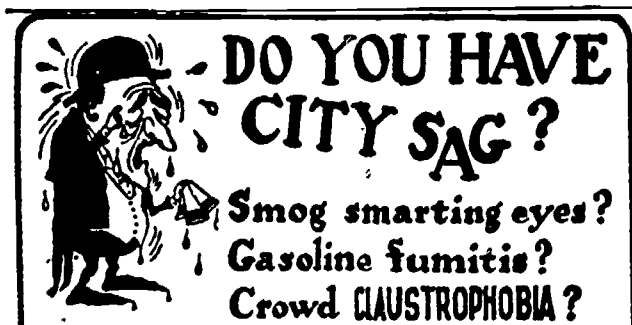
teachers: Answers to suggested
listed above can be found by
the section "Discussion of
Strategies and Resources."

committee(s) of students to sit
on appropriations or budget com-
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The committee outline a budget and
state what the state's public money
should be spent on for the upcoming year.
TO HAVE LESS MONEY AVAILABLE THAN
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to think about criteria for setting
priorities. Have the committee hold a
hearing where various members of the
class play representatives from
different groups; then have the committee
present the budget to the class for dis-
cussion before the class, sitting as
legislature, votes it into law or
refers it to the committee.

DISCUSSION OF STRATEGIES AND RESOURCES

used as effectively as possible, it couldn't alone
solve the problem at hand (e.g., maximum safety in
highway construction would not end auto accidents).

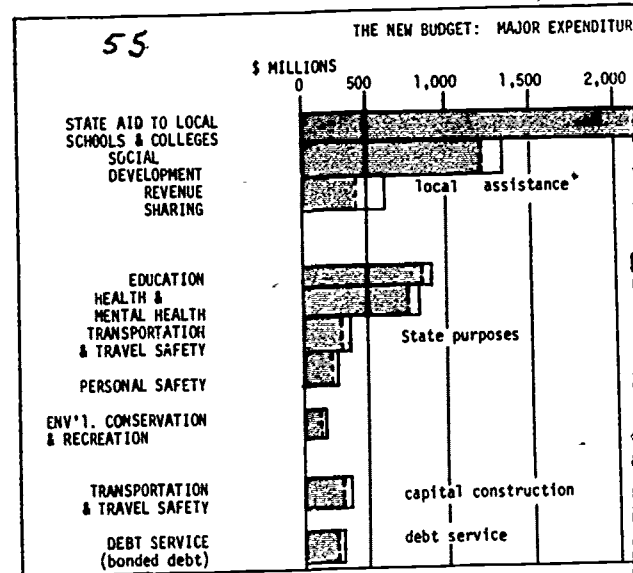
If students do not raise these points, teachers
should. They should be pursued in order to emphasize
that: (1) each legal technique is a tool available
to a legal system that can be well used or misused
(we might simply spend too much or too little on
defense or on education, or we might administer
these expenditures in a wasteful or ineffective
manner); (2) some techniques are more effective than
others in working on a given problem; (3) often
several techniques work on the same problem or social
need; (4) even where legal techniques are properly
used, some problems are very complex and are beyond
the reach of legal solutions.



Module 2
 DETAILED DESCRIPTION OF STRATEGIES

—An alternative: A student may be assigned to play the role of mayor or state governor (depending on what level of government is being simulated). Students as interest groups might put pressure on the executive which will bring into play more completely the "lawmaking" process. See also references to Mehlinger and Patrick, page 78.

DISCUSSION OF STRATEGIES AND RESOURCES



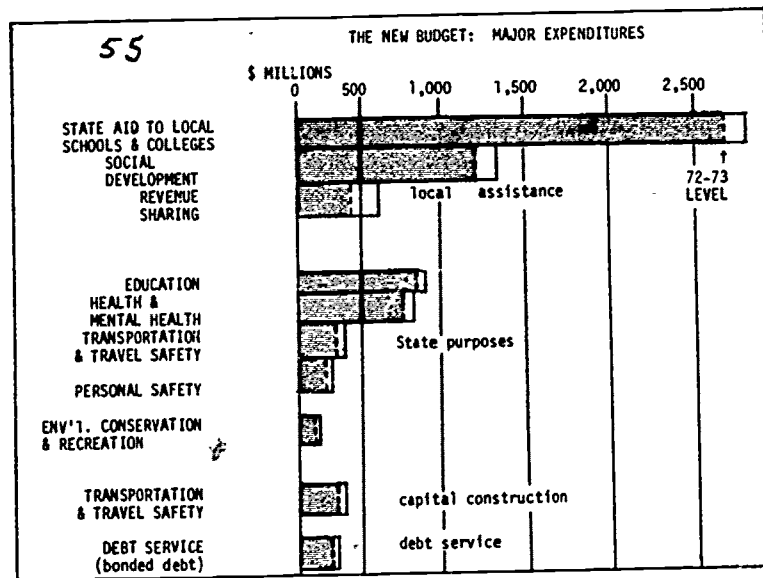
See text, page 54.

State of New York, Executive Budget
 April 1, 1973 to March 31, 1974

ON OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

Alternative: A student may be assigned to play the role of the state governor (depending on the level of government is simulated). Students as individual or small groups might put pressure on the executive which will bring about more completely the "decision-making" process. See also references to Mehlinger and ... , page 78.



See text, page 54.

State of New York, Executive Budget for April 1, 1973 to March 31, 1974, p. M-12

Module 2

STATE PURPOSES—REGULAR
SUMMARY OF APPROPRIATIONS AND CHANGES

Program	Personal Service	Non-Personal Service
	Recommended 1973-74	Recommended 1973-74
Administration.....	\$ 9,995,400	\$ 3,019,100
Transportation Planning, Research and Development.....		4,425,000
Transportation Design and Construction.....	55,012,000	3,228,000
Traffic and Safety.....	6,447,000	969,000
Highway Operation and Maintenance.....	58,141,000	33,200,000
Equipment Management.....	5,559,000	15,569,000
Waterway Operation and Maintenance.....	9,308,100	923,000
Transportation Regulation.....	1,514,100	143,000
Total.....	<u>\$145,976,600</u>	<u>\$61,477,400</u>

1973-74 Program Summary
(Regular and First Instance Funds)

Program	Reappro- priations	New Appropriations
Transportation Design and Construction, and Traffic Safety.....	\$1,012,087,148	\$621,950,000
Highway Operation and Maintenance.....	3,818,467	4,935,000
Waterways Operation and Maintenance.....	1,574,305	5,525,000
Administration.....	228,350	
Advance to Public Authorities.....	121,779,158	850,000
Total.....	<u>\$1,139,487,428</u>	<u>\$633,260,000</u>

State of New York Executive Budget for April 1, 1973 to March 31, 1974, pp. 495 and

STATE PURPOSES—REGULAR
SUMMARY OF APPROPRIATIONS AND CHANGES

Program	<u>Personal Service</u>	<u>Non-Personal Service</u>	<u>Total</u>
	Recommended 1973-74	Recommended 1973-74	Recommended 1973-74
.....	\$ 9,995,400	\$ 3,019,100	\$ 13,014,500
Planning, Research and		4,425,000	4,425,000
Design and Construction.....	55,012,000	3,228,000	58,240,000
Safety.....	6,447,000	969,000	7,416,000
Operation and Maintenance.....	58,141,000	33,200,000	91,341,000
Development.....	5,559,000	15,569,000	21,128,000
Operation and Maintenance.....	9,308,100	923,000	10,232,000
Regulation.....	1,514,100	143,000	1,657,500
.....	<u>\$145,976,600</u>	<u>\$61,477,400</u>	<u>\$207,454,000</u>

1973-74 Program Summary
(Regular and First Instance Funds)

Program	<u>Reappro- priations</u>	<u>New Appropriations</u>
Operation Design and Construction, and Public Safety.....	\$1,012,087,148	\$621,950,000
Day Operation and Maintenance.....	3,818,467	4,935,000
Highways Operation and Maintenance.....	1,574,305	5,525,000
Administration.....	228,350	.....
Grants to Public Authorities.....	121,779,158	850,000
Total.....	<u>\$1,139,487,428</u>	<u>\$633,260,000</u>

New York Executive Budget for April 1, 1973 to March 31, 1974, pp. 495 and 517.

Module 2

B. *Teaching Understanding I - 2. Regulation Technique*

QUESTIONS TO REACH UNDERSTANDING

- . What necessary social tasks are aided by legal standards and rules for guidance?
- . How do legal officials and private citizens take part in the operation of this law?
- . How might the regulation technique as it is used in our legal system be made more effective?

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. The regulation technique at work on a social problem.

Highway Safety

- (a) Have class identify ways the regulation technique might work on the problem of highway safety. Examine relevant regulations. Suggest the following topics with which some of the class members may already be familiar:

- regulating by licensing "safe" drivers
 - New York State operator's and junior operator's license requirements
 - driver's license written examination
 - driver's license road test
- regulations to keep unsafe vehicles off the road
 - New York State auto inspection requirements

As with the distribution technique resources suggested under the regulation technique, the teacher will use student inquiry to the special work resource. The same series of questions used to examine the benefit distribution should be answered about the regulation technique.

How does this technique generally work? Who decides to put this technique into effect? Who actually carries out the legal system? What other problems does this legal technique treat? How do the regulation techniques fail to solve the problem? What are its limits?

The regulation technique generally works on a social problem by setting qualifying standards for the conduct of private citizens. It provides expert guidance for a particular problem. Such standards and guidance try to coordinate things for people engaged in the activity.

Understanding I - 2. Regulation Technique

REACH UNDERSTANDING

Necessary social tasks are aided by legal standards and rules for guidance?
Legal officials and private citizens take part in the operation of this legal technique?
Can the regulation technique as it is used in our legal system be made more effective?

EXAMINATION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. The regulation technique at work on a social problem.

Highway Safety

Class identify ways the regulation technique might work on the problem of highway safety. Examine existing regulations. Suggest the topics with which some of the class members may already be familiar:

Regulating by licensing "safe" drivers

New York State operator's and motor operator's license requirements

Driver's license written examination

Driver's license road test

Regulations to keep unsafe vehicles off the road

New York State auto inspection requirements

As with the distribution technique, procedures and resources suggested under the regulation technique simply indicate examples of the regulation technique at work. To develop an understanding of the regulation technique, the teacher will need to direct student inquiry to the special workings of this legal resource. The same series of questions that were used to examine the benefit distribution technique should be answered about the regulation technique.

How does this technique generally get at a problem? Who decides to put this technique in motion, and who actually carries out the legal system's efforts under this technique? What other problems in society does this legal technique treat? How may this legal technique fail to solve the problem in point—what are its limits?

The regulation technique generally approaches a given problem by setting qualifying standards or standards for the conduct of private citizens and by providing expert guidance for a particular kind of activity. Such standards and guidance try to facilitate and coordinate things for people engaged in the activity

Module 2

DETAILED DESCRIPTION OF STRATEGIES

- regulating safe traffic flow
 - determining and requiring uniform traffic control devices
 - intersectional control
 - pavement markings

All of the above information can be learned in some form or other in the New York State Driver's Manual which can be obtained from the local Department of Motor Vehicles office.

- (b) Discuss with class various ways the regulation technique might work on the problem of pollution. Some of the areas in which there have been attempts at regulation include the following:
- regulating amount of permissible emissions into the air from industrial plants
 - regulating motor vehicle air pollution
 - standards regulating pollution of inland water
 - standards regulating pollution of the ocean
- (c) Collect for class study primary resource material that illustrates the regulation technique at work on the problem of pollution.

DISCUSSION OF STRATEGIES AND RESO

or to prevent the occurrence of u from the activity. For example, highway safety, we need standards who is qualified to drive on the standards and licensing drivers b regulation technique is better th decision up to each individual as qualified to drive safely. Likew for keeping unsafe vehicles off t desirable. Standards for limitin emissions of pollutants into the help protect the environment. Hu by qualifications or standards th technique sets for getting a lice people as to when they may hunt a they may take, the regulation tec species of wildlife. People are protected in the market place bec are informed of standards concern drugs by the regulation technique

Another key function of the regul addition to setting standards for coordination of certain activity. tion, auto or air traffic flow wo as well as very congested. Coord radio or TV airwaves would be imp regulation of their use.

Questions on the Operation of the Technique

As with the distributive techniqu administrators play the key roles

FUNCTION OF STRATEGIES

Regulating safe traffic flow

Determining and requiring uniform traffic control devices

Intersectional control

Signage markings

The above information can be learned from the manual or other in the New York State Department of Motor Vehicles office.

As with class various ways the regulation technique might work on the problem of pollution. Some of the areas in which there have been attempts at regulation include the following:

Regulating amount of permissible emissions into the air from industrial plants

Regulating motor vehicle air pollution

Standards regulating pollution of inland water

Standards regulating pollution of the ocean

Material for class study primary grade material that illustrates the regulation technique at work on the problem of pollution.

DISCUSSION OF STRATEGIES AND RESOURCES

or to prevent the occurrence of undesirable results from the activity. For example, in relation to highway safety, we need standards for determining who is qualified to drive on the highways. Setting standards and licensing drivers by means of the regulation technique is better than leaving the decision up to each individual as to whether he is qualified to drive safely. Likewise, some standards for keeping unsafe vehicles off the roads are desirable. Standards for limiting the amounts of emissions of pollutants into the air and water may help protect the environment. Hunters are protected by qualifications or standards that the regulation technique sets for getting a license. By informing people as to when they may hunt and amounts of game they may take, the regulation technique preserves species of wildlife. People are somewhat better protected in the market place because manufacturers are informed of standards concerning pure food and drugs by the regulation technique.

Another key function of the regulation technique, in addition to setting standards for a given activity, is coordination of certain activity. Without regulation, auto or air traffic flow would be hazardous as well as very congested. Coordinated use of the radio or TV airwaves would be impossible without regulation of their use.

Questions on the Operation of the Regulation Technique

As with the distributive technique, legislators and administrators play the key roles, but private

Module 2

DETAILED DESCRIPTION OF STRATEGIES

Note to Teachers: You may obtain a multitude of primary resources on how the state has attempted to regulate pollution by writing to:

New York State Department of
Environmental Conservation
Albany, New York

Ask for series of information leaflets put out by their department. Also the following booklets and leaflets from the above department:

- Help Give Earth a Chance
- New York's Pure Water's Progress
- Showdown
- Developing and Managing the Water Resources of New York
- An Environmental Checklist or
- Handbook of Environmental Education Strategies (obtained from Barry W. Jamason, Chairman, Environmental Task Force, Bureau of Continuing Curriculum Development, State Education Department, Albany, New York 12224.)

(d) The following questions and strategies should serve to aid the pupils in learning more about the regulation technique.

- Name and explain some other examples of legal restrictions at work on the

DISCUSSION OF STRATEGIES AND RESOURCES

individuals, interest groups, and they have an important influence. Generally, the legislature decides that a particular subject requires expert regulation, and then goes about setting up administrative commissions and bureaus to carry out a regulatory program. The legislature may make broad guidelines for regulation, leaving the details of making and implementing regulations left to the experts. For example, the legislature decides that some kind of standards for licensing drivers to keep unsafe drivers off the roads. The legislature then passes legislation creating a body of administrative experts (the Department of Motor Vehicles) and gives them some general guidelines. "Before a license is granted the applicant must pass such examinations as to his qualifications," says the Commissioner of Motor Vehicles. The details of constructing and administering these standards for getting a license are left to the experts. The legislators themselves use their own expertise to do this task. The same technique is generally followed for other examples of regulation: regulation of pollution, regulation of stocks and bonds, communication, etc., is necessary. It then lays down guidelines and creates administrative commissions. The legislature usually appoints experts to do this task, and these experts go about the day-to-day regulating.

The executive, private individuals and interest groups may have an influence on the regulatory process. For example, shortly after the office President Nixon made it clear

OF STRATEGIES

rs: You may obtain a primary resources on how attempted to regulate writing to:

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ir department. Also the
lets and leaflets from
rtment:

Birth a Chance

Secure Water's Progress

and Managing the Water
of New York

ental Checklist or

Environmental Education
(obtained from Barry W.
Chairman, Environmental Task
Bureau of Continuing Curriculum
State-Education Department,
New York 12224.)

Following questions and strategies
serve to aid the pupils in learning
about the regulation technique.

and explain some other examples
of restrictions at work on the

DISCUSSION OF STRATEGIES AND RESOURCES

individuals, interest groups, and the executive may have an important influence. Generally the legislature decides that a particular subject area needs expert regulation, and then goes about creating administrative commissions and bureaus of experts to carry out a regulatory program. The legislature may make broad guidelines for regulation, but details of making and implementing regulations are ordinarily left to the experts. For example, the legislature decides that some kind of standards are needed for licensing drivers to keep unsafe drivers off the roads. The legislature then passes a statute creating a body of administrative experts (Bureau of Motor Vehicles) and gives them some general guidelines: "Before a license is granted the applicant shall pass such examinations as to his qualification as the Commissioner of Motor Vehicles shall require." The details of constructing and administering standards for getting a license are left to the experts. The legislators themselves lack time and expertise to do this task. The same scheme is generally followed for other examples of the regulation technique at work. The legislature decides that regulation of pollution, transportation, education, stocks and bonds, communications, commerce, etc., is necessary. It then lays down broad guidelines and creates administrative offices. The executive usually appoints experts to fill these offices, and these experts go about the day-to-day work of regulating.

The executive, private individuals, and interest groups may have an influence on the regulatory process. For example, shortly after he got into office President Nixon made it clear that he wanted

Module 2

DETAILED DESCRIPTION OF STRATEGIES

problems of highway safety and pollution, and how they contribute toward improving the area mentioned.

- How can you explain the occurrence of so many auto accidents and different types of pollution despite the many restrictions to ensure highway safety and conservation of our natural resources?

Strategies

- (a) Have pupils check newspapers for reports of the regulation technique at work and make a bulletin board display. See if they can discover some areas right in their own school.
- (b) Have a student group role-play administrators who are called on to make regulations concerning the following activities:
 - qualifying to be a public school teacher
 - qualifying to use a snowmobile
 - securing a permit for a rock festivalOne might play the role of principal, another superintendent of schools, and yet others might play the part of the board of education members.
- (c) Invite a visitor from an administrative bureau that works with the regulation

DISCUSSION OF STRATEGIES AND RESOUR

Congress to create a new administrative agency to regulate environmental abuse more effectively. Private interest groups like the Environmental Fund or the auto manufacturers' lobby put pressure on the legislature to increase or decrease funding in an area like pollution control. When administrators are moved to action, they inform citizens. The highway department might put a red light at an intersection when private citizens point out the need.

Again, it is appropriate to look at the regulation technique critically: Why might it fail to solve the problems it addresses? Legal standards might be unsound regulations; for example, standards might be dangerously lax or might fail to use the regulatory technique that might be helpful; for example, the regulation of air pollution until more stringent standards might be set, but they are not enforced or they might be enforced only in some places. For example, landlord violations of building codes in many places are some of the most common. And finally, even where the regulatory technique works well, the problem on which it is applied is so complex that alone or in combination with other techniques it still cannot "solve" the problem completely. So long as there are auto accidents, they are bound to be some auto accidents.

ION OF STRATEGIES

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a visitor from an administrative
that works with the regulation

DISCUSSION OF STRATEGIES AND RESOURCES

Congress to create a new administrative agency to regulate environmental abuse more effectively. Private interest groups like the Environmental Defense Fund or the auto manufacturers' lobby put pressure on the legislature to increase or decrease regulation in an area like pollution control. Often local administrators are moved to action by private citizens. The highway department may put a stop-light at an intersection when private citizens point out the need.

Again, it is appropriate to look at this legal technique critically: Why might it fail to "solve" the problems it addresses? Legal officials may make unsound regulations; for example, pollution standards might be dangerously lax. Legal officials might fail to use the regulatory technique where it might be helpful; for example, there was little regulation of air pollution until recently. Effective standards might be set, but they might not be enforced or they might be enforced unfairly; for example, landlord violations of building and sanitation codes in many places are sometimes ignored. And finally, even where the regulation technique works well, the problem on which it works may be so complex that alone or in combination with other legal techniques it still cannot "solve" the problem completely. So long as there are autos there are bound to be some auto accidents.

Module 2

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

technique to talk on how these officials go about their regulating activity (for example, highway department, motor vehicle department, conservation department, fish and game department, etc.) You might have a panel prepare questions that various members of the class would like to ask.

- (d) Have a committee of three pupils do a research project on the role of Ralph Nader in the field of automobile safety. Suggest they read "Unsafe At Any Speed" and each report different aspects of what Mr. Nader has uncovered. This book is readily available in most libraries. Some of the pupils in class might be most interested in this project since it concerns automobiles. There may be some class experts on this topic.

Module 2

B. *Teaching Understanding I - 3. Penal Technique*

QUESTIONS TO REACH UNDERSTANDING

- . What necessary social tasks are performed by prohibiting certain conduct by punishment when it occurs?
- . How do legal officials and private citizens take part in the operation of this legal technique?
- . How might the penal technique be made to work better?

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. The penal technique at work on a social problem.

- (a) Have class identify ways the penal technique might work on the problem of highway safety.
- Consider provisions prohibiting and punishing the following: Does the class think they are fair and reasonable? Should they be more, or less, harsh? This should generate some lively discussion.
- speeding
 - drag racing
 - drunk driving
 - interference with traffic control devices
 - causing another's death by reckless driving
- (b) Assign pupils in class the task of collecting for class study the primary resource material that illustrates the penal technique at work on the problem of highway safety.

Here again, a series of examples and situations is presented. With the help of similar examples, the class will work out this legal technique generally get who operates this technique, other legal technique treats, and possible this legal technique.

Law's penal resource approaches a mainly by defining activity which and discouraging such activity by it happens. This primary function technique is commonly known as its tion; if antisocial acts result will in theory be deterred from er activity. Some manufacturers are the effect on others of dumping ra into a river or billowing black so but if these activities result in outweigh the advantages of pollut social industrialist may be discor ting. Likewise, the individual w with the dangers to himself and o

standing I - 3. Penal Technique

TEACH UNDERSTANDING

Essary social tasks are performed by prohibiting certain conduct by punishing violators occurs?

Legal officials and private citizens take part in the operation of this legal technique?

How the penal technique be made to work better?

CON OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. The penal technique at work on a social problem.

How might identify ways the penal technique might work on the problem of highway safety.

Under provisions prohibiting and discussing the following: Does the law think they are fair and reasonable? Should they be more, or less, strict? This should generate some discussion.

Examples of driving offenses: racing, reckless driving, interference with traffic control, causing another's death by reckless driving.

Assign pupils in class the task of preparing for class study the primary material that illustrates the penal technique at work on the problem of highway safety.

Here again, a series of examples and suggested questions is presented. With the help of these or similar examples, the class will want to consider how this legal technique generally gets at a problem, who operates this technique, other problems this legal technique treats, and possible shortcomings of this legal technique.

Law's penal resource approaches a given problem mainly by defining activity which creates the problem and discouraging such activity by punishment when it happens. This primary function of the penal technique is commonly known as its deterrence function; if antisocial acts result in penalties, people will in theory be deterred from engaging in such activity. Some manufacturers are not worried about the effect on others of dumping raw waste chemicals into a river or billowing black soot into the air, but if these activities result in penalties that outweigh the advantages of polluting, the antisocial industrialist may be discouraged from polluting. Likewise, the individual who is unconcerned with the dangers to himself and others of drunken

Module 2

DETAILED DESCRIPTION OF STRATEGIES

Suggest newspapers, magazines and possible interviews with local policemen.

NOTE: Where not otherwise indicated in the statutory law, violation of these provisions is a traffic infraction, as opposed to a criminal felony or misdemeanor, and is punishable only by fine.

Pollution

- (a) Have pupils identify ways the penal technique might work on the problem of pollution. Some possible areas to be considered are the following:
- polluting may come within the penal provisions prohibiting "public nuisances"
 - (for example, California Penal Code defining "public nuisance" as: "anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons" (California Penal Code, section 370 [1970])).

DISCUSSION OF STRATEGIES AND RESOURCES

driving may be deterred from doing so in an appropriate penalty. Penal law try to secure rights in property from help themselves to the property of others making rape, murder, and assault, protect the security of people by discouraging who might otherwise do them physical punishing drug sales try to deter such people who do not care about the social may do.

Also, the penal technique serves to supplement the regulation technique. There may be a total overlap between the penal and the regulation techniques. Often if one fails to provide guidance of the regulation technique with a penalty (the penal technique) ceeds to drive without meeting the standards for a license, he may be arrested and punished there is an important difference in standards for driver licenses and laws prohibiting murder or theft. These are different functions. The regulation standards where *guidance is necessary* people and direct and coordinate action would be less safe if everyone on the highway when he qualified to drive. On the other hand, laws that are primarily penal, such as prohibiting rape, the function of the regulation technique is to deter people from an activity which they know is wrong; the regulation technique is to help

COMPARISON OF STRATEGIES

from newspapers, magazines and
radio interviews with local
officials.

are not otherwise indicated in
statutory law, violation of
these provisions is a traffic
infraction, as opposed to a
criminal felony or misdemeanor,
which is punishable only by fine.

Pollution

Students identify ways the penal
technique might work on the problem
of pollution. Some possible areas to
be considered are the following:

Regulating may come within the penal
provisions prohibiting "public
nuisances"

For example, California Penal Code
defines "public nuisance" as: "any
condition which is injurious to health,
which is indecent, or offensive to the
senses, or an obstruction to the
free use of property, so as to
interfere with the comfortable enjoy-
ment of life or property by an entire
community or neighborhood, or by any
considerable number of persons"
(California Penal Code, section 370
[1970]).

DISCUSSION OF STRATEGIES AND RESOURCES

Driving may be deterred from doing so if it results
in an appropriate penalty. Penal laws against theft
try to secure rights in property from those who would
help themselves to the property of others. Laws
making rape, murder, and assault crimes try to pro-
tect the security of people by discouraging those
who might otherwise do them physical harm. Laws
punishing drug sales try to deter such activity by
people who do not care about the social damage drugs
may do.

Also, the penal technique serves to support the regu-
lation technique. There may be a tendency to confuse
the penal and the regulation techniques because there
is an overlap. Often if one fails to conform to the
guidance of the regulation technique, he may be faced
with a penalty (the penal technique). If one pro-
ceeds to drive without meeting the standards to get
a license, he may be arrested and punished. But
there is an important difference in laws setting
standards for driver licenses and laws, for example,
prohibiting murder or theft. These laws perform
different functions. The *regulation laws* set
standards where *guidance is necessary* to inform
people and direct and coordinate activity. Highways
would be less safe if everyone on his own decided
when he qualified to drive. On the other hand, with
laws that are primarily *penal*, such as those pro-
hibiting rape, the *function of the law is not pri-
marily guidance*; almost everyone already knows that
rape is wrong. Thus, the function of the penal
technique is to deter people from antisocial
activity which they know is wrong; the function of
the regulation technique is to help inform people

Module 2

DETAILED DESCRIPTION OF STRATEGIES

- Excessive pollution may be a violation of specific penal laws
 - excessive auto exhaust a misdemeanor
 - violation of Water Pollution Control Act provisions subjects one to a penalty of from \$250 to \$2500 per violation and if such violation is willful, it constitutes a misdemeanor. Violation later is subject to a fine from \$400 to \$2500 or a maximum of 1 year in prison or both
 - violation of the Oil Pollution Act of 1961 by certain discharges of oil into the sea is punishable as a misdemeanor by fine of \$500 to \$2500 and prison up to 1 year or both

(b) Assign class the task of collecting primary resource material that illustrates the penal technique at work on the problems of pollution. In line with the above assignment, assign the following as a class project: Write to the United States Attorney General requesting such information.

(c) The following questions and strategies are related to the penal technique:

- What are some further examples of the penal technique at work on the problems of highway safety or pollution? How does each example contribute to safer

DISCUSSION OF STRATEGIES AND RESOURCES

and supply guidance and standards to social activity. But when people regard the regulation technique, they confront penalties characteristic of the penal technique. While sanctions of the regulation techniques are similar (fines, the moral disgrace and condemnation), the penalties of the penal technique are more severe than with regulatory sanctions.

Questions on the Operation of the Penal Technique

Like the two techniques already discussed, officials have roles in putting the penal technique to work. The legislature decides what are to come within the reach of the penal technique. It defines crimes. Public opinion, or specific events may influence them in their process of defining what are to come within the reach of the penal technique. Legislatures may respond to public opinion by stiffening penal laws that harshly punish drug sellers, and possessors of drugs. Legislatures may present a bill to the legislature to stiffen penal law of a particular state. Nixon did with provisions to combat plane hijackings or carjackings. Legislatures to define certain anti-crimes.

Although the legislature decides what are to be punished by the penal technique, the operation of the penal technique is not left to the courts.

ION OF STRATEGIES

sive pollution may be a viola-
of specific penal laws

ssive auto exhaust a misdemeanor
ation of Water Pollution Control
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ation later is subject to a fine
\$400 to \$2500 or a maximum of
ear in prison or both

ation of the Oil Pollution Act of
by certain discharges of oil into
sea is punishable as a misdemeanor
fine of \$500 to \$2500 and prison up
year or both

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technique at work on the problems
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ey General requesting such
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technique at work on the problems
ghway safety or pollution? How
each example contribute to safer

DISCUSSION OF STRATEGIES AND RESOURCES

and supply guidance and standards to coordinate
social activity. But when people purposefully dis-
regard the regulation technique, they normally must
confront penalties characteristic of the penal
technique. While sanctions of the penal and regula-
tion techniques are similar (fines, imprisonment),
the moral disgrace and condemnation associated with
the penalties of the penal technique are greater
than with regulatory sanctions.

Questions on the Operation of the Penal Technique

Like the two techniques already discussed, various
officials have roles in putting the penal technique
to work. The legislature decides which activities
are to come within the reach of the penal technique;
it defines crimes. Public opinion, the executive,
or specific events may influence the legislature
in their process of defining what acts are crimes.
Legislatures may respond to public hostility toward
drug use with penal laws that harshly punish users,
sellers, and possessors of drugs. The executive
may present a bill to the legislature that would
stiffen penal law of a particular sort, as President
Nixon did with provisions to combat organized crime.
Events like plane hijackings or campus riots stir
legislatures to define certain antisocial acts as
crimes.

Although the legislature decides what acts will be
punished by the penal technique, actual operation
of the penal technique is not left to legislators.

Module 2

DETAILED DESCRIPTION OF STRATEGIES

highways or better environment?
Are there any other ways of ensuring highway safety other than legal technique (public conscience)?

- What are some examples of the penal technique working on other social needs or problems of our society? (Some areas to be considered are the problems of drugs and abortion.)
- Who decides to put the penal technique to work on given problems? Who actually operates this legal technique? How might the individual's influence be felt in the operation of the legal technique? Could they as minors take part in the penal technique?
- Why does the penal technique fail to prevent some accidents or some pollution? Is there such a thing as a bad law? (Pupils might wish to identify laws in their own school.)

Strategies

- (a) Have students collect newspaper articles on crime and consider the diverse kinds of interests the penal technique tries to protect. It might be possible to have a debate: "Does the law tend more to protect the guilty rather than the law-abiding citizen?"
- (b) Take class to visit a criminal trial.

DISCUSSION OF STRATEGIES AND RESOURCES

Private individuals have an important role in some violations of the penal law. The police try to apprehend those suspected of having committed the crime. From this point the prosecutor (district attorney) takes over. He brings the case before the court. Further officials may be involved if the defendant is convicted—probation officers, wardens, parole boards, etc.

The deterrent function of criminal law is not the only function that the law performs. In theory, after certain criminals are convicted, they are to be rehabilitated in correctional institutions. This process is to isolate antisocial people from society so they cannot do more harm. Though modern law generally frowns on earlier retributive theory of criminal law, orderly operation of "bad actors" often serves as a hedge against private retaliation by the victim and their friends and family.

The penal technique, too, sometimes fails. The legislature simply passes unwelcome laws. In some states, it is a serious crime for consenting adults to have sexual relations. The marriage of a black and a white person was in some states until the Supreme Court declared such laws unconstitutional in the 1960's. Some drug laws are at least subject to challenge if all penal laws were sound, the

DISCUSSION OF STRATEGIES

ways or better environment?
Are there any other ways of en-
suring highway safety other than
the penal technique (public conscience)?

Are there some examples of the penal
technique working on other social
problems or problems of our society?
What areas to be considered are the
problems of drugs and abortion.)

Who decides to put the penal technique
to work on given problems? Who actually
implements this legal technique? How
great is the individual's influence be-
ing in the operation of the legal
technique? Could they as minors
play a part in the penal technique?

Does the penal technique fail
to prevent some accidents or some
crimes? Is there such a thing as
a just law? (Pupils might wish to
write laws in their own
words.)

Students collect newspaper articles
on crime and consider the diverse kinds
of crimes. How does the penal technique try to
prevent crime? It might be possible to have
a debate: "Does the law tend more to
punish the guilty rather than the law-
abiding citizen?"

Class to visit a criminal trial.

DISCUSSION OF STRATEGIES AND RESOURCES

Private individuals have an important role in bring-
ing some violations of the penal law to the atten-
tion of the police. The police try to stop people
in the process of breaking penal laws and to appre-
hend those suspected of having committed crimes.
From this point the prosecutor (district attorney)
takes over. He brings the case before a judge.
Further officials may be involved if the accused is
convicted—probation officers, wardens, parole
boards, etc.

The deterrent function of criminal law (i.e., dis-
couraging antisocial activity by penalizing it)
is not the only function that the penal technique
performs. In theory, after certain criminals are
convicted, they are to be *rehabilitated* at our
correctional institutions. This process also serves
to *isolate* antisocial people from society so they
cannot do more harm. Though modern penal theory
generally frowns on earlier retribution (revenge)—
the theory of criminal law, orderly official sanctioning
of "bad actors" often serves as a healthy substitute
for private retaliation by the victims of crimes or
their friends and family.

The penal technique, too, sometimes fails to work
well in controlling antisocial conduct. Sometimes
the legislature simply passes unwise penal statutes.
In some states, it is a serious crime for unmarried
consenting adults to have sexual relations. The
marriage of a black and a white person was a crime
in some states until the Supreme Court declared the
laws unconstitutional in the 1960's. The wisdom of
some drug laws is at least subject to debate. Even
if all penal laws were sound, the penal technique

Module 2

DETAILED DESCRIPTION OF STRATEGIES

- (c) Have a prosecutor visit the class to talk about the purposes of penal law. A panel could further question the guest after his talk.
- (d) Have pupils view a film or filmstrip on the penal technique. Some possibilities are:
- Justice Under the Law: The Gideon Case
22 min. color. E.B.F.
 - Your Rights and What They Really Mean
(complete set of 6 color filmstrips with 3 cassettes)
- (e) One of the great controversies today is whether to have gun control laws or not. Much controversy has been evoked about this topic. Have a classroom debate on one of these statements. Have pupils do a great deal of preliminary research before tackling a class debate.
- "Gun laws can't work since criminals don't obey laws"
 - "All that is needed to solve our gun problem is strict legislation"
 - "We have a crime problem, not a gun problem"
 - "Only the National Rifle Association stands between this country and effective gun laws."

DISCUSSION OF STRATEGIES AND RESOUR

would not be omniscient. Viola laws often "get away with it." It is possible to have enough police to catch most, of the people who drive while drag race, pollute, murder, etc. And there are good penal laws there may for their application. Accused people in New York City jail for a year waiting convicted persons may be sent to institutions that do more to turn them into criminals than to correct them; or may not be equally applied—the rich who possesses marijuana may get a quiet wrist, the poor boy may get 5 year

Once students have been presented with legal techniques, it might be helpful to discuss the relative effectiveness of the various on the problems of highway safety and Also, they might consider the appropriate various roles played by officials. as well suited as legislatures to decide money of the benefit distribution to be spent or to decide what acts should be done. Would legislatures be as well suited to try criminal cases or be as well suited to administrators to set specific regulations on traffic control or traffic control? of comparative suitability include:

Extent to which particular of an elected representative can determine the appropriateness of leaving certain to the people's representatives (what acts are crimes).

ON OF STRATEGIES

Prosecutor visit the class to
at the purposes of penal law.
could further question the
er his talk.

pls view a film or filmstrip on
technique. Some possibilities

Under the Law: The Gideon Case
color. E.B.F.

ights and What They Really Mean
ete set of 6 color filmstrips
(cassettes)

the great controversies today is
to have gun control laws or not.
controversy has been evoked about
ic. Have a classroom debate on
these statements. Have pupils
at deal of preliminary research
ackling a class debate.

aws can't work since criminals
obey laws"

hat is needed to solve our gun
m is strict legislation"

ve a crime problem, not a gun
m"

the National Rifle Association
between this country and
ive gun laws."

DISCUSSION OF STRATEGIES AND RESOURCES

would not be omniscient. Violators of these
laws often "get away with it." It would be impos-
sible to have enough police to catch all, or even
most, of the people who drive while drunk, steal,
drag race, pollute, murder, etc. Also, even where
there are good penal laws there may be poor processes
for their application. Accused people may sit in a
New York City jail for a year waiting for a trial;
convicted persons may be sent to correctional insti-
tutions that do more to turn them into hardened
criminals than to correct them; or the penal laws
may not be equally applied—the rich boy who
possesses marijuana may get a quiet slap on the
wrist, the poor boy may get 5 years.

Once students have been presented three different
legal techniques, it might be helpful to contrast
the relative effectiveness of the various techniques
on the problems of highway safety and pollution.
Also, they might consider the appropriateness of the
various roles played by officials. Would courts be
as well suited as legislatures to decide how public
money of the benefit distribution technique should
be spent or to decide what acts should be crimes?
Would legislatures be as well suited as courts to
try criminal cases or be as well suited as expert
administrators to set specific regulations for pollu-
tion control or traffic control? Relevant criteria
of comparative suitability include:

- Extent to which particular officials serve in
an elected representative capacity and the
appropriateness of leaving certain activity to
the people's representatives (e.g., deciding
what acts are crimes).

Module 2

DETAILED DESCRIPTION OF STRATEGIES

(For their research, urge pupils to use Readers' Guide to Periodical Literature and the periodical American Rifleman.)

DISCUSSION OF STRATEGIES AND RESOU

- . Isolation from political and and influence
- . Degrees of expertise in the

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See text, p. 49.

ION OF STRATEGIES

research, urge pupils to use
de to Periodical Literature
odical American Rifleman.)

DISCUSSION OF STRATEGIES AND RESOURCES

- . Isolation from political and popular pressure and influence
- . Degrees of expertise in the matter in question.

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See text, p. 49.

Module 2

B. Teaching Understanding I - 4. Private Remedy Technique

QUESTIONS TO REACH UNDERSTANDING

- What necessary social tasks are performed by allowing lawsuits?
- How do legal officials and private citizens take part in the operation of this technique?
- What are some problems encountered in use of the private remedy technique?

DETAILED DESCRIPTION-OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Private remedy technique at work on a social problem.

Highway Safety

- (a) Have a local attorney speak to the class on the subject of suing a negligent driver to recover for personal injuries suffered in an auto accident.
- (b) Take class to visit a local court to see the trial of an actual automobile negligence suit.
- (c) Work with class on a case study of a lawsuit arising from an auto accident. One possibility is the following:
—AEP Public Issues Series, *The Lawsuit*. (1968) Case study.
- (d) Have some of the pupils devise a skit where they may role-play the characters involved in an actual lawsuit. Include plaintiff, defendant, lawyers, judges, witnesses, and jury. In this way, you may involve the entire class. (A simulation based on *The Lawsuit* is available from Clark Abt Company. See page 14.)

