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)
TEACHING ABOUT BASIC LEGAL CONCEPTS in the junior high school

FILMED FROM BEST AVAILABLE COPY
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
THE UNIVERSITY OF THE STATE OF NEW YORK

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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 in our everyday living.

Teaching About Basic Legal Concepts does not impose a requirement for another course of study at the junior high school level. Some schools will find the modules useful in consonance with the eighth grade program in United States History. In other schools, the modules may be introduced as a part of a minicourse of study.

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

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 Law School; Mrs. Geil F. Hubbard, Ithaca High School; and John P. Bozzone, Dewitt Junior High School, Ithaca, under State Department of Education sponsorship. Hills K. Idleman, associate, Bureau of Secondary Curriculum Development, served as liaison during the development and field testing stages.

Rose Mary Flihan, chairman of Social Studies, Barker Road Junior High School, Pittsford, developed additional teaching modules and identified a variety of resources for student use, drawing upon her own experience and the reports of other teachers. Donald H. Bragaw, chief, and John F. Dority and Jacob I. Hutchkiss, associates, Bureau of Elementary Education, 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
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GORDON E. VAN HOOF
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:

1. Provide rules and processes for resolving disputes fairly and rationally
2. Guide and coordinate their activities
3. 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:

1. The benefit distribution technique
2. The regulation technique
3. The penal technique
4. The private remedy technique
5. The private arrangement technique

The effectiveness of law in dealing with specific social needs and problems depends in part on the 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 important. Processes by which law reaches an outcome are subject to evaluation in terms of:

1. Their effectiveness in reaching the desired outcome
2. 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 sound 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 in its capacity to promote both.

The effectiveness of law as a social control may be limited if the law is unsupported by certain 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 problems 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.
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E 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

OBS 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.

THE 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 affect 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 sociological science, 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 is 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 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 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 that they illustrate.

DESCRIPTION

This guide includes four teaching modules, each of which deals with a basic aspect of the legal system. While all modules may be taught during the course of the year, each of the units is usable independently. The modules can be taught as a single block, or spaced according to the needs of the individual class. Field test experience has shown that each 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-standings. This rationale not only provides a background of legal knowledge for the teacher, but, in addition, deliver of the understanding. It is NOT intended for student use as written, the teacher may draw upon information contained in the module, 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 points to observe in using them. Resources which can be used for these strategies are grouped together at the end but are cross-referenced (by case name, statute, or other appropriate designation, and by page) in the detailed teaching procedure. In many instances, the resource listing for a case will include a brief description of the case, an excerpt from the decision is given. If either description or decision is available in a number of the inexpensively 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 purchasing or renting.

WHEN TO TEACH THESE MODULES

The modules in this guide can be incorporated into the social studies curriculum in a number of ways. They adding 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 one-semester course of study. Some will find them useful to incorporate into a minicourse program. Since each m
HOW TO USE THIS GUIDE

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, and history, legal concepts and processes are studied in a societal context. The conceptual approach to law as a useful inquiry method to consider several important aspects of the law: What is the nature of law? What are its limits? How does law work?

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

The legal curriculum materials may not be 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, they are not intended as a rule or process is a vital one about which students should learn for its own sake. Particular legal rules are quoted only for illustrative purposes, and as a basis for teacher and student understanding of the broader concepts.

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

Each module is contained in the understandings. An explanation for the teacher follows the statement of each understanding not only provides a background of legal knowledge for the teacher, but, in addition, delineates the important in the understanding; with notes for the teacher to explain the validity of the strategy and to indicate particular in using them. Resources which can be used for these strategies are grouped together at the end of the understandings. In many instances, the resource listing for a case will include a brief description of the circumstances. The decision is given. If either description or decision is available in a number of inexpensive case collections, secondary classroom use, those sources are cited.