The private remedy technique is known as the private lawsuit. This technique may be presented in the courtroom. Alternatively, a film presenting a case study of a lawsuit is available. Or a practicing lawyer may visit the class to explain the private remedy technique in repairing injuries.

Once students are introduced to this technique, they again might consider how this technique generally gets at a problem. This technique, other problems this technique treats, and possible shortcomings.

This technique differs from the traditional lawsuit. Its main function is reparation for damages that have occurred. When one private party claims to be fully damaged by another. If the work out a settlement between the suing party (the plaintiff) and the defendant (the defendant) before a court. If the plaintiff's claim has merit.

Understanding I - 4. Private Remedy Technique

REACH UNDERSTANDING

Necessary social tasks are performed by allowing lawsuits?

Legal officials and private citizens take part in the operation of this legal technique?

Some problems encountered in use of the private remedy technique?

DISCUSSION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Private remedy technique at work on a social problem.

Highway Safety

A local attorney speak to the class on the subject of suing a negligent driver to recover for personal injuries suffered in an auto accident.

Class to visit a local court to observe a trial of an actual automobile negligence suit.

With class on a case study of a problem arising from an auto accident. Possibility is the following:

Public Issues Series, *The Lawsuit*.

b) Case study.

Some of the pupils devise a skit in which they may role-play the characters involved in an actual lawsuit. Include a plaintiff, defendant, lawyers, judges, jury, and jury. In this way, you involve the entire class. (A simulation based on *The Lawsuit* is available from Mark Abt Company. See page 14.)

The private remedy technique in action is commonly known as the private lawsuit. The best introduction to the private remedy technique may be to visit the courtroom. Alternatively, a film, record, or booklet presenting a case study of a lawsuit may be available. Or a practicing lawyer may be willing to visit the class to explain the role of the private remedy technique in repairing injuries.

Once students are introduced to the private remedy technique, they again might consider how this technique generally gets at a problem, who operates this technique, other problems this legal technique treats, and possible shortcomings of this technique.

This technique differs from the three already presented. Its main function is repair of or *compensation* for damages that have occurred. A lawsuit occurs when one private party claims to have been wrongfully damaged by another. If the parties cannot work out a settlement between themselves, then the suing party (the plaintiff) can bring the sued party (the defendant) before a court. The court decides if the plaintiff's claim has merit, and then decides

Module 2

DETAILED DESCRIPTION OF STRATEGIES

- (e) Have class view a film on a private lawsuit. (Check your local film library if resource listed below is not easily available.)

—"Witness to the Accident," Indiana University Documentary. (30 min. drama of a lawsuit based on an auto injury case.)

Pollution

- (a) Invite a speaker from an environment protection interest group to speak to the class on the subject of lawsuits as a means of combating pollution (Sierra Club, Audubon Society, etc.).
- (b) Discuss with class the following case where a private citizen sued a polluter. (See page 36.)
- (c) Have members of class role-play a meeting of a conservation group trying to decide whether to sue a local polluter who employs most of the local work force. Include in the role-playing the chief executive of the pollution-causing company, some of the local wives of the plant workers, as well as the officers of the conservation group. Rutile and the Beach, from the High School Geography Project is useful for this. (See page 78.)
- (d) Have class view a film or filmstrip on pollution. (See those titles already listed in this module.) Check your local audiovisual center for other possibilities

DISCUSSION OF STRATEGIES AND RESOURCES

the terms of settlement by itself or a jury. Some common types of injuries for which private parties sometimes use private remedy techniques are injuries caused by others' carelessness (negligence), injury to reputation (written libel or spoken slander), injuries caused by attacks (assault and battery), and injuries caused by interference with property (nuisance or trespass). Harmful conduct may give rise to a civil suit between private parties to recover money (damages) or to have the conduct stopped (enjoined). Such conduct (from assault or careless driving) may also give rise to prosecution, i.e., use of the penal technique. The penal technique also comes into play when there is no longer repair, but punishment from similar conduct.

This legal technique aims at remedying an individual's harm to another by ultimate court order saying either *pay for* (a judgment) or *stop* the harmful activity (injunction).

Questions on the Operation of the Private Remedy Technique

The decision to initiate this technique is exclusively in the hands of private parties who claim to have been injured by activity. This legal technique is operated by the injured party, their attorneys, and the courts.

OF STRATEGIES

view a film on a private
(Check your local film library
ce listed below is not easily
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s to the Accident," Indiana
ity Documentary. (30 min.
f a lawsuit based on an
jury case.)

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speaker from an environment
n interest group to speak to
on the subject of lawsuits as
f combating pollution (Sierra
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ith class the following case
private citizen sued a polluter.
36.)

ers of class role-play a meeting
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as well as the officers of the
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High School Geography Project is
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(See those titles already
this module.) Check your local
al center for other possibilities.

DISCUSSION OF STRATEGIES AND RESOURCES

the terms of settlement by itself or with the help of
a jury. Some common types of injuries
for which private parties sometimes use the
private remedy technique are injuries resulting from
others' carelessness (negligence), injuries to
reputation (written libel or spoken slander), in-
juries caused by attacks (assault and battery),
injuries caused by interference with property
(nuisance or trespass). Harmful conduct may give
rise to a civil suit between private parties to
recover money (damages) or to have the conduct
stopped (enjoined). Such conduct (for example, an
assault or careless driving) may *also* be a crime.
It may also give rise to prosecution by the state;
i.e., use of the penal technique. To the extent
the penal technique also comes into use, the focus
is no longer repair, but punishment to deter others
from similar conduct.

This legal technique aims at remedying one
individual's harm to another by ultimately issuing
a court order saying either *pay* for the harm caused
(a judgment) or *stop* the harmful activity (an in-
junction).

Questions on the Operation of the Private Remedy Technique

The decision to initiate this technique rests almost
exclusively in the hands of private individuals who
claim to have been injured by activities of others.
This legal technique is operated by individual dis-
putants, their lawyers, and the courts.

Module 2

DETAILED DESCRIPTION OF STRATEGIES

- (e) The following questions are related to the workings of the private remedy technique:
- In dealing with the problems of highway safety or pollution, is the function of the private remedy technique primarily preventive or reparative?
 - What are some other examples of kinds of injuries that may give rise to a person using the private remedy technique?
 - Who decides to put the private remedy technique to work on a given problem? What is the individual's role in the operation of this legal technique?
 - Why might private lawsuits be of limited effect in rectifying injuries caused by accidents or pollution?

(Note to teachers: Answers to suggested questions listed above can be found by reading the section entitled, "Discussion of Strategies and Resources.")

DISCUSSION OF STRATEGIES AND RESOURCES

Sometimes the lawsuit against the person provides an efficient way to remedy a person by another. However, it may be necessary to consider circumstances where the lawsuit is not effective at all. (1) With highway accidents it may be very hard to determine who is at fault. (2) With 14 million auto accidents a year, it is almost impossible to bring a lawsuit for pollution injury to almost everyone. (3) It may be an impossible administrative task to bring a lawsuit to court; in some places it may take a long time to get before a court. (4) The cost of a lawsuit in private lawsuits may not be sufficient to cover the damages for negligently causing the injury. (5) The person enjoining pollution when the polluter serves to employ the entire community. (6) A person wishing to sue may not be able to afford a lawyer to take his case to court. (7) The right to sue is constitutionally guaranteed in some cases. (8) The person being sued may have no money with which to pay damages. (9) The person may have a lawyer to defend himself. (10) The lawsuit is determined on its own merits, but, the cost of the lawsuit is a question of which party hired the lawyer.

DISCUSSION OF STRATEGIES

Following questions are related to the workings of the private remedy technique:

1. Dealing with the problems of highway accidents or pollution, is the function of the private remedy technique primarily preventive or reparative?

2. Are there some other examples of kinds of injuries that may give rise to a lawsuit using the private remedy technique?

3. Under what circumstances does one decide to put the private remedy technique to work on a given problem? What is the individual's role in the application of this legal technique?

4. Under what circumstances might private lawsuits be of greatest effect in rectifying injuries caused by accidents or pollution?

Answers to suggested questions listed above can be found by reading the section entitled, "Discussion of Strategies and Resources."

DISCUSSION OF STRATEGIES AND RESOURCES

Sometimes the lawsuit against the party at fault provides an efficient way to remedy harm done one person by another. However, it may be informative to consider circumstances where this legal technique is not effective at all. (1) With some injuries it may be very hard to determine who was at fault. (2) With 14 million auto accidents per year and pollution injury to almost everyone, private lawsuits may be an impossible administrative burden on the courts; in some places it may take years of waiting to get before a court. (3) The remedies available in private lawsuits may not be suitable (e.g., money damages for negligently causing the death of a child, enjoining pollution when the polluting activity serves to employ the entire community). (4) The person wishing to sue may not be able to afford a lawyer to take his case to court (counsel is only constitutionally guaranteed in serious criminal cases). (5) The person being sued may simply have no money with which to pay damages or even to get a lawyer to defend himself. (6) The case may not be determined on its own merits, but, instead, on the question of which party hired the most able lawyer.

Module 2

B. Teaching Understanding I - 5. Private Arrangement Technique

QUESTIONS TO REACH UNDERSTANDING

1. What necessary social tasks are performed through private legal arrangements?
 - . How does the law support certain private arrangements?
 - . What are some problems encountered in leaving certain social tasks to private legal arrangements?

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Private arrangement technique at work on a social problem.

Highway Safety

- (a) Discuss with class legally supported private arrangements that work on the problem of highway safety. Some of the following items may be discussed:
 - facilitation of organized private efforts to promote highway safety
 - legal recognition: corporate tax-free status of AAA
 - AAA programs: safety education, research, movies, publications, etc.
 - legal recognition and backing up private contract arrangements to pay for damages caused by accidents
 - liability insurance arrangements
 - collision insurance arrangements
 - health insurance arrangements
- (b) Teacher might implement private arrangement techniques in the following ways:
 - Consumers Union reports on automobile safety

In the private arrangement technique, private decisions, and private actions are at the forefront. Many social problems are tackled through means of this kind through the various forms of direct and indirect action. For example, our society discharges its responsibility of producing and distributing goods largely through the operation of private market forces that choose what goods are produced and how they are distributed. In some legal systems, these determinations are made by legal action rather than through private arrangements.

With respect to some social problems, the private arrangement technique is wholly inadequate. For example, private parties ought not to be allowed to make enforceable contracts to commit crimes. This would encourage anti-social conduct and would not facilitate constructive social action.

Then there are social problems which are partly solved by private arrangements and partly by public techniques. The problems of highway safety and air pollution control illustrate this.

standing I - Private Arrangement Technique

EACH UNDERSTANDING

- Essary social tasks are performed through private legal arrangements?
- the law support certain private arrangements?
- some problems encountered in leaving certain social tasks to private legal arrangements?

ON OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Private arrangement technique at work on a social problem.

Highway Safety

with class legally sup-
private arrangements that work
problem of highway safety. Some
following items may be discussed:

itation of organized private
s to promote highway safety

recognition: corporate tax-
status of AAA

programs: safety education,
arch, movies, publications, etc.

recognition and backing up pri-
contract arrangements to pay
damages cau ed by accidents

ality insurance arrangements

ision insurance arrangements

th insurance arrangements

might implement private arrange-
chniques in the following ways:

ners Union reports on automobile

In the private arrangement technique, private judg-
ment, private decisions, and private arrangements
are at the forefront. Many social tasks are best
tackled through means of this kind rather than
through the various forms of direct official action.
For example, our society discharges the task of pro-
ducing and distributing goods largely through private
ordering. Thus, it is largely through the interplay
of private market forces that choices are made which
determine what goods are produced and how they are
distributed. In some legal systems, these basic
determinations are made by legal officials rather
than through private arrangements.

With respect to some social activities, the private
arrangement technique is wholly inappropriate. For
example, private parties ought not to be allowed to
make enforceable contracts to commit crimes. This
would encourage anti-social conduct rather than
facilitate constructive social activity.

Then there are social problems which can be attacked
partly by private arrangements and partly by legal
techniques. The problems of highway safety and of
air pollution control illustrate this point. In

Module 2

DETAILED DESCRIPTION OF STRATEGIES

- Local chapter of American Automobile Association for publications and speakers.
- Local insurance agent and companies for material and speakers.

Pollution

- (a) Discuss with class legally supported private arrangements that work on the problem of pollution. The following areas might be included:
 - facilitation of organized private efforts to promote decent environment; e.g., legal recognition for such organizations as the Sierra Club and the Environmental Defense Fund, and permission to use the courts to achieve the ends that have been sought by these groups.
 - various tax incentives to influence private decisions to clean up environment; e.g., special tax deductions for purchasing air pollution control equipment, tax exempt status for the Environmental Defense Fund, tax deductions for donors to certain organizations.
- (b) The following questions and strategies are related to the workings of the private arrangement technique:
 - What are some further examples of the private arrangement technique at work

DISCUSSION OF STRATEGIES AND RESO

discussing these, it is important closely at some of the detailed w private arrangement technique. I sion, this legal technique consis elements.

First, it *grants permission* to pr private organizations to make cer arrangements and to carry on acti kinds. Thus, persons may be gran make contracts, leases, wills, et organizations of a certain kind t vantages of joint action (greater greater intellectual resources, g of effort, etc.) The AAA in the field is one such organization. Defense Fund in the field of poll another. These organizations exi provides for their formation. Ev law permits the various activitie organizations carry on.

Second, law *facilitates* the activ organizations. By giving tax exe it helps them to continue. By al collect dues and to charge fees, their activities. By helping to interfering with their activities not only recognizes their right t activities, but also affirmatively activities. Thus, if someone sou either violently or by legal tech work of the AAA or the Environmen the legal system could be used to

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DISCUSSION OF STRATEGIES AND RESOURCES

discussing these, it is important to look more
closely at some of the detailed workings of the
private arrangement technique. In its legal dimen-
sion, this legal technique consists of three basic
elements.

First, it *grants permission* to private persons and
private organizations to make certain binding
arrangements and to carry on activities of certain
kinds. Thus, persons may be granted the right to
make contracts, leases, wills, etc. and to form
organizations of a certain kind to gain the ad-
vantages of joint action (greater economic resources,
greater intellectual resources, greater continuity
of effort, etc.) The AAA in the highway safety
field is one such organization. The Environmental
Defense Fund in the field of pollution control is
another. These organizations exist because law
provides for their formation. Even more important,
law permits the various activities these private
organizations carry on.

Second, law *facilitates* the activities of such
organizations. By giving tax exempt status to them,
it helps them to continue. By allowing them to
collect dues and to charge fees, it facilitates
their activities. By helping to prevent others from
interfering with their activities, the legal system
not only recognizes their right to carry on certain
activities, but also affirmatively protects these
activities. Thus, if someone sought to interfere,
either violently or by legal techniques, with the
work of the AAA or the Environmental Defense Fund,
the legal system could be used to intervene.

Module 2

DETAILED DESCRIPTION OF STRATEGIES

on the problem of highway safety or pollution? How does each example contribute to safer highways or better environment?

- What are some examples of the private arrangement technique working on other social needs or problems of our society?
- Who decides to put the private arrangement technique to work on given problems? Who actually operates this legal technique? How might the individual's influence be felt in the operation of this legal technique?
- What are some possible defects in the workings of the private arrangement technique?

Strategies

- (a) Present for the class to examine an example of a binding private legal arrangement in written form; i.e., a sales contract for a TV or auto, a will, a lease, a mortgage, an insurance contract, corporate charter, etc. As a teacher, you may have been involved in many legal arrangements. Based on your own experience, you might discuss some of the following legal arrangements. You might use some of the following examples:

- employment contract
- loan agreement
- time sales agreement
- lease
- mortgage

DISCUSSION OF STRATEGIES AND RESOURCE

Third, the legal system promotes private arrangements by *supporting* them when they break down. For example, private insurance companies enter into contracts with car owners which provide that if the owners who are hurt in highway accidents share the cost of the damage to certain sums. When these owners who enter into such arrangements seek payment and it is fully refused, they may turn to the public law technique and secure judicial judgment against the insurance companies.

Questions on the Operation of the Private Arrangement Technique

As with the private remedy technique, the private arrangement technique places heavy emphasis on the role of the individual citizen. These techniques simply do not perform their social function if private individuals do not take them seriously and use them. In the private arrangement technique, private individuals actually "make the law" by defining their rights and duties (i.e., the legal content of a valid employment contract, a will, a sales contract, a lease, a mortgage, a loan, etc. are defined not by legislative rule makers, but by the parties to the arrangement). Similarly, the purposes and activities of a corporation or a union like the AAA, the Environmental Defense Fund, NAACP, the American Legion, the 4-H, etc. are not defined and limited by the terms of a charter which has been approved by the private directors of the organization.

Thus, much important social interaction is going on in the background; legal officials set the rules for legally effective

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agreement
sales agreement

age

DISCUSSION OF STRATEGIES AND RESOURCES

Third, the legal system promotes private arrangements by *supporting* them when they break down. For example, private insurance companies may make contracts with car owners which provide that car owners who are hurt in highway accidents shall be entitled to certain sums. When these owners who have entered into such arrangements seek payment and are wrongfully refused, they may turn to the private remedy technique and secure judicial judgments against the insurance companies.

Questions on the Operation of the Private Arrangement Technique

As with the private remedy technique, the private arrangement technique places heavy emphasis on the role of the individual citizen. These legal techniques simply do not perform their social functions if private individuals do not take the initiative to use them. In the private arrangement technique, private individuals actually "make the law." The rights and duties (i.e., the legal content) under a valid employment contract, a will, an insurance contract, a lease, a mortgage, a loan, a credit sale, etc. are defined not by legislative or administrative rule makers, but by the parties to the private arrangements. Similarly, the purposes, structure, and activities of a corporation or an association, like the AAA, the Environmental Defense Fund, the NAACP, the American Legion, the 4-H Club, the YMCA, etc. are not defined and limited by officials, but by the terms of a charter which has been drawn up by the private directors of the organization.

Thus, much important social interaction leaves legal officials in the background; legal officials merely set the rules for legally effective formation of

Module 2

DETAILED DESCRIPTION OF STRATEGIES

- will
- insurance agreement

(Some of the pupils in class should be able to relate some information based on their own family's experiences.)

- (b) Have students role-play a meeting of local citizens where they discuss the pollution of a lake or river and what they can do about it. You might include in the role playing, people who live on the lake, teenagers who are being deprived the right of swimming in the polluted waters, and the executive of the oil company who is, to a great degree, responsible for the polluted waters.
- (c) Have pupils role-play a group of people trying to set up a commune. How might the legal system fail to facilitate this activity? Explain first the meaning of the commune. Include all types of people from all walks of life to make sure there is interaction.
- (d) Have class divide in groups and draft a private legal arrangement; for example, a contract for employment as a paper boy, a lease for an apartment, a will, a 25-year mortgage on a house.

NOTE: Drafting such arrangements in real life normally calls for the assistance of a lawyer. Students should not be led to believe that they are making the "real thing"; in fact, minor children are not capable of making any legal arrangements. The purpose of this exercise is to demonstrate how important familiar law is made and administered by private parties and their lawyers.

DISCUSSION OF STRATEGIES AND RESOURCES

private arrangements and stand ready to make other arrangements if they break down.

Like the other techniques, the private arrangement technique has possible defects. The fact that the legal system sets up for itself that private arrangements may be overruled and that the only ones who really gain are the lawyers who collect legal fees. Arrangements for carrying out wills at death may be time-consuming, and expensive that this arrangement is not a satisfactory one for the testator at death. Or allowing tax advantages in the form of efforts on social problems is not a satisfactory arrangement if the tax law is so complex that it can only be understood and used with the aid of professional legal assistance.

Also, the legal system may simply ignore or suppress organized private efforts to combat social problems. The NAACP on occasion has been dismissed by court officials in its orderly efforts to bring about change; in 1970 the Federal government took away the tax exempt status of environmental organizations.

By leaving distribution and exchange of resources primarily to private arrangements as society does, some social needs are not met. In the richest society in history, there are still people starving and dying of diseases that have long been known.

DISCUSSION OF STRATEGIES

agreement

Let pupils in class should be able to state some information based on their own family's experiences.)

Students role-play a meeting of neighbors where they discuss the problem of a lake or river and what to do about it. You might include role-playing, people who live on the shore, teenagers who are being deterred from swimming in the lake, and the executive of a company who is, to a great extent, responsible for the polluted lake.

Students role-play a group of people who have set up a commune. How might the legal system fail to facilitate this? Explain first the meaning of the problem. Include all types of people and ways of life to make sure there is a variety of opinions.

Students divide in groups and draft a legal arrangement; for example, a contract for employment as a paper boy, a lease for an apartment, a will, or a mortgage on a house.

Legal arrangements in real life normally calls for the assistance of a lawyer. Students are often led to believe that they are making the "real thing"; in fact, minors are legally incapable of making any legal arrangements. The purpose of this exercise is to demonstrate how much familiar law is made and administered by private parties and their lawyers.

DISCUSSION OF STRATEGIES AND RESOURCES

private arrangements and stand ready to uphold such arrangements if they break down.

Like the other techniques, the private arrangement technique has possible defects. The ground rules that the legal system sets up for making and carrying out private arrangements may be over-technical so that the only ones who really gain are those who collect legal fees. Arrangements for making and carrying out wills at death may be so complex, time consuming, and expensive that this private arrangement is not a satisfactory one for passing property on at death. Or allowing tax advantages for private efforts on social problems is not a very helpful arrangement if the tax law is so complicated that it can only be understood and used with much expensive professional legal assistance.

Also, the legal system may simply fail to facilitate organized private efforts to combat social problems. The NAACP on occasion has been discouraged by legal officials in its orderly efforts to combat segregation; in 1970 the Federal government considered taking away the tax exempt status of environmental protection organizations.

By leaving distribution and exchange of goods and services primarily to private arrangements, as our society does, some social needs are left unattended. In the richest society in history, we have people who are starving and dying of diseases whose cures are known.

Module 2

RESOURCES *

Bennett, Robert and Newman, Thomas. *Poverty and welfare*. Justice in Urban America
Boston. Houghton Mifflin. 1969.

United States Code, Title 42, Public Health and Welfare: "Federal Air Quality Control
Act of 1967." Sections 1857-1857L.

(Regulating emissions other than auto exhaust)

Through this act, the Congress of the United States under its power to regulate
interstate commerce (since air pollutants are very much related to interstate
commerce; i.e., movement of air pollutants across state lines), set up certain
standards through which all levels of government could cooperate for the prevention
and control of air pollution; e.g., standards to achieve higher level of air
quality, standards set concerning emissions of substances from vehicles or
engines, hearings for failures to abate pollution.

McKinney's Consolidated Laws of New York. - "Public Health Law: State Air Pollution
Control Act." Vol. 44, Sections 1264 and following.

(Regulating emissions other than auto exhaust)

...establishment of air pollution board by the State of New York for the express
purpose of maintaining a reasonable degree of purity of the air resources of the
State.

--In conjunction with establishment of the board, the State will appoint a
health officer who will regulate the activities of the board. This same health
officer has the power to do many things including the following:

- a) enter and inspect any property and inspect any motor vehicle for the purpose
of investigating either an actual or suspected source of air pollution
- b) determine by means of field studies and sampling the degree of air pollution
in New York State
- c) receive moneys from Federal government and then make provisions as to how
money would be spent for the purpose of air pollution control studies
- d) do whatever is necessary to enforce codes, rules, and regulations regarding
air pollution

*Direct quotations from statutes are indicated by the use of quotation marks. Other statements
are summaries or paraphrases of the statute listed.

RESOURCES *

, Robert and Newman, Thomas. *Poverty and welfare*. Justice in Urban America Series. Houghton Mifflin. 1969.

States Code, Title 42, Public Health and Welfare: "Federal Air Quality Control Act of 1967." Sections 1857-1857L.

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State's Consolidated Laws of New York. - "Public Health Law: State Air Pollution Control Act." Vol. 44, Sections 1264 and following.

Regulating emissions other than auto exhaust)

...establishment of air pollution board by the State of New York for the express purpose of maintaining a reasonable degree of purity of the air resources of the state.

-In conjunction with establishment of the board, the State will appoint a commissioner of health who will regulate the activities of the board. This same commissioner of health has the power to do many things including the following:

- a) enter and inspect any property and inspect any motor vehicle for the purpose of investigating either an actual or suspected source of air pollution
- b) determine by means of field studies and sampling the degree of air pollution in New York State
- c) receive moneys from Federal government and then make provisions as to how the money would be spent for the purpose of air pollution control studies on research
- d) do whatever is necessary to enforce codes, rules, and regulations regarding air pollution

Quotations from statutes are indicated by the use of quotation marks. Other statements are paraphrases of the statute listed.

Module 2

Vanishing Air. New York. Grossman Publishers. 1970.

This is a report of the Ralph Nader Study Group on Air Pollution and their demands for more government control.

The Foreword of the text by Ralph Nader is an excellent summary of the purpose of the group and some of Nader's own thoughts on air pollution and role of citizens in their continuation of biological trespass on citizens by fighting government co-opting administrators, and refusing to let people know the facts.

Note to teachers: The reading level might be a little difficult for eighth grade pupils. Certain pupils might wish to use it as a research source. Teachers should use it as background material.

New York Vehicle and Traffic Law.

(Prohibited unsafe highway activity)

Section 1180 - Speeding

- a person is prohibited from driving his vehicle at a speed that is greater than is reasonable or prudent
- certain speed limits within school zones must be observed
- (he) cannot drive in excess (5 miles an hour) of maximum speed limits in a school zone (normally not in excess of 55 miles an hour unless otherwise set by state law)

Section 1181 - Drag Racing

No races or contest for speeds can be held according to this law, nor can any person engage or aid any motor vehicle speed contest on the highway unless he secures permission from the proper authorities in the area where the race is being sponsored. Not only must a permit be secured, but also the entire area over which the race is to be run must be fully and efficiently patrolled. Any violation of this law would be considered a misdemeanor.

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Module 2

Section 1192 - Drunk Driving

The person who operates a motor vehicle or motorcycle while his ability to drive is impaired is guilty of a traffic infraction. There can be a conviction if a plea of not guilty if a chemical test is given within 2 hours of the defendant's arrest and ten-hundredth of 1 per centum or more by weight of alcohol is found in his blood; if the defendant is under 21 years of age, and the amount in the blood is five-hundredth of 1 per centum there can be a conviction. The method of chemical analysis may be of breath, blood, urine, or saliva.

Section 1115 - Interference with Official Traffic Control Devices, Railroad Signals, and other Highway Mechanisms

--any person is prohibited by law without lawful authority to alter, deface, injure, knock down, cover, remove, or in any way interfere with any traffic control device or railroad sign. This would also include any lamppost, walk, tree, or other object on a highway right of way. Deface would include damaging, destroying, erasing any of the above-mentioned objects by the use of chalk, crayon, paint, stain, ink, or other similar material.

New York Penal Law.

Section 125.10 - Causing Another's Death by Reckless Driving

--states that a person is guilty of criminally negligent homicide when with criminal negligence he causes the death of another person [according to the previously stated definition, "criminal negligence" is in a sense a form or degree of recklessness].

AEP Public Issues Series. *Rights of the accused*. 1968. (Case study--negligent homicide case.)

Bassiouni, Cheril, Lawrence, Michael, Starr, Isidore, & Summers, Robert. *Criminal justice*. Justice in Urban America Series. Boston. Houghton Mifflin Co.

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Issiouni, Cheril, Lawrence, Michael, Starr, Isidore, & Summers, Robert. *Crimes and Justice*. Justice in Urban America Series. Boston. Houghton Mifflin Co. 1970.

Module 2

Martin vs. Reynolds Metal Company. Pacific Reporter. Vol. 342. pp. 790-798.

(Pollution and private lawsuits)

In this particular lawsuit, the Martins, who owned a cattle ranch, sued the Reynolds Metal Company because they believed that their aluminum reduction plant near Troutdale, Oregon caused certain fluoride compounds in the form of gases and particles to become airborne and settle on their land, making it impossible for them to raise livestock from Aug. 22, 1951 to January 1, 1956. They further argued that their cattle were poisoned by taking in the fluorides which had contaminated the grain and water on their land. They felt they were entitled to damages in the amount of \$450,000 not only for loss of land, but because the land had deteriorated due to the growth of brush trees and weeds, since the land could not be used for grazing purposes.

The Supreme Court ruled upon appeal of the aluminum company that, in fact, the manufacturing operation of aluminum reduction had caused certain chemicals to become airborne and then settle on land that thus became unfit for grazing. This caused the water to become unfit for livestock consumption.

The Martins were awarded \$71,500 for the loss of use of their land and were \$20,000 for the deterioration of their land.

Berger, Robert and Teplin Joseph. *Law and the consumer.* Justice in Urban America. Boston. Houghton Mifflin Company. 1970.

Summers, R., Campbell, B., & Bozzone, J. *Law in our society, our laws and legal process -- Do we need them?* Unit II - Chapter One - Lessons 1-6.

Mehlinger, H.D. & Patrick, J.J. *American political behavior.* Book II - Unit For Decisionmakers."

A very well-organized program for examining the lawmaking process. Although it is in much greater depth than this alternative strategy suggests, teachers will find the detailed development helpful in planning.

High-School Geography Project. *Rutile and the beach.* Unit 5 - "Habitat and Resources." The Macmillan Co. 1970.

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vs. Reynolds Metal Company. *Pacific Reporter*. Vol. 342. pp. 790-798.

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Campbell, R., Campbell, B., & Bozzone, J. *Law in our society, our laws and legal process -- Do we need them?* Unit II - Chapter One - Lessons 1-6.

Gerber, H.D. & Patrick, J.J. *American political behavior*. Book II - Unit Four - "Political Decisionmakers."

A very well-organized program for examining the lawmaking process. Although it goes into much greater depth than this alternative strategy suggests, teachers will find the detailed development helpful in planning.

School Geography Project. *Rutile and the beach*. Unit 5 - "Habitat and Resources." Macmillan Co. 1970.

Module 2

UNDERSTANDING II

THE EFFECTIVENESS OF LAW IN DEALING WITH SOCIAL NEEDS AND PROBLEMS DEPENDS IN PART ON THE APPROPRIATE LEGAL TECHNIQUE(S) TO WORK.

A. *Explanation of Understanding II*

Understanding II introduces the important concepts that (1) particular legal techniques are more suited for certain problems than other techniques, and (2) the managers of a legal system may choose the appropriate legal technique(s) to work on a problem, and this may help explain why the

The procedures and resources section of Understanding II seeks in three ways to teach a society of using the appropriate legal technique(s). First, once students have studied the contributions of each legal technique in treating the problem of pollution or highway safety, they briefly consider the kinds of difficulties that would arise if only a single technique were used in action on the problem. Next, the contrast of the prohibition years and alcohol beverage control provides a dramatic example in American history of attacking a social problem with inappropriate (overemphasis of the penal technique). Finally, the materials suggest reviewing a contemporary problem and consider whether our legal system today is putting the most effective combination of techniques to solve it.

B. *Teaching Understanding II*

QUESTIONS TO REACH UNDERSTANDING

- Why are some legal techniques more appropriate than others in working on a particular problem?
- How might putting different legal techniques to work on a social problem result in an effective treatment of the problem by the legal system?

II

EFFECTIVENESS OF LAW IN DEALING WITH SOCIAL NEEDS AND PROBLEMS DEPENDS IN PART ON PUTTING APPROPRIATE LEGAL TECHNIQUE(S) TO WORK.

of Understanding II

Understanding II introduces the important concepts that (1) particular legal techniques are better in problems than other techniques, and (2) the managers of a legal system may fail to put legal technique(s) to work on a problem, and this may help explain why the problem persists.

Procedures and resources section of Understanding II seeks in three ways to teach the importance of using the appropriate legal technique(s). First, once students have studied the distinct uses of each legal technique in treating the problem of pollution or highway safety, they might be asked to identify the kinds of difficulties that would arise if only a single technique were called into play. Next, the contrast of the prohibition years and alcohol beverage control today (a classic example in American history of attacking a social problem with inappropriate resources of the penal technique). Finally, the materials suggest reviewing a contemporary problem to which our legal system today is putting the most effective combination of techniques to work to solve.

Understanding II

REACH UNDERSTANDING

Why are some legal techniques more appropriate than others in working on a particular social problem?

What different legal techniques to work on a social problem result in more effective treatment of the problem by the legal system?

Module 2

DETAILED DESCRIPTION OF STRATEGIES

- (a) In class discussion, investigate with pupils what might be the impact on law's effectiveness in treating the problem of highway safety or pollution if the legal system channeled all its efforts into one of the legal techniques and suspended use of the others. Divide the class into four groups; each with a group leader should consider one of the following series of questions and report back to the entire class their opinions.

- What if the legal system effectively apprehends and severely punishes all people who cause any traffic accidents, but does not concern itself with spending for safety; regulating drivers, autos, and traffic; providing for private remedies; or promoting private safety programs?
- What if the legal system closely regulates drivers, autos, and traffic control devices, but fails to spend for safe highways, to penalize those who intentionally drive unsafely, or to allow remedial lawsuits?
- What if the legal system combats pollution only by allowing private parties who are injured to sue polluters, and does not bother to set effective regulatory standards, spend public money on clean water and air, or penalize those who pollute?

DISCUSSION OF STRATEGIES AND RESOURCES

The survey and analysis of legal techniques on particular problems of Understanding II indicate to students something of the distinctive character of the resources of a legal system to draw on. The resources of Understanding II direct the matter of calling on the right combination of resources to deal with a problem. Some legal techniques are more effective than others to deal with particular problems. Yet there is no assurance that the resources of the legal system will call into play in the most productive way.

One way the legal system could fail is by overemphasizing reliance on a particular legal technique and not approaching the problem with other sources that might be more appropriate. Thus, students might consider the effect of only one of the legal techniques, or if all of the others, were set into motion to deal with the problems that has been under examination.

It may be useful to examine the treatment of pollution or highway safety problems using a single legal technique. By contrast, the prohibition of the alcohol abuse problem during the prohibition years, students may illustrate the notion of the possibility of solving a social problem by failure to provide legal resources to work on the problem. The prohibition provides an excellent example of the effects of unwise allocation of legal resources.

OF STRATEGIES

discussion, investigate with might be the impact on law's success in treating the problem of safety or pollution if the legal system channeled all its efforts into legal techniques and suspended others. Divide the class into groups; each with a group leader consider one of the following questions and report back to the class—their opinions.

Does the legal system effectively deter and severely punishes all who cause any traffic accidents, or does it not concern itself with speeding; regulating drivers, and traffic; providing for priorities; or promoting private programs?

Does the legal system closely regulate drivers, autos, and traffic devices; but fails to spend for ways, to penalize those who illegally drive unsafely, or to initiate lawsuits?

Does the legal system combat pollution by allowing private parties injured to sue polluters, and whether to set effective regulations, spend public money on water and air, or penalize pollute?

DISCUSSION OF STRATEGIES AND RESOURCES

The survey and analysis of legal techniques at work on particular problems of Understanding I should indicate to students something of the *variety* and *distinctive character* of the resources available for a legal system to draw on. The resources and procedures of Understanding II direct students to the matter of calling on the right legal resource or combination of resources to deal effectively with a problem. Some legal techniques are more appropriate than others to deal with particular aspects of problems. Yet there is no assurance that the managers of the legal system will call law's resources into play in the most productive way.

One way the legal system could fail to use law effectively in addressing a social problem would be to overemphasize reliance on a particular legal technique and not approach the problem with legal resources that might more appropriately meet the need. Thus, students might consider the consequences if only one of the legal techniques, to the exclusion of the others, were set into motion to combat one of the problems that has been under examination.

It may be useful to examine the treatment of the pollution or highway safety problems by use of a single legal technique. By contrasting law's treatment of the alcohol abuse problem during and after the prohibition years, students may get a more realistic notion of the possibility of legal mishandling of a social problem by failure to put appropriate legal resources to work on the problem. Prohibition provides an excellent example of the dual detrimental effects of unwise allocation of legal resources in

Module 2

DETAILED DESCRIPTION OF STRATEGIES

—What if the legal system combats pollution only by penalizing polluters, without use of the regulatory, distributive, or remedial techniques?

- (b) Discuss with pupils a case in American history where an imprudent choice of legal techniques to work on a social problem resulted in aggravation of the problem: overemphasis of penal "prohibition" and the problem of alcohol abuse. An excellent example of this is the era of prohibition. Have pupils look up in the U.S. Constitution, Amendment XVIII (1919) (prohibition) and Amendment XXI (1933) (repeal). Then discuss with class the effects on the problem of alcohol abuse of nearly exclusive reliance on a legal technique (the penal technique) that alone was not appropriate to combat this problem:
- ineffective treatment of the problem
 - promotion of general disrespect and nonsupport of the law
 - You might bring out the "speakeasy era"; the period of the "Feds"; Elliot Ness and the "Untouchables"; "Bath Tub Gin"
 - Contrast the current legal techniques in use and the legal system's relative effectiveness in treating the social problem of alcohol abuse.
 - regulation* of manufacture and sale of alcoholic beverages (license, age limits, etc.)

DISCUSSION OF STRATEGIES AND RESOURCES

meeting social problems: (1) relative treatment of the problem, and (2) public disrespect for the law.

With this background, the class might do a critical analysis of the legal system of some contemporary social problem. This analysis might consider (1) whether techniques at work could be used more effectively, (2) whether a different combination or distribution of emphasis among legal techniques would result in more effective treatment of the problem, and (3) whether important social problems are beyond the reach of all resources.

ON OF STRATEGIES

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DISCUSSION OF STRATEGIES AND RESOURCES

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treatment of the problem, and (2) promotion of
public disrespect for the law.

With this background, the class might undertake a
critical analysis of the legal system's treatment
of some contemporary social problem. Such an
analysis might consider (1) whether the legal tech-
niques at work could be used more effectively, (2)
whether a different combination of resources or re-
distribution of emphasis among legal techniques used
would result in more effective treatment of the
problem, and (3) whether important aspects of the
problem are beyond the reach of all of law's
resources.

Module 2

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

-*penal* provisions for not conforming to regulated standards

-*spending* on rehabilitation centers promoting *private* programs (Alcoholics Anonymous [AA])

(c) Ask pupils to consider if there are any other legal methods that might be used to help solve the problem of alcohol abuse.

(d) Analyze in class some other social problems (for example, the drug abuse problem, the crime in the streets problem, the abortion problem) in terms of the following: Call on individual pupils to enlist their opinion. One member of the class may serve as master of ceremonies; the class may decide on one of the above mentioned problems and an open forum could be conducted based on the use of the following questions:

—What *are* the main legal techniques in use to deal with the problem?

—What *should be* the main legal techniques in use to deal most effectively with the problem?

—Does the present allocation of legal techniques at work on the problem result in:

-*ineffective* treatment of the problem?

-a *disrespect* for the law?

Module 2

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOUR

—Have students make a comparison of how social problems are solved with how medical problems are solved. What "tools" do doctors use to cure patients? Are all tools always appropriate?

DESCRIPTION OF STRATEGIES

Have students make a comparison of how social problems are solved with how medical problems are solved. What "tools" do doctors use to cure patients? Are all tools always appropriate?

DISCUSSION OF STRATEGIES AND RESOURCES

Module 2

RESOURCES*

McKinney's Consolidated Laws of New York - "Alcoholic Beverage Control Law." Vol

Section 2 - Statement of State's policy in regulating this area

"It is hereby declared as the policy of the state that it is necessary to regulate and control the manufacture, sale and distribution within the state of alcoholic beverages for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to law."