The guide also includes not only written source materials, but also films and filmstrips, with information concerning sources for use of visuals are listed. On the double-columned pages, there are detailed descriptions of classroom use, with notes for the teacher to explain the validity of the strategy and to indicate particular strategies for use of visuals are listed. On the double-columned pages, there are detailed descriptions of classroom use, with notes for the teacher to explain the validity of the strategy and to indicate particular strategies for use of visuals are listed.
stand independently of others, 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 topic: Federal and state government in grades 7 and 8.

The following is applicable in the use of the modules as a part of the State program for Social Studies 8, United States history, and should be incorporated into the curriculum:

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.


In addition, the understandings in the same topic related to interrelationships among the levels of government (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, a useful for developing understandings related to prohibition and current social problems, as well as the changing 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. A discussion of two approaches in dealing with the Bill of Rights and process values is discussed on page 116.

By emphasizing the fundamental importance of fair process values (participation, fairness, legitimacy), module III teaching these and other understandings related to the Bill of Rights and the development of civil and political liberties (p. 131) are more effectively taught through the use of this module.

Module IV: "Limits of Law" contains several ideas that have not been taught before in an American history course. Several illustrative examples of understandings from the syllabus related to this a pressing issue that still faces our country today.

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By stressing process values, module IV will be particularly useful in teaching understandings related to the concept of democracy by blacks in American history. Several illustrative examples of understandings from the syllabus related to this in American history that are pressing issue that still faces our country today.

Module IV: "Limits of Law" contains several ideas that have not been taught before in an American history course. Several illustrative examples of understandings from the syllabus related to this a pressing issue that still faces our country today.

Finally, the legal materials can also help students develop social studies skills including respect for factual argument about matters of social principle, and capacity for sound value analysis.
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ral processes would also be a helpful concept for students to understand because they will be confronted
in their study of United States history in which process values are at the core of major controversies such as
on Court (rights of poor defendants, reapportionment), and the Alien and Sedition Acts.
ces values, module III will be particularly useful in teaching understandings related to the quest for equality
history. Several illustrative examples of understandings from the syllabus related to this area are:
PROCLAIMED PREWAR CONCERN FOR HUMAN JUSTICE OF NORTHERN LIBERAL AND RADICAL OPPONENTS OF SLAVERY DID NOT
THROUGH THE LONG STRUGGLE NEEDED TO SECURE THE BASIC RIGHTS FOR NEGROES AFTER 1865. (p. 99)
PROGRESS ON CIVIL RIGHTS FOR NEGROES HAS ACCELERATED SINCE THE END OF WORLD WAR II. (p. 125)
wealth of legal materials, including many important court cases, to help teachers plan lessons on this most
till faces our country today.
its of Law" contains several ideas that have not been taught before in any systematic way. This module, it would be
ite in the year so that the teacher could draw on many examples from American history that illustrate one of
law: Prohibition (law unsupported by morality); controversies over loyalty oaths, the Pledge of Allegiance, and
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ciation of social principle, and capacity for sound value analysis.
BACKGROUND INFORMATION ABOUT THE LEGAL SYSTEM FOR TEACHERS

Understanding about law and the legal system concern conceptual ground familiar to the social studies teacher. 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 legal system 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, the law is made by the Senate and Assembly with the assent of the Governor. Local ordinances, the counterpart of statutes, are enacted 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 previous cases. A large portion of American common law dates back to court cases from the beginning of this country and even before to the case of Blackstone. Common law supplements statutory law by providing judicial interpretation of statutes and constitutions as they are enacted.

Administrative Law. Administrative law is made neither by legislators nor judges, but by administrative officials. 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 issuance of a driver's license, and rules promulgated by the New York State Tax Commissioner concerning the preparation 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 to structure government and to limit the powers of officials in order to protect the governed from potential abuse. When a legal system operates under the restraints of constitutional law, one may speak of it as a "government of men." The latter is a legal system without viable constitutional limits on the powers of the only restraints on those in positions of official power are self-imposed restraints and the threat of potential retribution.

2. KINDS OF OFFICIAL TASKS

The day-to-day operation of the legal system is entrusted to legal officials and private citizens who perform 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. Legislation in the form of statutes. Judges make legal rules by deciding cases. Part of the job of administrators is determining 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 their duties relative to private housing. Private individuals also make many enforceable legal rules in the form of contracts, leases, and wills.
ION ABOUT THE LEGAL SYSTEM FOR TEACHERS

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

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

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Statutory law includes the law that is made by legislatures. At the Federal level, such law is composed of the Senate and House of Representatives with the assent of the President. At the New York State level, statutory law is made by the Senate and Assembly with the assent of the Governor. Local ordinances, the counterpart of state statutes, are enacted by local authorities, 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 statutory law is made by state legislatures by providing judicial interpretation of statutes and constitutions as they are applied in specific cases 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 qualification for 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 income 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. It purposes government and to limit the powers of officials in order to protect the governed from potential oppression by government. The latter is a legal system without viable constitutional limits on the powers of the government, where on those in positions of official power are self-imposed restraints and the threat of potential revolution.

AL TASKS

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 by enacting statutes. Judges make legal rules by deciding cases. Part of the job of administrators is promulgation of regulations of the New York State Commissioner of Education. The executive makes rules in the form of executive orders. Executive orders are a type of administrative rule that becomes law by the act of the President or Governor.

Private individuals also make many enforceable legal rules in private legal arrangements such as contracts, leases, and wills.
Carrying Out Legal Rules. Legal officials are also charged with the carrying out of legal rules. Taxing, spying, and other 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 in 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. 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 who preside over this task. Many legal disputes are adjudicated in hearings before administrative agencies. Disputes concerning highways 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 agencies serve as a third party to resolve disputes that arise under administrative regulations.

Legislative adjudication also exists under particular 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 involve 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 impartially resolves many kinds of disputes. In a civil lawsuit, a private party may seek relief from another private party or by improper official action. In a criminal case, the government District Attorney or prosecutor may bring an accused private party to trial to seek redress for a wrong supposedly done at large. Another sort of judicial proceeding is carried on in appeals courts where judges review the propriety of the action at the trial court level. If the appeals court judges find that the trial judge has made a serious mistake, they may order 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 carried out 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 and administrative proceedings 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 diagramed on the following page.

Questions of which courts have jurisdiction over what cases are extremely complicated. A few simplified general rules are helpful here. Federal courts generally handle cases involving citizens from different states or questions of Federal law may be started in either State or Federal court. In the Federal courts, cases start at trial and in the Federal district court is a right to one appeal which is generally to a Federal Court of Appeals. The U.S. Supreme Court, highest Court in the land, 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 st
ules. Legal officials are also charged with the carrying out of legal rules. Taxing, spending, and regulatory
rules 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
administrative agencies carry out much administrative law. Private citizens carry out many legal rules in making private legal arrangements among themselves (contracts, wills, etc.).

ing civil liability are carried out only after private individuals initiate lawsuits.

s Under Legal Rules. Adjudication of legal disputes is primarily a task of judicial officials. Other official agencies have the authority to adjudicate cases. Disputes concerning teachers or students of educational administrators. Drivers' licenses are suspended in hearings before a representative of the Department of Motor Vehicles. Labor disputes go before labor department administrators. Such administrative adjudication may be subject to judicial review through the process of judicial review. Legislative adjudication also occurs in some special cases, when a legislator is censured by fellow legislators.

of legal proceedings often brings to mind the activities of the courtroom, judicial processes are only one of the many legal processes in which legal officials engage. In this section, we will consider (a) judicial proceedings, (b) legislative proceedings, and (c) administrative proceedings.