Section 17 - Power, functions, duties of regulatory board of the State Liquor Authority

--Under this section are spelled out some of the functions, powers, and duties of the State Liquor Authority. They include the following:

- a) either issuing or refusing to issue liquor licenses
- b) to revoke liquor licenses for just cause
- c) to inspect any premises where alcoholic beverages are manufactured or sold
- d) to stop during times of emergency the sale of alcoholic beverages

Section 65 - Regulates who may buy alcoholic beverages

All persons in New York State, no matter what their race, color, creed, or national origin, may according to law buy alcoholic beverages except for:

- a) any minor under the age of 18
- b) any intoxicated person or any person who seems to be under the influence of liquor
- c) any habitual drunk and who is known to be such by the person dispensing alcoholic beverages

Section 103 - Regulating how alcohol is manufactured

Sets up specific regulations whereby the manufacturer may produce and distribute alcoholic beverages. They include the size of the containers, the type of the goods may be delivered in, and a complete description with fingerprints of employees along with their photographs which can not be less than 2 by 2 inch in size.

*Direct quotations from statutes are indicated by the use of quotation marks. Other are summaries or paraphrases of the statute listed.

RESOURCES*

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Module 2

Section 130 - Punishing those who disregard these regulations

This particular section of the Alcoholic Beverage Control Act specifically states that any person who lies in application for a liquor license or attempts to sell liquor while his license is suspended is guilty of a misdemeanor. The guilty person may be subjected to a maximum fine of \$1,200 or a maximum jail sentence of 1 year.

Module 2

UNDERSTANDING III

NONLEGAL SOCIAL CONTROLS MAY MAKE IT POSSIBLE FOR LEGAL TECHNIQUES TO WORK MORE EFFECTIVE

A. *Explanation of Understanding III*

The law at work in various ways is not the only force at work in confronting social problems. Private individuals without compulsion, direction, encouragement, or assistance from the law can work with relieving or avoiding many of the social problems that law confronts. Perhaps the single force at work on the problem of highway safety is individual interest in self-preservation. Without support from this force, law would be of limited effect. However, it is also unlikely that any combination of legal forces could satisfactorily treat problems of highway safety without help from the legal system. Understanding III briefly surveys some nonlegal forces that contribute to the legal system's effectiveness, then considers how both legal resources and support from nonlegal forces are necessary for confronting social problems.

B. *Teaching Understanding III*

QUESTIONS TO REACH UNDERSTANDING

- . What are some nonlegal factors that work on the same problems that law works on?
- . How is law made more effective when it works with the support of such nonlegal factors?
- . How is law made less effective when it works without support of such nonlegal factors?

III

SOCIAL CONTROLS MAY MAKE IT POSSIBLE FOR LEGAL TECHNIQUES TO WORK MORE EFFECTIVELY.

of Understanding III

Law at work in various ways is not the only force at work in confronting social problems. Individuals without compulsion, direction, encouragement, or assistance from the law are concerned with or avoiding many of the social problems that law confronts. Perhaps the single most important in the problem of highway safety is individual interest in self-preservation. Without support from the law would be of limited effect. However, it is also unlikely that any combination of non-legal factors could satisfactorily treat problems of highway safety without help from the legal techniques. I briefly surveys some nonlegal forces that contribute to the legal system's efforts, and show how both legal resources and support from nonlegal forces are necessary for effectively confronting these problems.

Understanding III

TO REACH UNDERSTANDING

Are there some nonlegal factors that work on the same problems that law works on?

Is law made more effective when it works with the support of such nonlegal factors?

Is law made less effective when it works without support of such nonlegal factors?

Module 2

DETAILED DESCRIPTION OF STRATEGIES

- (a) Consider in class discussion some reasons (nonlegal) why people on their own initiative act in a way to prevent and remedy traffic accidents and pollution.

—desire for self-preservation and perception of mutual advantage

—moral consciousness and respect for other human beings

—desire to avoid "unofficial" criticism

—desire for economic advantage

Since many teenagers do not like to brag publicly about some of their good deeds, ask them to write anonymously and hand in some actions they have taken to alleviate some social problem in their community. Without personal references, you might read some of their descriptions to prove that some of the above reasons motivated their actions.

- (b) Ask students to make a list of examples of how each of these nonlegal factors *may* contribute to reducing the problems of highway safety or pollution. For example:

—some people drive "defensively" and safely because they see this as necessary for survival

DISCUSSION OF STRATEGIES AND RESOURCES

The persistence of many social problems is simply the failure of the legal system. Some forces may contribute to this. One of the most important nonlegal forces are those that are solving the same problems law addresses. Such as those suggested not only for highway safety and pollution, but also for other problems like highway safety and pollution are often a necessary prerequisite for law to be effective.

Students might identify some important nonlegal forces that assist law by considering the conditions some people might have about their environment and reckless driving. Some nonlegal forces that also work on students should consider the extent to which nonlegal forces helps or hinders the legal efforts to solve the problems. Legal efforts to solve the problems, (1) are relatively inefficient if people do not perceive the problem to be no immediate threat to themselves or others, (2) are uncertain if people are uncertain of the problem, and (3) fail if people disregard the problem.

A

DISCUSSION OF STRATEGIES

Consider in class discussion some reasons (nonlegal) why people on their own initiative act in a way to prevent and remedy traffic accidents and pollution.

Reasons for self-preservation and acceptance of mutual advantage, social consciousness and respect for other human beings

Reasons to avoid "unofficial" criticism

Reasons for economic advantage

Ask many teenagers do not like to talk publicly about some of their needs, ask them to write anonymously and hand in some actions they have taken to alleviate some problem in their community. Without personal references, you can read some of their descriptions to prove that some of the above reasons motivated their actions.

Ask students to make a list of examples of how each of these nonlegal factors contribute to reducing the problems of highway safety or pollution. For example:

Some people drive "defensively" and slowly because they see this as necessary for survival

DISCUSSION OF STRATEGIES AND RESOURCES

The persistence of many social problems is often not simply the failure of the legal system. Nonlegal forces may contribute to this. On the other hand, some important nonlegal forces are at work on reducing the same problems law addresses. Nonlegal forces such as those suggested not only serve to relieve problems like highway safety and pollution, but they are often a necessary prerequisite if legal efforts are to be effective.

Students might identify some important nonlegal forces that assist law by considering the personal reservations some people might have about fouling the environment and reckless driving. Having identified nonlegal forces that also work on these problems, students should consider the extent each of these nonlegal forces helps or hinders the law at work on the problems. Legal efforts to tax and spend, regulate, or penalize to reduce a problem are likely to be relatively inefficient if people generally (1) perceive the problem to be no immediate threat to themselves or others, (2) are uncritical of aggravations of the problem, and (3) find it economical to disregard the problem.

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Module 2

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

- some people combat pollution because they are concerned with a threat to the welfare of all humanity
 - some people drive safely because they do not wish to be thought of as reckless or irresponsible
 - some oil companies reduce pollutants in their gasoline because by doing so today they can sell more gasoline
- (c) Consider in class discussion (1) whether nonlegal forces can effectively treat such problems as highway safety and pollution without the help of the legal technique and without the support of these nonlegal forces and (2) whether legal *and* nonlegal forces can completely "solve" problems like highway safety and pollution.
- (d) Have students debate this issue: If everyone would observe the Golden Rule, automobile accidents would be no problem. (Of course, there must be adequate preparation for the debate including, needless to say, the students knowing what the "Golden Rule" is! The Hebrew variant, proposed by Rabbi Hillel reads: "What is hateful to yourself, do not to your fellow man." That is the whole of the Torah, and the rest is but commentary...Go, and learn it.")

Module 3

MODULE III: LEGAL PROCESSES — HOW THE LAW PLAYS THE GAME ALSO COUNTS *

1. *The Main Focus.*

The law seeks to do many different jobs in society. As we have seen in Module I, law helps to guide and law helps to settle disputes, law helps to keep potential wrongdoers in line. These are only some of the jobs law

As we have also seen in Module II, law does its job with particular resources, what we have called legal benefit distribution technique, the regulation technique, the penal technique, the private remedy technique, and the technique. All these legal techniques might be used on some social problems. Thus, Module II examined all five legal work on problems of highway safety and pollution. Module II also considered that for the law to be effective, the resources must be used. Finally, we discussed the influence of nonlegal forces at work on social problems.

The assignment of the right legal technique to a social problem is important, but so is the process by which processes for using our legal resources should be well designed, and officials should follow them. As officials use solve problems, citizens should be concerned about the fairness of the processes involved, and whether officials act processes.

In the first understanding of Module I, students were introduced to legal processes for dispute settling— of the private remedy technique. The processes for any of the legal techniques can be analyzed. These processes can or badly. In this module, students will analyze in detail some basic processes of the penal technique of law. They tions of why maintenance of sound processes of the penal technique is important, the citizen's role in securing fair cesses, and some possible social costs involved in maintaining a legal system that is concerned with the fairness of

2. *Why This Focus?*

Three understandings about legal processes of the penal technique will be considered through illustration field of law known to lawyers as criminal procedure. The law of criminal procedure consists of rules specifying how must be enforced or carried out. These provide ground rules for legal officials (legislators, police, prosecutors, criminal cases where a private citizen is charged by the government with violating a criminal statute, that is, com

Illustrations could be drawn from the other legal techniques. However, there are several reasons for dra penal technique. First, when a citizen is apprehended and prosecuted pursuant to this legal technique, a great deal for the accused (liberty) and society (order). This, along with students' relative familiarity with criminal law, student interest in the subject matter. Secondly, our society has had long experience with attempts to design and cesses for use of this legal technique; such was a primary concern of our forefathers in drafting the Bill of Right value of some of the processes in the penal technique is currently being debated and will continue to be in the com over crime grows.

A caution may be appropriate at this point. This unit considers the value of good legal processes. It l processes for examples. To point out that good processes are important is not to say that in practice good process lowed. On the contrary, the legal system's failure to pursue fair and sound processes is probably more often a sou than legal rules which are unjust.

One helpful method for teaching the importance of having and following good legal processes is that of po facts in the design or application of our penal law processes, either in society at large or in the school communit that may be profitably used throughout this module.

*See footnote on page 1, Module 1.

MODULE III: LEGAL PROCESSES — HOW THE LAW
PLAYS THE GAME ALSO COUNTS *

seeks to do many different jobs in society. As we have seen in Module I, law helps to guide and coordinate activities, settle disputes, law helps to keep potential wrongdoers in line. These are only some of the jobs law may try to do.

We have also seen in Module II, law does its job with particular resources, what we have called legal techniques; the private remedy technique, the regulation technique, the penal technique, the private remedy technique, and the private arrangement. These legal techniques might be used on some social problems. Thus, Module II examined all five legal techniques at the case of highway safety and pollution. Module II also considered that for the law to be effective, the appropriate legal techniques must be used. Finally, we discussed the influence of nonlegal forces at work on social problems.

The selection of the right legal technique to a social problem is important, but so is the process by which it is used. The design of our legal resources should be well designed, and officials should follow them. As officials use legal techniques to solve social problems, citizens should be concerned about the fairness of the processes involved, and whether officials actually follow these processes.

In our first understanding of Module I, students were introduced to legal processes for dispute settling—the legal processes for the private remedy technique. The processes for any of the legal techniques can be analyzed. These processes can be designed well. In this module, students will analyze in detail some basic processes of the penal technique of law. They will focus on questions of the maintenance of sound processes of the penal technique is important, the citizen's role in securing fair criminal law processes, and the possible social costs involved in maintaining a legal system that is concerned with the fairness of how law operates.

Our understandings about legal processes of the penal technique will be considered through illustrations drawn from the law of criminal procedure. The law of criminal procedure consists of rules specifying how the law of crimes is to be carried out. These provide ground rules for legal officials (legislators, police, prosecutors, judges, etc.) in the case where a private citizen is charged by the government with violating a criminal statute, that is, committing a crime.

Illustrations could be drawn from the other legal techniques. However, there are several reasons for drawing them from the penal technique. First, when a citizen is apprehended and prosecuted pursuant to this legal technique, a great deal is at stake, both for the citizen (liberty) and society (order). This, along with students' relative familiarity with criminal law, may contribute to the interest in the subject matter. Secondly, our society has had long experience with attempts to design and protect good processes in the penal technique; such was a primary concern of our forefathers in drafting the Bill of Rights. Thirdly, the processes in the penal technique is currently being debated and will continue to be in the coming years as concern grows over the fairness of the legal process.

It may be appropriate at this point. This unit considers the value of good legal processes. It looks to criminal law for examples. To point out that good processes are important is not to say that in practice good processes are always followed. Contrary, the legal system's failure to pursue fair and sound processes is probably more often a source of injustice than the processes which are unjust.

An effective method for teaching the importance of having and following good legal processes is that of pointing out actual design or application of our penal law processes, either in society at large or in the school community. This is a method that has been used throughout this module.

Module 3

3. *Outline of the Teaching Scheme.*

This module attempts to have students reach three main understandings by evaluating processes of one legal penal technique). First, legal processes can and should be evaluated in terms of two things: the extent to which outcomes *and* the extent to which they are a fair way of going about things. Second, the task of securing good processes designing good processes in the first place and protecting them from disregard by officials. Third, the value of good processes in conflict with other values so that good processes can be maintained only at some social cost, costs we may have to pay the price of having good processes.

NOTE: *An Alternative Sequence.*

This module on evaluating processes of the criminal law begins with presentation of cases and stories which evaluate not only legal outcomes, but also legal processes. An alternative way that the module might be introduced is on a survey of the process rights (the rights of the accused) that are set forth in the Bill of Rights of the United States. As the module is presently structured, these constitutional rights are surveyed in the first part of Understanding I. Reason for not introducing the unit with the Bill of Rights is this: by examining and evaluating certain basic processes of criminal law *before* noting their constitutional status, it is usually easier to get students to consider *why* certain criminal processes are important. This approach avoids possible circular reasoning—our basic rights are important because they are in the Bill of Rights, and, if this is the case, the best way to introduce criminal processes is to survey their embodiment in the Bill of Rights, and, if this is the case, the initial materials from Understanding II on the Bill of Rights are an obvious starting point. The teacher might then return to Understanding I to examine and evaluate several of the selected processes by using

Teaching Scheme.

attempts to have students reach three main understandings by evaluating processes of one legal resource (the first, legal processes can and should be evaluated in terms of two things: the extent to which they produce desired results and to which they are a fair way of going about things. Second, the task of securing good processes requires both vigilance in the first place and protecting them from disregard by officials. Third, the value of good processes may be so great that good processes can be maintained only at some social cost, costs we may have to bear as part of the legal processes.

Sequence.

When evaluating processes of the criminal law begins with presentation of cases and stories which lead students to legal outcomes, but also legal processes. An alternative way that the module might be introduced is to focus first on process rights (the rights of the accused) that are set forth in the Bill of Rights of the United States Constitution. If the unit is presently structured these constitutional rights are surveyed in the first part of Understanding II. The reason for beginning the unit with the Bill of Rights is this: by examining and evaluating certain basic processes of the criminal law and their constitutional status, it is usually easier to get students to consider *why* certain criminal processes are important. Each avoids possible circular reasoning—our basic rights are important because they are in the Constitution and the teacher may feel that the best way to introduce criminal processes is to survey their embodiment in the Bill of Rights. In this case, the initial materials from Understanding II on the Bill of Rights are an obvious place to start. Then return to Understanding I to examine and evaluate several of the selected processes by using cases and stories.

Module 3

SUMMARY OF UNDERSTANDINGS

- I. SINCE NOT ONLY THE OUTCOMES OF LAW'S OPERATIONS ARE IMPORTANT, BUT ALSO HOW LAW OPERATES IS IMPORTANT, THE PROCESSES BY WHICH LAW REACHES AN OUTCOME ARE SUBJECT TO EVALUATION IN TERMS OF:
 - . THEIR EFFECTIVENESS IN REACHING THE DESIRED OUTCOME
 - . THEIR VALUE AS SOUND PROCESSES
- II. SINCE MERELY HAVING RULES FOR SOUND PROCESSES IS NOT, BY ITSELF, A GUARANTEE THAT THE PROCESSES WILL BE FOLLOWED BY OFFICIALS, LEGAL SYSTEMS NEED EFFECTIVE WAYS OF ASSURING THAT OFFICIALS WILL CONFORM TO SOUND PROCESSES.
- III. MAINTAINING SOUND LEGAL PROCESSES MAY NOT BE POSSIBLE WITHOUT INCURRING SOME SOCIAL COSTS.

UNDERSTANDING I

SINCE NOT ONLY THE OUTCOMES OF LAW'S OPERATIONS ARE IMPORTANT, BUT ALSO HOW LAW OPERATES IS IMPORTANT, THE PROCESSES BY WHICH LAW REACHES AN OUTCOME ARE SUBJECT TO EVALUATION IN TERMS OF:

- . THEIR EFFECTIVENESS IN REACHING THE DESIRED OUTCOME
- . THEIR VALUE AS SOUND PROCESSES

A. *Explanation of Understanding I*

Laws are necessary instruments to perform various social functions. Thus, we have laws for free education, laws calling for licensing drivers, laws punishing rape, etc. But none are self-executing or self-applying. There must be further rules for determining *how*, for example, how rape will be implemented, *how* suspected rapists may be detected, apprehended, questioned, and punished. When we evaluate the operation of law we usually focus only on legal outcome

SUMMARY OF UNDERSTANDINGS

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UNDERSTANDING I

NOT ONLY THE OUTCOMES OF LAW'S OPERATIONS ARE IMPORTANT, BUT ALSO HOW LAW OPERATES IS IMPORTANT, THE PROCESSES BY WHICH LAW REACHES AN OUTCOME ARE SUBJECT TO EVALUATIONS IN TERMS OF:

- . THEIR EFFECTIVENESS IN REACHING THE DESIRED OUTCOME
- . THEIR VALUE AS SOUND PROCESSES

Definition of Understanding I

Laws are necessary instruments to perform various social functions. Thus, we have laws requiring licensing drivers, laws calling for licensing drivers, laws punishing rape, etc. But none of these laws is self-applying. There must be further rules for determining *how*, for example, the law on rape is implemented, *how* suspected rapists may be detected, apprehended, questioned, held, tried, and sentenced. When we evaluate the operation of law we usually focus only on legal outcome or result. For

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Module 3

QUESTIONS TO REACH UNDERSTANDING

- How can the basic legal processes enumerated below be evaluated with respect to the of producing just results?
- How are the illustrative basic processes below subject to qualitative evaluation in fairness regardless of the results they produce?
- How can the basic legal processes enumerated below be judged as far as fairness is without considering the results they may produce?

USE OF VISUALS

- Using a picture of an individual being interrogated by the law, students may develop of what will probably happen as a result of the events portrayed in this picture. actions so projected may then be analyzed with respect to fairness to the accused.
- Show a film or filmstrip portraying the apprehension of an alleged lawbreaker with track turned off, or without the script in the case of a filmstrip. From the expressions of the accused, students may make statements concerning the opinion of the regarding the fairness of the process applied. The statements may then be tested of judgment by rerunning the film using audio or printed script.

REACH UNDERSTANDING

Do the basic legal processes enumerated below be evaluated with respect to the likelihood of producing just results?

Are the illustrative basic processes below subject to qualitative evaluation in terms of fairness regardless of the results they produce?

Do the basic legal processes enumerated below be judged as far as fairness is concerned without considering the results they may produce?

ALS

When a picture of an individual being interrogated by the law, students may develop an account of what will probably happen as a result of the events portrayed in this picture. The results so projected may then be analyzed with respect to fairness to the accused.

When a film or filmstrip portraying the apprehension of an alleged lawbreaker with the sound turned off, or without the script in the case of a filmstrip. From the expressions and statements of the accused, students may make statements concerning the opinion of the accused regarding the fairness of the process applied. The statements may then be tested for accuracy of judgment by rerunning the film using audio or printed script.

Module 3

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Should our processes give people a chance to know in advance what acts will be punished as crimes?

- a) Discuss with class the enumerated court cases on page 100. Consider the question of whether the processes followed were fair. For example, did the process allow for the people involved to be aware in advance of what acts would be punished as crime? Were the outcomes just? Were the people involved subjected to inhumane practices?
- b) Divide the class into three groups. Each group should appoint a group leader to conduct group discussion and report back to the class on the following question: Is the individual in the case guilty, considering the fact he was notified in advance that a particular act was considered a crime?
- Pupils should then regroup and try to construct their own case and report to the class their results. The case should prove interesting because some of the pupils will undoubtedly draw on their own personal experience.
- c) View a film such as "Due Process of Law Denied" (see page 101) depicting disregard of fair process by legal officials; direct student discussion of the film not only to the "rights" considered in the film, but also in identifying what unfair legal processes the film pointed out.

The procedures and resources of several of the four basic processes of the criminal justice system concern (1) making prohibitions, (2) allowing suspects to remain silent, (3) the disposition of a case by a judicial tribunal, and (4) allowing a defendant to speak in his own favor.

Evaluation of legal processes should be done on two grounds: the suitability of the process in securing desirable outcomes and the fairness of the process. The main desirable outcome of the criminal justice system is convicting the guilty and acquitting the innocent. Understanding the fairness of the processes followed in applying the law to create the likelihood of reaching a just outcome is a process value that has been largely neglected. A process that is fair, even if the outcome it produces is just or unjust. Even if one who is innocent is under the pressure of a thumb screw, is it fair if something is unfair about using this process? It is wrong because the innocent who confesses might be innocent; it is wrong because torture is itself inhumane and unfair.

With each of the four legal processes, several hypothetical stories are presented to illustrate abuses. By presenting the process from a different point of view, students may realize a good process by criticizing a bad process or identifying what is wrong with it. The

DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Should our processes give people a chance to know in advance what acts will be punished as crimes?

Discuss with class the enumerated court processes on page 100. Consider the question whether the processes followed were fair. For example, did the process allow the people involved to be aware in advance of what acts would be punished as crimes? Were the outcomes just? Were the people involved subjected to inhumane practices?

Divide the class into three groups. Each group should appoint a group leader to direct group discussion and report back to the class on the following question: "Should the individual in the case guilty, knowing the fact he was notified in advance that a particular act was considered a crime?"

Groups should then regroup and try to construct their own case and report to the class their results. The case should be interesting because some of the students will undoubtedly draw on their personal experience.

Show a film such as "Due Process of Law" (see page 101) depicting disregard of fair process by legal officials; initiate student discussion of the film not only to the "rights" considered in the film, but also in identifying what legal processes the film pointed out.

The procedures and resources of section B examine four basic processes of the criminal law. These concern (1) making prohibitions known in advance, (2) allowing suspects to remain silent, (3) assuring that the disposition of a case will be by an impartial tribunal, and (4) allowing a suspect a chance to speak in his own favor.

Evaluation of legal processes should generally be on two grounds: the suitability of the process for securing desirable outcomes *and* the inherent fairness of the process. The main desirable outcome in applying criminal laws is convicting the guilty and not the innocent. Understanding I should reveal that the processes followed in applying the law may increase the likelihood of reaching that outcome. This process value should be familiar. A second is perhaps more neglected. A process itself, regardless of the outcome it produces, may be fair or unfair, just or unjust. Even if one who confesses under pressure of a thumb screw, is in fact guilty, something is unfair about using this process of investigation. It is wrong because the next suspect who confesses might be innocent; it is wrong because torture is itself inhumane and unfair.

With each of the four legal processes, cases and hypothetical stories are presented that show some abuses. By presenting the process from the negative point of view, students may realize the value of a good process by criticizing a bad process and identifying what is wrong with it. The value of the

Module 3

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

particular process can be further clarified. Students are called on to construct further examples showing abuse of the process values. Examples or stories may lend themselves to dramatization as skits and role-plays.

The value of giving people a chance to know what is prohibited can be demonstrated in several ways. First, in protection of the innocent, if the wrong outcome, this process serves to ensure that lawmakers cannot strike at an individual by defining an act he has already committed as a crime. With similar reasoning, courts have struck down certain laws that prohibit "vagrancy" or "loitering" in vague or indefinite terms. Laws do not make clear in advance what is prohibited. Second, the simplest reason for advance notice is that fairness demands that it is something unfair about surprising someone by punishing him for an act that he had no way of knowing was punishable. This is true, at least in the act in question involves breaking a rule that was not known (sliding into base, failing to cover up, etc.). In the latter case, morality should tell us that his act is wrong, and he isn't taken

One point might be clarified to avoid confusion in dealing with the process of giving advance notice. The important thing we are talking about is the process that makes sure the accused has a *chance to know* in advance that what he is doing is a crime. This is not the same as saying that a person must know his act is against the law. He must have a *chance* to know this. It

DISCUSSION OF STRATEGIES AND RESOURCES

particular process can be further clarified if students are called on to construct further episodes showing abuse of the process values. Such episodes or stories may lend themselves to dramatic presentation as skits and role-plays.

The value of giving people a chance in advance to know what is prohibited can be demonstrated in two ways. First, in protection of the innocent from the wrong outcome, this process serves to assure that lawmakers cannot strike at an unpopular citizen by defining an act he has already committed as a crime. With similar reasoning, courts have struck down certain laws that prohibit "vagrancy" or "loitering" in vague or indefinite terms because the laws do not make clear in advance what action is prohibited. Second, the simplest reason for giving advance notice is that fairness demands it. There is something unfair about surprising a person and punishing him for an act that he had no way of knowing was punishable. This is true, at least, when the act in question involves breaking a regulation (sliding into base, failing to cover a back) as opposed to purposefully hurting someone else. In the latter case, morality should tell the actor that his act is wrong, and he isn't taken by surprise.

One point might be clarified to avoid confusion in dealing with the process of giving advance notice. The important thing we are talking about here is a process that makes sure the accused person has had a *chance to know* in advance that what he has done was a crime. This is not the same as saying the accused person must know his act is against the law; he just must have a *chance* to know this. It is often said

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that "ignorance of the law is not generally it isn't. If a driver goes miles over the limit, it is not failed to see the speed limit sign did not know the law. But this is from the case where there are no giving the driver a chance to know in advance.

2. Should our legal process permit a person to remain silent?

- a) Discuss with class the court cases on pages 101-102. In the student's opinion, did he feel that the methods used by law enforcement officers was fair? Should the alleged guilty party have a right to remain silent and not make any comments about the deed of which he is accused?
- b) Place on an overhead transparency or on the board the hypothetical cases on page 102 assigning different groups of students to each case. Have the students consider one of the cases by placing their individual ideas on their own sheet of paper of whether the procedures in each case were fair. Then working with a team partner, each pupil should try to reconstruct the case so that, in the opinion of that team, the proceeding would have been just. Call on some of the pupils to describe their reconstructed stories. It might be interesting to see if some might leave the story exactly the same.

The value of allowing suspects to also be demonstrated in terms of If silence is not respected and use the "third degree," a suspect incriminating evidence in order police. This will increase the innocent will be convicted. The or unfairness of a process of in the third degree is the other grade evaluation. There is something about forcing a person to give himself that will in turn be used person his life, liberty, or property most effective way to make this whether it is fair or right to do in a case where the only evidence evidence that was starved or been normal procedure that courts forbid has been gathered through improper prohibit the use of such evidence exclusion of evidence is considered in Understanding II on page 25

DISCUSSION OF STRATEGIES AND RESOURCES

that "ignorance of the law is no defense," and generally it isn't. If a driver is speeding 10 miles over the limit, it is not a defense that he failed to see the speed limit signs and therefore did not know the law. But this is quite different from the case where there are no speed limit signs giving the driver a chance to know the speed limit in advance.

2. Should our legal process permit a person to remain silent?

class the court cases on pages the student's opinion, did the methods used by law officers was fair? Should guilty party have a right to t and not make any comments ed of which he is accused?

overhead transparency or on e hypothetical cases on page 102 fferent groups of students to Have the students consider one s by placing their individual air own sheet of paper of whether res in each case were fair. Then a team partner, each pupil to reconstruct the case so that, on of that team, the proceeding been just. Call on some of the describe their reconstructed t might be interesting to see nt leave the story exactly the

The value of allowing suspects to say nothing can also be demonstrated in terms of process and outcome. If silence is not respected and police are free to use the "third degree," a suspect may give inaccurate, incriminating evidence in order to escape the police. This will increase the likelihood that the innocent will be convicted. The inherent fairness or unfairness of a process of investigation involving the third degree is the other ground for process evaluation. There is something fundamentally unfair about forcing a person to give information about himself that will in turn be used to take from this person his life, liberty, or property. Perhaps the most effective way to make this point is to ask whether it is fair or right to convict the suspect in a case where the only evidence against him is evidence that was starved or beaten out of him. The normal procedure that courts follow when evidence has been gathered through improper processes is to prohibit the use of such evidence in court. This exclusion of evidence is considered in some detail in Understanding II on page 25 in this manual.

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- c) Have a local policeman speak to the class about the right to remain silent and the processes the police must go through to make suspects aware of that right. Have a question-answer session after the talk. (The impact of the *Miranda* case. See below and page 103.)
- d) Assign pupils to do preliminary research to a debate on this topic: Should an individual have a right to remain silent if questioned by the local police, district attorney's office, representatives of the American Civil Liberties Union?
- e) Appoint certain pupils in class to research the *Miranda vs. Arizona* case. Then have them role-play the "before" and "after" court decision scenes in the interrogation. The film, *Right to Remain Silent: The Miranda Case*, Encyclopedia Britannica's Living Bill of Rights series, can be used here. See page 199
- f) Have the entire class do a study on the various interpretations of rights guaranteed an individual under the Bill of Rights. Then have some of the pupils debate the topic: A person is definitely guilty if he pleads the fifth amendment.

DISCUSSION OF STRATEGIES AND RESOURCES

The Supreme Court has expanded the right to remain silent in the interest of securing fair trial procedures of investigation. In the now famous *Miranda vs. Arizona*, 384 U.S. Reports, the court declared two restrictions on the questioning of suspects. Any evidence forced from a suspect is not good in court; any evidence forced from a suspect is not good unless he has first been advised of his rights to stay silent and his right to have counsel help in answering police questioning. The Supreme Court limited or clarified the *Miranda* by saying in the case of *Harris*, vol. 400 U.S. Reports, (1971) that a suspect who gives self-incriminating evidence before being warned of his rights and then at his own free will testifies on the witness stand with a different self-incriminating evidence can be shown to be a logical and good sense of either the *Miranda* or *Harris* case might provide the basis for an interesting classroom debate.

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DISCUSSION OF STRATEGIES AND RESOURCES

The Supreme Court has expanded the right to remain silent in the interest of securing fairer processes of investigation. In the now famous case of *Miranda vs. Arizona*, 384 U.S. Reports 436 (1966), the court declared two restrictions on the questioning of suspects. Any evidence forced from a suspect is not good in court; any evidence from the suspect is not good unless he has first been warned of his rights to stay silent and his right to have a lawyers help in answering police questioning. Recently the Supreme Court limited or clarified the rule in *Miranda* by saying in the case of *Harris vs. New York*, vol. 400 U.S. Reports, (1971) that if a suspect gives self-incriminating evidence before being warned of his rights and then at his trial takes the witness stand with a different story, the self-incriminating evidence can be shown to the jury in order to show that the suspect might be a liar. The logic and good sense of either the *Miranda* or the *Harris* case might provide the basis of an interesting classroom debate.

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3. Should our processes of trial provide for an impartial judge and jury free of undue influence?

- a) Distribute to pupils the details of the *Moore vs. Dempsey* case as given on resource page 103. Then open for discussion the question: Can this trial be conducted fairly under these circumstances? (Pupils should have some background in the civil rights in the Southern states.) As an allied topic to above question, you could discuss with the class why it seems to be so difficult to select a jury for a trial involving the Black Panthers, the Weathermen, or any controversial organization cases.
- b) Divide your class in half. One half of the group should consider the two hypothetical cases on page 105 and decide if, in their opinion, an impartial decision was arrived at. Have the other group devise incidents of a similar nature; i.e., a partial third party making a decision about the guilt or innocence of some individual.
- c) Have pupils view the film, "To Kill a Mockingbird," and then discuss the unfair processes that it illustrates. One or more of the pupils may wish to read Harper Lee's novel (same title) and give a report to class. This should

In evaluating a process providing *impartial* tribunal, protecting t erroneous outcome and inherent f itself are again relevant. An i jury are free of outside influen place in reaching a decision bas a case. Examples of such impropr might impair the impartiality of prejudice, personal dislike, pol financial interest in the outcom

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In evaluating a process providing for trial by an *impartial* tribunal, protecting the innocent from erroneous outcome and inherent fairness of the process itself are again relevant. An impartial judge and jury are free of outside influences that have no place in reaching a decision based on the merits of a case. Examples of such improper influences that might impair the impartiality of a trial are racial prejudice, personal dislike, political pressure, or financial interest in the outcome.

Obviously, if the judge or jury is not impartial, the outcome of the case may be erroneous—that is, may fail to accord with relevant law and actual fact. But, in addition to this, there is something inherently unfair about convicting a man in a court that is not impartial. Again, the most effective way to make this point may be to consider whether, even if a suspect is guilty, we would still say something is wrong if he is convicted in a court that would find him guilty anyway.

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DISCUSSION OF STRATEGIES AND RESO

also generate discussion on unfair legal processes.

- d) To point out the legal processes at work in the course of history, assign pupils in class to do reports on the following famous trials in history:
- Eugene Debs
 - Sacco and Vanzetti
 - John Brown
 - Black Panthers
 - SDS

4. Should our processes be ones that allow the suspect a chance to defend himself before he is punished?

- a) Read the hypothetical cases: "The Case of the Expelled Student," "Dudley Gets Some New Duds," or the case "In Re Gault" on pages 103 and 106. Without giving pupils any clues, see if they can judge the soundness of the legal processes that were utilized in each case.
- b) Have pupils put their imagination to work and devise some stories that would depict individuals being punished for crimes without having any chance to present their side of the story. They could then make a bulletin board display which includes all the stories they have plus illustrated cartoons titled "Legal Processes Gone Astray."
- c) Have class view a film or filmstrip which depicts disregard of fair legal processes. See page 107.

The final examples involve letting a chance to defend himself before. No matter how much evidence there is against a suspect there is always a chance to confront his accusers, to give an explanation or defense. To convict the person most concerned a chance to be heard is the likelihood of an erroneous conviction. To punish a suspect without a chance to be heard or have his side heard is inherently unfair. To make this point might consider a hypothetical case in which a person is convicted who is in fact guilty. Letting him about the trial until after he is convicted.

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DISCUSSION OF STRATEGIES AND RESOURCES

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The final examples involve letting the suspect have a chance to defend himself before he is punished. No matter how much evidence there seems to be against a suspect there is always a chance that, when given a chance to confront his accusers, he can supply an explanation or defense. To convict without allowing the person most concerned a chance to speak increases the likelihood of an erroneous conviction. A second criterion for evaluating processes is important here, too. To punish a suspect without first offering him a chance to be heard or have his say in the court is inherently unfair. To make this point, the teacher might consider a hypothetical case in which a suspect is convicted who is in fact guilty, but without telling him about the trial until after he has been convicted.

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RESOURCES*

Sample Court Cases

State vs. Masino, vol. 38 Southern Reporter, second series, p. 685 (1949).

Masino convicted of negligent homicide for his careless construction of a project that resulted in loss of lives; the carelessness occurred before the making negligent homicide a crime was passed.

People vs. Diaz, vol. 4 New York Reports, second series, p. 469 (1958).

Diaz was convicted of loitering under a statute that prohibits loitering with that term any further. Since no one could tell in advance what exactly such criminal statute was prohibiting, the appeals court reversed the conviction.

Sample Hypothetical Cases

Case #1 -- Throw the Book at Him

At a teachers' meeting the junior high teachers make a new school rule: "A student who fails to have covers on his or her textbooks will have to stay after school for an hour recess for three days." It so happens the teachers didn't bother to tell anybody about the new rule. One day a few weeks later a teacher, Mr. Chamberlain, having trouble with discipline in a class. He suddenly decides to hold a textbook check and instructed six eighth graders whose books were not covered to report to school. They did so and learned for the first time of the new school rule which they had broken.

Case #2 -- Some Way to Win a Ballgame

Your school and another softball team are in the State junior high softball championship game. In a semi-final game, a boy broke his leg sliding into second base. Because of this, before the final game, the umpires made a new rule: "Any player who slides is out." But they forgot to tell either team.

*Direct quotations from statutes are indicated by the use of quotation marks. Other are summaries or paraphrases of the statute listed.

RESOURCES *

Court Cases

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Hypothetical Cases

1 -- Throw the Book at Him

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With two outs in the last inning, your school is behind by one run. One of your boys "belts a long one" and tries to make a homerun out of it. It is a close play at the plate and the runner slides. The umpire cries, "You slid, therefore you're out." The umpire explains the new rule to the teams as everybody is leaving the ballpark.

Case #3 -- The Young Drinker

Today in New York the minimum drinking age is 18. Although we sometimes hear people say that drinking under 18 is illegal, under the New York law, it is the selling or giving the underage person the alcohol that is a crime. It isn't a crime for the minor who does the actual drinking. But suppose there is a change in the law. Suppose the New York Legislature makes it a crime if you drink beer if you are 18, with a 5-year punishment. The law has not yet been publicized in the papers.

Bud Schaefer, a 14-year old, drinks a beer at the local tavern and is convicted under the new, unpublished law.

"Due Process of Law Denied." 29 min. McGraw-Hill.

Adapted from the 20th Century Fox feature film, "Ox Bow Incident." A dramatization of the kind of unlawful trials which were sometimes held in the early days of the West (Nevada 1885). Pictures the dangers of denying due process of law and illustrates convincingly the necessity to recognize the rights of an accused person as guaranteed by the Constitution of the U.S. The action and dialogue of the film point up the dangers of mob violence.

Sample Court Cases (to be used with strategy 2a)

People vs. Jones, vol. 150 Pacific Reporter, second series, p. 801 (1944).

Jones was convicted of murder. His conviction was based on a confession he made to the police. Jones was beaten twice a day for 4 days by police. On the fourth day, he confessed.

With two outs in the last inning, your school is behind by one run. One of your players "belts a long one" and tries to make a homerun out of it. It is a close play at the plate and the runner slides. The umpire cries, "You slid, therefore you're out." The umpire explains the new rule to the teams as everybody is leaving the ballpark.

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Ed Schaefer, a 14-year old, drinks a beer at the local tavern and is convicted under the new, unpublished law.

"Process of Law Denied." 29 min. McGraw-Hill.

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People v. Jones (to be used with strategy 2a)

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Jones was convicted of murder. His conviction was based on a confession he made to the police. Jones was beaten twice a day for 4 days by police. On the fourth day, Jones confessed.

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Watts vs. Indiana, vol. 338 United States Reports, p. 49 (1949).

Watts was convicted of murder. His conviction was based on a confession he made after he was kept in solitary confinement for a week and questioned intensively at all hours of the day and night.

Sample Hypothetical Cases (to be used with strategy 2b)

Case #1 -- Friendly Persuasion

Wilma is a cheerleader. She has been accused of smoking in the girls' room. The principal says that unless she explains, she is through cheerleading. Wilma then confesses. This confession is the only evidence against her. Wilma, who now pleads innocent, is convicted by the school judiciary of breaking the school smoking rules, and is expelled.