One familiar sort of judicial proceeding is the trial, a legal proceeding where a judge and jury sit as a court to resolve many kinds of disputes. In a civil lawsuit, a private party may seek relief from some harm he claims to be done by another private party or by improper official action. In a criminal case, the government in the person of the District Attorney may bring an accused private party to trial to seek redress for a wrong supposedly done society. If judicial proceeding is carried on in appeals courts, where judges review the propriety of judicial decisions. If the appeals court judges find that the trial judge has made a serious mistake, they may reverse the case.

ings. There are two main kinds of legislative proceedings—passage of laws and the investigation in preparation of bills to become a law. The methods by which a bill may become a law are familiar. Most of the work of the legislators is carried on in committees and in research where background information for lawmaking is collected and considered. These proceedings are carried on by legislative committees and their staffs.

ings. Elements of judicial proceedings and legislative proceedings are present in administrative proceedings. Administrative officials investigate and promulgate regulations under powers granted them by legislative acts. Like judges, administrative officials have the authority to resolve disputes that arise under administrative regulations.

em is a Federal system of coexistent National and State Governments, we have coexistent state and Federal systems diagramed on the following page.

m have jurisdiction over what cases are extremely complicated. A few simplified generalizations may be made about the types of cases that are handled by the Federal courts. Federal courts generally handle cases involving citizens from different states or questions of Federal law. Such cases are handled in the Federal courts. In the Federal courts, cases start at trial in the Federal district courts. There is a second appeal. In state courts, cases start at trial in the supreme court or in a local court that handles the particular kind of case. In a local court, the right to one appeal is to the State Supreme Court. If the case starts in the State
Supreme Court, the right to one appeal is to one of the four Appellate Division Courts. The New York Court of Appellate Terms, 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 has jurisdiction over the case.

**NEW YORK STATE COURTS**

- Court of Appeals (appeals court of last resort) (one in State)
- Possible appeal on matters concerning U.S. Constitution
- Appellate Division of Supreme Court (intermediate appeals court) (four in N.Y. State)
- Right to appeal
- Supreme Courts (trial courts that handle some appeals from local courts) (one in every county)
- Family Surrogates County Juvenile Court

**FEDERAL COURTS**

- Supreme Court (appeals court of last resort)
- Possible appeal
- Court of Appeals (intermediate appeals court) (11 in the country)
- Right to appeal
- United States district court (trial courts) (at least one in each state; four in New York)
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.

**NEW YORK STATE COURTS**

- Court of Appeals (appeals court of last resort) (one in State)
  
  **Possible appeal**
  
  - Appellate Division of Supreme Court (intermediate appeals court) (four in N.Y. State)
  
  **Right to appeal**
  
  - Supreme Courts (trial courts that handle some appeals from local courts) (one in every county)

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- Supreme Court (appeals court of last resort)
  
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  - Court of Appeals (intermediate appeals court) (11 in the country)
  
  **Right to appeal**
  
  - United States district court (trial courts) (at least one in each state; four in New York)
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 adapted for secondary students' use. Any one of the casebooks included in the bibliography of casebooks in the reader's guide will help to provide cases suggested in the guide. References in the modules list the location of the cases in the secondary school level textbooks.

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 use.

LOCATION AND ADAPTATION OF CASES

Court decisions are suggested as resources at various points in this guide. Court decisions exist in two types: 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 scattered in other sources. Second, most cases require substantial editing of case language and length prior to use in a class. In a casebook, this 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, or judges as a written opinion. As enough new decisions are handed down by a particular court to fill a volume, the judges assemble all the new volumes, and the new volume is added to the multivolume series that constitutes the case reports of that court. For example, cases of the United States Supreme Court are collected in a series of volumes, known as the United States Reports, which contains over 400 volumes. One case suggested for classroom study is the New York Regents prayer case, Engel v. Vitale. In the New York Times Index, a citation for this case appears as "vol.370 U.S. Reports, p. 421 (1962)." Thus, the Supreme Court decision for the case of Engel v. 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.

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series of volumes. The diagram of the court system below indicates the names of the reports in which cases from
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, Southeastern Reporter, Northwestern Reporter, Southwestern Reporter, and Pacific Reporter. For example, New York courts are collected in the Northeastern Reporter along with cases from Indiana, Illinois, Massachusetts, etc.

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. Only vocabulary that is too difficult for secondary students and 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 legislatures on scores of topics. These laws are consolidated by subject (codified) in statute books. For example, all the laws on motor vehicles are collected in a single place, all the laws on crimes are collected in a single place, etc. All United States laws are periodically codified and updated in approximately one dozen volumes called the United States Code, containing areas called titles. The entire code as well as each of the separate titles is indexed reasonably well. All New York laws are codified by subject in a series of statute books called McKinney's Consolidated Laws of New York. In this multivolume statute law of the State is consolidated under 70 different subjects, and indexed well by topics through the entire code.

The United States Code and the Consolidated Laws of New York can be found in any county courthouse, and may be available in college, university, or public libraries. Practicing attorneys generally have copies of the federal and state statutes.

As with cases, editing will usually be necessary before using statutes for classroom study. The text of the statute may 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 available in the school or public library. One means of facilitating the process of compiling student materials is to acquire books for a law source supplement to the social studies resource center. A list of book and other resource materials is found in the bibliography. Acquisition of one book from each of the suggested categories of "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 the teaching of law in the schools. This resource should not be overlooked when assistance is needed in the local school district to acquire books for a law source supplement to the social studies resource center. A list of books and other resource materials is found in the bibliography. Acquisition of one book from each of the suggested categories of "mini" resource collection that would facilitate locating classroom materials for study.

Many classes will not be able to have legal talent available for more than one or two occasions. However, a wish to "adopt" your classes over a period of time, providing several members who could be available at different 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 included in the regional reporters. These reporters are the 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.

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

The text of the statute can be restructured and technical legal material can be deleted.

A list of books that collect relevant statutes passed each year by the Federal and State legislatures 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. These laws are consolidated by subject in statute books. For example, all the laws on crimes are collected in a single place, etc. All Federal legislation is edited and updated in approximately one dozen volumes called the United States Code, containing 50 main subject titles. The entire code as well as each of the separate titles is indexed reasonably well. All New York State legislation is in a series of statute books called McKinney's Consolidated Laws of New York. In this multivolume series, the state is consolidated under 70 different subjects, and indexed well by topic through the entire series.

The Code and the Consolidated Laws of New York can be found in any county court house, and may also be available in 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 rewritten as simplified, and technical legal material can be deleted.

MENT FOR SOCIAL STUDIES RESOURCE CENTER

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

MENT FOR SOCIAL STUDIES RESOURCE CENTER

The Bar Association and several local bar associations have expressed an interest in assisting the development of classroom materials. This resource should not be overlooked when assistance is needed in the location or adaptation of material. If a visit to court is arranged as part of such a program it is particularly helpful to
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 avoid 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 on which he will be present. Some questions which students have raised concerning these topics would provide helpful guest lectures.
- 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. 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.

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Even more than written and audiovisual materials, require careful planning in order to realize their full
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related student material.

attorney to identify misconceptions which students may have about the legal processes to be discussed. The
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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
trainings 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
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 haemostasis.
legal processes are not really social necessities. Providing rational processes for dispute resolution, providing soci
protection from antisocial conduct are by no means the only necessary social functions of law, but in study
fills these fundamental social functions, students may perceive how law is in fact a social necessity.

Second, most students will think that law exists mainly to punish people for doing bad things. Even students who
social necessity are apt to think that only the criminal law is really essential. This exaggerates law's restrictive
exist primarily to facilitate social life. The necessity for many laws and legal processes does not rest on the existence
doers. 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
makers make which tell people what to do. Rather, laws are responses to particular social needs. And they include mor
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
social needs that have called it into play can be explained in several ways: the need may be beyond law's effective
do (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
claims are backed up in some urban courts as much as 5 years). Existence of defective legal processes fosters the m
the part of many that legal process is necessarily only technical ritual that interferes with operation of rules. Alt
processes may be well or ill designed, legal process is essential to provide a structured, rational means of getting r
changed, or applied in specific circumstances.