Case #2 -- Speak Up, Son

Mrs. Justice, an eighth grade teacher, gives a true-false test to her eighth grade social studies class. Janie Bookmark usually gets the highest grades in class. Oliver Averager is a "C" student. On this particular test Oliver and Janie tie for the highest grade. However, they sit beside each other and their answers match exactly. Mrs. Justice accuses Oliver of copying Janie's answers. Oliver refuses to answer. Mrs. Justice presents Oliver with a Bible and says, "Swear on this that you will tell me the truth; I am going to ask you if you have been cheating." Oliver again says nothing. Mrs. Justice says, "Since you are afraid to swear that you did not cheat, you must have cheated. Therefore, I'm giving you a zero on the test."

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Excerpts from the Miranda case, all within junior high school reading level, are c in Quigley and Longaker, *Conflict, Politics and Freedom*, pp. 90-93; Bassiouni e *Crimes and Justice*, pp. 48-51; as well as the Oregon State Bar Association refere listed below.

Although the case In Re Gault (1967) was concerned with other questions also, the of self-incrimination and right to counsel were points specified in the Supreme O decision. Since the case involves a juvenile, students may find greater relevance in cases concerning adults; it can certainly be used for comparisons and reinforce. These excerpts are all within junior high reading level: Bragdon and Pittenger, *Pursuit of Justice*, pp. 71-77, and 166-167; Bassiouni and Shiel, *Youth and the La* pp. 72-78; Cuban and Arronson, *You've Been Arrested*, pp. 45-47; Oregon State Bar *The Privilege Against Self-Incrimination*, (which has both the Miranda and the Gau as well as some others). Also useful: segments of Oliver and Newman, *Rights of Judgment*, Case Study No. 12.

The film, *Young Person and the Court*, could be used for analysis with this materi (See AV listing.)...42

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law.* U Chapter Four, Lesson 10 - "Process values -- how our law does its job, also co and Company.

Sample Court Case (to be used with strategy 3a)

Moore vs. Dempsey, vol. 261 United States Reports, p. 86 (1923).

"...The appellants are five negroes who were convicted of murder in the first and sentenced to death by the Court of the State of Arkansas. The ground of

pts from the Miranda case, all within junior high school reading level, are contained in Quigley and Longaker, *Conflict, Politics and Freedom*, pp. 90-93; Bassiouni et al, *Law and Justice*, pp. 48-51; as well as the Oregon State Bar Association reference listed below.

Though the case *In Re Gault* (1967) was concerned with other questions also, the issues of self-incrimination and right to counsel were points specified in the Supreme Court decision. Since the case involves a juvenile, students may find greater relevance than cases concerning adults; it can certainly be used for comparisons and reinforcement. The excerpts are all within junior high reading level: Bragdon and Pittenger, *The Spirit of Justice*, pp. 71-77, and 166-167; Bassiouni and Shiel, *Youth and the Law*, pp. 2-78; Cuban and Arronson, *You've Been Arrested*, pp. 45-47; Oregon State Bar Association, *Privilege Against Self-Incrimination*, (which has both the Miranda and the Gault cases, as well as some others). Also useful: segments of Oliver and Newman, *Rights of the Accused*; Case Study No. 12.

Film, *Young Person and the Court*, could be used for analysis with this material also. (AV listing.)

Walters, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law*. Unit IV, Chapter Four, Lesson 10 - "Process values -- how our law does its job, also counts." Ginn Press Company.

The Court Case (to be used with strategy 3a)

Scott vs. Dempsey, vol. 261 United States Reports, p. 86 (1923).

...The appellants are five negroes who were convicted of murder in the first degree and sentenced to death by the Court of the State of Arkansas. The ground of the

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petition for the writ is that the proceedings in the State Court,...were only and that the appellants were hurried to conviction under the pressure of a mob out any regard for their rights and without 'according to them due process of law

"...while we put (the case) in narrative form, we are not affirming the facts as stated but only what we must take them to be,... . On the night of September 1919, a number of colored people assembled in their church were attacked and f upon by a body of white men, and in the disturbance that followed a white man killed. The report of the killing caused great excitement and was followed by hunting down and shooting of many negroes and also by the killing on October 1 one Clinton Lee, a white man, for whose murder the petitioners were indicted. (the Negroes) say that their meeting was to employ counsel for protection against extortions practiced upon them by the landowners and that the landowners tried prevent their effort,.... .

"...Shortly after the arrest of the petitioners a mob marched to the jail for purpose of lynching them but were prevented by the presence of United States t and the promise of some of the Committee of Seven (a committee appointed by the governor) and other leading officials that if the mob would refrain, as the p puts it, they would execute those found guilty in the form of law. ... Accord to affidavits of two white men and the colored witnesses on whose testimony the petitioners were convicted,...the Committee made good their promise by calling colored witnesses and having them whipped and tortured until they would say wh was wanted,... . On November 3 the petitioners were brought into Court, info that a certain lawyer was appoin d their counsel and were placed on trial be a white jury... . The Court and neighborhood were thronged with an adverse c that threatened the most dangerous consequences to anyone interfering with the desired result. The counsel...had had no preliminary consultation with the a called no witnesses for the defence although they could have been produced, a not put the defendants on the stand. The trial lasted about three-quarters of hour and in less than five minutes the jury brought in a verdict of guilty of in the first degree.

"...appeals to the Governor, about a year later, earnestly urg(es) him not to fere with the execution of the petitioners. ... (One) stated that 'all our ci are of the opinion that the law should take its course.' Another from a (com

petition for the writ is that the proceedings in the State Court,...were only a form, and that the appellants were hurried to conviction under the pressure of a mob without any regard for their rights and without according to them due process of law.

...while we put (the case) in narrative form, we are not affirming the facts to be stated but only what we must take them to be,... . On the night of September 30, 1919, a number of colored people assembled in their church were attacked and fired upon by a body of white men, and in the disturbance that followed a white man was killed. The report of the killing caused great excitement and was followed by the lynchings and shooting of many negroes and also by the killing on October 1 of the Clinton Lee, a white man, for whose murder the petitioners were indicted. ...They (the Negroes) say that their meeting was to employ counsel for protection against tortions practiced upon them by the landowners and that the landowners tried to prevent their effort,.... .

...Shortly after the arrest of the petitioners a mob marched to the jail for the purpose of lynching them but were prevented by the presence of United States troops and the promise of some of the Committee of Seven (a committee appointed by the Governor) and other leading officials that if the mob would refrain, as the petitioners insist, they would execute those found guilty in the form of law. ... According to affidavits of two white men and the colored witnesses on whose testimony the petitioners were convicted,...the Committee made good their promise by calling colored witnesses and having them whipped and tortured until they would say what was wanted,... . On November 3 the petitioners were brought into Court, informed that a certain lawyer was appointed their counsel and were placed on trial before a white jury... . The Court and neighborhood were thronged with an adverse crowd that threatened the most dangerous consequences to anyone interfering with the desired result. The counsel...had had no preliminary consultation with the accused, called no witnesses for the defence although they could have been produced, and did not put the defendants on the stand. The trial lasted about three-quarters of an hour and in less than five minutes the jury brought in a verdict of guilty of murder in the first degree. ...

...appeals to the Governor, about a year later, earnestly urges him not to interfere with the execution of the petitioners. ... (One) stated that 'all our citizens are of the opinion that the law should take its course.' Another from a (community

Module 3

veterans group) protests against a contemplated commutation of the sentence of the petitioners and repeats that a 'solemn promise was given by the leading of the community that if the guilty parties were not lynched, and let the law take its course, that justice would be done and the majesty of the law upheld.' ...

"...it does not seem to us sufficient to allow a Judge of the United States to abdicate the duty of examining the facts for himself when if true as alleged they make the verdict absolutely void. ...it appears to us unavoidable that the District Judge should examine whether the facts alleged are true and whether they can be explained so far as the state proceedings undisturbed.

"Order reversed. The case to stand for hearing before the District Court."

Sample Hypothetical Cases (to be used with strategy 3b)

Case #1 -- Now It's My Turn

Mary and Liz are arch rivals at the junior high school. They compete over almost everything--boys, grades, sports, etc. Recently Mary was elected captain of the cheerleaders and student body secretary, defeating Liz. Liz's boyfriend has been waiting for Mary after class. Mary just made the honor roll and Liz did not.

Liz is the chief judge on the local youth court. Mary has been accused of shoplifting, but says there must be some mistake. Liz is the judge at Mary's trial. Mary is found guilty.

Case #2 -- Will He Call 'em Like He Sees 'em?

Returning to the championship junior high school softball game, suppose the social studies department chairman at each school was sure his school's team would win. Each was so sure they bet 1 year's salary on the outcome of the game. It so happens that the social studies chairman from your school is also the umpire for this game. Your school wins.

"To Kill A Mockingbird" (Harper Lee). 129 min. (In AV Section of Bibliography)

Gregory Peck, Brock Peters, Mary Baham -- Pulitzer Prize novel -- tale of South lawyer -- deals with problems of prejudicial justice and its effect on the community

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Module 3

Sample Hypothetical Cases (to be used with strategy 4a)

Case #1 -- The Case of the Expelled Student (From a Report of a Commissioner's H

"On March 17 (___), petitioner's son...was expelled from attendance at (___) H
Petitioner's father was informed of this action by letter dated March 18, (___)
which he was given the opportunity to appear before (the Board of Education) o
April 7, (___) with his son and counsel of his choosing. Petitioner seeks a
reinstating him immediately as a student at (___) High School.

"The record indicates that (the student) was expelled (by the principal) before
any opportunity for a hearing on the charges against him. While it is true th
appeared before (the Board of Education) at its April 7 regular meeting, he wa
that time given an opportunity to present witnesses on his behalf or to cross
witnesses against him. ... (At) that meeting the burden was placed on (the s
to prove his innocence of the charges against him, rather than upon (the Boar
his guilt.

"It further appears from the Board's papers that the sole reason (for expellin
student) was that (the Board) was informed that (the student) had committed c
acts. There is no indication that any evidence was presented substantiating
information.

"The Commissioner's ruling supported the student. He noted that the petitione
not provided with those 'proper safeguards of procedural fairness.' He order
the student be reinstated for the following school year."

Case #2 -- Dudley Gets Some New Duds

There have been a series of thefts from the boys' locker room at the junior
One day 10 lockers are broken into and several hundred dollars worth of cash
are taken. The following day Dudley Dapperman, who usually wears grubby jean
shows up in new bells, a double-breasted blazer, a new bodyshirt, and a new
almost never goes near the men's gym, but that one day one of his books is fo
men's locker room. Also, a janitor reports to the coach that he saw Dudley s
back of the gym about 4:00 p.m. the day of the theft.

11 Hypothetical Cases (to be used with strategy 4a)

#1 -- The Case of the Expelled Student (From a Report of a Commissioner's Hearing)

On March 17, (), petitioner's son...was expelled from attendance at () High School. Petitioner's father was informed of this action by letter dated March 18, (), in which he was given the opportunity to appear before (the Board of Education) on April 7, () with his son and counsel of his choosing. Petitioner seeks an order... reinstating him immediately as a student at () High School.

The record indicates that (the student) was expelled (by the principal) before receiving any opportunity for a hearing on the charges against him. While it is true that (he) appeared before (the Board of Education) at its April 7 regular meeting, he was not at that time given an opportunity to present witnesses on his behalf or to cross-examine witnesses against him. ... (At) that meeting the burden was placed on (the student) to prove his innocence of the charges against him, rather than upon (the Board) to prove his guilt.

It further appears from the Board's papers that the sole reason (for expelling the student) was that (the Board) was informed that (the student) had committed certain acts. There is no indication that any evidence was presented substantiating that information.

The Commissioner's ruling supported the student. He noted that 'the petitioner was not provided with those 'proper safeguards of procedural fairness.' He ordered that the student be reinstated for the following school year."

#2 -- Dudley Gets Some New Duds

There have been a series of thefts from the boys' locker room at the junior high school. One day 10 lockers are broken into, and several hundred dollars worth of cash and jewelry are taken. The following day Dudley Dapperman, who usually wears grubby jeans to school, shows up in new bells, a double-breasted blazer, a new bodyshirt, and a new watch. Dudley almost never goes near the men's gym, but that one day one of his books is found in the men's locker room. Also, a janitor reports to the coach that he saw Dudley sneak from the back of the gym about 4:00 p.m. the day of the theft.

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The coach brings all this information to the attention of the principal, and the principal decides to tell Dudley that he is expelled from school. When Dudley is told this, he objects, saying he was on the other side of town when the thefts occurred. The principal says, "Come now, Dudley, we have already discussed the evidence in your case and you are guilty."

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law*. University of Chicago Press, 1954. Chapter One, Lessons 3 and 4 - "Process values -- how our law does its job, also" Ginn and Company.

coach brings all this information to the attention of the principal, and the two decide to tell Dudley that he is expelled from school. When Dudley is told this, he objects, saying he was on the other side of town when the thefts occurred. The principal explains to him now, Dudley, we have already discussed the evidence in your case and you are expelled."

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Module 3

UNDERSTANDING II

SINCE MERELY HAVING RULES FOR SOUND PROCESSES IS NOT, BY ITSELF, A GUARANTEE THAT PROCESSES WILL BE FOLLOWED BY OFFICIALS, LEGAL SYSTEMS NEED EFFECTIVE WAYS OF ASSURING OFFICIALS WILL CONFORM TO SOUND PROCESSES.

A. *Explanation of Understanding II*

Rules that provide good processes are not self-enforcing. Well-designed processes enhance the likelihood of a desirable result and which are inherently fair ways of applying the law and which are not disregarded by officials. Merely having a rule saying that suspects have a right to silence and trial process does not assure that an occasional policeman will not coerce innocent citizen.

Thus, a legal system that strives for fairness will need to provide some ways of insuring officials to insure they actually follow prescribed processes. Understanding II focuses on the surveillance of officials and describes some of the reasons for these checks: (1) Checks discourage officials from disregarding prescribed processes, (2) checks can undo injustice if officials have disregarded prescribed processes, and (3) checks can provide for redress against officials who have caused injustice by ignoring prescribed processes. The checks to be considered here are: (1) providing for the constitutional status of officials, (2) providing the accused with the help of a lawyer, (3) providing for the disregard of certain processes, (4) allowing private lawsuits against officials who have disregarded prescribed processes, (5) prohibiting the use of evidence gathered while disregarding a prescribed process, (6) providing for review of official decisions by higher officials, and (7) establishing civilian boards for officials to hear complaints about how officials are doing their jobs.

In practice, some of these checks are not very effective. As a result, some injustice in the operation of our legal system results not from ill-designed processes, but from officials who do not follow good processes.

B. *Teaching Understanding II*

OBJECTIVES

- Given statements made by the accused concerning unlawful action of enforcement personnel in an incident of rule infraction or lawbreaking, the student can suggest ways in which the officer may be checked so that unfair actions will not result.

II

Merely having rules for sound processes is not, by itself, a guarantee that the legal system will be followed by officials. Legal systems need effective ways of assuring that officials will conform to sound processes.

of Understanding II

Legal systems that provide good processes are not self-enforcing. Well-designed processes—those which have a high likelihood of a desirable result and which are inherently fair ways of applying the law—may be followed by officials. Merely having a rule saying that suspects have a right to silence in the investigation process does not assure that an occasional policeman will not coerce information from a

A legal system that strives for fairness will need to provide some ways of checking on whether officials actually follow prescribed processes. Understanding II focuses on the need for checks on officials and describes some of the reasons for these checks: (1) Checks may operate to prevent officials from disregarding prescribed processes, (2) checks can undo injustices when officials disregard prescribed processes, and (3) checks can provide for redress against officials who have acted unjustly by ignoring prescribed processes. The checks to be considered here are: (1) giving certain officials a higher institutional status, (2) providing the accused with the help of a lawyer, (3) making a crime of disregarding certain processes, (4) allowing private lawsuits against officials who have disregarded prescribed processes, (5) prohibiting the use of evidence gathered while disregarding a prescribed process; (6) providing for review of official decisions by higher officials, and (7) establishing civilian boards or other mechanisms for complaints about how officials are doing their jobs.

Justice, some of these checks are not very effective. As a result, some injustice that occurs in our legal system results not from ill-designed processes, but from official disregard of the rules.

Understanding II

When a student makes statements made by the accused concerning unlawful action of enforcement personnel in an attempt to suggest a rule infraction or lawbreaking, the student can suggest ways in which the enforcement process may be checked so that unfair actions will not result.

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- . Given a list of types of checks upon the application of legal processes by officials, can cite examples of instances when each can be applied, and can categorize each in terms of acceptance by the public.

QUESTIONS TO REACH UNDERSTANDING

- . How does the Constitution serve the purpose of protecting basic fair processes?
- . Why do officials sometimes disregard basic processes?
- . What important roles must private citizens play in the process of checking on officials to basic fair processes in the application of criminal laws?

USE OF VISUALS

- . Students experienced in photography can provide pictures for class discussion. Staged photographs portraying detection by authorities of an alleged student infraction of rules. Actions of the authorities in the pictures may then be analyzed concerning motivations regarding basic processes and possible actions of students to prevent such disregard of processes.
- . Students may analyze the cartoon on page 120, both in terms of the layman's view and the policeman's view of the scene portrayed by it.

List of types of checks upon the application of legal processes by officials, the student examples of instances when each can be applied, and can categorize each checking procedure of acceptance by the public.

REACH UNDERSTANDING

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Officials sometimes disregard basic processes?

What important roles must private citizens play in the process of checking on official conformity with fair processes in the application of criminal laws?

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Students may analyze the cartoon on page 120, both in terms of the layman's view and the student's view of the scene portrayed by it.

Module 3

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESO

1. Constitutional status given to certain basic processes of criminal law enforcement.

- a) Assign pupils the task of looking up Amendments IV, V, VI, and VIII in the Bill of Rights of the United States Constitution. They should be able to identify specifically the basic legal processes guaranteed by these amendments to guarantee that ultimately only the guilty will be punished, and that criminal justice will prevail.
- b) Have pupils view a film or filmstrip that depicts how the rights of the accused are protected. In discussion after film, teacher should try to get pupils to point out what constitutional processes were afforded the accused.
- c) Because of the alarming increase in crime rate, the public has demanded passage of laws or measures to combat this "mushrooming of crime." Great controversy has been generated about the fairness, constitutionality, and "ability to convict" of these new measures. Discuss with class the following measures and ask them to evaluate them in light of the above comments:
 - "No knock" procedures
 - Preventive detention
 - Stop and frisk
 - Unlimited wiretaps
 - Mass arrests

Understanding I tries to teach the having good processes by which law processes that are themselves real ways of doing things as well as means to achieve the desired outcome. Because processes of our legal system in designed (overcrowded courts, pre-rectional institutions), some people legal process in general with con means "technicality," and technic with justice. Many of the deficiencies legal justice stem not from unfair defective processes—defective ways. What is needed is not contempt for constructive attitude towards the creating and maintaining sound pr

Understanding II focuses on the good legal processes available and are not always the same thing. In legal system, we need a system that processes, a system that provides conformity to good processes.

In the area of the criminal law, the system provides for protection to provide these processes with constitutional status. Amendments IV, V, the Bill of Rights set forth numerous governments must follow in applying. Because the language in which the present the "process rights" of the what technical, a paraphrased list

OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Constitutional status given to certain basic processes of criminal law enforcement.

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d wiretaps
ests

Understanding I tries to teach the importance of having good processes by which law operates, processes that are themselves reasonable and fair ways of doing things as well as means likely to achieve the desired outcome. Because some of the processes of our legal system in fact are ill-designed (overcrowded courts, poorly managed cor- rectional institutions), some people simply look on - legal process in general with contempt: process means "technicality," and technicalities interfere with justice. Many of the deficiencies in American legal justice stem not from unfair laws, but from defective processes—defective ways of applying laws. What is needed is not contempt for process, but a constructive attitude towards the importance of creating and maintaining sound processes.

Understanding II focuses on the point that having good legal processes available and following them are not always the same thing. Thus, to have a just legal system, we need a system that watches over its processes, a system that provides checks on official conformity to good processes.

In the area of the criminal law, the first way that the system provides for protection of processes is to provide these processes with special constitu- tional status. Amendments IV, V, VI, and VIII of the Bill of Rights set forth numerous processes that governments must follow in applying criminal laws. Because the language in which these amendments present the "process rights" of the accused is some- what technical, a paraphrased list of process rights

Module 3

DETAILED DESCRIPTION OF STRATEGIES

- d) Have pupils read a hypothetical case which deals with the issues involved in arrest, trial, appeal, and constitutional law. References on page 117 list several such cases. Questions in case study can promote much fruit for discussion on certain constitutional processes.

2. Why officials sometimes disregard prescribed processes for carrying out laws.

- a) Work with pupils to recall some cases or stories taken up already in this module to see which of the following reasons most accurately explains why officials disregarded a good process. Some possible answers might be:
- dishonesty of an official
 - officials being overzealous in trying to do their jobs
 - misjudgment by officials as to what processes are required by law
 - prejudice against any individual because of appearance or background

3. Checks on the processes that are followed by the police in enforcing the law.

- a) Give pupils a short summary of the Ex Parte Sullivan Court decision (p. 117). Ask them to analyze why the processes followed by law enforcement agents in dealing with alleged

DISCUSSION OF STRATEGIES AND RESOUR

is suggested. These provisions may be useful if students evaluate them in terms of (1) increasing the likelihood of deterring and (2) applying law in a way that is consistent with these criteria. These criteria might also be used to evaluate practices such as stop and frisk, preventive detention, and unlimited warrants on these topics can be found in *The Journal of Periodical Literature*.

The second part of Understanding I discusses why officials might disregard prescribed processes for carrying out law. The first thing that comes to mind is corruption or self-dealing. But more often, not, official nonadherence to good processes is from reasons like overzealous attempt to achieve desired outcome, misjudgment as to what processes are required, or inertia (failure to change to meet changing needs). The easiest way to demonstrate the diverse reasons officials may not adhere to good processes is to return to examples of bad processes discussed in I and ask, "What explains the nonadherence here?"

The remaining procedures and resources in Understanding II survey mechanisms by which prescribed processes for applying law can be checked.

ON OF STRATEGIES

Students read a hypothetical case with the issues involved, trial, appeal, and constitutional law. References on page 117 deal with several such cases. Questions for study can promote much fruitful discussion on certain constitutional processes.

Ask pupils to recall some cases or situations taken up already in this module which of the following reasons most clearly explains why officials disregard good process. Some possible reasons might be:

1. Integrity of an official

2. Officials being overzealous in trying to do their jobs

3. Disregard by officials as to what the law requires by law

4. Lack of evidence against any individual because of appearance or background

5. Ask students a short summary of the Ex Parte Court decision (p. 117). Ask them to explain why the processes followed by law enforcement agents in dealing with alleged

DISCUSSION OF STRATEGIES AND RESOURCES

is suggested. These provisions may be more meaningful if students evaluate them in terms of both (1) increasing the likelihood of desired results, and (2) applying law in a way that is itself fair. These criteria might also be used to evaluate practices such as stop and frisk, "no-knock," preventive detention, and unlimited wiretaps. Material on these topics can be found in *The Readers' Guide to Periodical Literature*.

2. Why officials sometimes disregard prescribed processes for carrying out laws.

The second part of Understanding II considers why officials might disregard prescribed processes of law. The first thing that comes to mind is official corruption or self-dealing. But more often than not, official nonadherence to good processes results from reasons like overzealous attempts to reach a desired outcome, misjudgment as to what the process requires, or inertia (failure to change a process to meet changing needs). The easiest way to demonstrate the diverse reasons explaining why officials may not adhere to good processes may be to return to examples of bad processes in Understanding I and ask, "What explains the disregard of good processes here?"

3. Checks on the processes that are followed by the police in enforcing the law.

The remaining procedures and resources of Understanding II survey mechanisms by which adherence to prescribed processes for applying criminal law can be checked.

Module 3

DETAILED DESCRIPTION OF STRATEGIES

violators of the law is important. How important, in their estimation, is the presence of a lawyer to one who has been charged with a crime? It would be interesting to note if some members of the class think they could do better defending themselves without benefit of counsel.

- b) Have pupils examine the New York Penal Law and see if they can learn the State law that applies if an official disregards a certain set of official processes.
 - Relate to pupils the actions of the policeman in *People ex re Reardon* (see page 117). Then let them make a judgment on the policeman's action. Does their judgment coincide with that of the courts.
- c) Ask pupils if they think a policeman can be sued if he disregards the rights of a citizen who has been denied his rights in the course of some legal proceedings.
- d) Inform pupils of the main facts in the *Monroe vs. Pape* case explained on page 118. In their opinion, should a suit be allowed by the courts against the the policemen?
- e) Make the statement: "Allowing lawsuits against officials who disregard protected processes might not be an effective check on police disregard of protected processes." Divide the class in half. Have one group

DISCUSSION OF STRATEGIES AND RESOU

The first check on police adherence processes is provision for a suspect lawyer with him once he is picked alone is not likely to know what police must follow to be fair to him. Police are more likely to respect of a suspect if his lawyer is there more likely to be listened to by the public than would the suspect alone. As suggested, the judge explains how "defendant needs counsel most is immediate arrest and until trial."

The second check on police procedural liability for the police themselves crime to disregard process rights. A criminal statute setting out such and a case under this statute is presentation.

The third possible check on police civil liability. The suspect who by officials' disregard for the process sue the officials and claim a right money. The Federal civil rights statute for this is cited as is the leading Supreme Court allowed a civil suit against officials under the Federal statute.

The fourth check on police is probably effective and controversial. It is a rule. This simply means that any gathered while disregarding a process suspect (e.g., the fruits of an illegal forced confession) must be excluded.

DISCUSSION OF STRATEGIES

Teachers of the law is important. Important, in their estimation, is the presence of a lawyer to one who has been charged with a crime? It would be interesting to note if some members of the class think they could do better defending themselves without benefit of counsel.

Pupils examine the New York Penal Code to see if they can learn the State law which applies if an official disregards a prescribed set of official processes.

Present to pupils the actions of the policeman in *People ex re Reardon* (page 117). Then let them make their judgment on the policeman's action. Do their judgment coincide with that of the courts.

Discuss with pupils if they think a policeman can be held liable if he disregards the rights of a suspect who has been denied his rights in the course of some legal proceedings.

Present to pupils of the main facts in the *People vs. Pape* case explained on page 118. In their opinion, should a lawsuit be allowed by the courts against a policeman?

Present the statement: "Allowing lawsuits against officials who disregard protected processes might not be an effective check on the disregard of protected processes." Discuss the class in half. Have one group

DISCUSSION OF STRATEGIES AND RESOURCES

The first check on police adherence to prescribed processes is provision for a suspect to have a lawyer with him once he is picked up. The suspect alone is not likely to know what processes the police must follow to be fair to him. Also, the police are more likely to respect the process rights of a suspect if his lawyer is there. The lawyer is more likely to be listened to by the police or the public than would the suspect alone. In the case suggested, the judge explains how "the time a defendant needs counsel most is immediately after his arrest and until trial."

The second check on police procedure is criminal liability for the police themselves--making it a crime to disregard process rights of the accused. A criminal statute setting out such a crime is cited, and a case under this statute is suggested for class presentation.

The third possible check on police procedure is civil liability. The suspect who has been harmed by officials' disregard for the process rights may sue the officials and claim a right to recover money. The Federal civil rights statute providing for this is cited as is the leading case where the Supreme Court allowed a civil suit against State officials under the Federal statute.

The fourth check on police is probably the most effective and controversial. It is the *exclusionary rule*. This simply means that any information police gather while disregarding a process right of a suspect (e.g., the fruits of an illegal search or forced confession) must be excluded from evidence



Module 3

DETAILED DESCRIPTION OF STRATEGIES

give arguments for, the other against, this. Place pupils' opinions on board. Bring out this idea in summing up their opinions:

--The police generally serve as protectors of citizens. Therefore, in a lawsuit against a policeman, the jury may be unlikely to make a policeman pay a person he suspected of a crime, even though the policeman abused that person's rights. Often the people who suffer from disregard of processes are the poor, disadvantaged, or minority members of society-- people who do not normally get much public sympathy.

- f) Pose this question to the pupils: Does the law seem to protect the guilty more than the innocent? Some lively discussion, should ensue. At end of pupil discussion, tell pupils about Mapp vs. Ohio Supreme Court Case and Decision and the exclusionary rule. Ultimately, does this rule also protect the innocent?
- g) Explain to pupils the purpose of civilian review boards. Then have a question-answer session with pupils to express their opinions as to why these boards might be unpopular with police personnel?
- h) Have one of the pupils in class do a report on the role of the ombudsman and his relationship to the general public: To whom is he a help or a hindrance?

DISCUSSION OF STRATEGIES AND RESOURCES

in any criminal trial. This check because police do not wish to spoil rendering key evidence useless in court is controversial because it sometimes setting free a criminal who the police guilty. Some people think this exclusionary rule is a technicality over the social interest. Excerpts from the famous case of Mapp vs. Ohio explain the judicial justification of the exclusionary rule. In the words of the

"(A)ll evidence obtained...in violation of the Constitution (improper seizure in this case) (cannot be used to convict a suspect).

"...To hold otherwise is to grant the police but in reality to withhold its fruits and enjoyment... The purpose of the exclusionary rule is to deter--to respect for the constitutional guarantee of the only effective available remedy for removing the incentive to disregard

"...(This) gives to the individual more than that which the Constitution guarantees him, to the police officer no more than that to which honest law enforcement is entitled, and, to the courts, more integrity so necessary in the administration of justice."

Civilian review boards and ombudsmen are relatively new checks on police power initiated in some places.

DESCRIPTION OF STRATEGIES.

arguments for, the other against, this. Pupils' opinions on board. Bring this idea in summing up their opinions:

Police generally serve as protectors of citizens. Therefore, in a lawsuit against a policeman, the jury may be unlikely to make a policeman pay a person suspected of a crime, even though the policeman abused that person's rights. Often the people who suffer from disregard of processes are the poor, disadvantaged, or minority members of society—people who do not normally get much public sympathy.

Ask this question to the pupils: Does law seem to protect the guilty more than the innocent? Some lively discussion, and debate ensue. At end of pupil discussion, ask pupils about Mapp vs. Ohio Supreme Court Case and Decision and the exclusionary rule. Ultimately, does this rule also protect the innocent?

Ask pupils the purpose of civilian review boards. Then have a question-answer session with pupils to express their opinions on why these boards might be unpopular with police personnel?

Have one of the pupils in class do a role-play on the role of the ombudsman and his relationship to the general public: To what is he a help or a hindrance?

DISCUSSION OF STRATEGIES AND RESOURCES

in any criminal trial. This check is effective because police do not wish to spoil their cases by rendering key evidence useless in court. This check is controversial because it sometimes results in setting free a criminal who the police know to be guilty. Some people think this exalts a procedural technicality over the social interest in security. Excerpts from the famous case of Mapp vs. Ohio explain the judicial justification for the exclusionary rule. In the words of the Supreme Court:

"(A)ll evidence obtained...in violation of the Constitution (improper search and seizure in this case) (cannot be used to convict a suspect).

"...To hold otherwise is to grant the right but in reality to withhold its privilege and enjoyment... The purpose of the exclusionary rule is to deter—to compel respect for the constitutional guaranty in the only effective available way—by removing the incentive to disregard it... .

"...(This) gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice."

Civilian review boards and an official ombudsman are relatively new checks on police that have been initiated in some places.

Module 3

DETAILED DESCRIPTION OF STRATEGIES

- a) After preliminary research and preparation, have pupils debate this topic: A lawyer should be able to defend a client even though he may sincerely believe his client is guilty. It might be interesting, after the debate, to consider the question of what the trial process would be like if there was no adversary system of justice; i.e., a lawyer for the defense and one for the plaintiff—each pleading their client's position.
- b) Discuss with class these questions: Does an accused have the right to skilled counsel to represent him regardless of what his political persuasion might be? Should the news media associate have the right to associate the supposed guilt of the client with the lawyer himself? The article, "The Right to Counsel and the Unpopular Cause," on page 118, does an excellent job in pointing out an individual's right to counsel.
- c) As a summary of a study of right to counsel, have pupils view a filmstrip on the right

DISCUSSION OF STRATEGIES AND RESOURCES

Checks on the police like those suggested are not always effective. As each check is discussed, students should also consider some of the conditions of these checks. Notwithstanding the conditions of these checks, such protection is necessary if good processes are to be meaningful.

4. Checks on the trial processes in applying the law.

The final part of Understanding II covers the process of trial. These are so familiar: the right to a lawyer's help, the right to appeal to a higher court to correct errors in the processes of trial.

The matter of a right to counsel at a trial raises a related issue that may be of interest: should a lawyer defend a case when he believes his client is guilty as charged? The answer to this question goes to the whole nature of the adversary system. Most lawyers have no trouble with the case where they personally think a client is guilty. Yet many people question this practice in the adversary system where the lawyer is not supposed to give his own judgment. It is an "adversary system" that assumes that the best way to get all the facts on the table—so a just result can be reached—is for each side to place his view of the case before a court in the strongest possible manner. The job of a lawyer—to present an honest, unbiased, view of the case as best he can (and a lawyer on the other side of the case is doing the same thing. The judge and jury sit impartially and the aspects of the case unfold before them.

FUNCTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

Checks on the police like those suggested above are not always effective. As each check is examined, students should also consider some of the limitations of these checks. Notwithstanding the limitations of these checks, such protections are a necessity if good processes are to be meaningful.

4. Checks on the trial processes in applying the law.

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The final part of Understanding II concerns checks on the process of trial. These are somewhat familiar: the right to a lawyer's help and the right to appeal to a higher court to challenge the processes of trial.

The matter of a right to counsel at a criminal trial raises a related issue that may be of interest: should a lawyer defend a case when he believes his client is guilty as charged? The answer to this question goes to the whole nature of our judicial system. Most lawyers have no trouble in taking a case where they personally think a client is guilty. Yet many people question this practice. Ours is a system where the lawyer is not supposed to pass judgment. It is an "adversary system." This system assumes that the best way to get all aspects of a case on the table—so a just result can be reached—is for each side to place his view of the case before a court in the strongest possible way. This is the job of a lawyer—to present an honest, but one-sided, view of the case as best he can. Of course, a lawyer on the other side of the case (the adversary) is doing the same thing. The theory is that the judge and jury sit impartially as all aspects of the case unfold before them. Then they

Module 3

DETAILED DESCRIPTION OF STRATEGIES

to counsel for indigent defendants. The classic case is Gideon vs. Wainwright. The following is one possible title. Many others are available.

—"*Gideon's Trumpet*," NBC-TV. 54 min. Traces the case of Clarence Gideon in which the Supreme Court declared that poor defendants must be provided with legal counsel.

DISCUSSION OF STRATEGIES AND RESOUR

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This is not the only way the judiciary be carried on. In some systems, the inquiry rather than leaving the inquiry lawyers. The principal argument in adversary system is that the adverse leave relatively few stones unturned criticism of this approach is that come a contest of lawyer's skills means to reaching a just result.

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Module 3

RESOURCES *

United States Constitution, Amendments IV, V, VI, VIII

Process protections of the Bill of Rights:

- Right to be free from arrest unless there is "*probable cause*" to believe the person is guilty. (4th)
- Right to be secure from "*unreasonable search and seizure*." (4th)
- Protection from warrants for search or seizure unless the *warrant* from a judge particularly the place, person, or thing to be searched or seized. (4th)
- An accused will be protected from prosecution of serious Federal offenses unless a *grand jury* of fellow citizens thinks the prosecutor's evidence is strong enough to be reason to start a prosecution. (5th)
- An accused is protected from being *prosecuted twice* for the same crime. (5th)
- An accused has a right to *remain silent* at all times (before and during the trial) rather than say anything that might be used against him. (5th)
- An accused has a right to be *tried within a reasonable time* after his arrest. (6th)
- An accused has a right to have his *trial open to the public*. (6th)
- An accused has a right to have a *jury* determine his guilt or innocence. (6th)
- An accused has a right to *be told of what crime* he is being accused. (6th)
- An accused has a right to *cross-examine* the witnesses against him. (6th)
- An accused has a right to *bring witnesses in his favor* to court. (6th)
- An accused has a right to *assistance from a lawyer*. (6th)
- An accused is protected from *excessive bail or fines*. (8th)
- A convicted accused shall be protected from *cruel and unusual punishment*.

Films:

"Bill of Rights in Action, Story of a Trial," 22 min. Color. Bernard Willets

Film follows two people arrested for a misdemeanor offense; shows how the process in arrest, arraignment, and trial protect the rights of an accused person. The participants are real -- actual policemen, lawyers and judge appear as participants using their own words -- everyday language of law and law enforcement.

*Direct quotations from statutes are indicated by the use of quotation marks. Other summaries or paraphrases of the statute listed.

RESOURCES*

United States Constitution, Amendments IV, V, VI, VIII

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Module 3

AEP (American Educational Publications). Rights of the Accused.

Traces a hypothetical case from incident to verdict.

Bassiouni, et al. *Crimes and justice.* pp. 45-48.

Goodykoontz, William. *Law, you, the police and justice.* pp. 61-75.

Gibson, W. M., *Lessons in conflict.*

Ex Parte Sullivan, vol. 107 Federal Supplement, p. 514 (1952).

The murder conviction of two boys was reversed, the court explaining that because the boys were denied the help of counsel and therefore had no intelligent notion of what was going on as the police questioned them and built an airtight case against them, there had been a denial of fundamental justice.

Sample Statute:

New York Penal Law, Section 195 - "Official Misconduct"

...states that official misconduct is a Class A misdemeanor

...that a public servant is guilty of official misconduct if, when he intends to obtain something worthwhile or deprive another person of a benefit, he commits an unauthorized act in connection with his job or does not perform duties which are imposed by law in connection with his job.

Sample Cases:

People ex el Reardon vs. Flynn, vol. 111 New York Supplement. p. 1065 (1908).

In this particular case, a police officer entered a saloon and without any reason whatsoever pointed his pistol at the plaintiff and called her "bad names." The woman became so frightened she became ill. No arrests were made. However a judge decided the policeman was guilty of oppression.

Module 3

Sample Statute:

United States Code, Title 42, "Public Health and Welfare" -- "Civil Rights" Section
"Civil Action for Deprivation of Rights."

"Every person who, under cover of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected any U.S. citizen or other person within the jurisdiction of U.S. to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to an action at law, a suit or other proper proceeding for redress."

Sample Cases:

Monroe vs. Pape, vol. 365 U.S. Reports, p. 167 (1961).

Allowing a suit against 13 Chicago policemen who entered a house at 5:30 a.m. without a warrant, stood a husband and wife and six children naked before them, called their names, beat them, took the man in for 12 hours of questioning without letting anyone in, and released the man after finding there wasn't any evidence against him. (Case also discussed in The Law and American History, p. 147-148.)

Mapp vs. Ohio, vol 367 U.S. Reports, p. 643 (1961).

The court reversed a conviction of possession of lewd literature where all the evidence for conviction came from a search that disregarded processes limiting search. The court noted that if "excluding from evidence" all information gotten when searches are disregarded is the only way to discourage disregard of process, the constitution requires such "exclusion." (This case is also discussed in Liberty Under Law, p. 23-26.)

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law*. Chapter 5 - "Legal processes to discourage adoption of unwise laws and to control applications of laws." Ginn and Company. 1973.

Symposium, "The Right to Counsel and the Unpopular Cause," in vol. 20 University of Pittsburgh Law Review, p. 725 and following (1959). Reprinted by permission of the University of Pittsburgh Press.

"...the right to counsel means the right to adequate representation. ...that an accused, regardless of what he is charged with and regardless of his

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Module 3

political persuasion or racial or religious background, is entitled to get a lawyer, even if not the best, to represent him. Unfortunately, this is too often the fact. There are some people and many newspaper editors who are ready and willing to associate the supposed guilt of the client with the lawyer himself. And a person accused of a crime which happens to be unpopular at a given time is liable to find that he cannot get a "respectable" lawyer to take his case because the lawyer is afraid of being associated with the public reputation of his client.