3. Outline of the Teaching Scheme.

To show how law is a social necessity, this module treats: the law as supplier of processes for resolving fa
that actually arise (Understanding I), the law as guider and coordinator (Understanding II), and the law as protector
III). Stated in another way, the module is designed to show the student that some laws are responses to society's bas
"process" of law, some responses to its basic need for the "guidance" of law, and some responses to its basic need for
law. While in most instances where law operates, these three uses of law interact, this module directs attention to t
importance of each.

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

*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 role of law in modern society. As this module develops, the main focus will be on three of law’s social functions to a modern society: laws provide a process by which many disputes can be resolved rationally, laws provide 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 misperceptions about 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 not really social necessities. Providing rational processes for dispute resolution, providing social guidance, and from antisocial conduct are by no means the only necessary social functions of law, but in studying how law fulfills 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 apt to think that only the criminal law is really essential. This exaggerates law’s restrictive functions. Laws facilitate social life. The necessity for many laws and legal processes does not rest on the existence of evil people what to do. Rather, laws are responses to particular social needs. And they include more than rules; includes legal processes and legal officials. This is necessarily so because rules are not self-creating, self-enforcing.

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

A common misconception is that legal processes are merely ritualistic technicalities. The failure of law to meet the rule may be unwise (a speed limit can be set too high or low), or the process may be ill-designed (auto accident in some urban courts as much as 5 years). Existence of defective legal processes fosters the misconception on : legal process is necessarily only technical ritual that interferes with operation of rules. Although legal or ill designed, legal process is essential to provide a structured, rational means of getting rules made, specific circumstances.

A teaching Scheme.

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). The module is designed to show the student that some laws are responses to society’s basic need for the responses to its basic need for the “guidance” of law, and some responses to its basic need for the “threat” of instances where law operates, these three uses of law interact, this module directs attention to the independent

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to bring a volume of statutes or case reports into the classroom. In examining the covered in either of these original sources, one discovers that criminal matters are only a small fraction of the law.

Geographical 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 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 "good" person vs. "bad" one, but are commonplace among all members (2) while many of these conflicts can be ironed out by negotiation, goodwill, forgetting about etc., some are sufficiently serious to require help from society in resolving them fairly and (3) one of the functions of law is to provide this help; and (4) that for the law to carry out must follow fair and reasonably efficient procedures itself. The teaching materials suggest designed to help achieve this understanding by considering how good-faith conflicts naturally 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 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
- GUIDE AND COORDINATE THEIR ACTIVITIES
- DISCOURAGE ANTI-SOCIAL BEHAVIOR SUCH AS ASSAULTS AND THEFTS

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

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

2. In develop awareness of the universality of disputes by observations of the world well as through directed viewing of selected cases.
Module 1

- The student can indicate the need for structuring in the resolution of conflict by indicating 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, 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 by which 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 there any rules that the participants seem to follow in such a "talk" session? Is there a follow-up 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 confrontation between two or more persons, in which a dispute seems imminent. The cartoons on pages 6, 7, and 9 can be analyzed, using the questions above.

- 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 newspapers or from interview of participants) compare with what you thought was happening?
- Are there any rules that the participants seem to follow in discussing the questions above?

- Study pictures, such as those produced by Documentary Photo Aids can be helpful also as additional visual sources in bibliography.)
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UNDERSTANDING

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usal sources in bibliography.)
Module 1

DETAILED DESCRIPTION OF STRATEGIES

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 have hospital bills of $10,000. Each mostly 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 some very basic rules of law and present good-faith conflict situations to which rules might be applied for resolution, should see that additional rules are put up processes for fair application of those rules. Even good-faith disputants who agree on a rule may be unable to come to an agreement on how to be resolved.