"The problem of representing an unpopular cause is certainly not new to our country. As far back as 1770 honorable members of the Bar of this country felt the impact of public opinion when defending an unpopular cause. ... Josiah Quincy, John Adams, were asked to defend the British soldiers who had participated in the Boston massacre. They accepted. The result of this case was acquittal for the defendants, but the public opinion against Quincy and Adams ran so high that, in writing some 50 years later, still felt its effects... . It is perhaps not surprising that the two lawyers who represented John Peter Zenger in New York were disbarred in connection with motions they made in court as a prelude to the now famous trial over the issue of freedom of the press. ... Josiah Quincy, ... said: 'I never harbored the expectation nor any great desire that all men should speak well of me. To inquire my duty, and to do it, is my aim.'

"...The continued inactivity of leading lawyers in these areas of unpopularity is quickly resulting in their decreasing competence to provide adequate representation when they do take an unpopular case. In short, more and more reputable lawyers in the big cities are saying, 'I'm not really competent to help the client even if I took the case, I'm not a trial lawyer,' or 'I'm not a criminal lawyer.' ...

"What can be done to stop this unfortunate trend away from adequate representation? The answer is that the Bar, as an organized body, must take a forthright and independent stand in favor of the right to counsel. It must give its members the support, influence and prestige and help them thereby to overcome countervailing social forces.

"Some years ago, a lawyer took a batch of letters to ... Mr. Justice Brandeis. They were from friends of the lawyer begging him to refuse a retainer from an extremely unpopular client. After reading a few of the letters, Mr. Justice Brandeis said:

political persuasion or racial or religious background, is entitled to get a skilled lawyer, even if not the best, to represent him. Unfortunately, this is too often not the fact. There are some people and many newspaper editors who are ready and willing to associate the supposed guilt of the client with the lawyer himself. And a man accused of a crime which happens to be unpopular at a given time is liable to find that he cannot get a "respectable" lawyer to take his case because the lawyer is afraid of being associated with the public reputation of his client.

The problem of representing an unpopular cause is certainly not new to our culture. As far back as 1770 honorable members of the Bar of this country felt the imposing danger of public opinion when defending an unpopular cause. ...Josiah Quincy, Jr. and John Adams, were asked to defend the British soldiers who had participated in the Boston massacre. They accepted. The result of this case was acquittal for the defendants, but the public opinion against Quincy and Adams ran so high that Adams, writing some 50 years later, still felt its effects... . . .It is perhaps not surprising that the two lawyers who represented John Peter Zenger in New York City were disbarred in connection with motions they made in court as a prelude to Zenger's now famous trial over the issue of freedom of the press. ...Josiah Quincy, Jr. ...said: 'I never harbored the expectation nor any great desire that all men should speak well of me. To inquire my duty, and to do it, is my aim.'

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Module 3

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The Lincoln Filene Center for Citizenship and Public Affairs. *The courts make*
The story of Clarence Earl Gideon. Tufts University. Medford, Massachusetts

_____. *The police: Fact and fiction.* Tufts University. Medford, Massachusetts

Also available from the Center:

- a film, *The police: Fact and fiction.* 28 min. b/w.
- Young person and the court.* 28 min. b/w.

A cartoon from Punch Magazine, September 16, 1970 has been omitted here because of copyright restrictions.

See text, page 109.

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Module 3

UNDERSTANDING III

MAINTAINING SOUND LEGAL PROCESSES MAY NOT BE POSSIBLE WITHOUT INCURRING SOME SOCIAL COSTS

A. *Explanation of Understanding III*

One important value our legal system pursues is good processes. As is often the case, it comes into conflict with other values that the law pursues, values such as protecting society from criminals, facilitating the efficient performance of the jobs of law enforcement officers, and government economically. In some circumstances, good processes are achieved only at some expense of these values. Thus, it can be said that securing good processes has some social cost. This is obvious if we consider that one very effective way to protect adherence to good processes is to forbid use in court of evidence that is collected in disregard of the relevant processes. If other evidence is unavailable, this may mean that a guilty man will go free. If police in this way to respect rights to silence, rights to privacy, rights to counsel, etc., efficient law enforcement is made harder. Not only do these processes serve to protect the innocent, they may also protect the guilty. Finally, the formalities of pursuing good processes mean a cost in a literal sense. A great deal of money is required to conduct a fair trial; a great deal more is required in many places to make processes such as speedy trial or correctional institutions work than mere ideals.

B. *Teaching Understanding III*

OBJECTIVES

- For each personal protection of the individual, the student can list a social cost and a dollar cost that society pays for the application of legal processes.
- For each failure to act or distortion of the application of legal processes, the student can list a social cost and a dollar cost that society must pay.
- Given statistical evidence of the cost of law enforcement and of the court system, the student can cite evidence of the worth of these costs to the individual.

QUESTIONS TO REACH UNDERSTANDING

- How does maintaining sound processes of criminal law involve some cost to society?
- Are the costs to society of securing fair processes of criminal law worth it?

II
SOUND LEGAL PROCESSES MAY NOT BE POSSIBLE WITHOUT INCURRING SOME SOCIAL COSTS.

Understanding III

Important value our legal system pursues is good processes. As is often the case, this value must be balanced with other values that the law pursues, values such as protecting society from convicted criminals, maintaining the efficient performance of the jobs of law enforcement officers, and running the courts efficiently. In some circumstances, good processes are achieved only at some expense in terms of other values. Thus, it can be said that securing good processes has some social "cost." This is most clearly seen when one considers that one very effective way to protect adherence to good processes by police is to require the collection of evidence that is collected in disregard of the relevant processes for gathering evidence. If the relevant evidence is unavailable, this may mean that a guilty man will go free. By compelling police to respect rights to silence, rights to privacy, rights to counsel, etc., their job of law enforcement is made harder. Not only do these processes serve to protect the innocent, but they also protect the guilty. Finally, the formalities of pursuing good processes mean costs in a great deal of money is required to conduct a fair trial; a great deal more will be required to make processes such as speedy trial or correctional institutions realities, rather

Understanding III

For the personal protection of the individual, the student can list a social and a dollar cost that society pays for the application of legal processes.

In the event of a failure to act or distortion of the application of legal processes, the student can list a social and a dollar cost that society must pay.

Using statistical evidence of the cost of law enforcement and of the court systems, the student can list the evidence of the worth of these costs to the individual.

REACH UNDERSTANDING

Do you think maintaining sound processes of criminal law involve some cost to society?

Are the costs to society of securing fair processes of criminal law worth it?

Module 3

USE OF VISUALS

- . Use a film such as those in E.B.F.'s series on the Bill of Rights; with students to analyze it in terms of social costs of the application of legal processes; use evidence drawn from the film or films, debate the question: Resolved, society can bear the cost of applying basic legal processes to protect the accused.
- . Convert statistical evidence of the cost of applying legal processes to protect the individual to pictorial charts or collages intended to persuade the average citizen that the cost is a justifiable cost of government.
- . Use the program from the New York State Historical Association, *Painting as Social Justice: Justices' Court in Back Woods*. What evidence is there of the application of legal processes to protect the individual? Are the costs of the procedure the same as they are today? Why do you think that there might be a difference in the degree of justice for the accused? What kind of person would be most likely to get justice in this court?

film such as those in E.B.F.'s series on the Bill of Rights, with students prompted to analyze it in terms of social costs of the application of legal processes; using the material drawn from the film or films, debate the question: Resolved, society cannot afford the cost of applying basic legal processes to protect the accused.

Use statistical evidence of the cost of applying legal processes to protect the individual to create a mural or collage intended to persuade the average citizen that this is a just cost of government.

Use a program from the New York State Historical Association, *Painting as Social History: A Court in Back Woods*. What evidence is there of the application of legal processes to protect the individual? Are the costs of the procedure the same as they would be today? Why do you think that there might be a difference in the degree of justice for the individual? What kind of person would be most likely to get justice in this court?

Module 3

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. The scope of the problem of crime control in our society.

- a) Place on opaque projector some of the graphs and charts dealing with crime in America. Have pupils analyze some of the following situations: Rate of Increase in Crimes, Areas of Increase, Monies Spent on Law Enforcement. See if pupils can analyze on Charts #1, #2, and #3 where their city would fit as far as violent property crimes are covered. See pp. 127, 128, and 129.
- b) Assign some of the pupils in class the task of looking up in their local newspaper articles on the type and rate of crimes occurring in their community. Some of the pupils could then interview the law enforcement agents and report back to the class on what possible threats this crime trend might pose to the community.

Having looked at the value of good Understanding I and the need to police of officials to such processes in Understanding III surveys the cost of good processes in the area of crime.

The first procedure suggests looking at the growing problem that crime poses to society. Thus, in the area of crime in general, like the accused individual at stake. Without effective criminal courage people from interfering with and property of others, the most basic freedom and security that goes along with threatened.

However, securing good law process possible at the expense of protecting "bad actors." To state an extreme example life would be more orderly and there greater security from criminals if not have to respect any process rights citizen. The remaining procedures in Understanding III look at particular costs of good processes in applying the criminal.

2. Cost #1: Protecting processes by, in effect, letting the guilty go unpunished

- a) At this point, the teacher should recall to the minds of the pupils that the most widely used and apparently most effective check on abuse of processes is nullification of the conviction of a guilty man by not allowing

The first cost of securing good law process is actually letting some criminals threaten society further. As noted in Understanding I, prohibiting the use of evidence in conviction gathered while disregarding present

ON OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. The scope of the problem of crime control in our society.

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Having looked at the value of good processes in Understanding I and the need to police the conformity of officials to such processes in Understanding II, Understanding III surveys the cost of perserving good processes in the area of criminal law.

The first procedure suggests looking at the size of the growing problem that crime presents to our society. Thus, in the area of criminal law, society in general, like the accused individual, has much at stake. Without effective criminal laws to discourage people from interfering with the persons and property of others, the most basic kind of freedom and security that goes along with order is threatened.

However, securing good law processes may only be possible at the expense of protecting society from "bad actors." To state an extreme example, surely life would be more orderly and there would be greater security from criminals if the police did not have to respect any process rights of the accused citizen. The remaining procedures of Understanding III look at particular costs of trying to secure good processes in applying the criminal law.

Cost #1: Protecting processes by, in effect, letting the guilty go unpunished.

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The first cost of securing good criminal processes is actually letting some criminals go free to threaten society further. As noted earlier, prohibiting the use of evidence in court that has been gathered while disregarding prescribed processes is

Module 3

DETAILED DESCRIPTION OF STRATEGIES

officials to use evidence against him at trial that they got in disregard of constitutionally required processes. Such guilty men will go free unless there is other, untainted, evidence sufficient to convict the accused. Pupils should be able to mention some of the cases that have been dismissed because the processes involving the rights of the defendant were abused or ignored. See *Judgment: Case Study No 3, Case Study No. 4, Case Study No. 6, Case Study No. 9, Case Study No. 12.*

- b) Have pupils debate the question: Is it worth the cost of protecting processes if this means possibly turning some guilty rapists, murderers, or arsonists loose to harm people and property again? By this time the pupils should have a very good background in this area so that limited research will be required on their part.

3. Cost #2: Increasing the difficulty of effective law enforcement

- a) Pose this question to pupils: Can the interest of protecting good processes guaranteed to individuals according to the fourth, fifth, sixth and eighth amendments be in conflict with the interest of effective law enforcement? Have pupils consider the above question in line with the hypothetical cases on page 130.

DISCUSSION OF STRATEGIES AND RES

the most widely used and effective rights. This can mean that any lead to conviction does not reach it does reach the jury, use of grounds for appeal and nullification based on this evidence. Where reversed on these grounds, the accused usually go free. The higher courts use of particular evidence at a trial. If, at a new trial, the prosecution using other evidence, there is a conviction. The new trial is not double jeopardy because the new trial is a continuation of the first prosecution for the same offense.

Perhaps securing sound processes of the criminal law is most costly to the police. Law enforcement is only do certain processes make in some cases these processes make part of the police practically problem is this: in order to proceed in a fair manner, the police being forced to "coddle" some guilty

ION OF STRATEGIES

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DISCUSSION OF STRATEGIES AND RESOURCES

the most widely used and effective protection of rights. This can mean that any evidence that might lead to conviction does not reach the jury. Or if it does reach the jury, use of such evidence may be grounds for appeal and nullification of a conviction based on this evidence. Where a conviction is reversed on these grounds, the accused does not necessarily go free. The higher court merely says that use of particular evidence at a trial was wrong. If, at a new trial, the prosecutor can get a conviction using other evidence, there may still be a conviction. The new trial is not considered to be double jeopardy because the new trial is merely a continuation of the first prosecution, not a second prosecution for the same offense.

Perhaps securing sound processes for application of the criminal law is most costly in its impact on the police. Law enforcement is a tough job. Not only do certain processes make this job tougher, but in some cases these processes make efficiency on the part of the police practically impossible. The problem is this: in order to protect the innocent and proceed in a fair manner, the police may end up being forced to "coddle" some guilty people,

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DETAILED DESCRIPTION OF STRATEGIES

- b) Have pupils view a film dealing with the conflict between law enforcement and the preservation of civil rights. The following are two possible titles. Others might be available through your local audiovisual center:
- "In the Name of the Law," color.
14 min.
 - Considers the question of what is causing the breakdown of law and order in our cities. Shows how the police are caught in the crossfire between black rage and white fear.
 - "Super Cop."
 - Depicts police community relations in Philadelphia community.
- (Both films can be ordered from NBC Educational Media)
- c) Invite a member of the local police force on the district attorney's office to speak to the class on his views on the difficulty of the law enforcement job in light of recent court rulings regarding protecting legal processes of individuals. A question-answer session by pupils could follow.
- d) Have pupils debate the following question after preliminary research. At this stage of development of certain concepts in the module, pupils should have a grasp of background materials to aid in preparing their debate: Is it worth the cost of protecting processes if it results in making the police's task of enforcing law more difficult?

DISCUSSION OF STRATEGIES AND RESOURCES

including some hardcore, professional. The stories suggested in the procedure show how an interest in efficient processes can clash head-on with an interest in good processes. The answer to such questions is often easy, and the courts continue to balance these interests.

OF STRATEGIES

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DISCUSSION OF STRATEGIES AND RESOURCES

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often easy, and the courts continually struggle to
balance these interests.

Module 3

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOU

- e) Open up for class discussion and comments on the following: Bumper stickers read: "Support your local police and the next time you're in trouble call a hippie." Do they think there are problems that exist in our society which result in such slogans? Pupils' concepts of what the police and what a hippie mean to them might be brought out in discussion.

4. Cost #3: Good processes cost tax dollars.

- a) Teachers should be able to secure a copy of the budget of their village, city, or county. Make use of the opaque projector to show pupils the budget. See if they can pick out how much money is being spent by the local government on the administration of justice in the local courts. In considering the above question, have pupils suggest the additional expenses that might be necessary to improve the processes necessary in the application of criminal law such as speedy trials, better paid police, and a better prison system. You might use the graphs and charts from various government agencies. See pp. 127-129, to help pupils draw some conclusions about this topic.
- b) Pupils might arrive at a decision concerning where their priorities lie by debating the following topic after ample preparation: Is it worth it to spend millions ensuring legal processes when the money

The final cost of securing sound p in a literal sense. Courts and co cost money as police work and hand ed criminals do. Much more could ing the processes by which crimina For example, millions of tax dolla pay police in accordance with the of the job they perform, to increa courts and judges, and to improve so that rehabilitation might be po

In recent years, plea bargaining ha save the time of overworked distri the expense of trials. Plea barga ment between the district attorney who pleads guilty to a less serious possession of drugs rather than se than 90 percent of the serious cas settled by plea bargaining. Altho are saved by this process, injusti from plea bargaining; i.e., a pers guilty, but he might not want to r guilty of a more serious crime. 0

DISCUSSION OF STRATEGIES

for class discussion and comments following: Bumper stickers read: "Call your local police and the next time you're in trouble call a hippie." Do you think there are problems that exist in our society which result in social problems? Pupils' concepts of what a hippie and what a police officer mean to them are brought out in discussion.

4. Cost #3: Good processes cost tax dollars.

Pupils should be able to secure a copy of the budget of their village, city, or county. Make use of the opaque projector to show pupils the budget. See if they can figure out how much money is being spent by the local government on the administration of justice in the local courts. In discussing the above question, have pupils list the additional expenses that might be necessary to improve the processes involved in the application of criminal law, such as speedy trials, better paid judges, and a better prison system. You may use the graphs and charts from various government agencies. See pp. 127-129, where pupils draw some conclusions about the cost of justice.

Pupils might arrive at a decision concerning their priorities by debating the following topic after ample preparation: Is it worth it to spend millions of dollars on legal processes when the money

DISCUSSION OF STRATEGIES AND RESOURCES

The final cost of securing sound processes is cost in a literal sense. Courts and court processes cost money as police work and handling convicted criminals do. Much more could be spent improving the processes by which criminal law operates. For example, millions of tax dollars are needed to pay police in accordance with the social importance of the job they perform, to increase the numbers of courts and judges, and to improve penal institutions so that rehabilitation might be possible.

In recent years, plea bargaining has been used to save the time of overworked district attorneys and the expense of trials. Plea bargaining is an agreement between the district attorney and a defendant who pleads guilty to a less serious crime; e.g., possession of drugs rather than selling drugs. More than 90 percent of the serious cases in New York are settled by plea bargaining. Although time and money are saved by this process, injustices could result from plea bargaining; i.e., a person may not be guilty, but he might not want to risk being found guilty of a more serious crime. Conversely,

Module 3

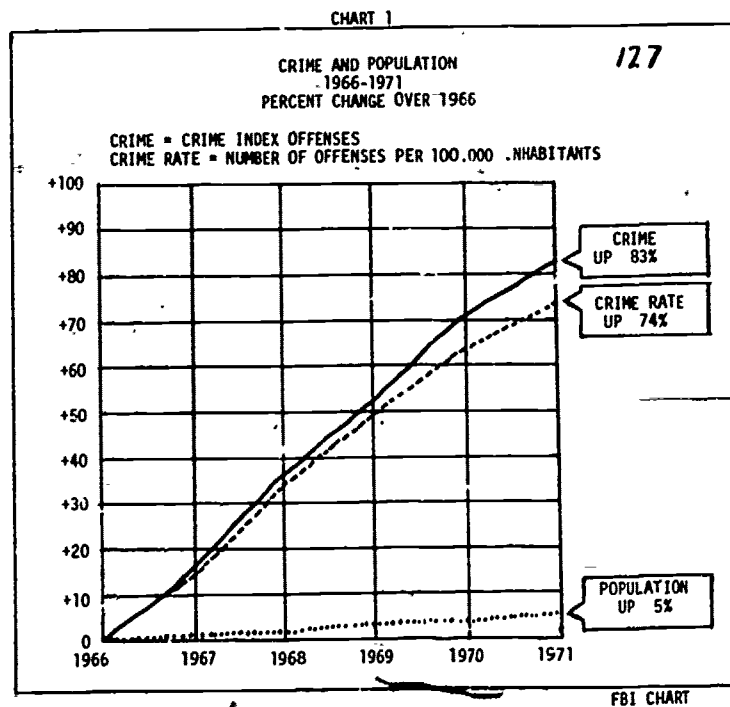
DETAILED DESCRIPTION OF STRATEGIES

could be well spent on areas that are crying for improvement such as pollution, health, and education?

- c) Inform pupils of the meaning of plea bargaining. (See page 126.) Inform them that 90 percent of the serious cases in New York State are settled in this way. In their opinion, how just is this method as far as desired outcome and fairness in application of the law?

DISCUSSION OF STRATEGIES AND RESOURCES

simply because we do not have the resources to prosecute suspects properly, some crimes of serious crimes may get off *easy* in our society, possibly to do more harm.



(From United States Dept. of Justice, Federal Bureau of Investigation, *Uniform Crime Report*)

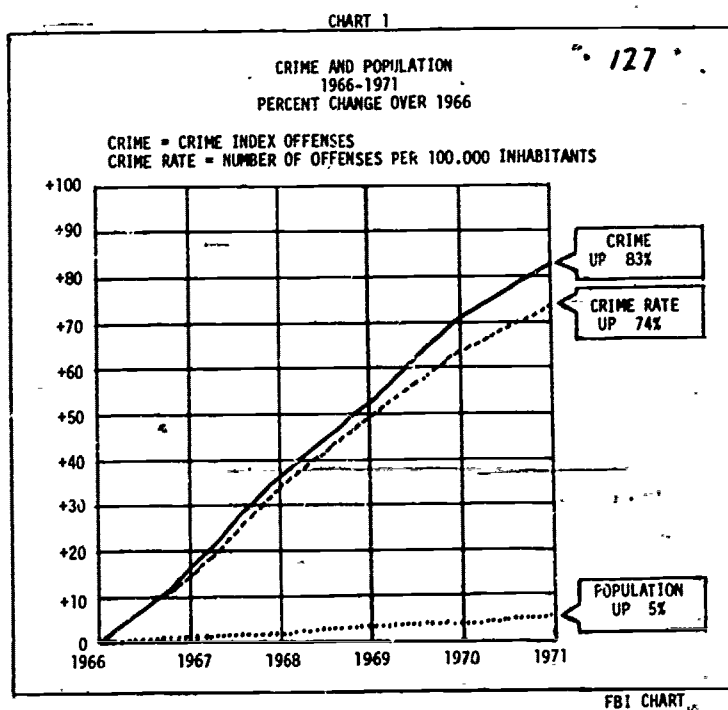
ION OF STRATEGIES

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DISCUSSION OF STRATEGIES AND RESOURCES

simply because we do not have the resources to
prosecute suspects properly, some criminals guilty
of serious crimes may get off *easy* and return to
society, possibly to do more harm.



es Dept. of Justice, Federal Bureau of Investigation, *Uniform Crime Reports*, page 2.)

CHART #2 - INDEX OF CRIME, UNITED STATES, 1971

Area	Popula- tion ¹	Total Crime Index	Violent ² crime	Property ² crime	Murder and non- negligent man- slaughter	Forcible rape	Robbery	Aggra- vated assault	Burglary	La \$5
<u>United States Total</u>	206,256,000	5,995,211	810,018	5,185,193	17,627	41,889	385,908	54,595	2,368,423	1,8
Rate per 100,000 inhabitants	.....	2,906.7	392.7	2,514.0	8.5	20.3	187.1	176.8	1,148.3	
<u>Standard Metropolitan Statistical Area</u>	145,878,000	.....	.....	.....	.....	.....	.....	.....	.....	.....
Area actually reporting ³	97.6%	5,106,494	709,246	4,397,248	13,675	35,106	370,643	289,822	1,988,830	1,5
Estimated total	100.0%	5,173,916	715,731	4,458,185	13,845	35,575	372,486	293,825	2,015,759	1,5
Rate per 100,000 inhabitants	.....	3,546.7	490.6	3,056.1	9.5	24.4	255.3	201.4	1,381.8	
<u>Other Cities</u>	23,068,000	.....	.....	.....	.....	.....	.....	.....	.....	.....
Area actually reporting	89.1%	393,215	39,332	353,883	1,026	1,965	7,083	29,258	154,562	
Estimated total	100.0%	436,145	44,522	391,623	1,192	2,177	7,874	33,279	171,744	
Rate per 100,000 inhabitants	.....	1,890.7	193.0	1,697.7	5.2	9.4	34.1	144.3	744.5	
<u>Rural</u>	37,309,000	.....	.....	.....	.....	.....	.....	.....	.....	.....
Area actually reporting	74.8%	304,206	33,089	271,117	1,705	3,044	4,068	24,272	146,321	
Estimated total	100.0%	285,150	49,765	335,385	2,590	4,130	5,548	37,491	180,920	
Rate per 100,000 inhabitants	.....	1,032.3	133.4	898.9	6.9	11.1	14.9	100.5	484.9	

¹Population is Bureau of the Census provisional estimate as of July 1, 1971.

²Violent crime is offenses of murder, forcible rape, robbery and aggravated assault; property crime is offenses of larceny \$50 and over and auto theft.

³The percentage representing area actually reporting will not coincide with the ratio between reported and estimated since these data represent the sum of the calculations for individual states which have varying populations, and crime rates.

(From United States Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports*.)

CHART #2 - INDEX OF CRIME, UNITED STATES, 1971

Popula- tion ¹	Total Crime Index	Violent crime ²	Property crime ²	Murder and non- negligent man- slaughter	Forcible rape	Robbery	Aggra- vated assault	Burglary	Larceny \$50 and over	Auto theft
206,256,000	5,995,211	810,018	5,185,193	17,627	41,889	385,908	364,595	2,368,423	1,875,194	941,576
.....	2,906.7	392.7	2,514.0	8.5	20.3	187.1	176.8	1,148.3	909.2	456.5
145,878,000	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
97.6%	5,106,494	709,246	4,397,248	13,675	35,106	370,643	289,822	1,988,830	1,542,374	866,044
100.0%	5,173,916	715,731	4,458,185	13,845	35,575	372,486	293,825	2,015,759	1,566,821	875,602
.....	3,546.7	490.6	3,056.1	9.5	24.4	255.3	201.4	1,381.8	1,074.1	600.2
23,068,000	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
89.1%	393,215	39,332	353,883	1,026	1,965	7,083	29,258	154,562	163,293	36,028
100.0%	436,145	44,522	391,623	1,192	2,177	7,874	33,279	171,744	179,867	40,012
.....	1,890.7	193.0	1,697.7	5.2	9.4	34.1	144.3	744.5	779.7	173.5
37,309,000	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
74.8%	304,206	33,089	271,117	1,705	3,044	4,068	24,272	146,321	103,926	20,870
100.0%	285,150	49,765	335,385	2,590	4,130	5,548	37,491	180,920	128,503	25,962
.....	1,032.3	133.4	898.9	6.9	11.1	14.9	100.5	484.9	344.4	69.6

..... of the Census provisional estimate as of July 1, 1971.

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..... Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports*.)

7

Chart # 3
 CRIMINAL JUSTICE SYSTEM—PUBLIC EXPENDITURES, 1970, BY LEVEL OF GOVERNMENT
 [Expenditures in millions of dollars except per capita.]

Level of Government and Activity	Expenditures	
	1970	
	Total	Per ¹ capita
All governments.....	2,571	² 41.56
Police.....	5,080	24.63
Judicial.....	1,190	5.77
Prosecution ³	442	2.14
Indigent defense ³	102	.49
Correction.....	1,706	8.27
Federal Government.....	2978	24.74
Police.....	589	2.86
Judicial.....	129	.63
Prosecution ³	102	.49
Indigent defense ³	56	.27
Correction.....	83	.40
State Government.....	2,134	² 10.37
Police.....	689	3.34
Judicial.....	282	1.37
Prosecution ³	83	.40
Indigent defense ³	9	.04
Correction.....	1,051	5.10
Local Government.....	25,454	226.44
Police.....	3,803	18.44
Judicial.....	779	3.78
Prosecution ³	257	1.25
Indigent defense ³	37	.18
Correction.....	572	2.77

¹Based on estimated population as of July 1, 1971, excluding Armed Forces abroad.

²Includes residual amounts not shown separately.

³Prior to 1969, not included as part of the criminal justice system totals.

(Adapted from *Statistical Abstract*.)

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RESOURCES*

United States Statistical Abstract, 1971.

Federal Bureau of Investigation, *Uniform Crime Reports*.

Sample hypothetical cases:

Suppose there has been a series of violent robberies in the area of the local center. All the police know is that the robbers have been teenagers and, in each case, they have had guns and threatened to shoot their victims. At midnight on a Wednesday two high school boys are walking home through the area. A patrol car pulls up. Can the police be able to frisk the boys before inquiring what they are doing out at this hour?

Look at the language of the fourth amendment. What about the boys' right to be free from "unreasonable searches and seizures...except upon probable cause..."? What if the boys were the policeman and were afraid these boys might shoot you?

Suppose the police, the next week, arrest a suspect in this robbery case, and it turns out to be a teenager at all, but Little Louie. Louie is connected with organized crime and has been in prison time on four prior occasions for armed robbery. In fact, each time Louie has been arrested and serving a sentence, he has committed a robbery within 3 days of being released. After Louie's arrest and charge, he wishes to post bail and go free until the trial.

The police fear that the only way to protect the community from further robberies is to set bail so high that Louie can't possibly raise it or else deny bail completely. If Louie waits to be tried.

Look at the language of the eighth amendment. What about Louie's right to bail? What is his right to be considered innocent until proved guilty in a court of law? And what about the threat to the lives and property in the community?

Suppose now that Louie did post bond, did not commit any further robberies, and was brought up for trial. As it turns out the police got their original lead in apprehending the robbers from a stool pigeon's tip that the robberies weren't done by teenagers, but by a man in disguise. Before the "stoolie" gave the tip, he had the police promise they would not reveal his identity. The "stoolie" feared, and the police suspect the fear might be true.

*Direct quotations from statutes are indicated by the use of quotation marks. Other statements are summaries or paraphrases of the statute listed.

RESOURCES*

United States Statistical Abstract, 1971.

Federal Bureau of Investigation, *Uniform Crime Reports*.

Sample hypothetical cases:

Suppose there has been a series of violent robberies in the area of the local shopping center. All the police know is that the robbers have been teenagers and, in each case, have had guns and threatened to shoot their victims. At midnight on a Wednesday night, two high school boys are walking home through the area. A patrol car pulls up. Should the police be able to frisk the boys before inquiring what they are doing out at this hour?

Look at the language of the fourth amendment. What about the boys' right to be free from "unreasonable searches and seizures...except upon probable cause..."? What if you were the policeman and were afraid these boys might shoot you?

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Module 3

founded, that Louie's organized crime connections might "rub him out" if they found he was the squealer. Louie says the stoolie's information is untrue, and he wants a lawyer to show this on cross-examination at a public trial.

Look at the language of the sixth amendment. What about Louie's right to be "confronted with the witnesses against him"? But what happens to an important source of police information if the identity of "informers" must be made public?

Dan Smith is a young teacher. Outside school he works with several civic groups. He is chairman of the local Vietnam War protest group for November 15, 1970.

The November 15 moratorium, contrary to what local officials have warned, is peacefully well supported. On the night of November 15, Dan's home is bombed with powerful explosives. Dan loses a leg and his eyesight; his wife and two baby children are killed.

The police go to work on the case. After a week they don't have a shred of evidence or a single lead. They get an anonymous phone call that simply says, "You might check out Bomber in connection with the Smith murders." The caller hangs up. The police, on the basis of this phone call alone, arrest Bomber. Bomber refuses to talk until he gets a lawyer. The police refuse to let him see his lawyer until he talks. While objecting to the refusal of his request for counsel, Bomber confesses to the bombing. The police have no other evidence. At the trial, Bomber denies everything.

Should Bomber be convicted or go free? Look at the fifth and sixth amendments. What about Joe Bomber's right to have the assistance of counsel and right against self-incrimination? What about the threat this kind of man poses to the community?

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Module 4

A cartoon by Tidy has been omitted here because of copyright restrictions. It is from Punch Magazine July 1, 1970.

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Tidy. Copyright July 1, 1970, Punch Magazine, London. Reprinted by permission of The Agency, Inc.)

Module 4

MODULE IV: SOME LIMITS OF LAW *

1. *The Main Focus.*

"There oughta be a law!" People who gripe about some problem, frequently voice this plea. This little "There oughta be a law," makes it sound as if laws could do anything and everything. Laws can and do accomplish many important things. Through laws tax dollars are collected and spent on public benefits such as education, parks, hospitals, defense, and coordinate activities that might otherwise be unsafe or inefficiently conducted such as transportation, factoring, etc. Laws punish certain harmful acts to discourage those who might take advantage of others. Through laws a process for people to settle private disputes when they cannot settle them on their own. Laws also back up things like wills, leases, and employment agreements.

Law performs many important functions in society, but often law is not successful or effective in accomplishing what is intended. Many things might explain the ineffectiveness of law: (1) A law might be ineffective because it is not reasonable (voting age could be set at 6 years of age or speed limits in school zones could be set at 55 mph). (2) A law might be ineffective because the processes by which law is applied are bad, not the law's content. (A welfare law might be sound, but the way that it is wasteful or unfair; criminal statutes might be unreasonable, but their enforcement and prosecution by police disregard the rights of the accused or if courts are so crowded that suspects must wait months in jail before trial.) (3) A law might be ineffective because governmental officials may put inappropriate legal resources to work on a problem. (The law's penal resource was used almost exclusively to deal with intemperance; since the repeal of prohibition, the law's benefit distribution resources have also been put to work on problems of alcohol abuse.)

The three possible explanations for ineffective operation of laws (unsound content; unsound processes; inadequate legal resources) are treated in some detail in the material for Modules II and III and will not be repeated here.

The primary point in this unit is that even when law is operating effectively, there are certain things that law can be expected to accomplish. Because of the nature of law, men, and society, some things are beyond law's power to accomplish. For example, no law can make people respect human dignity or even force a person to love another person. The following paragraphs in this unit provide a brief survey of some inherent limitations of law.

2. *Why This Focus?*

Why study inherent limits of law in a law unit for social studies? First, in studying law, we may wish to know some general characteristics about law's nature, one of which is simply that law is not all-powerful. Second, many people today, and some of this disrespect is undeserved. Certainly laws can be improved and used more effectively on some things. One sees that there are limits to what can be reasonably expected of law, he may become unduly and unnecessarily dependent on the legal system. The result of this might be loss of respect for the rule of law which is necessary in a free society. In a democracy, laws in large part reflect what concerned people demand. Many students today want to improve our legal system. By learning about some of law's limits, tomorrow's citizens may be able to spend their energies more effectively through law.

3. *Outline of the Teaching Scheme.*

Five understandings in this unit provide illustrative examples of some tasks that, by the very nature of law, are beyond the capacity of law to perform: (1) laws cannot simultaneously promote conflicting valid interests, (2) laws cannot control certain intangible things like thoughts and emotions, (3) laws cannot control certain intangible things like thoughts and emotions and cannot repair some kinds of injuries; and (5) laws cannot always determine the "true" facts. Each of the five understandings illustrates the broader concept this unit is designed to reach—that law as an instrument of social control is not all-powerful. There is no order that is necessarily proper in treating the five understandings. The teacher might organize and present the understandings as he sees fit.

*See footnote on page 1, Module 1.

MODULE IV: SOME LIMITS OF LAW *

"There ought to be a law!" People who gripe about some problem, frequently voice this plea. This little phrase, "There ought to be a law," as if laws could do anything and everything. Laws can and do accomplish many important things in society. Taxes are collected and spent on public benefits such as education, parks, hospitals, defense, etc. Laws help regulate activities that might otherwise be unsafe or inefficiently conducted such as transportation, communication, manufacture, and punish certain harmful acts to discourage those who might take advantage of others. Through lawsuits, laws provide a way to settle private disputes when they cannot settle them on their own. Laws also back up private arrangements and employment agreements.

Many important functions in society, but often law is not successful or effective in accomplishing what its framers might explain the ineffectiveness of law: (1) A law might be ineffective because it is an unreasonable rule (e.g., a law that children must be at least 6 years of age or speed limits in school zones could be set at 55 mph). (2) A law might be ineffective because the conditions in which law is applied are bad, not the law's content. (A welfare law might be sound, but be administered in an unfair way; criminal statutes might be unreasonable, but their enforcement and prosecution could be unfair if the courts are so crowded that suspects must wait months in jail before cases are heard.) (3) A law might be ineffective because governmental officials may put inappropriate legal resources to work on a given problem. (During the prohibition era, a great deal of legal resource was used almost exclusively to deal with intemperance; since the repeal of prohibition laws, regulation resources have also been put to work on problems of alcohol abuse.)

Some possible explanations for ineffective operation of laws (unsound content; unsound processes; unsound allocation of resources) are treated in some detail in the material for Modules II and III and will not be repeated here.

The main point in this unit is that even when law is operating effectively, there are certain inherent limitations on what law can accomplish. Because of the nature of law, men, and society, some things are beyond law's reach even when law is operating effectively. For example, no law can make people respect human dignity or even force a person to love another person. The understanding of these limitations is a brief survey of some inherent limitations of law.

What are the inherent limits of law in a law unit for social studies? First, in studying law, we may wish to know important things about law's nature, one of which is simply that law is not all-powerful. Second, many people disrespect law and disrespect is undeserved. Certainly laws can be improved and used more effectively on some problems, but unless we understand the limits to what can be reasonably expected of law, he may become unduly and unnecessarily disenchanted with laws. The result of this might be loss of respect for the rule of law which is necessary in a free society. Finally, the large part of the unit should reflect what concerned people demand. Many students today want to improve our society through orderly change. Understanding about some of law's limits, tomorrow's citizens may be able to spend their energies in influencing change.

Learning Scheme.

The activities in this unit provide illustrative examples of some tasks that, by the very nature of law and society, are difficult for law to perform: (1) laws cannot simultaneously promote conflicting valid interests, (2) laws cannot regulate nonlegal factors, (3) laws cannot control certain intangible things like thoughts and beliefs, (4) laws cannot prevent all injuries; and (5) laws cannot always determine the "true" facts. Each of the five understandings illustrated in this unit is designed to reach that law as an instrument of social control is not all-powerful, but limited. It is not necessarily proper in treating the five understandings. The teacher might organize and emphasize the under-

Module 4

SUMMARY OF UNDERSTANDINGS

- I. IN SITUATIONS WHERE LAW ATTEMPTS TO PROMOTE LEGITIMATE INTERESTS THAT CONFLICT, LAW IS LIMITED IN ITS CAPACITY TO PROMOTE BOTH.
- II. THE EFFECTIVENESS OF LAW AS A SOCIAL CONTROL MAY BE LIMITED IF THE LAW IS UNSUPPORTED BY CERTAIN NONLEGAL FACTORS SUCH AS MORALITY AND THE INSTINCT OF SELF-PRESERVATION.
- III. SINCE LAW CANNOT READILY CONTROL THOUGHTS AND BELIEFS, TO BE EFFECTIVE, THE LAW MUST IDENTIFY SOME OVERT BEHAVIOR OR ACTION TO REGULATE.
- IV. IN PROVIDING REMEDIES FOR THE HARM WHICH ONE PERSON DOES ANOTHER, LAW MAY CONFRONT SOME KINDS OF HARM THAT ARE BEYOND ITS LIMITED POWER TO REPAIR OR COMPENSATE.
- V. ALTHOUGH LAW USES MANY RULES AND PROCEDURES TO RESOLVE DISPUTED FACTS RATIONALLY AND FAIRLY, CIRCUMSTANCES MAY LIMIT THE ABILITY OF JUDGES AND JURORS TO DETERMINE THE FACTS.

UNDERSTANDING I

IN SITUATIONS WHERE LAW ATTEMPTS TO PROMOTE LEGITIMATE INTERESTS THAT CONFLICT, LAW IS LIMITED IN ITS CAPACITY TO PROMOTE BOTH.

A. *Explanation of Understanding I*

Law is used in society to help promote numerous interests or ends. Laws help include a healthy environment. Laws help keep community peace. Laws help secure basic help secure equality of opportunity. Laws help structure and organize distribution and resources. Laws help secure such privileges as private ownership.

These and other interests or aims of law are not always easily coordinated. Like these, in particular circumstances, may conflict. By promoting one valid interest, interfere with another. For example, law's efforts to help secure private ownership may interfere with law's interest in securing equality of opportunity. Freedom to sell or

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of Understanding I

used in society to help promote numerous interests or ends. Laws help promote human health and a healthy environment. Laws help keep community peace. Laws help secure basic freedoms. Laws help secure equality of opportunity. Laws help structure and organize distribution and exchange of material goods. Laws help secure such privileges as private ownership.

and other interests or aims of law are not always easily coordinated. In fact, valid interests in particular circumstances, may conflict. By promoting one valid interest, law may of necessity infringe on another. For example, law's efforts to help secure private ownership may in some circumstances infringe on law's interest in securing equality of opportunity. Freedom to sell or rent one's private

Module 4

property to whomever one pleases may mean no equal opportunity for racial minorities when it comes to securing decent housing. Law's efforts to secure basic freedoms may in some situations work against the public interest in keeping community peace. By protecting the basic freedom of expression of the unpopular views, law's interest in keeping order and peace in the community is necessarily limited.

Thus, one of the most fundamental limits of law is something of a logical limitation: interests may tend to conflict, or even be mutually exclusive. Therefore, sometimes law cannot protect two valid important interests at the same time.

B. Teaching Understanding I

OBJECTIVES

Given a situation in which the legitimate interests of one party are adversely affected by a ruling that promotes the best interests of another, the student can:

- assess the consequences of the ruling for each party
- state whether the ruling is in the best interests of society in general and support the ruling with a statement with valid arguments.

Using the newspaper or another source of current interest, the student can identify two situations in which legitimate interests of various parties are in conflict and state the consequences of a proposed decision to each party.

QUESTIONS TO REACH UNDERSTANDING

- What does it mean to say that valid interests of law sometimes clash?
- How is law limited when valid interests conflict?
- Why is it important to look very closely at the facts of a case in which valid interests conflict?

USE OF VISUALS

Give the students the statement of Judge Learned Hand that the function of law is to control the hearts of people, but to control the disorderly, even at times at the risk of the hearts of people. Ask the students to bring in newspaper and magazine pictures or cartoons that they

one pleases may mean no equal opportunity for racial minorities when it comes to security. Law's efforts to secure basic freedoms may in some situations work against law's community peace. By protecting the basic freedom of expression of the speaker with very little interest in keeping order and peace in the community is necessarily frustrated.

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situation in which the legitimate interests of one party are adversely affected by a law that promotes the best interests of another, the student can:

1. determine the consequences of the ruling for each party

2. determine whether the ruling is in the best interests of society in general and support his or her position with valid arguments.

3. identify a newspaper or another source of current interest, the student can identify at least two situations in which legitimate interests of various parties are in conflict and assess the consequences of a proposed decision to each party.

EACH UNDERSTANDING

1. What does it mean to say that valid interests of law sometimes clash?

2. How are law's interests limited when valid interests conflict?

3. Why is it important to look very closely at the facts of a case in which valid interests of law

4. Explain to students the statement of Judge Learned Hand that the function of law is "not to reform the bad habits of people, but to control the disorderly, even at times at the risk of making them angry." Ask students to bring in newspaper and magazine pictures or cartoons that they think are

Module 4 .

illustrations of that support or belie this statement. (The cartoon below could be an example.)

Using an opaque projector for total class discussion, or working with small groups the pictures without projection, ask students to:

- identify visual clues that indicate imposition of law, feelings of people involved
- hypothesize "what would happen next" in the situation depicted in the picture.
- suggest ways that the heat of anger could be dispelled without destroying the peace provided by the law.

In the light of such discussion, is Judge Hand's definition of the function of law anyone rephrase it so that the class is better satisfied with it?

A cartoon drawn by Albert has been omitted here because of copyright restrictions. It is from Punch Magazine, October 21, 1970.

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Module 4

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF RESOURCES AND STRATEGIES

- a) Suggest to the students a hypothetical situation in which a student, running for office in student government, organized a campaign demonstration in the cafeteria during the lunch hour. Several students and several faculty members complained about the noise and confusion during lunch. Use a "fishbowl" technique in which two students in the inner circle speak for the candidate, two for the student opposition, and two for the school faculty. Have one empty chair for the student who wishes to step in the circle, be heard, and step out. Using this format, role-play a faculty-student discussion of the incident, allowing a maximum of 20 minutes. Have the "fishbowl observers" discuss the participants' performances, focusing upon conflicting valid interests represented in the statements.

The class may then decide whether any school rule could be developed that would protect all interests expressed in this case.

1. Conflict of valid interests in free expression and public order and welfare.

- a) Have students read a synopsis of the case, Feiner vs. New York which is an example of possible conflict of interest between the interests of the community in maintaining peace and order on the streets and the community's interest in maintaining freedom of speech. (See p. 142.) When pupils have a good

The procedures suggested for this present cases where a court is faced with conflicting interests of the law that conflict too often, students tend to look at resolution as a process of selecting "right" and "wrong" side. But often they find their way into court do not

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DISCUSSION OF RESOURCES AND STRATEGIES

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Module 4

DETAILED DESCRIPTION OF STRATEGIES

understanding of the details of the case, assign certain pupils to prepare and present a skit depicting the events that gave rise to this case. In order to evoke student participation in reaching this understanding, the class might role-play the case in the Supreme Court. Given the background facts of the case and the trial court decision, students may argue and decide the case on appeal. Teams of two students might argue each side of the case before nine other students who role-play the Supreme Court in deciding the case. The students who play Supreme Court justices should actually decide which of the valid conflicting interests in the particular situation should prevail, and explain why in a written opinion.

- b) Select one or more of the following cases (see pp. 143-145) which are examples of conflict of valid interests between free expression and public order and welfare. Have pupils present a mock television program of the cases. Some of the pupils might be assigned to do visuals with the scenes of their "TV" program.

—Tinker vs. DesMoines School District,
vol. 393 U.S. Reports, p. 503 (1969)

—Kovacs vs. Cooper, vol. 336 U.S. Reports,
p. 77 (1949)

—Gregory vs. Chicago, vol. 394 U.S.
Reports, p. 111 (1969)

DISCUSSION OF STRATEGIES AND RESOU

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Our legal system seeks to protect the expression of views regardless of their popularity. The First Amendment has been thought of as one of the most important civil liberties; peaceful expression of views and dissent serve both as a means of gaining knowledge and as a process for holding government officials accountable. An equally fundamental interest of the legal system is preserving order in society, for without order there is little security for persons.

Interests in free expression and in public order are not always compatible: in many instances where restricted peaceful free expression, such as the student protest, the speech act, or the strike, interfere with orderly operations. On the other hand, a society of maximum order that suppresses all expression except that which is necessary to the doctrine. Because such valid interests are limited in the extent to which they can be protected, circumstances simultaneously protect both interests. It must examine in detail situations where interests conflict and determine in each case which interest will be protected and which will give way.

The same rationale holds true when the interests in police procedures and efficient law enforcement and fair trial and free press come in

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Brandenburg vs. Des Moines School District, 379 U.S. Reports, p. 503 (1969)

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Brandenburg vs. Chicago, vol. 394 U.S. Reports, p. 111 (1969)

DISCUSSION OF STRATEGIES AND RESOURCES

this luxury. The choice is instead between "right" and "right." And when two valid interests clash in a situation that demands legal resolution, the law is limited in the extent to which it can, in the particular instance, pursue both valid interests.

Our legal system seeks to protect free expression of views regardless of their popularity. Free expression has been thought of as one of our most important civil liberties; peaceful expression of divergent views and dissent serve both as a process for expanding knowledge and as a process for securing liberty by subjecting government officials to public scrutiny. An equally fundamental interest of any legal system is preserving order in society, for without order, there is little security for persons or property.

Interests in free expression and interests in order are not always compatible: in many instances unrestricted peaceful free expression (the inflammatory speech, the student protest, the sound truck) may interfere with orderly operations of society. On the other hand, a society of maximum order might suppress all expression except that of official doctrine. Because such valid interests clash, law is limited in the extent to which it can in some circumstances simultaneously protect each. Instead, it must examine in detail situations where such interests conflict and determine in each particular case which interest will be protected and which will give way.

The same rationale holds true when interests in fair police procedures and efficient law enforcement or fair trial and free press come into conflict. In

Module 4

DETAILED DESCRIPTION OF STRATEGIES

- c) Have pupils view a film or filmstrip on the conflict of free expression vs. public order. (The People of New York vs. Irving Feiner can be used again here.)

—Freedom to Speak: The Feiner Case. E.B.F. 27 min. color.

—Bill of Rights in Action: Due Process of Law. BFA. 22 min. color

—Bill of Rights in Action: Freedom of Speech. BFA. 22 min. color.

2. Conflict of valid interests in fair police procedures ("due process") and effective law enforcement ("law and order").

- a) Have students read the details of the following court cases. Assign some pupils to role-play for the rest of the class one of the cases to illustrate a conflict between the legitimate interests of the police in "due process" and facilitating "law and order." (See pages 145-149.)

—Terry vs. Ohio, vol. 392 U.S. Reports, p. 1 (1968). (Since this case concerns the right of an officer to "stop and frisk" an individual, teenagers may be interested in the details.) See also: Oregon State Bar Association, Search and Seizures for other examples.

—Berger vs. New York, vol. 388 U.S. Reports, p. 41 (1967) (See page 150.)

—Miranda vs. Arizona, vol. 384 U.S. Reports, p. 436 (1966) (See page 150.)

DISCUSSION OF STRATEGIES AND RESOUR

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1967 (See page 150.)

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DISCUSSION OF STRATEGIES AND RESOURCES

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both to equal degree is often beyond law's capabili-
ties, and this is a major limitation of law.

Module 4

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

- b) Have pupils view a film or filmstrip on the conflict of fair police procedures vs. efficient law enforcement. The following is a possible title. Check your local film centers for other possibilities.

—Police Power, N.E.T. 60 min. b/w
(Panel on conflict between civil liberties and police methods. Panel consists of experts on criminology and law enforcement.)

3. Conflict of valid interest in fair trials and free press.

- a) Provide pupils with readings which give details of each of the following cases without giving them the Supreme Court's rulings. See if pupils can arrive at the Supreme Court's decisions in these cases which represent a conflict of valid interest in fair trials with those of free press. (See pages 150-151.)

—Rideau vs. Louisiana, vol 373 U.S. Reports
p. 723 (1963)

—Estes vs. Texas, vol. 381 U.S. Reports,
p. 532 (1965)

—Sheppard vs. Maxwell, vol. 384 U.S. Reports,
p. 333 (1966)

- b) Have some pupils prepare and present a debate on the following topic: "An individual can receive a fair trial even if newspapers exercise their rights of free press and print

Module 4

DETAILED DESCRIPTION OF STRATEGIES

all details related to the case."

In connection with the debate, individuals representing the local newspaper, police, and district attorney's office might be invited to sit in on the debate and express their opinions on the fair trial/free press conflict.

- c) Have pupils view a film or filmstrip on the fair trial/free press issue. The following title is one possibility:

—Free Press vs. Fair Trial by Jury--The Sheppard Case. Encyclopedia Britannica Educational Corp. 27 min. (A study of the trial of Dr. Sam Sheppard in 1954. Documentary footage of key figures and reenactment of the crime reveal the conflict between freedom of the press and the right of the accused. Also included, footage on Supreme Court's decision in 1961 reversing original verdict.)

DISCUSSION OF STRATEGIES AND RESOURCES

Module 4

RESOURCES*

Feiner vs. New York, vol. 340 U.S. Reports, p. 315 (1951)

"Irving Feiner, an articulate young Syracuse University student,...in a loud, pitched voice, urged his audience of some seventy-five to eighty whites and Negroes to attend a meeting that evening on racial discrimination and civil rights. In the course of his speech Feiner called the then President Harry S. Truman a 'bum' and referred to the Mayor of Syracuse as a 'champagne sipping bum.' He remarked that the 'American Legion is a Nazi Gestapo,' and that the colored people should 'pick up in arms' and fight for their rights. After about twenty minutes of listening to Feiner, the crowd became somewhat restless and there was some shoving, pushing and milling around. There were two policemen at the scene, but they seemed more concerned with the movement of traffic...than in Feiner's speech. But the crowd became more restless. ...a man in the audience...told the policemen to get Feiner off the box or he would pull him off himself. Thereupon one of the officers asked Feiner to get down off the box so that the crowd could be dispersed but Feiner refused. A police officer arrested him for disorderly conduct.

"Feiner was convicted in the local trial court and sentenced to thirty days in jail. The conviction was affirmed by the state court, and Feiner appealed his case to the Supreme Court. ...

"MR. CHIEF JUSTICE VINSON delivered the opinion of the Court.

"...Petitioner was accorded a full, fair trial. The trial judge heard testimony and contradicting the judgment of the police officers that a clear danger of riot was threatened. After weighing this contradictory evidence, the trial judge reached a conclusion that the police officers were justified in taking action to prevent a riot. ...The courts below recognized petitioner's right to hold a street meeting at a public locality, to make use of loud-speaking equipment in giving his speech, and to make derogatory remarks concerning public officials and the American Legion. They found no fault with the officers in making the arrest were motivated solely by a proper concern for the maintenance of order and protection of the general welfare and that there was no evidence that could lend color to a claim that the acts of the police were a cover for suppression of petitioner's views and opinions. Petitioner was thus neither arrested nor convicted on the making or the content of his speech.

*Direct quotations from statutes are indicated by the use of quotation marks. Other summaries or paraphrases of the statute listed.

RESOURCES *

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...Petitioner was accorded a full, fair trial. The trial judge heard testimony supporting and contradicting the judgment of the police officers that a clear danger of disorder was threatened. After weighing this contradictory evidence, the trial judge reached the conclusion that the police officers were justified in taking action to prevent a breach of peace. ...The courts below recognized petitioner's right to hold a street meeting at this locality, to make use of loud-speaking equipment in giving his speech, and to make derogatory remarks concerning public officials and the American Legion. They found that the officers in making the arrest were motivated solely by a proper concern for the preservation of order and protection of the general welfare and that there was no evidence which could lend color to a claim that the acts of the police were a cover for suppression of petitioner's views and opinions. Petitioner was thus neither arrested nor convicted for the making or the content of his speech.

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"...The findings of the state courts as to the existing situation and the imminence of greater disorder coupled with petitioner's deliberate defiance of the police officers convince us that we should not reverse this conviction in the name of free speech. ..."

Tinker vs. Des Moines School District, vol. 393 U.S. Reports, p. 503 (1969)

"Mr. Justice Fortas delivered the opinion of the Court. Petitioner John F. Tinker, 15 years old, and petitioner Christopher Eckhardt, 16 years old, attended high schools in Des Moines, Iowa. Petitioner Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school.

"In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Petitioners and their parents had previously engaged in similar activities, and they decided to participate in the program.

"The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended until he returned without the armband. Petitioners were aware of the regulation the school authorities adopted.

"On December 16, Mary Beth and Christopher wore black armbands to their schools. Christopher wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return until after the planned period for wearing armbands had expired--that is, until New Year's Day.

"The complaint was filed in the United States District Court by petitioners, through their fathers, under § 1983 of Title 42 of the United States Code. It prayed for an injunction restraining the respondent school officials and the respondent members of the board of directors of the school district from disciplining the petitioners and it sought nominal damages.

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"The school officials banded and sought to punish petitioners for a silent, passive expression of opinion, accompanied by any disorder or disturbance on the part of petitioners. There is no evidence whatever of petitioner's interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students.

"Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises. ...

"The principle of these cases is not confined to the supervised and ordained discussion which takes place in the classroom. The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an inevitable part of the process of attending school; it is also an important part of the educational process. A student's rights, therefore do not end merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without 'materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school' and without colliding with the rights of others...

"As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them. They neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression. ..."

school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioner's interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises. ...

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The case of Tinker vs. Des Moines School District can also be found in the following

Cohen, et. al. *Bill of Rights: a sourcebook*. pp. 232-233.

Parker, et. al. *Civil liberties: case studies and the law*. p. 178.

Some students might be interested in comparing Edwards vs. South Carolina (1963) with Adderly vs. Florida (1966). Sources:

Oregon State Bar Association. *Freedom of the press*. pp. 4-9.

Cohen, et. al. *The Bill of Rights: a sourcebook*. pp. 235-236.

Bragdon and Pittenger. *The pursuit of justice*. pp. 45-48 and 159.

Quigley and Longaker. *Conflict, politics and freedom*. pp. 59-60.

Kovacs vs. Cooper, vol. 336 U.S. Reports p. 77 (1949)

Challenge on free expression grounds to an ordinance prohibiting use of sound trucks "Emitting loud and raucous noises." Weighing this relatively efficient method of expression of issues against the comfort and convenience of the public, the Supreme Court decided the comfort of the community should prevail in this circumstances.

Gregory vs. Chicago, vol. 394 U.S. Reports, p. 111 (1969)

Challenge to a conviction of disorderly conduct when, during an orderly march from City Hall to the mayor's residence to protest school segregation, a crowd of bystanders grew "threatening" and the marchers refused to disperse at the request of police. Weighing the interest in preventing public disorder against the interest in protecting orderly expression of protest, the Supreme Court decided an interest in peaceful expression of dissent should prevail in these circumstances.

Terry vs. Ohio, vol. 392 U.S. Reports, p. 1 (1968)

[Testimony included in the report of the Supreme Court decision]

"...Officer McFadden testified that while he was patrolling in plain clothes in downtown Cleveland at approximately 2:30 in the afternoon of October 31, 1963, his attention

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Officer McFadden testified that while he was patrolling in plain clothes in downtown Cleveland at approximately 2:30 in the afternoon of October 31, 1963, his attention was

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attracted by two men, Chilton and Terry, standing on the corner of Huron Road and Euclid Avenue. He had never seen the two men before, and he was unable to say precisely what first drew his eye to them. However, he testified that he had been a policeman for 39 years and a detective for 35 and that he had been assigned to patrol this vicinity of downtown Cleveland for shoplifters and pickpockets for 30 years. He explained that he had developed routine habits of observation over the years and that he would 'stand and watch people or walk and watch people at many intervals of the day.' He added: 'Now, in this case when I looked over they didn't look right to me at the time.'

"...He saw one of the men leave the other one and walk southwest on Huron Road, past some stores. The man paused for a moment and looked in a store window, then walked on a short distance, turned around and walked back toward the corner, pausing once again to look in the same store window. He rejoined his companion at the corner, the two conferred briefly. Then the second man went through the same series of walking, strolling down Huron Road, looking in the same window, walking on a short distance, turning back, peering in the store window again, and returning to confer with the first man at the corner. The two men repeated this ritual alternately between five and six times apiece—in all, roughly a dozen trips. At one point, while the two were standing together on the corner, a third man approached them and engaged them briefly in conversation. This man then left the two others and walked west on Euclid Avenue. Chilton and Terry resumed their measured pacing, peering and conferring. After this had gone on for 10 to 12 minutes, the two men walked off together, heading west on Euclid Avenue, following the path taken earlier by the third man.

"By this time Officer McFadden had become thoroughly suspicious. He testified that he suspected the two men of 'casing a job, a stick-up,' and that he considered it his duty as a police officer to investigate further. He added that he feared 'they might have a gun.' Thus, Officer McFadden followed Chilton and Terry and saw them stop in front of Zucker's store to talk to the same man who had conferred with them earlier on the street corner. Deciding that the situation was ripe for direct action, Officer McFadden approached the three men, identified himself as a police officer and asked for their names. At this point his knowledge was confined to what he had observed. He was not acquainted with any of the three men by name or by sight, and he had no information concerning them from any other source. When the men 'mumbled some things' in response to his inquiries, Officer McFadden grabbed petitioner Terry, spun him

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so that they were facing the other two, with Terry between McFadden and the others and patted down the outside of his clothing. In the left breast pocket of Terry's overcoat Officer McFadden felt a pistol. He reached inside the overcoat pocket, but was unable to remove the gun. At this point, keeping Terry between himself and the others, the officer ordered all three men to enter Zucker's store. As they went in, he removed Terry's overcoat completely, removed a .38-caliber revolver from the pocket and ordered all three men to face the wall with their hands raised. Officer McFadden proceeded to pat down the outer clothing of Chilton and the third man, Katz. He discovered another revolver in the outer pocket of Chilton's overcoat, but no weapons were found on Katz. The officer testified that he only patted the men down to see whether they had weapons, and that he did not put his hands beneath the outer garments of either Terry or Chilton until he felt their guns. So far as appears from the record, he never placed his hands beneath Katz' outer garments. Officer McFadden seized the gun, asked the proprietor of the store to call a police wagon, and took all three to the station, where Chilton* and Terry were formally charged with carrying concealed weapons. ...

"...this question thrusts to the fore difficult and troublesome issues regarding a sensitive area of police activity—...the practical and constitutional arguments... over the power of the police to 'stop and frisk' —...suspicious persons.

"[This section contains some of the arguments given by Chief Justice Warren for his decision.]

"On the one hand, it is frequently argued that in dealing with the rapidly unfolding and often dangerous situations on city streets the police are in need of an escalating set of flexible responses, graduated in relation to the amount of information they possess. For this purpose it is urged that distinctions should be made between a 'stop' and an 'arrest' (or a 'seizure' of a person), and between a 'frisk' and a 'search'. Thus, it is argued, the police should be allowed to 'stop' a person and detain him briefly for questioning upon suspicion that he may be connected with criminal activity. Upon suspicion that the person may be armed, the police should have the power to search him for weapons. If the 'stop' and the 'frisk' give rise to probable cause to believe

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that the suspect has committed a crime, then the police should be empowered to make a formal 'arrest,' and a full incident 'search' of the person. ...

"On the other side the argument is made that the authority of the police must be strictly circumscribed by the law of arrest and search as it has developed to date. The [interpretation] of the Fourth Amendment. ...

"...And simple 'good faith on the part of the arresting officer is not enough.' If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers, and effects' only in the discretion of the police.' *Beck vs. Ohio, supra*, at 97.

"...Officer McFadden...had observed Terry, Chilton, and Katz go through a series of stops, each of them perhaps innocent in itself, but which taken together warranted further investigation. There is nothing unusual in two men standing together on a street perhaps waiting for someone. Nor is there anything suspicious about people in such circumstances strolling up and down the street, singly or in pairs. Store windows are made to be looked in. But the story is quite different where, as here, two men stand about a street corner for an extended period of time, at the end of which it becomes apparent that they are not waiting for anyone or anything; where these men pace back and forth along an identical route, pausing to stare in the same store window roughly 24 times where each completion of this route is followed immediately by a conference between the two men on the corner; where they are joined in one of these conferences by a third man who leaves swiftly; and where the two men finally follow the third and rejoin him a few blocks away. It would have been poor police work indeed for an officer of 30 years experience in the detection of thievery from stores in this same neighborhood to have failed to investigate this behavior further.

"The crux of this case, however, is...whether there was justification for McFadden's invasion of Terry's personal security by searching him for weapons in the course of this investigation. ...there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a dangerous weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence, and each year in this country many law enforcement officers are killed in the line of duty and thousands more are wounded. Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives.

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"In view of these facts, we cannot blind ourselves to the need for law enforcement to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest. When an officer is justified in believing that an individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the individual is in fact carrying a weapon and to neutralize the threat of physical harm.

"We must still consider, however, the nature and quality of the intrusion on individual rights which must be accepted if police officers are to be conceded the right to search for weapons in situations where probable cause to arrest for crime is lacking. A limited search of the outer clothing for weapons constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frustrating and perhaps, humiliating experience. ...

"Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in jeopardy.

"...We think on the facts and circumstances Officer McFadden detailed before the court that a reasonably prudent man would have been warranted in believing petitioner was armed and thus presented a threat to the officer's safety while he was investigating his suspicious behavior. ...

"...Officer McFadden confined his search strictly to what was minimally necessary to determine whether the men were armed and to disarm them once he discovered the weapons. He did not conduct a general exploratory search for whatever evidence of criminal activity he might find.

"We conclude that the revolver seized from Terry was properly admitted in evidence against him. ...Such a search is a reasonable search under the Fourth Amendment, and any evidence so seized may properly be introduced in evidence against the person from whom they were seized.

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Berger vs. New York, vol. 388 U.S. Reports, p. 41 (1967)

Challenge to a conviction of conspiracy to bribe a city official on the ground the evidence was improperly collected with an electronic wire tap device. Weighing an interest in "privacy of the home" against "a most important technique of law enforcement," the Supreme Court decided in these circumstances an interest in privacy should prevail, saying that electronic eavesdropping is "search and seizure" and thus subject to Fourth Amendment restrictions.

See also: Bassiouni et. al., *Crimes and justice*. pp. 63-64.

Miranda vs. Arizona, vol. 384 U.S. Reports, p. 436 (1966)

Challenge to a murder conviction because after the suspect was taken into police custody and before questioning, he was not warned of his rights to silence and to an attorney. Weighing an interest in having people be aware of their rights in criminal prosecutions against an interest in gathering confession evidence to convict criminals, the Supreme Court decided an interest in having people know their rights should prevail.

See also: Bassiouni et. al., *Crimes and justice*. pp. 48-53.

Oregon State Bar Association. *Privilege against self-incrimination*.

Tresolini, *These liberties*. pp. 46-60.

EBF. *Right to remain silent: the Miranda case*. (And Pamphlet)

Rideau vs. Louisiana, vol. 373 U.S. Reports, p. 723 (1963)

Challenge to conviction of robbery, kidnapping, and murder on grounds that judge should have moved trial to another location after a local TV station broadcast an interview in which the suspect confessed to the charges. Weighing an interest in free dissemination of information against an interest in having guilt decided at trial, the Supreme Court decided an interest in having guilt determined at trial should prevail in these circumstances. So as to give a change of venue.

Estes vs. Texas, vol. 381 U.S. Reports, p. 532 (1965)

Challenge to conviction of swindling on grounds that TV coverage at the trial prejudiced the accused. Weighing the interest in the public being informed of what occurs

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against the actual unfairness that could be caused by the presence of a TV in courtroom, the Supreme Court decided an interest in fair trials should prevail these circumstances. Court decided that accused was not allowed due process. other reasons, TV was psychologically disturbing to jurors and judge. Note the Federal court cases bar live TV coverage as do all but two states. Many pupils probably aware of this fact.

See also: Oregon State Bar Association. *Free press - fair trial.* pp. 13-14

Sheppard vs. Maxwell, vol. 384 U.S. Reports, p. 333 (1966)

Challenge to conviction of murder on grounds that extensive news coverage before and during the trial implied to the public (including the jurors) that the suspect was guilty and otherwise prejudiced his trial. Weighing an interest of subject the judicial process to public scrutiny through an unrestrained press against interest in preventing impairment of jury impartiality, the Supreme Court decided an interest in fair trials should prevail in these circumstances.

See also: Bassiouni et al. *Crimes and justice.* pp. 54-56.

Oregon State Bar Association. *Free press - fair trial.* p. 4.

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Module 4

UNDERSTANDING II

THE EFFECTIVENESS OF LAW AS A SOCIAL CONTROL MAY BE LIMITED IF THE LAW IS UNSUPPORTED BY CERTAIN NONLEGAL FACTORS SUCH AS MORALITY AND THE INSTINCT OF SELF-PRESERVATION.

A. *Explanation of Understanding II*

Law can be viewed as one kind of social control—a formal set of do's and don'ts together safer and easier. Of course, laws are only one kind of social control; familiar ones include custom, tradition, morality, and even the basic interest in self-preservation. Some nonlegal factors are stronger than the control of law, and law may be limited by the extent to which it is consistent with these factors. For example, suppose that tomorrow cigarettes and alcohol are on a list of dangerous drugs whose use is subject to serious penalty. Such a law would have to go in part against the grain of common custom and popular morality. And in all likelihood, lack of such nonlegal factors would limit the effectiveness of legal prohibition.

B. *Teaching Understanding II*

OBJECTIVES

- . Given a conflict situation, the student can identify the possible actions that can be taken, analyze each alternative in terms of the moral principles involved, and suggest the course of action most palatable to the public.
- . Given a case in which the question of self-preservation is involved, the student can identify the actions of each of the principal participants in terms of the values held by them.
- . Given a hypothetical conflict situation in which he himself is involved, the student can apply the valuing process by explaining why a specific course of action is consistent with his values.

QUESTIONS TO REACH UNDERSTANDING

- . What nonlegal factors influence social interaction?
- . How is the effectiveness or ineffectiveness of law influenced by nonlegal factors?

II

EFFECTIVENESS OF LAW AS A SOCIAL CONTROL MAY BE LIMITED IF THE LAW IS UNSUPPORTED BY NONLEGAL FACTORS SUCH AS MORALITY AND THE INSTINCT OF SELF-PRESERVATION.

of Understanding II

be viewed as one kind of social control—a formal set of do's and don'ts that make living and easier. Of course, laws are only one kind of social control; familiar nonlegal factors tradition, morality, and even the basic interest in self-preservation. Sometimes such non- stronger than the control of law, and law may be limited by the extent to which it is these factors. For example, suppose that tomorrow cigarettes and alcohol were added to the s drugs whose use is subject to serious penalty. Such a law would have to operate in large grain of common custom and popular morality. And in all likelihood, lack of support from ctors would limit the effectiveness of legal prohibition.

Understanding II.

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REACH UNDERSTANDING

onlegal factors influence social interaction?

the effectiveness or ineffectiveness of law influenced by nonlegal factors of social l?

Module 4

USE OF VISUALS

Have students study the cartoons below and on page 132. Check understanding of the identification and analysis questions (for example: What is happening? - Why is this funny?) Then have groups of students attempt to write a law related to the situation by the cartoon. The class may then discuss the chances of these laws being obeyed.

**Children's Painting
Competition—Number**

A cartoon for coloring has been omitted here because of copyright restrictions. It is from Punch Magazine, December 2, 1970.

Study the cartoons below and on page 132. Check understanding of the cartoons through
discussion and analysis questions (for example: What is happening? - Why is this situation
happening? When have groups of students attempt to write a law related to the situation depicted
in the cartoon. The class may then discuss the chances of these laws being obeyed.

Children's Painting Competition—Number One

The coloring has been omitted here because of copyright restrictions. It is from
the book, December 2, 1970.

Module 4

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Circumstances where law tries to operate against the grain of human interest in self-preservation.

- a) Explain to pupils what the New York statutes defines regarding murder and justification for use of physical force. Then assign pupils the task of creating a short skit in which an individual must "kill or be killed."
- b) A discussion of the following sample cases should prove quite interesting to the pupils. In all three cases, the accused were faced with the task of killing in order to survive. During discussion, ask pupils what their reactions might have been under the same circumstances. (See page 160.)
 - Regina vs. Dudley and Stephens, Law Reports, vol. 14, Queens Bench Division 1884 (English)
 - United States vs. Holmes, in Federal Cases, Book 26 (cases 15, 244 to 15,819) p. 360 (1842)
 - "The Case of the Speluncean Explorers" by L. Fuller, in vol. 62 Harvard Law Review, p. 616 (1949)

Law may be viewed as a social control only social influence at work in its rules of law may be limited by the forces they are consistent with or support. Law may be most effective against these nonlegal forces.

Perhaps the strongest of nonlegal influences influencing social interaction is self-preservation. We have hundreds of regulations aimed at helping people travel in safety. But each driver's interest in self-preservation is the strongest influence on driving. The traffic regulation that is to be ignored is the one that the driver feels to be unnecessary to his own safety. Thus, the law is limited by the extent of the driver's concern for self-preservation.

The most dramatic example of this is the law of self-defense. The law punishes those who are tempted to discourage those who might be killed. The law almost universally makes an exception for killing another in self-defense. Because self-preservation is such a strong instinct, a legal prohibition is very difficult to enforce. A law prohibiting killing in self-defense is almost impossible to enforce.

The three remaining resources under consideration are present cases where people were put to death where the choice was between killing themselves or others. In each case, the limit

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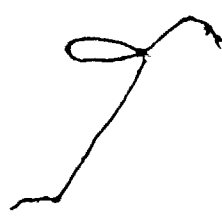
se of the Speluncean Explorers" uller, in vol. 62 Harvard Law p. 616 (1949)

Law may be viewed as a social control. Law is not only social influence at work in society, and formal rules of law may be limited by the extent to which they are consistent with or supported by nonlegal forces. Law may be most effective when it conforms to these nonlegal forces.

Perhaps the strongest of nonlegal forces at work in influencing social interaction is the interest in self-preservation. We have hundreds of legal regulations aimed at helping people travel our highways in safety. But each driver's interest in self-preservation is the strongest influence on safe driving. The traffic regulation that is most likely to be ignored is the one that the driver perceives to be unnecessary to his own safety and well-being. Thus, the law is limited by the extent it goes against one's concern for self-preservation.

The most dramatic example of this may be the matter of self-defense. The law punishing murder is intended to discourage those who might kill. But this law almost universally makes an exception for killing another in self-defense. Because self-preservation is such a strong instinct, a legal system would find it very difficult to enforce a law which prohibits killing in self-defense.

The three remaining resources under subsection 1 present cases where people are placed in situations where the choice was between killing another or dying themselves. In each case, the limits of law's power



Module 4

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

to discourage killing were surpassed in self-preservation. In each case, struggled with applying the law to su

2. An actual occurrence in American legal history where law has lacked "public support" or operated without the backing of "public morality."

- a) Have pupils look up specific details of the 18th and 21st amendments to the Federal Constitution. Assign pupils to read in depth concerning the effectiveness of the Prohibition law. In their reports, pupils should be able to relate some of the unorthodox happenings such as bootlegging, "bath-tub gin," speakeasies—generally, the overall increase in criminal activities. The excerpt on page 160 from "Alcoholic Beverage Control Before Repeal" by Clark Byse might be a fitting introduction to this topic.
- b) Have pupils make use of Readers Guide to Periodical Literature and American history texts to look up the landmark Supreme Court cases dealing with segregation and integration—Plessy vs. Ferguson, Brown vs. Board of Education of Topeka, Kansas, and Holmes vs. Alexander. Other pupils might investigate how much followup there has actually been in the Southern school systems to carry out the court's orders to integrate and grant to all citizens equal protection under the law guaranteed by the 14th amendment to the United States Constitution.

An interest in self-preservation is nonlegal force that may serve as a limit on the effectiveness of law. To the extent that the law is applied against the grain of popular morality and tradition, it may be of limited effectiveness. The Prohibition era of the 1920's provides a case in American history. The social problems of that era were met with comprehensive prohibition of manufacture and sale of alcohol. Yet the law was largely morally condoned and socially accepted. The result—massive numbers of "respectable" officials disregarded the law with impunity.

Some of the most controversial interpretations of the U.S. Constitution of the Warren Court era confronted the same limitation of law. The Board of Education, in 1954, determined that the equal protection clause of the U.S. Constitution forbids segregation of school children. Nevertheless, more than a decade and that case was decided, more than half of the children in America attend predominantly segregated schools. Lack of popular and moral support for the requirements set forth in Brown probably explains the relative ineffectiveness of the law.

CON-OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

to discourage killing were surpassed by the interest in self-preservation. In each case, the courts struggled with applying the law to such circumstances.

2. An actual occurrence in American legal history where law has lacked "public support" or operated without the backing of "public morality."

Students look up specific details about the 18th and 21st amendments of the Federal Constitution. Assign pupils in depth concerning the effectiveness of the Prohibition law. In their reports, pupils should be able to relate the unorthodox happenings such as speakeasies, "bath-tub gin," and the overall increase in criminal activity. The excerpt on page 160 from "Prohibition: Beverage Control Before Repeal" by Byse might be a fitting introduction to this topic.

Students make use of Readers Guide to American Literature and American history to look up the landmark Supreme Court cases dealing with segregation and desegregation—Plessy vs. Ferguson, Brown vs. Board of Education of Topeka, Kansas, and Dr. Martin Luther King vs. Alexander. Other pupils might be interested in how much followup there has been in the Southern school system to carry out the court's orders. The Supreme Court's decision to grant to all citizens the protection under the law guaranteed by the 14th amendment to the United States Constitution.

An interest in self-preservation is not the only nonlegal force that may serve as a limit to the effectiveness of law. To the extent that law goes against the grain of popular morality, custom, or tradition, it may be of limited effect. The prohibition era of the 1920's provides a clear example in American history. The social problems of alcohol abuse were met with comprehensive prohibitions of manufacture and sale of alcohol. Yet drinking was largely morally condoned and socially accepted. The result—massive numbers of "respectable" citizens and officials disregarded the law with impunity.

Some of the most controversial interpretations of the U.S. Constitution of the Warren Court era have confronted the same limitation of law. Brown vs. Board of Education, in 1954, determined that the equal protection clause of the U.S. Constitution forbids segregation of school children by races. Nevertheless, more than a decade and a half after that case was decided, more than half of the black children in America attend predominately segregated schools. Lack of popular and moral support of a large portion of our population in implementing the requirements set forth in Brown probably helps explain the relative ineffectiveness of this law.

Module 4

DETAILED DESCRIPTION OF STRATEGIES

- c) The statement on page 160 was contained on an envelope mailed within a regular envelope. The statute related to this type of mailing is listed below the message.
- Have each student write anonymously his or her probable action if he received such an envelope in the mail.
 - Have the class discuss what they perceive as the intent of the statute; they can then add to their perceptions any additional ideas from the introductory statements on page 161.
 - Compare the anonymous statements with the class decision concerning the intent of the statute. Is the law effective in bringing out the desired change of behavior?
 - Suggest ways that the desired changes could be brought about by societal action.
- d) As an introduction to the topic of religious exercises in the public school system, the teacher might poll the class to see how many pupils have attended schools where religious exercises were part of the daily procedure. The question might then be asked: Why is this subject so controversial and what legal action if any, has been initiated about religious services in public schools? This would be a natural point to study the case of Bible Reading and Prayers in Public Schools. (See page 165 for references.)

DISCUSSION OF STRATEGIES AND RESOURCES

The school prayer cases reveal a significant shift in the 1950's and early 1960's. Courts interpreted the First Amendment as prohibiting religious exercise in public schools. These decisions were inconsistent with the perceptions of the public concerning the proper relation between religion and education of large numbers of citizens. The result has been that the practices have remained unchanged in public schools, notwithstanding the

RECEPTION OF STRATEGIES

statement on page 160 was contained in an envelope mailed within a regular envelope. The statute related to this type of mailing is listed below the page.

Each student write anonymously on the envelope their probable action if he or she received such an envelope in the mail.

After the class discuss what they perceive as the intent of the statute; they then add to their perceptions any additional ideas from the introductory statements on page 161.

Compare the anonymous statements with the class decision concerning the intent of the statute. Is the law effective in bringing out the desired change of behavior?

Suggest ways that the desired changes could be brought about by societal action.

After the introduction to the topic of religious practices in the public school system, the teacher might poll the class to see how many students have attended schools where religious practices were part of the daily procedure. A question might then be asked: Why is this subject so controversial and what legal action, if any, has been initiated about religious practices in public schools? This would be a natural point to study the case of Bible Reading in Public Schools. (See page 165 for references.)

DISCUSSION OF STRATEGIES AND RESOURCES

The school prayer cases reveal a similar limit of law. In the 1950's and early 1960's the Supreme Court interpreted the First Amendment as prohibiting any religious exercise in public schools. These decisions were inconsistent with the personal conviction concerning the proper relation between religion and education of large numbers of citizens and education officials. The result has been that religious practices have remained unchanged in thousands of public schools, notwithstanding their illegality.

Module 4

DETAILED DESCRIPTION OF STRATEGIES

- e) Have pupils view a film or filmstrip on the school prayer controversy. The following titles are possibilities:
- "The Schempp Case: Bible Reading in Public Schools." Color No. 2858; B/W No. 2859. Encyclopedia Britannica Film Division.
 - "Bill of Rights in Action: Freedom of Religion." 21 min., color, BFA.
- f) A recent United States Vice President, Hubert Humphrey made the following statement: "There are not enough jails, not enough policemen and not enough courts to enforce a law not supported by the people." Divide the class in half. Have one half devise arguments to support this statement, the other half to devise reasons why they might disagree with the Vice President's statement.

DISCUSSION OF STRATEGIES AND RESOURCES

Module 4

RESOURCES*

New York Statutes

New York Penal Law, Section 125.25 "Murder."

"A person is guilty of murder when:

1. With intent to cause the death of another person, he causes the death of a person or of a third person; ...

[Exceptions]

- (a) The defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reason for which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. ...or
 - (b) The defendant's conduct consisted of causing or aiding, without duress or deception, another person to commit suicide.
2. Under circumstances evincing a depraved indifference to human life, he engages in conduct which creates a grave risk of death to another person, thereby causes the death of another person; or
 3. Acting either alone or with one or more other persons, he commits or attempts to commit robbery, burglary, kidnapping, arson, rape in the first degree, sexual abuse in the first degree, escape in the first degree, or escape in the second degree, and, in the course of and in furtherance of such crime or of immediate flight therefrom, he is a participant, if there be any, causes the death of a person other than a participant; ...

[Exceptions]

- (a) [The defendant] did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof;
- (b) Was not armed with a deadly weapon, or any instrument, article or object readily capable of causing death or serious physical injury and not ordinarily carried in public places by law-abiding persons;

*Direct quotations from statutes are indicated by the use of quotation marks. Other are summaries or paraphrases of the statute listed.

RESOURCES*

Ark Statutes

Ark Penal Law, Section 125.25 "Murder."

Person is guilty of murder when:

With intent to cause the death of another person, he causes the death of such person or of a third person; ...

[Exceptions]

- (a) The defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. ...or
- (b) The defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide.

Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person; or

Acting either alone or with one or more other persons, he commits or attempts to commit robbery, burglary, kidnapping, arson, rape in the first degree, sodomy in the first degree, sexual abuse in the first degree, escape in the first degree, or escape in the second degree, and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants; ...

[Exceptions]

- (a) [The defendant] did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and
- (b) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and

Quotations from statutes are indicated by the use of quotation marks. Other statements are paraphrases of the statute listed.

Module 4

- (c) Had no reasonable ground to believe that any other participant was with such a weapon, instrument, article or substance; and
- (d) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

New York Penal Law, Section 35.15 "Justification: Use of Physical Force in Defense"

- "1. Except as provided in subdivisions two and three of this section, a person is justified in using physical force upon another person in order to defend himself or another person from what he reasonably believes to be the use of imminent unlawful physical force by such other person, and he may use a degree of force which he reasonably believes is necessary for such purpose; except that deadly physical force may not be used if the actor reasonably believes that such other person is (a) using or about to use lawful deadly physical force, or (b) using or about to use physical force in the commission of a burglary of a dwelling while committing or attempting to commit a burglary of a dwelling, or (c) committing or about to commit a kidnapping, robbery, forcible rape, or forcible sodomy.
- "2. Notwithstanding the provisions of subdivision one of this section, a person is justified in using deadly physical force upon another person if he knows that he is not likely to avoid the necessity of using such force with complete safety (a) by retreating, (b) by surrendering possession of property to a person asserting a claim of ownership thereto, or (c) by complying with a demand that he abstain from performing an act which he is not obligated to perform.
- "3. Notwithstanding the provisions of subdivision one of this section, a person is justified in using physical force if (a) with intent to cause physical injury to another person, he provoked the use of unlawful physical force by such other person, or (b) he was the initial aggressor, ...or (c) the physical force is the product of a combat by agreement not specifically authorized by law."

- (c) Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and
- (d) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury."

ork Penal Law, Section 35.15 "Justification: Use of Physical Force in Defense of a Person."

Except as provided in subdivisions two and three of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonable believes to be the use of imminent use of unlawful physical force by such other person, and he may use a degree of force which he reasonably believes is necessary for such purpose; except that deadly physical force may not be used unless the actor reasonably believes that such other person is (a) using or about to use unlawful deadly physical force, or (b) using or about to use physical force against an occupant of a dwelling while committing or attempting to commit a burglary of such dwelling, or (c) committing or about to commit a kidnapping, robbery, forcible rape or forcible sodomy.

Notwithstanding the provisions of subdivision one of this section, a person is not justified in using deadly physical force upon another person if he knows that he can avoid the necessity of using such force with complete safety (a) by retreating,...or (b) by surrendering possession of property to a person asserting a claim of right thereto, or (c) by complying with a demand that he abstain from performing an act which he is not obligated to perform.

Notwithstanding the provisions of subdivision one of this section, a person is not justified in using physical force if (a) with intent to cause physical injury or death to another person, he provoked the use of unlawful physical force by such other person, or (b) he was the initial agressor,...or (c) the physical force involved was the product of a combat by agreement not specifically authorized by law."

Module 4

Sample Cases

Regina vs. Dudley and Stephens, Law Reports vol. 14, Queens Bench Division 1884 (E) (reproduced in edited form in Howard and Summers, Law, Its Nature, Functions and p. 238; reproduced in Kadish and Paulsen, Criminal Law and Its Processes, p. 67.)

Four men were lost at sea in a lifeboat for more than 3 weeks. In order to prevent all from dying of starvation, the weakest, an 18-year-old boy with no family, was killed and eaten. This case is the report of the murder prosecution that followed the rescue of the remaining three men. Only two of the men were tried; the other two were not gone along with their plan. The final sentence was the death penalty.

United States vs. Holmes, in Federal Cases, Book 26 (cases 15, 244 to 15,819), p.

After shipwreck, 42 people were at sea in a lifeboat. After 2 days when the sea was rough, a seaman threw 14 passengers overboard to keep the lifeboat from sinking. This case is the prosecution of the seaman for manslaughter.

"The Case of the Speluncean Explorers" by Fuller, L., in vol. 62 Harvard Law Review p. 616 (1949)

Hypothetical story of five men lost in a cave for 30 days without food. Lots of people were cast and the loser was eaten. Case presents the murder prosecution of the other four.

Alcoholic Beverage Control Before Repeal. Clark Byse. 7 Law and Contemporary Problems (1940) pp. 544-566. Reprinted by permission of Fred B. Rothman & Co., South Hackensack, N.J.

"Many factors help to explain the adoption of the Amendment. Public opinion was profoundly disturbed by the evils of the saloon...and the corrupt alliance between business and politics. In addition to these two major causes, there was the argument that by enforcing prohibition the productivity of the nation would be enlarged, because the nation would be more efficient and the money theretofore spent for liquor would be invested in more productive enterprises. Business interests, convinced that sober employment would result from the adoption of national prohibition, supported the dry crusade. It was also urged that wages would be increased and that standards of living be

Case

Regina vs. Dudley and Stephens, Law Reports vol. 14, Queens Bench Division 1884 (English) reproduced in edited form in Howard and Summers, Law, Its Nature, Functions and Limits, 238; reproduced in Kadish and Paulsen, Criminal Law and Its Processes, p. 67.)

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Module 4

"All these factors were skillfully exploited by the driving force against the Anti-Saloon League... The result was the Eighteenth Amendment to the Constitution which prohibited the manufacture, sale, or transportation of intoxicating liquors. The unfortunate results of this attempt at legal coercion are well known. The saloon was replaced by the speak-easy which served adults and minors with impartiality. Instead of being able to secure liquor made by an experienced distiller with skill or local reputation, the average consumer was forced to accept 'bath tub' gin that had been 'cut,' colored and flavored to resemble whisky. Bootleggers in business, charged high prices, paid their taxes in the form of protection money, corrupted local, state, and national officials. Thus the unholy alliance between business and politics, one of the causes of Prohibition, returned in an aggravated form. With political protection assured, the bootlegging element branched out into other activities, particularly into the fields of racketeering and gambling.

"Law enforcement agencies failed to cope with the problem successfully. Many people explain this failure. Congress refused to establish an adequate enforcement agency. It voted dry, but apparently was quite wet when it came to giving the Prohibition Bureau adequate appropriations. Even with decent appropriations, it would have been well-nigh impossible for the Federal Government to police the liquor activities of its citizenry. There is a limit to effective federal action. This weakness possibly have been remedied by state assistance, but the states refused to cooperate with the Federal Government in its attempt to enforce the law. In no one year combined enforcement appropriations of the states equal one million dollars. They were bogged down with a flood of liquor prosecutions, held 'bargain days' on which violators could plead guilty and be assured of a light fine or suspended sentence.

"The most important reasons for the failure in enforcement is found in the attitude of the public. Indeed, this attitude probably explains why state and federal agencies failed to establish adequate enforcement agencies. People resented being ordered by Constitutional command not to indulge in even a glass of mildly euphoric beverage. They objected to the disregard of the law by the wealthy who were able and willing to pay high prices in order to keep a well-stocked cellar. Law enforcement officials resorted to crude methods that stirred up opposition to national prohibition and made enforcement practically impossible. With the breakdown in law enforcement agencies and widespread violation of the laws that had been enacted pursuant to the power granted in the Amendment, there arose a general disregard for law and order. It is here that Prohibition caused the most havoc, for law and order, respect for

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The most important reasons for the failure in enforcement is found in the attitude of the public. Indeed, this attitude probably explains why state and federal governments failed to establish adequate enforcement agencies. People resented being ordered by a Constitutional command not to indulge in even a glass of mildly euphoric beer. They objected to the disregard of the law by the wealthy who were able and willing to pay high prices in order to keep a well-stocked cellar. Law enforcement officials often used crude methods that stirred up opposition to national prohibition and made effective enforcement practically impossible. With the breakdown in law enforcement and the widespread violation of the laws that had been enacted pursuant to the power granted in the Amendment, there arose a general disregard for law and order. It is precisely here that Prohibition caused the most havoc, for law and order, respect for authority

Module 4

are basic to the well-being of any government. The effort to eradicate the evils of the pre-Prohibition era resulted in the greater evil of disrespect for and violation of law.

"Such a situation could not long endure. ... Prominent leaders who had theretofore been noncommittal or active supporters of the Amendment publicly announced their opposition. A Literary Digest poll in 1930 indicated that the Amendment was very unpopular. Opponents, missing no chances publicized the theory that legalizing the liquor traffic would provide the necessary impetus for economic recovery. Federal and state governments, with their budgets unbalanced for relief expenditures and decreased tax returns, looked anxiously for new sources of revenue. Eventually these forces became sufficient and on December 5, 1933, Utah, the thirty-sixth state, ratified the Twenty-first Amendment."

This envelope contains a "Sexually Oriented Ad". Please read this notice carefully before opening.

The advertisement enclosed in this envelope contains photographic illustrations of nude men and women together in what may be considered erotic situations and includes pertinent text.

I do not want to offend anyone not interested in sexually oriented literature. If you are not over 21 years of age or if you are not interested in seeing sexually oriented material please destroy this envelope without opening and you will receive no further advertising from this company.

You will receive my future offerings only if you specifically request them to be mailed to you--otherwise you will receive no further advertisements.

Thank you.

(Signature of Publisher)

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of the pre-Prohibition era resulted in the greater evil of disrespect for and
violation of law.

A situation could not long endure. ... Prominent leaders who had theretofore been
opponents or active supporters of the Amendment publicly announced their opposition.
A Literary Digest poll in 1930 indicated that the Amendment was very unpopular. ... The
Commissioner, missing no chances publicized the theory that legalizing the liquor traffic would
provide the necessary impetus for economic recovery. Federal and state governments,
with budgets unbalanced for relief expenditures and decreased tax returns, looked
anxiously for new sources of revenue. Eventually these forces became sufficiently strong,
and on December 5, 1933, Utah, the thirty-sixth state, ratified the Twenty-first
Amendment."

This envelope contains a "Sexually Oriented Ad". Please read this notice
carefully before opening.

The advertisement enclosed in this envelope contains photographic illustra-
tions of nude men and women together in what may be considered erotic situa-
tions and includes pertinent text.

If you do not want to offend anyone not interested in sexually oriented literature,
if you are not over 21 years of age or if you are not interested in seeing sex-
ually oriented material please destroy this envelope without opening and you
will receive no further advertising from this company.

You will receive my future offerings only if you specifically request they be
mailed to you--otherwise you will receive no further advertisements.

Thank you.

(Signature of Publisher)

Module 4

Pent-R-Books, Inc. vs. United States Postal Service. 328 Federal Supplement. (19

"The Legislative Findings and the Statute

The Congressional findings which support the Goldwater amendment are contained in Section 14 of Pub.L. 91-375, which reads:

INVASION OF PRIVACY BY MAILING OF SEXUALLY ORIENTED ADVERTISEMENTS

SEC. 14. (a) The Congress finds—

- (1) that the United States mails are being used for the indiscriminate dissemination of advertising matter so designed and so presented as to exploit sexual sensuality for commercial gain;
 - (2) that such matter is profoundly shocking and offensive to many persons who receive it, unsolicited, through the mails;
 - (3) that such use of the mails constitutes a serious threat to the dignity and privacy of the American home and subjects many persons to an unconscionable and unjustified intrusion upon their fundamental personal right to privacy;
 - (4) that such use of the mail reduces the ability of responsible parents to protect their minor children from exposure to material which they as parents believe to be harmful to the normal and healthy ethical, mental, and social development of their children; and
 - (5) that the traffic in such offensive advertisements is so large that individual citizens will be helpless to protect their privacy or their families without the aid of stronger and more effective Federal controls over the mailing of such material.
- (b) On the basis of such findings, the Congress determines that it is consistent with the public policy of the United States for the facilities and services of the United States Postal Service to be used for the distribution of such materials to persons who do not want their privacy invaded in this manner or to persons who wish to protect their minor children from exposure to such material.

ks, Inc. vs. United States Postal Service. 328 Federal Supplement. (1971)

Legislative Findings and the Statute

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that such use of the mails constitutes a serious threat to the dignity and sanctity of the American home and subjects many persons to an unconscionable and unwarranted intrusion upon their fundamental personal right to privacy;

that such use of the mail reduces the ability of responsible parents to protect their minor children from exposure to material which they as parents believe to be harmful to the normal and healthy ethical, mental, and social development of their children; and

that the traffic in such offensive advertisements is so large that individual citizens will be helpless to protect their privacy or their families without stronger and more effective Federal controls over the mailing of such matter.

On the basis of such findings, the Congress determines that it is contrary to the public policy of the United States for the facilities and services of the United States Postal Service to be used for the distribution of such materials to persons who do not want their privacy invaded in this manner or to persons who wish to protect their minor children from exposure to such material.

Module 4

The basic statutory provision is contained in 39 U.S.C. § 3010, which reads:

- (a) Any person who mails or causes to be mailed any sexually oriented advertisement shall place on the envelope or cover thereof his name and address as the address of the sender, and such mark or notice as the Postal Service may prescribe. ...

Criminal prosecution for violations of the Goldwater amendment is authorized in 18 U.S.C. §§ 1735 and 1737, which are also part of Pub.L. 91-375, and which read:

§ 1735. Sexually oriented advertisements

(a) Whoever—

- (1) willfully uses the mails for the mailing, carriage in the mails, or delivery of any sexually oriented advertisement in violation of section 3010 of title 39, or willfully violates any regulations of the Board of Governors issued under such sections; or
- (2) sells, leases, rents, lends, exchanges, or licenses the use of, or, for the purpose expressly authorized by section 3010 of title 39, uses a list maintained by the Board of Governors under such section;

shall be fined not more than \$5,000 or imprisoned not more than five years, or both, for the first offense, and shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, for any second or subsequent offense.

Post Office Department. Section 3010 (a) of Title 39, United States Code. [Rev. 11-1-64]

"(1) Any person who mails or causes to be mailed any sexually oriented advertisement shall place in the upper left-hand corner of the exterior face of the mail piece whereon appear the address designation and postmarks, postage stamps, or indicia thereof, the sender's name and address. In the right-hand portion below the postage stamp, or indicia thereof, and above the addressee designation, there shall be placed the words 'Sexually Oriented Ad'. The words 'Sexually Oriented Ad,' however, need not be placed on the exterior envelope or cover of a mail piece containing such an advertisement if the contents of the mail piece are enclosed in a sealed envelope, inside the envelope or cover which sealed envelope bears conspicuously the words 'Sexually Oriented Ad.'"

basic statutory provision is contained in 39 U.S.C. § 3010, which reads:

a) Any person who mails or causes to be mailed any sexually oriented advertisement shall place on the envelope or cover thereof his name and address as the sender thereof and such mark or notice as the Postal Service may prescribe. ...

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shall be fined not more than \$5,000 or imprisoned not more than five years, or both, for the first offense, and shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, for any second or subsequent offense. ..."

Office Department. Section 3010 (a) of Title 39, United States Code. [Revision]

Any person who mails or causes to be mailed any sexually oriented advertisement shall place in the upper left-hand corner of the exterior face of the mail piece, before the address designation and postmarks, postage stamps, or indicia thereon, the sender's name and address. In the right-hand portion below the postage stamp, or indicia thereof, and above the addressee designation, there shall be placed the words 'Sexually Oriented Ad'. The words 'Sexually Oriented Ad,' however, need not be placed on the exterior envelope or cover of a mail piece containing such an advertisement, if the contents of the mail piece are enclosed in a sealed envelope, inside the exterior envelope or cover which sealed envelope bears conspicuously the words 'Sexually Oriented Ad'.

Module 4

Resources Concerning Bible Reading and Prayer in Public Schools

National Council for the Social Studies. *Judgment: case study #1, bible reading and prayer in public schools.* (Also printed in *Social Education*, vol. 29, #6, October, pp. 361-372.)

Bragdon and Pittenger. *The pursuit of justice.* pp. 23-28.

James, *The supreme court in American life.* pp. 146-156.

Cohen, et. al. *The Bill of Rights: a source book.* pp. 284-289.

Mill, *Liberty and law.* pp. 138-151.

Parker, et. al. *Civil liberties.* pp. 143-145.

Oregon State Bar Association. *Liberty and the law.* Unit 7, Church, State, and

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law.* "The limits of law." Ginn and Company. 1973.

Cases Concerning Bible Reading and Prayer in Public Schools

National Council for the Social Studies. *Judgment: case study #1, bible reading and prayer in public schools.* (Also printed in *Social Education*, vol. 29, #6, October 1965. pp. 361-372.)

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Watts, *Liberty and law.* pp. 139-151.

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Wisconsin State Bar Association. *Liberty and the law.* Unit 7, Church, State, and Education.

Watts, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law.* Unit V - "The limits of law." Ginn and Company. 1973.

4.

Module 4

UNDERSTANDING III

SINCE LAW CANNOT READILY CONTROL THOUGHTS AND BELIEFS; TO BE EFFECTIVE, THE LAW MUST REGULATE SOME OVERT BEHAVIOR OR ACTIVITY.

A. *Explanation of Understanding III*

Perhaps the quality of life in our society would be improved if everyone believed in the principles of the Ten Commandments. Some social problems would be solved if all husbands loved their wives and vice versa. Harm done by criminal activity might be reduced if criminals were punished before such thoughts had a chance to take the form of antisocial activity. So why require all spouses to love each other, and require people to think good thoughts? Obviously, regulation would somehow go beyond the effective limits of law. Legal officials may try to regulate purposes of controlling beliefs, emotions, thoughts, and the like. However, such regulation without the restriction of some tangible conduct, activity, or behavior is generally beyond the powers of law.

B. *Teaching Understanding III*

OBJECTIVES

- The student can demonstrate his understanding of overt activities that can be limited by collecting 10 examples from articles in newspapers or magazines.
- Given an incident in which an individual is penalized for alleged hostile thoughts by authorities; the student can list several positive and negative results of such action and propose hypotheses concerning the long-run weaknesses of such a policy.

QUESTIONS TO REACH UNDERSTANDING

- What factors limit the capacity of law to regulate what goes on in the minds of people?
- Even if law could regulate intangibles such as thoughts and beliefs, how might this be better than good?
- Why is law less limited in regulating overt activity than in regulating intangible thoughts and beliefs?

II

CANNOT READILY CONTROL THOUGHTS AND BELIEFS, TO BE EFFECTIVE, THE LAW MUST IDENTIFY BEHAVIOR OR ACTIVITY TO REGULATE.

Understanding III

the quality of life in our society would be improved if everyone believed in the basic Ten Commandments. Some social problems would be solved if all husbands loved their wives. Harm done by criminal activity might be reduced if criminals were punished for their evil. Such thoughts had a chance to take the form of antisocial activity. So why not have laws that require people to love each other, and requiring people to think good thoughts? Obviously, such laws somehow go beyond the effective limits of law. Legal officials may try to use law for regulating beliefs, emotions, thoughts, and the like. However, such regulation of intangibles is beyond the effective limits of law. Regulation of some tangible conduct, activity, or behavior is generally beyond law's limited

Understanding III

How can a student demonstrate his understanding of overt activities that can be limited by law? Select 10 examples from articles in newspapers or magazines.

Describe an incident in which an individual is penalized for alleged hostile thoughts about the government; the student can list several positive and negative results of such action, and can propose hypotheses concerning the long-run weaknesses of such a policy.

REACH UNDERSTANDING

What factors limit the capacity of law to regulate what goes on in the minds of people?

If law could regulate intangibles such as thoughts and beliefs, how might this do more harm than good?

Is law less limited in regulating overt activity than in regulating intangibles such as thoughts and beliefs?

Module 4

USE OF VISUALS

- . Have students find pictures in newspapers and periodicals of overt situations which are controlled by law.
- . Use a film of a totalitarian government in action (pre-World War II Germany or Italy). Have students identify situations in which individuals fear that they may be punished for their actions or opinions. What visual clues reveal this?
(Many commercial films such as *The Shop on Main Street* can be used in this context.)

Students find pictures in newspapers and periodicals of overt situations which can be limited

of a totalitarian government in action (pre-World War II Germany or Italy, for example).

Students identify situations in which individuals fear that they may be punished for thoughts or actions. What visual clues reveal this?

Commercial films such as *The Shop on Main Street* can be used in this context.)

Module 4

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOU

1. Rules regulating intangibles.

- a) Ask pupils if it is possible to control what people think, feel, or believe. Assign each pupil the task of designing and later revealing to the class a law which might control one of the emotions listed below. Read them the following hypothetical statutes before they begin their task. (It would be interesting to hear the reactions of their classmates about the feasibility of each statute.)

Sample hypothetical statutes:

—It shall be a crime punishable by a fine of not more than \$500 and imprisonment for not more than a year for any person over 12 years of age to believe in discrimination on the basis of race, creed, or national origin.

—It shall be a crime...for a husband not to love his wife or wife not to love her husband.

- b) A teacher will most likely receive an affirmative response to the question of whether the attitudes of students, teachers, and administrators within a school need to be changed. Suggest to pupils that the possibility exists of certain legislation being devised

Many of the difficulties we confront in society have more to do with attitudes than with antisocial activity. Resistance may defy resolution until respect human dignity. Problems probably will not be overcome until morally compelled to respect other property. Some aspects of the problem may remain insolvable in the tradition of our society until more people are bound to the bonds that tie the family together.

Why not simply bring about these changes by law? Pass a law saying—"You must love your fellow man," "You must believe in God," "You must love your spouse and children." Such legislation would be an attempt beyond the limits of law. Law which coerces beliefs is limited in two senses. First, such laws go beyond the proper scope of legal control. Given our limited power to view and control man's minds, such laws are virtually unenforceable. The effectiveness of such laws is bound to be limited.

Even if we assume that an Orwellian regime could control men's thoughts, feelings, and beliefs, such laws might still be beyond the limits of law in another sense. In any legal system, individual dignity is a fundamental value. Individual thought, feeling, and

PTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES .

1. Rules regulating intangibles.

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Many of the difficulties we confront in our complex
society have more to do with attitudes of people
than with antisocial activity. Problems of racial
tension may defy resolution until people more widely
respect human dignity. Problems of widespread crime
probably will not be overcome until more people feel
morally compelled to respect other persons and their
property. Some aspects of the problem of poverty
may remain insolvable in the traditional framework
of our society until more people commit themselves
to the bonds that tie the family together.

Why not simply bring about these changes in people
by law? Pass a law saying—"You must respect your
fellow man," "You must believe it is wrong to steal,"
"You must love your spouse and children." Obviously,
such legislation would be an attempt to operate
beyond the limits of law. Law which attempts to
coerce beliefs is limited in *two* senses. For one
thing, such laws go beyond the practical boundaries
of legal control. Given our limited capacity to
view and control man's minds, such laws would be
virtually unenforceable. The *effectiveness* of these
laws is bound to be limited.

Even if we assume that an Orwellian surveillance of
men's thoughts, feelings, and beliefs is possible,
such laws might still be beyond law's proper limits
in another sense. In any legal system where indi-
vidual dignity is a fundamental value, the realm of
individual thought, feeling, and belief may not be

Module 4

DETAILED DESCRIPTION OF STRATEGIES

to change attitudes in the following areas:

Sample hypothetical school rules:

- Design a school rule that will help foster trust between teachers and students.
- Design a school rule that will reduce racial prejudice among people at the school.
- Design a school rule that will encourage students, teachers, and administrators to respect the rights of others in the school.

Ask pupils after they have devised these rules why there might be problems in enforcing such rules. The reasons cited should be listed on bulletin board or poster for reference in the ensuing study.

2. The more overt the things prescribed the less limited law is in regulating.

- a) Construct a case study on the use of law to regulate and promote patriotism.
- Construct a hypothetical statute that requires all school children to respect their country and its flag.
 - Adapt for student reading a case where students challenged in court a law requiring all students to take a pledge of allegiance to the nation's flag.

DISCUSSION OF STRATEGIES AND RESOURCES

an appropriate realm for law's intrusion. Legal coercion in such matters may result in more social harm than good.

Having small groups of students actually construct some laws or rules dealing with human feelings or beliefs may draw attention to how limited law is in controlling people.

As thoughts or beliefs manifest themselves as antisocial activity, they enter the sphere of legal regulation. For example, one might argue that a law requiring citizens to salute the flag would be either enforceable or unenforceable. Law punishing children's refusal to salute is easily enforced, but raises difficulties as to propriety. In several cases, children have struggled with these laws which conflict with their act in an expression of belief. On

ION OF STRATEGIES

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DISCUSSION OF STRATEGIES AND RESOURCES

an appropriate realm for law's intrusion. Direct
legal coercion in such matters may result in more
social harm than good.

Having small groups of students actually try to
construct some laws or rules dealing with regulation
of human feelings or beliefs may dramatically reveal
how limited law is in controlling peoples' minds.

As thoughts or beliefs manifest themselves in overt
antisocial activity, they enter the appropriate
sphere of legal regulation. For example, few would
argue that a law requiring citizens to believe in
the flag would be either enforceable or proper. A
law punishing children's refusal to salute the flag
is easily enforced, but raises difficult questions
as to propriety. In several cases, the courts have
struggled with these laws which condemn refusal to
act in an expression of belief. On the other hand,

Module 4

DETAILED DESCRIPTION OF STRATEGIES

- b) Consider with pupils the following three court cases that examine the controversy as to whether students must be required to say the pledge of allegiance to the U.S. flag. Do pupils agree with the court's rulings?

References given on page 172.

- West Virginia Board of Education vs. Barnett, vol. 319 U.S. Reports, p. 624 (1943)
- Frain vs. Baron, vol. 307 Federal Supplement, p. 766 (1969)
- Sheldon vs. Fanin, vol. 221 Federal Supplement, p. 766 (1963)

- c) Does a person have a right to either say or commit destructive acts on the United States flag? Go over the actions of the individual in each of the following cases without revealing the court's decision. See if pupils can figure out the court's ruling in each case.

References given on page 173.

- People vs. Radish, vol. 26 New York Reports, Second Series, p. 114 (1970)
- Street vs. New York, vol. 394 U.S. Reports, p. 576 (1969)

- d) Can a government control what a person thinks? Have one of the pupils in class find excerpts from George Orwell's "1984" which indicate efforts of the government

DISCUSSION OF STRATEGIES AND RESOU

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be discussed if time permits.

ON OF STRATEGIES

With pupils the following
cases that examine the
issue as to whether students
are required to say the pledge
of allegiance to the U.S. flag. Do
you agree with the court's rulings?

See given on page 172.

Virginia Board of Education vs.
Walton, vol. 319 U.S. Reports,
p. 194 (1943)

West Virginia State Board of Education vs. Barnette, vol. 307 Federal
Supplement, p. 766 (1969)

Lee vs. Weisman, vol. 221 Federal
Supplement, p. 766 (1993)

Does a person have a right to either
commit destructive acts on the
U.S. flag? Go over the actions
of each individual in each of the following
cases without revealing the court's
ruling.

See if pupils can figure
out the court's ruling in each case.

See given on page 173.

United States vs. Radish, vol. 26 New York
Second Series, p. 114 (1970)

United States vs. New York, vol. 394 U.S.
Supplement, p. 576 (1969)

Should the government control what a person
says? Have one of the pupils in class
write a report from George Orwell's "1984"
that depicts the efforts of the government

DISCUSSION OF STRATEGIES AND RESOURCES

Laws prohibiting acts of destruction of the flag
have presented easier questions. Here overt activity
expressing an unpopular belief is at issue.

By tracing case studies of legal attempts to encour-
age a belief that is a legitimate concern for a
legal system to foster (i.e., patriotism), students
may see dramatic limitations of law's power to oper-
ate in this area. Legal attempts to prohibit what
ideas can be taught in the classroom, as illustrated
in the "Scopes monkey trial," provide yet another
area where law may have some limits. The whole
issue of legal censorship of books and films could
be discussed if time permits.

Module 4

DETAILED DESCRIPTION OF STRATEGIES

to control the thought processes and make certain thoughts a crime. Pupils should then report their findings to the class and lead a class discussion defending or refuting the government's power or right to do this.

- e) Have pupils view the film "Inherit the Wind." If this is unavailable, it might be easier to secure a copy of the play.

—John Scopes was charged with violating state law by teaching the theory of evolution in his high school biology class. Can laws like this one be effective? Do they regulate an overt activity?

- f) Pupils can be assigned to do research into the background of Martin Luther King as a prelude to debating the following statement of his: "Morality cannot be legislated but behavior can be regulated. Judicial decrees may not change the heart, but, they can restrain the heartless."

Module 4

RESOURCES *

West Virginia Board of Education vs. Barnett, vol. 319 U.S. Reports, p. 624 (1943)

Many pupils who were Jehovah Witnesses in West Virginia were expelled from school when they refused to say the Pledge of Allegiance. In accordance with West Virginia law, an expelled pupil was considered to be unlawfully absent and subject to proceedings against the parents. Parents could be prosecuted, and if adjudged guilty, could be fined \$50 and jailed for 30 days. The court ruled that this was a violation of the pupil's rights under the first and fourteenth amendment and further stated that compulsion to salute the flag was a permissible method of achieving national unity.

Frain vs. Baron, vol. 307 Federal Supplement, p. 27 (1969)

In several schools, students were given the choice of leaving the classroom or participating in the flag salute. Civil rights actions against their respective schools were filed by students who refused to leave their school rooms or to participate. The schools maintained it was a threat to discipline and order. The students maintained the right to stand outside the room was punishment for their exercise of constitutional rights. The court ruled that the standing of the students would not say the pledge because he was an atheist and objected to "under God." The other two pupils did not feel there was liberty and justice for all in America. The court ruled that pupils had a right to remain in the classroom, even if they did not participate.

Sheldon vs. Fanin, vol. 221 Federal Supplement, p. 766 (1963)

Pupils who were members of Jehovah's Witnesses were suspended from school for inactivity because they refused to stand for the singing of the national anthem. The United States District Court ruled that this action of the school was a violation of the pupil's rights under the first amendment guaranteeing freedom of religion. The board could not suspend these pupils from school unless their conduct was disorderly and materially disruptive to the conduct and discipline of the school.

Some of these can be found in the following sources:

Mills, *Liberty and Law*. pp. 138-144.

*Direct quotations from statutes are indicated by the use of quotation marks. Other statements are summaries or paraphrases of the statute listed.

RESOURCES *

Virginia Board of Education vs. Barnett, vol. 319 U.S. Reports, p. 624 (1943)

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Baron, vol. 307 Federal Supplement, p. 27 (1969)

In several schools, students were given the choice of leaving the classroom or participating in the flag salute. Civil rights actions against their respective schools were brought by students who refused to leave their school rooms or to participate. The school authorities maintained it was a threat to discipline and order. The students maintained the idea of being sent outside the room was punishment for their exercise of constitutional rights. One student would not say the pledge because he was an atheist and objected to the words "under God." The other two pupils did not feel there was liberty and justice for all in America. The court ruled that pupils had a right to remain in the classroom, even though they did not participate.

vs. Fanin, vol. 221 Federal Supplement, p. 766 (1963)

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These can be found in the following sources:

Liberty and law. pp. 138-144.

Quotations from statutes are indicated by the use of quotation marks. Other statements are paraphrases of the statute listed.

Module 4

Parker, et. al. *Civil Liberties*. pp. 142-143.

Cohen, et. al. *The Bill of Rights*. p. 260.

James. *The Supreme Court in American Life*. pp. 142-145.

Sandler, et. al. *The people make a nation*. pp. 172-173.

People vs. Radish, vol. 26, New York Reports, Second Series, p. 114 (1970)

(Affirmed by U.S. Supreme Court without opinion, March 24, 1971. Statute prohibiting contemptuous acts against the flag determined to be constitutional.)

The defendant in this case was a proprietor of an art gallery who publicly displayed and exposed for sale a certain type of sculptures which had been made out of the flag as protests against the Vietnam War. He was found guilty of violating the Law which states that the American flag cannot be defiled. The court ruled that in no way violated the defendant's right to freedom of speech under the first amendment.

Street vs. New York, vol. 394 U.S. Reports, p. 576 (1969).

(Statute prohibiting contemptuous words against the flag determined to be unconstitutional.)

Upon hearing the news that James Meredith, the civil rights leader was shot, Street burned an American flag that he owned and burned it on a street corner near his home. Street was arrested and charged with malicious mischief for violating the New York Penal Law which states it is a crime to publicly mutilate the flag either by word or acts. Street heard to say to the arresting officer, "we don't need no damn flag if they let it happen to Meredith." The New York Court of Appeals ruled that they could not uphold Street's contention that he had the right under the first amendment to express his opinion in this fashion. The court upheld the opinion that Street was guilty of a misdemeanor and gave him a suspended sentence. In the court's opinion, "One may not justify burning a flag on one's house, even if it is his own, on the ground, however sincere, that he does so in protest. One may not justify breaking the windows of a government building on that basis. One does not exonerate lawlessness. And the prohibition against flag burning on the grounds of thoroughfare being valid, the misdemeanor is not excused because it is an act of protest."

, et. al. *Civil liberties*. pp. 142-143.

, et. al. *The Bill of Rights*. p. 260.

. *The Supreme Court in American life*. pp. 142-145.

, et. al. *The people make a nation*. pp. 172-173.

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defendant in this case was a proprietor of an art gallery who publicly displayed and exposed for sale a certain type of sculptures which had been made out of the American flag as protests against the Vietnam War. He was found guilty of violating the Penal Law which states that the American flag cannot be defiled. The court ruled that this act in no way violated the defendant's right to freedom of speech under the first amendment.

vs. New York, vol. 394 *U.S. Reports*, p. 576 (1969)

Statute prohibiting contemptuous words against the flag determined to be unconstitutional.)

On hearing the news that James Meredith, the civil rights leader was shot, Street took down the American flag that he owned and burned it on a street corner near his home. He was arrested and charged with malicious mischief for violating the New York Penal Law which states it is a crime to publicly mutilate the flag either by word or acts. He was also asked to say to the arresting officer, "we don't need no damn flag if they let that happen to Meredith." The New York Court of Appeals ruled that they could not agree with Street's contention that he had the right under the first amendment to express his opinion in this fashion. The court upheld the opinion that Street was guilty of a misdemeanor but gave him a suspended sentence. In the court's opinion, "One may not justify burning a flag, even if it is his own, on the ground, however sincere, that he does so as a protest. One may not justify breaking the windows of a government building on that basis. Protest does not exonerate lawlessness. And the prohibition against flag burning on the public thoroughfare being valid, the misdemeanor is not excused because it is an act of flamboyant protest."

Module 4

UNDERSTANDING IV

IN PROVIDING REMEDIES FOR THE HARM WHICH ONE PERSON DOES ANOTHER, LAW MAY CONFRONT HARM THAT ARE BEYOND ITS LIMITED POWER TO REPAIR OR COMPENSATE.

A. *Explanation of Understanding IV*

When large numbers of people live together in a society, some harm others. Harm may be physical (assaults) or intangible (slander). Harm can be purposefully inflicted or might be caused accidentally or through carelessness (auto or hunting accidents.)

Some harmful acts are crimes, and the actor may be punished. The threat of punishment deters some criminal activity. But all acts that cause injury are not crimes (to wit, many auto accidents, broken promises). And even when the wrongdoer is punished, this does not repair the injury.

If two parties cannot settle things themselves when one has been hurt by the other, the law comes into play in the form of a lawsuit. The person who has been injured can sue the person who caused the harm and try to get the court to make the latter repair the harm. If the injury is repaired through the lawsuit, the court will normally give a judgment of money damages. Thus, with a civil lawsuit, the law can help repair things when one person harms another.

However, there are many kinds of harm that are beyond the limited powers of law to repair. The repair to a dented fender is one thing; rectifying things when the injury is, for example, a lost limb, or a ruined marriage is quite another. Effective repair of some injuries is beyond the law.

B. *Teaching Understanding IV*

OBJECTIVES

- Given the details of a personal injury accident case, the student can identify the harm that the victim is hurt by the actions of the other party and can differentiate between physical and intangible hurts which can be corrected by law and those which cannot be so compensated.
- The student can suggest reasons why the legal interpretation of compensation for injury has changed in the last 100 years.

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of Understanding IV

Large numbers of people live together in a society, some harm others. Harm can take many forms. Harm can be tangible (assaults) or intangible (slander). Harm can be purposefully inflicted (murder), or it can be inflicted accidentally or through carelessness (auto or hunting accidents.)

Wrongful acts are crimes, and the actor may be punished. The threat of punishment discourages wrongful acts. But all acts that cause injury are not crimes (to wit, many auto accidents and hunting accidents). And even when the wrongdoer is punished, this does not repair the injury he has caused.

Parties cannot settle things themselves when one has been hurt by the other, the law may step in in the form of a lawsuit. The person who has been injured can sue the person who supposedly caused the harm and try to get the court to make the latter repair the harm. If the injured person wins the lawsuit, the court will normally give a judgment of money damages. Thus, with a civil law suit the law provides a way to settle things when one person harms another.

However, there are many kinds of harm that are beyond the limited powers of law to repair. Money damages are one thing; rectifying things when the injury is, for example, a lost life, a ruined marriage is quite another. Effective repair of some injuries is beyond law's limits.

Understanding IV

In the details of a personal injury accident case, the student can identify the various ways in which the victim is hurt by the actions of the other party and can differentiate between those injuries which can be corrected by law and those which cannot be so compensated.

The student can suggest reasons why the legal interpretation of compensation for personal injury has changed in the last 100 years.

Module 4

QUESTIONS TO REACH UNDERSTANDING

- How does law provide for repairing things when one person has harmed another?
- How is law limited in its capacity to repair harm done one person by another?

USE OF VISUALS

- Show a film dealing with an automobile accident. (Your Driver Education teacher may appropriate selections.) Have students identify all possible grievances that might be by those involved in the incident depicted. Show the film again, noting visual clue personal damage to individuals, both as to physical impairment and emotional distress. class discussion, attempt to reach consensus concerning which of these can be satisfied financial settlement.
- Have students photograph an actual or staged altercation among students. Ask others the pictures to identify from visual clues evidence of harm wrongfully done to an individual by another. Discuss what compensation would be possible in settlement.

REACH UNDERSTANDING

What law provide for repairing things when one person has harmed another?

How limited in its capacity to repair harm done one person by another?

When dealing with an automobile accident. (Your Driver Education teacher may have some film selections.) Have students identify all possible grievances that might be raised in the incident depicted. Show the film again, noting visual clues of damage to individuals, both as to physical impairment and emotional distress. In discussion, attempt to reach consensus concerning which of these can be satisfied by a settlement.

Have students photograph an actual or staged altercation among students. Ask others viewing the photographs to identify from visual clues evidence of harm wrongfully done to an individual. Discuss what compensation would be possible in settlement.

Module 4

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Lawsuits for carelessly causing a death.

- a) What provisions, if any, does New York State make for allowing people to sue someone who has carelessly caused the death of another person? Assign students to examine the section from the New York State constitution and report back to the class on their interpretation of any pertinent section. (See page 179.)
- b) Is a human life priceless? Can you replace with any amount of money someone you have loved very dearly who has died? Discuss these questions with your pupils and then give them testimony of the following cases without telling them the judge or jury's decision. Have members of class play the judge and jury and come up with the amount of money to be given to the plaintiff. It will be interesting to see if their amounts vary greatly from the original cases. The student decisions can then be compared with the actual decisions. (See pages 179-182.)

—Wycko vs. Gnodtke, vol. 105 Northwestern Reporter, Second Series, p. 118 (1960)

—Fussner vs. Andert, vol. 113 Northwestern Reporter, Second Series, p. 355 (1962).

An important function that law fulfills is providing a rational process by which a third party (a court) can settle one party's claims to have been injured and the two cannot work things out. However, the law is limited in how it can repair harm; it has a limited number at its disposal. The principal way to repair harm done is with money. If the court determines the party suffered the alleged harm, the court orders the injured person the amount of money to compensate for the harm done. The other available to courts is the injunction demanding that the wrongdoer stop the act or do some specific act to repair.

Yet the kinds of injuries that men and other living together do not all admit to satisfactory repair by such legal means. In a further respect, law is limited. Negligence results in property damage that can be medically cured, an award can be satisfactory repair. But no amount of money a court might order can repair a friend or a loved one carelessly made up for a permanent physical injury or loss of sight. Notwithstanding its inability to compensate for such harms, law in its limited capacity does what it can towards repair by assessing damages.

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give them testimony of the follow-
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be compared with the actual.
(See pages 179-182.)

5. Gnodtke, vol. 105 Northwestern
Second Series, p. 118 (1960)
vs. Andert, vol. 113 Northwestern
Second Series, p. 355 (1962)

An important function that law fulfills in society is providing a rational process by which an impartial third party (a court) can settle disputes when one party claims to have been injured by another, and the two cannot work things out by themselves. However, the law is limited in how effectively it can repair harm; it has a limited number of remedies at its disposal. The principal way that law seeks to repair harm done is with money judgment awards. If the court determines the party sued has caused the alleged harm, the court orders him to pay the injured person the amount of money that will compensate for the harm done. The other common remedy available to courts is the injunction, or court order, demanding that the wrongdoer stop the harmful activity or do some specific act to repair the harm.

Yet the kinds of injuries that men may wreak on each other in living together do not all lend themselves to satisfactory repair by such legal remedies. Thus, in a further respect, law is limited. When someone's negligence results in property damage or an injury that can be medically cured an award of money may be satisfactory repair. But no amount of money or nothing a court might order can repair the loss of a friend or a loved one carelessly killed, or even make up for a permanent physical injury such as loss of sight. Notwithstanding its inability to compensate for such harms, law in its limited way does what it can towards repair by assessing money damages.

Module 4

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCE

2. Lawsuits for interference with marital happiness.

- a) Ask pupils if they know the meaning of the phrase, "alienation of affections." After discussion, examine New York State Civil Rights Law concerning the State's limits in bringing a lawsuit against another individual for alienation of affection.
- b) Use the case of Moulin vs. Monteleone, vol. 115 Southern Reporter, p. 447 (1927) on page 182 for discussion.
- c) Bring out in discussion that laws about different issues may vary from state to state; could the case of Moulin vs. Monteleone take place in New York? Why or why not?

Certain physical injuries are not the harm done one person by another that factory legal repair. Some mental injuries are beyond law's limits to repair in some instances (for example, slander to reputation), courts attempt to make awarding money damages. In other instances, for example, interference with affections has proven law to be largely unfit to repair injuries.

3. Law suits to repair harm done by destruction of unique goods.

- a) Divide the class into three distinct juries. Have each jury consider one of the three distinct cases. Each jury could appoint a foreman who might conduct a discussion concerning the amount of money to be awarded to the individual who has lost some irreplaceable item. The foreman can report back to the class what their decision is.

The third subject for case study suggests state law's limited effectiveness in repairing harm done to unique possessions. If someone destroys the property of someone else and sue and force payment for replacement property. But if the lost property is something of great value (for example, a coin collection or heirloom), the money is hardly a satisfactory substitute for

OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

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Certain physical injuries are not the only kinds of harm done one person by another that defy satisfactory legal repair. Some mental and emotional injuries are beyond law's limits to rectify. Again, in some instances (for example, slanderous injury to reputation), courts attempt to make repairs by awarding money damages. In other instances (for example, interference with affections), experience has proven law to be largely unfit to repair any injuries.

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The third subject for case study suggested to demonstrate law's limited effectiveness in repairing harm concerns unique possessions. If someone takes or destroys the property of someone else, the owner can sue and force payment for replacement of such property. But if the lost property is unique (a coin collection or heirloom), the money judgment is hardly a satisfactory substitute for the original.



Module 4

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RES

Sample hypotheticals:

- Case #1 - Suppose your mother took her antique wedding ring, which has been in the family for 150 years, to the jeweler to be cleaned. The jeweler carelessly throws the ring into the incinerator. Your mother sued the jeweler for the wrong he had done her. Sitting as the jury, have the class determine how much mother should recover from the jeweler. Consider whether any judgment can really satisfactorily repair this wrong.
 - Case #2 - Suppose Suzie is an orphan girl who lost her parents in an auto accident when she was 12. She has only one photograph of her parents. As a practical joke, a friend destroyed this picture. Suzie sued this friend for the harm he has caused her. Sitting as the jury, have the class determine how much Suzie should recover from her friend. Consider whether any judgment can really satisfactorily repair this wrong.
 - Case #3 - In the movie, "Blackboard Jungle," several students destroy the teacher's rare and irreplaceable collection of jazz records which he has brought to class. Could the teacher sue? Should he? Can this harm be remedied at all?
- b) Assign each pupil to work with a partner to write up an instance where one individual harms another either by word or deed and no action can be taken by law to rectify the harm. (Some of the members of the class may feel that the "irreparable" harm can be corrected.)

DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

Synthetic situations:

Suppose your mother took her wedding ring, which has been in the family for 150 years, to the jeweler to be repaired. The jeweler carelessly throws it into the incinerator. Your mother sues the jeweler for the wrong he had done. Acting as the jury, have the class determine how much money the mother should recover from the jeweler. Consider whether any judgment can really satisfactorily repair the wrong.

Suppose Suzie is an orphan girl who lost her parents in an auto accident when she was 12. She has only one photograph of her parents. As a practical joke, a friend stole this picture. Suzie sued this friend for the harm he has caused her. Sitting as the jury, have the class determine how much money Suzie should recover from her friend. Consider whether any judgment can really satisfactorily repair this wrong.

In the movie, "Blackboard Jungle," a student destroys the teacher's rare and valuable collection of jazz records which he has brought to class. Could the student be sued? Should he? Can this harm be repaired at all?

Each pupil to work with a partner to come up with an instance where one individual has done harm to another either by word or deed and no judgment can be taken by law to rectify the harm. (Some of the members of the class may feel that "irreparable" harm can be corrected.)

Module 4

RESOURCES*

New York State Constitution, Article I, Section 16.

"[Damages for injuries causing death.] §16. The right of action now existing to damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation. (Formerly §18. Repealed by Constitutional Convention of 1938 and approved by vote of the people November 1938.)"

Wycko vs. Gnodtke, vol. 105 Northwestern Reporter, Second Series, p. 118 (1960)

"The case before us concerns, in general, damages for the life of a child negligently killed. Specifically it is whether or not a jury award of approximately \$15,000 for the parents of a 14-year-old boy was excessive.

"So far as the facts are concerned we will simply say that the deceased was walking completely off a highway, with some other boy scouts. He was killed by an automobile driven by one defendant and driven by the other. The car suddenly ran onto the shoulder of the highway and killed two of the scouts. The plaintiff here is the administrator of the estate of one of the scouts.

"To substantiate the damage claims, testimony was introduced as to the boy's dependency, trustworthiness, and ambition. It was established that he helped his father and worked the family farm. Upon such evidence the jury awarded \$14,000, plus \$979.50 for funeral and burial expenses. The trial judge said it was too much. He said that a jury would not be justified in awarding more than \$7,500, plus \$979.50 for funeral and burial expenses. The boy at his age 'could have had the earning capacity indicated by this verdict,' and a new trial unless remittitur were filed.

"Thus we come once more to a consideration of the problem of the pecuniary loss suffered by the parents of a deceased minor child. What we in Michigan have done, in common with many other courts, is to require the subtraction, from the hypothetical earnings of the child prior to his majority, the speculative costs of his rearing. The difference, if any, we say is the parents' pecuniary loss. ...

[Decision]

"This, then, was the day from which our precedents come, [from] a day when employment of children of tender years was the accepted practice and their pecuniary contribution to the family was recognized.

*Direct quotations from statutes are indicated by the use of quotation marks. Other quotations are summaries or paraphrases of the statute listed.

RESOURCES *

State Constitution, Article I, Section 16.

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To substantiate the damage claims, testimony was introduced as to the boy's dependability, intelligence, and ambition. It was established that he helped his father and brothers on the family farm. Upon such evidence the jury awarded \$14,000, plus \$979.50 for funeral and burial expenses. The trial judge said it was too much. He said the proofs warranted an award of only \$7,500, plus \$979.50 for funeral and burial expenses, since no other evidence 'could have had the earning capacity indicated by this verdict,' and he ordered the excess award unless remittitur were filed.

It comes once more to a consideration of the problem of the 'pecuniary loss' suffered by the parents of a deceased minor child. What we in Michigan have done, in common with other courts, is to require the subtraction, from the hypothetical earnings of the child prior to his majority, the speculative costs of his rearing. The difference, if any, is the parents' pecuniary loss. ...

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to the family both substantial and provable. ...

"...In fact, our society, by one means or another, now attempts to keep children out of the general labor market. Yet there still exists in the law this remote and repulsive backwash of time and civilization... where precedents... tell us that the value of life of a child must be measured solely by the standards of the day when he peddled the sweat of his hands and the strength of his back at the factory gates. ...

"[3,4] What, then, is the pecuniary loss suffered because of the taking of the child's life? It is the pecuniary value of the life. ... In the cases coming to us a life is taken and it is our duty, as best we can, to put a fair valuation on it. In so doing we will keep in mind that the act is remedial in its character and our duty is to award it liberally in favor of the beneficiaries. ...

"...The fiction now employed as the measure of pecuniary loss should be abandoned. It perpetuates an attitude towards the value of a child's life completely repudiated by the legislation and the enlightened child-welfare policies of this jurisdiction. It does violence to the intent of the act, which is to grant a recovery whenever a death of a person is caused by the wrongful act of another. ... The bloodless bookkeeping imposed upon our juries by the savage exploitations of the last century must no longer be followed by our courts.

"The order granting new trial subject to remittitur is reversed [that is, the father is entitled to the money that had been granted.]"

Fussner vs. Andert, vol. 113 Northwestern Reporter, Second Series, p. 355 (1962)

"[1] It appears that the record that plaintiff's daughter, Sandra Fussner, died from injuries received in an automobile accident which the jury found was caused by the negligence of the defendant. The father was 49 years of age at the time of the trial and is an engineer in a railroad car repair shop. Sandra was the younger of two daughters. Her mother died in 1952 after an illness which continued for 2 years. During the mother's illness the father relied upon Sandra for much of the housework including cleaning and cooking. After the mother's death the two girls assumed the

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responsibility of maintaining the household until 1955 when the sister married. Those responsibilities were assumed by the decedent. In the fall of 1956 the father married. The second wife continued her employment outside the home. The decedent at the time of her death was employed as a typist-receptionist at a department store and during a 6 1/2-month period prior to her death earned \$1,104.95. She purchased her own necessary various items for the house, and gifts for her father out of her earnings. She paid per week for her room, but beyond that no accounting was kept of what she spent for the household. There was a pleasant relationship between the decedent, her father, and mother, and she considered their home as her own. After her father's remarriage, there was no change in her routine of housework. Because the stepmother worked, the father relied upon her as before and it was customary for Sandra to start meals at night after the stepmother had returned home from work. ...

[Decision]

"In submitting the case to the jury the court gave the standard and approved instruction on the subject of damages:

'If you award the plaintiff damages they must be in an amount which will fully, fairly and adequately reflect the present monetary value of any future contribution in money or services which you find Sandra would have made to her father during the remainder of their lives had she not been killed in this accident. In other words if your verdict is for the plaintiff you must decide from the evidence what pecuniary or financial loss the plaintiff has sustained, but you may not include any amount of compensation for the father's grief, sorrow or mental anguish, nor are you permitted to make an award for the father's loss of his daughter's comfort, society or companionship.' ...

"There is no contention that the court was in error in telling the jury that they should not include damages for the father's grief, sorrow, or mental anguish. It is asserted that the error lies in the fact that the instruction limited recovery to loss in dollars and that in context the instruction permitting recovery for 'contribution in services' referred to labor or other employment performed pursuant to an understanding or agreement with the survivor and excluded from the consideration of the jury real and substantial losses, which might be considered as having a pecuniary advantage.

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to the survivor and which would be encompassed within the broad term of society and companionship. ...

"...The Supreme Court, Murphy, J., held that pecuniary-loss test limiting recovery parent for death of a child by wrongful act to loss of earnings, contributions and services in terms of dollars is unduly restrictive and parent may recover for loss of advice, comfort, assistance and protection which jury might find to be of a pecuniary value to the parent if child had lived."

Summers, R.S., Campbell, A.B., & Bozzone, J.P. *Justice and order through law*. - Unpublished
"The limits of law," Chapter 2. Lexington, Mass. Ginn and Company. 1973.

New York Civil Rights Law, Section 80-a.

"§ 80-a. Causes of action for alienation of affections, criminal conversation, seduction and breach of contract to marry abolished.

The rights of action to recover sums of money as damages for alienation of affections, criminal conversation, seduction, or breach of contract to marry are abolished. Any cause of action done within this state shall operate to give rise, either within or without this state, to any such right of action. No contract to marry made or entered into in this state shall operate to give rise, either within or without this state, to any cause of action for its breach."

Moulin vs. Monteleone, vol. 115 Southern Reporter, p. 447 (1927)

"...The facts disclosed...are that the plaintiff and the offending spouse were married in Arkansas nearly 16 months ago—...—and they soon after moved to New Orleans, where the plaintiff introduced his wife to his erstwhile friend, Monteleone. About three months later, plaintiff went away on a business trip, leaving his wife with a lady companion. He corresponded with her daily, by letters and telegrams and telephone messages for 13 days, when she ceased replying, and his letters were returned unopened, bearing a postmark, 'Removed.' Meanwhile, Monteleone, it was alleged, had paid frequent and marked attention to Mrs. Moulin, entertaining her at suppers and drinking parties."

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had attention to Mrs. Moulin, entertaining her at suppers and drinking parties, at

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midnight clubs, cabarets, and gambling houses;... It is alleged that he induced her to ride to Baton Rouge with him in his automobile, and introduced her there as Mrs. Brown. Finally, it is alleged, he persuaded her to leave the house where her husband had left her and to go and live with him (Monteleone) in an apartment, where he supported and provided for her as his wife; so that, when plaintiff returned from his trip, and met his wife, she informed him that Monteleone 'was in love with her,' that she was intimate with him, and that she would no longer live with her husband. For all of which the plaintiff claims the sum of \$80,000, itemized into four items of equal worth, viz: \$20,000 for the deprivation of the wife's love and affection, and the loss of her fidelity and assistance; \$20,000 for the loss of the companionship and society of the wife; \$20,000 for the humiliation and mental anguish which the husband endured; and \$20,000 for the breaking up of his home.

[Decision]

"The best way to suppress such conduct as is described in the plaintiff's petition would be by means of a penal statute condemning both of the particeps criminis. A law that would allow the husband compensation in money for such a wrong would be revolting to a majority of men, and might tend more to encourage blackmail than to protect the home. It is not astonishing that the Civil Code makes no provision for such a right of action.

"The judgment is affirmed. [That is, that the plaintiff is not entitled to his money

Module 4

UNDERSTANDING V

ALTHOUGH LAW USES MANY RULES AND PROCEDURES TO RESOLVE DISPUTED FACTS RATIONALLY AND CIRCUMSTANCES MAY LIMIT THE ABILITY OF JUDGES AND JURORS TO DETERMINE THE TRUE FACTS

A. *Explanation of Understanding V*

In a criminal case, the district attorney, as the people's representative, accuses someone of committing a crime. In a civil case, one private person sues another, usually claiming a right to have damage repaired. In both criminal and civil cases there are trials.

When cases go to trial, unanswered questions of two kinds may arise. First, it may be unclear exactly what law controls the case. For example, what is the law concerning possession of a small quantity of marijuana? Or will the law allow a civil suit to recover money when someone's negligence causes the death of an unborn child?

But more often, when a case goes to trial, the law itself is not the issue; both parties agree on the rules of law; they are disputing the facts of the case. For example, the district attorney claims X killed Y in cold blood; X says it was purely a matter of self-defense. Both parties agree on the law, that cold blooded killing is murder and that self-defense is a valid excuse, but they disagree on the facts. Likewise, in civil cases, trials are usually concerned with disputing the facts. In an auto negligence case, both parties may agree that driving on the left side of the road is not the law; it is likely to be a question about who was driving on which side of the road at a given moment.

Generally speaking, it is the job of the judge, with the help of the lawyers, to determine the law of the case. On the other hand, there is a right to have a jury settle disputed facts.

Finding out what really did happen when people are presenting conflicting stories is one of the aspects of "adjudication." The law uses several techniques to make this process of fact finding as accurate as possible. There are usually lawyers for each side to present the case. There are rules of evidence regulating the information that can be presented to the jury. There are rules about how to win if the jury is equally convinced by evidence of each side. There are certain presumptions. In criminal cases a person is presumed innocent until proven guilty beyond any reasonable doubt. In civil cases a person is presumed sane until proven insane; a person is presumed to have intended the natural consequences of his act.

V-
LAW USES MANY RULES AND PROCEDURES TO RESOLVE DISPUTED FACTS RATIONALLY AND FAIRLY,
ANCES MAY LIMIT THE ABILITY OF JUDGES AND JURORS TO DETERMINE THE TRUE FACTS.

of Understanding V

In a criminal case, the district attorney, as the people's representative, accuses someone of com-
In a civil case, one private person sues another, usually claiming a right to have some
In both criminal and civil cases there are trials.

When cases go to trial, unanswered questions of two kinds may arise. First, it may not be clear
what law controls the case. For example, what is the law concerning possession of an unuseably
of marijuana? Or will the law allow a civil suit to recover money when someone's carelessness
of an unborn child?

Often, when a case goes to trial, the law itself is not the issue; both parties usually
know the law; they are disputing the facts of the case. For example, the district attorney
says Y killed X in cold blood; X says it was purely a matter of self-defense. Both parties agree on the
fact that the blooded killing is murder and that self-defense is a valid excuse, but they disagree on what
the facts are. Likewise, in civil cases, trials are usually concerned with disputed facts. In an
accident case, both parties may agree that driving on the left side of the road is negligent, but there
is a question about who was driving on which side of the road at a given moment.

Generally speaking, it is the job of the judge, with the help of the lawyers, to figure out the law
and, on the other hand, there is a right to have a jury settle disputed facts.

Figuring out what really did happen when people are presenting conflicting stories is a complex
task called "fact-finding." The law uses several techniques to make this process of fact finding as fair and
reasonable as possible. There are usually lawyers for each side to present the case. There are complex rules
regulating the information that can be presented to the jury. There are rules concerning who
must be equally convinced by evidence of each side. There are certain presumption rules—in
a criminal case, a person is presumed innocent until proven guilty beyond any reasonable doubt; a person is
presumed sane until proven insane; a person is presumed to have intended the natural consequences of his

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But even with all these rules and processes for finding the facts, the law cannot always find the true facts. Instead, it must try to reach a resolution of disputed facts by a fair and reasonable process. Undoubtedly, this version of the facts is sometimes inaccurate; determination of the truth is beyond the limited powers of law.

B. *Teaching Understanding V*

OBJECTIVES

- Given a report of an incident, or testimony from a court case, the student can correct facts which can be proven from observations open to question or misinterpretation.
- The student can list reasons why the facts behind certain reports cannot be ascertained.
- After viewing a film of a court proceeding, the student can identify those aspects of the trial which appeal to the emotions of the listener and thereby obscure the facts.

QUESTIONS TO REACH UNDERSTANDING

- Aren't facts facts?
- What elements help explain why law often must deal in probabilities rather than absolutes?
- Why does the public go along with a legal process that sometimes cannot be certain of the true facts?

USE OF VISUALS

- Using the New York State Historical Society's *Painting As Social History*, program "Justice in the Backwoods," identify all the factors that might obscure the facts of the case. Identify also those factors that help to reveal the facts. Discuss the reasons that a trial is more desirable than having no trial at all.

Even with all these rules and processes for finding the facts, the law cannot always determine. Instead, it must try to reach a resolution of disputed facts by a fair and rational means. A version of the facts is sometimes inaccurate; determination of the truth is sometimes beyond the powers of law.

Understanding V

When reading a report of an incident, or testimony from a court case, the student can correctly separate facts which can be proven from observations open to question or misinterpretation.

The student can list reasons why the facts behind certain reports cannot be ascertained.

When viewing a film of a court proceeding, the student can identify those aspects of the testimony which appeal to the emotions of the listener and thereby obscure the facts.

TO REACH UNDERSTANDING

What are the facts?

What elements help explain why law often must deal in probabilities rather than absolute facts?

Why does the public go along with a legal process that sometimes cannot be certain of determining facts?

ALS

Using the New York State Historical Society's *Painting as Social History*, program "Justice's Court Backwoods," identify all the factors that might obscure the facts of the case being presented. Identify also those factors that help to reveal the facts. Discuss the reasons that such a process is more desirable than having no trial at all.

Module 4

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Imperfections in human memory and sense perception.

- a) Have each student in the class write a short but detailed account of some unexpected incident that occurred in the class or at the school some time more than a month ago, but within the last year or two (for example, a fire, an accident, a fight, etc.). In class, systematically compare these accounts to see if memory or other factors obscure the "true" happenings of the past and interfere with efforts to determine what truly did happen. As students report their versions, undoubtedly, other pupils will chime in to disagree.
- b) Stage a surprise skit for the class in which someone breaks into the classroom, has a quick and loud exchange of words with the teacher, threatens an assault on the teacher with some weapon, and quickly retreats. You might secretly plan it with one of the more discreet members of your class well in advance, complete with written details including gestures and words. (It is probably wise to alert your administrator to this incident, even possibly having him intercede as a "surprise observer.")

The final limit of law suggested concerns law's limited capacity to truth. Usually when either a civil case goes to trial, the matter being concerns a dispute as to what are the facts. Through the process of adjudication such fact disputes in what is intended to be a rational, deliberate fashion. However, the resolution of fact disputes and determination of truth are not the same.

The truth is not uncommonly beyond the reach of the law. Because of such factors as memory and imperfect human sense perception toward recollection of things in a courtroom, the facts, as reported in a courtroom months after the occurrence of the event, may be obscured. Even without the passage of time, imperfect human sense perception may obscure the truth. Twenty-five people, if sufficiently by surprise, may honestly seen and heard 25 different versions of the same incident. Another variable that may obscure the truth is the capacity to determine the truth is not always in the hands of the party to a fact dispute may simply protect himself or someone else. Although procedures of adjudication may cause a witness to get "caught in a lie" (as invariably is the case when TV news reports a crime), oftentimes the law must resolve a dispute in the face of persistent controversy, neither of which can be proven true in a court of law.

ATION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Imperfections in human memory and sense perception.

Each student in the class write a detailed account of some undetailed incident that occurred in the school some time more month ago, but within the last two (for example, a fire, an fight, a fight, etc.). In class, compare these accounts if memory or other factors obthe "true" happenings of the and interfere with efforts to ne what truly did happen. As s report their versions, unly, other pupils will chime disagree.

a surprise skit for the class ch someone breaks into the om, has a quick and loud exof words with the teacher, ens an assault on the teacher me weapon, and quickly re- You might secretly plan it e of the more discreet mem- f your class well in advance, e with written details inclu- estures and words. (It is ly wise to alert your admin- or to this incident, even ly having him intercede as rprise observer.")

The final limit of law suggested for consideration concerns law's limited capacity to determine the truth. Usually when either a civil or a criminal case goes to trial, the matter being contended concerns a dispute as to what are the facts of the case. Through the process of adjudication the law resolves such fact disputes in what is intended to be a rational, deliberate fashion. However, legal resolution of fact disputes and determination of the truth are not the same.

The truth is not uncommonly beyond law's limits. Because of such factors as memory and partiality toward recollection of things in a particular way, the facts, as reported in a courtroom by witnesses months after the occurrence of the events in question, may be obscured. Even without the intervention of time, imperfect human sense perception may obscure the truth. Twenty-five people, if they are taken sufficiently by surprise, may honestly report having seen heard 25 different versions of the same incident. Another variable that limits law's capacity to determine the truth is dishonesty. One party to a fact dispute may simply be trying to protect himself or someone else. Although rational procedures of adjudication may cause an occasional dishonest witness to get "caught in his own lies" (as invariably is the case when TV lawyers do their thing), oftentimes the law must resolve a fact dispute in the face of persistent conflicting stories, neither of which can be proven true in any absolute sense.

Module 4

DETAILED DESCRIPTION OF STRATEGIES

Before any discussion, have each member of the class record in detail what he or she has witnessed. In class, systematically compare these accounts with a taped account to see if human sense perception obscures "true" happenings of the past and interferes with efforts to determine what really did happen. If time permits, a jury trial could be held to establish the facts in the incident.

DISCUSSION OF STRATEGIES AND RESOUR

The suggested procedures within this attempt to illustrate two things. Each student describe an event he or she then comparing these descriptions, graphically that past facts are not. In considering why this is so, elements of memory, infallible sense perception, latent prejudice may be evident.

2.. Limitations of judicial fact finding.

- a) Present for student reading and discussion the cases on page 188 which include a hypothetical school disciplinary matter in which the opposite sides of the case present conflicting versions of the facts, and the party in whose favor the fact dispute is resolved will be the winner of the case. Regardless of who wins, consider whether it is possible to know for certain who really is telling the truth if each side sticks to his story.
- b) Have some of the members of the class prepare and present a court case in which there is conflicting evidence on the parts of prosecution and the defense. The rest of the class can sit in as a jury. It will be interesting to see how they will evaluate the case in the light of conflicting stories presented.

The examination of the jury's fact may demonstrate that the jury's is a foolproof task of simply sorting out the lies. Often the jury, without truth, reaches a result by following a deliberate procedure that is merely produce a *fair* result with maximum accuracy.

DESCRIPTION OF STRATEGIES

Before any discussion, have each member of the class record in detail what he or she has witnessed. In class, systematically compare these accounts with a taped account to see if human perception obscures "true" happenings of the past and interferes with efforts to determine what really happened. If time permits, a jury trial could be held to establish the facts in the incident.

2. Limitations of judicial fact finding.

Assign student reading and discussion cases on page 188 which include a hypothetical school disciplinary matter in which the opposite sides of the case present conflicting versions of the facts, and the student in whose favor the fact dispute is resolved will be the winner of the case. Regardless of who wins, consider whether it is possible to know for certain who is telling the truth if each side sticks to his story.

Have some of the members of the class prepare and present a court case in which there is conflicting evidence on the parts of the prosecution and the defense. The rest of the class can sit in as a jury. It will be interesting to see how they will evaluate the case in the light of conflicting stories presented.

DISCUSSION OF STRATEGIES AND RESOURCES

The suggested procedures within this understanding attempt to illustrate two things. First, by having each student describe an event he has witnessed and then comparing these descriptions, students may see graphically that past facts are not easily recreated. In considering why this is so, elements of imperfect memory, infallible sense perception, and overt or latent prejudice may be evident.

The examination of the jury's fact-finding function may demonstrate that the jury's job is often not a foolproof task of simply sorting out the truth from the lies. Often the jury, without ever knowing the truth, reaches a result by following a rational and deliberate procedure that is merely designed to produce a *fair* result with maximum *probability* of accuracy.

Module 4

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

- c) Have class view a film showing presentation of conflicting testimony at trial. Before showing the portion of the film revealing the jury's verdict, divide the class into groups of six, nine, or 12 to deliberate as juries and reach verdicts on their own. Consider whether such findings are absolute determinations of truth or merely rational attempts to reconstruct a past event as fairly and accurately as possible. The following movie titles are possible choices. If movies are unavailable, pupils could read the movie version of "To Kill a Mockingbird" by Harper Lee or the play, "Twelve Angry Men."

—"The Bill of Rights in Action: Story of a Trial," A Bernard Willets Film. 22 min. (Trial of misdemeanor offense.)

—"To Kill A Mockingbird"

—"Twelve Angry Men"

- d) Have some of pupils in class stage a court drama in advance. Have the rest of the class view the trial which involves a case where there is conflicting evidence or a question of fact. Before hearing what verdict the jury actually reached, return to class and divide the class into groups to reach verdicts of their own. Consider whether such findings are absolute determinations of truth or merely rational attempts to reconstruct a past event as *fairly* and *accurately* as possible.

A drawing by Handelsman from the Magazine, Inc. (1972) has been omitted because of copyright restrictions.

SECTION OF STRATEGIES

Class view a film showing presentation of conflicting testimony at trial. Before the portion of the film revealing the jury's verdict, divide the class into groups of six, nine, or 12 to deliberate the issues and reach verdicts on their own. Consider whether such findings are absolute determinations of truth or merely rational attempts to reconstruct a past event as fairly and accurately as possible. Following movie titles are possible. If movies are unavailable, pupils read the movie version of "To Kill a Mockingbird" by Harper Lee or the play, "Angry Men."

Bill of Rights in Action: Story of the Bill of Rights, A Bernard Willets Film. 22 min. (see list of misdemeanors in Appendix A, p. 100.)
Bill "A Mockingbird"
"Angry Men"

Some of pupils in class stage a court trial in advance. Have the rest of the class observe the trial which involves a case where there is conflicting evidence on a question of fact. Before hearing what verdict the jury actually reached, return to class and divide the class into groups to reach verdicts on their own. Consider whether such findings are absolute determinations of truth or merely rational attempts to reconstruct a past event as fairly and accurately as possible.

DISCUSSION OF STRATEGIES AND RESOURCES

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Module 4

RESOURCES *

Sample Cases:

People vs. Ivy, vol. 244 California Appellate Reports, Second Series, p. 406 (

Narcotics officer claimed to have bought three "joints" from Ivy. Ivy claim home with his family at the alleged time of illegal sale. A jury found Ivy selling marijuana. Is there any way of knowing for certain whose version of was in fact true?

Ivy appealed the jury's decision on the basis that the judge made certain to the jury before they made their deliberation that were prejudicial to him. decided in the appeal case that according to California law it was within the of a judge in commenting on evidence to express his opinion as to the guilt nocense of the accused so long as the province of the jury was not invaded.

People vs. Pearson, vol. 169 Northeastern Reporter, Second Series, p. 252 (196

District attorney's witness claimed X was raping and robbing her at the time question. X's witness said he saw X at home asleep at the time in question both witnesses stand firm, is there any way a court can know for certain what the "true" facts of this case?

Berry vs. Chaplin, vol. 169 Pacific Reporter, Second Series, p. 442 (1946)

Charles Chaplin was sued in a paternity case. In the face of conflicting evidence including a negative blood test, the jury found Chaplin was the father of the Is there any way of knowing for certain what are the "true" facts of the case?

Sample Hypothetical Case:

Suzie Butts is caught by the principal in a smoke-filled girls' room. Suzie she hasn't been smoking and that the bathroom was smoke-filled when she entered principal says no one entered the girls' room for 15 minutes prior to Suzie. or not Suzie gets disciplined depends upon whether her story is believed. Re the outcome of this case, if Suzie sticks to her story, is it possible to even whether Suzie was or was not smoking?

*Direct quotations from statutes are indicated by the use of quotation marks. Other are summaries or paraphrases of the statute listed.

RESOURCES*

Cases:

Le vs. Ivy, vol. 244 California Appellate Reports, Second Series, p. 406 (1966)

A narcotics officer claimed to have bought three "joints" from Ivy. Ivy claimed to have been home with his family at the alleged time of illegal sale. A jury found Ivy guilty of selling marijuana. Is there any way of knowing for certain whose version of the story is in fact true?

Ivy appealed the jury's decision on the basis that the judge made certain comments to the jury before they made their deliberation that were prejudicial to him. The court decided in the appeal case that according to California law it was within the power of a judge in commenting on evidence to express his opinion as to the guilt or innocence of the accused so long as the province of the jury was not invaded.

Le vs. Pearson, vol. 169 Northeastern Reporter, Second Series, p. 252 (1960)

A strict attorney's witness claimed X was raping and robbing her at the time in question. X's witness said he saw X at home asleep at the time in question. If both witnesses stand firm, is there any way a court can know for certain what are the "true" facts of this case?

Ivy vs. Chaplin, vol. 169 Pacific Reporter, Second Series, p. 442 (1946)

Charles Chaplin was sued in a paternity case. In the face of conflicting evidence including a negative blood test, the jury found Chaplin was the father of the child. Is there any way of knowing for certain what are the "true" facts of the case?

Hypothetical Case:

John Butts is caught by the principal in a smoke-filled girls' room. Suzie claims she hasn't been smoking and that the bathroom was smoke-filled when she entered. The principal says no one entered the girls' room for 15 minutes prior to Suzie. Whether or not Suzie gets disciplined depends upon whether her story is believed. Regardless of the outcome of this case, if Suzie sticks to her story, is it possible to ever determine whether Suzie was or was not smoking?

Quotations from statutes are indicated by the use of quotation marks. Other statements are paraphrases of the statute listed.

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availability or for rental arrangements used by their school system. In some cases, regional collections at
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Department has videotapes for several titles in the *Living Bill of Rights* Series deposited in these regional

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Subtitles: #36 *The Justice Machine*
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#39 *Men of Justice*
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Special source of each of these entries is listed. However, teachers are reminded to check with their local sources for rental arrangements used by their school system. In some cases, regional collections are available through a number of centers. Some videotapes have been made available by the State Education Department to these centers. Through the generosity of the State Bar Association, sets of *The Bill of Rights in Action*, have been distributed in this way. In addition, the videotapes for several titles in the *Living Bill of Rights Series* deposited in these regional collections.

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Your Rights and What They Really Mean. 6 filmstrips and 3 cassettes. Eyegate, 146-01 Archer Avenue, Jamaica

Collections of Study Prints

Documentary Photo Aids, Box 2620, Sarasota, Florida 33578.
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Instructional Simulations, Inc., 2147 University Avenue, St. Paul, Minn. 55114.

In-Force: A Criminal Justice Simulation replicates the public administration of the Omnibus Crime Control Act. Xerox copies available; developed by LEAA and the Minnesota Department of Education.

Education Ventures, Inc., 209 Court Street, Middletown, Conn. 06457.

Community Decision Games, including New Highway; Open Space; New School.

Reference Services

Taylor's Encyclopedia of Government Officials. Dallas Political Research, Inc. 75201.

\$60 for 2 years. One volume every 2 years, quarterly supplement, monthly bulletin plus reference service included. Example of reference service: questions concerning published state or federal laws provide the teacher with the brief of the case.

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Simulations, Inc., 2147 University Avenue, St. Paul, Minn. 55114.

A Criminal Justice Simulation replicates the public administration of the Omnibus Crime Control and Safe Street Act. 100 copies available; developed by LEAA and the Minnesota Department of Education.

Games, Inc., 209 Court Street, Middletown, Conn. 06457.

Decision Games, including New Highway; Open Space; New School.

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Encyclopedia of Government Officials. Dallas Political Research, Inc. 75201.

Reference service. One volume every 2 years, quarterly supplement, monthly bulletin plus reference service available to school libraries. Example of reference service: questions concerning published state or Federal cases can be answered by teacher with the brief of the case.

Statutes Compiled by Subject

Federal Statutes

United States Printing Office. *United States code*. (Approximately 11 volumes - price approximately \$7/vol)
Suggested for reference collections in schools in which depth studies are contemplated.

New York State Statutes

The laws passed by the New York State Legislature are published in a many-volume series of books called *Consolidated Laws of New York*. A list of the titles of these volumes shows how many subjects are dealt with in each volume.

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Suggested for reference collections in schools in which depth studies are contemplated.

State Statutes

Laws passed by the New York State Legislature are published in a many-volume series of books called *McKinney's Consolidated Laws of New York*. A list of the titles of these volumes shows how many subjects are dealt with in legislative

THE CONSOLIDATED LAWS OF NEW YORK

Statutes	20. General City	46. Public Officers
Substitution	21. General Construction	47. Public Service
Cultural Conservation and Adjustment	22. General Corporation	47a. Public Works
Culture and Markets	23. General Municipal	48. Railroad
Alcoholic Beverage Control*	24. Highway	48a. Rapid Transit
Allegiance	25. Indian*	49. Real Property
Evolutionary Orders	27. Insurance	50. Religious Corporations
Business Corporations	28. Joint-Stock Association	51. Salt Springs
Charity	29. Judiciary*	52. Second Class Cities
County Home Rule	30. Labor	52a. Social Welfare*
County Practice Law Rules (civil procedure)*	31. Legislative*	-- Soil Conservation Districts
County Rights*	32. Lien	53. State Boards and Commissions
County Service	34. Membership Corporations	54a. State Departments
County Demerit	34a. Mental Hygiene	55. State Finance
County Preservation*	35. Military	56. State
Cooperative Corporations	35a. Multiple Dwelling*	57. State Printing
County Protection	36. Navigation	58. Stock Corporation
County Property	37. Negotiable Instruments	59. Tax
County Debtor and Creditor	37a. Optional County Government	61. Town
County Decedent Estate	38. Partnership	62. Transportation Corporations
County Domestic Relations (family law)*	39. Penal*	62a. Vehicle and Traffic*
County Administration*	40. Personal Property	63. Village
County Election	42. Public Authorities	-- Village Home Rule
County Employers' Liability	43. Public Buildings	64. Workmen's Compensation
County Executive*	44. Public Health*	65. Unconsolidated Laws
County General Associations	44a. Public Housing	66. Code of Criminal Procedure*
County General Business	45. Public Lands	69. Uniform Commercial Code

These volumes are suggested for reference collections in schools in which depth studies are contemplated. Approximately one volume.