The three sample good-faith disputes show three separate ways in which honest men may themselves locked in conflict. Case one, the watch resold, shows that honest men may disagree on their interpretations of a fact. Case two, the head-on accident, shows that good faith may have their facts wrong in this case. Some process make a rational attempt at determining good faith disputing parties has his perception of what constitutes "stand workmanship" is the more reasonable.
Some disputes, even among men of good faith, create a need for legal process.

...are suggested classroom activities that may be used to prove this...

...the class into three groups and each group determine the possible resolution of the following hypothetical cases:

- Has stolen Smith's watch and resold it to Clark who initially believed it was Jones'. Jones is nowhere to be found, and now Smith and Clark claim to the watch. (Rule: owner of property has a right to possession.)

- White have had a head-on collision in which each was seriously injured and had hospital bills of $10,000. Each honestly swears the other's presence on the side of the road and should be held liable for the other. (Rule: person's negligence causes injury to another, he must compensate him for the harm.)

- Has an agreement with White 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 starting with some very basic rules of law and presenting simple good-faith conflict situations to which these same rules might be applied for resolution, the student 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 by themselves to come to an agreement on how their conflict should be resolved.

The three sample good-faith disputes suggest three separate ways in which honest men may find themselves locked in conflict. Case one, the stolen watch resold, shows that honest men of good faith may disagree on their interpretations of what a rule 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 process is needed to decide, given these facts, whose 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 court.

The teacher might construct hypothetical situations like those outlined above material for classroom discussion. A students might better grasp the notion faith conflict which defies private they are called upon to work in small struct such situations themselves.

Presenting a good-faith conflict-sit the form of a skit may increase study participation and provide an excellent question: What are various ways might be resolved when disputants are With a little direction from the teacher, discussion may evaluate alternatives of etc. and the need for an official method of resolution—a judicial process.

Cases included in Judgment Case Study, Tort Cases in the Classroom would also here. The "Background for Teachers" leaflet helps the teacher understand law involved.

"The Case of the Missing Ring" in the Courts and the Law is also applicab
ION OF STRATEGIES

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DISCUSSION OF STRATEGIES AND RESOURCES

In each of these three cases, some rational
process for fair dispute resolution is needed. The
law attempts to meet this need by supplying sub-
stantive rules, third parties (courts) to resolve
the dispute, and procedures for courts to follow.

The teacher might construct hypothetical dispute
situations like those outlined above to provide
material for classroom discussion. Alternatively,
students might better grasp the notion of a good-
faith conflict which defies private resolution if
they are called upon to work in small groups to con-
struct such situations themselves.

Presenting a good-faith conflict situation in
the form of a skit may increase student interest and
participation and provide an excellent springboard
to the question: What are various ways disputes
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

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New Yorker Magazine, 1971. dra
J. Mirachi

Drawing by J. Mirachi; © 1971 The
Magazine, Inc.
See text, p. 3.
Teacher select pupils in the third and then with the benefit of the process. Ask class to role-play while watching skits. That the matter could not be solved without the process. It would be interesting to have the pupils do it extemporaneously that direction they would go.

Grapher Smith takes a picture of a famous actress while she is mowing the lawn with a new Torch Lawnmower. Picture appears in the morning paper with a caption of the actress extolling the merits of the Lawnmower and encouraging all one as soon as possible. The actress immediately sues the paper stating she never used that product. The grapher states that she used it in public so that he within his rights in making assumptions that he did.

Smith claims that her son's fifth grade teacher, Miss, is always calling him slow. He developed an inferiority complex and as a result she intends...
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 See text, p. 3.

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

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

book, *Treasury of Law*, by Richard, is an excellent source for materials giving the pupil a "broad sampling of legal tradition." (Excerpts from text will be quoted later on in discussion.)

See text, p. 3.
Module 1

DETAILED DESCRIPTION OF STRATEGIES

this first module.) However, if the above mentioned book is un-
available, 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 of 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 courts are to do this job properly they must follow certain procedures.

The teacher might propose resolution of disputes the class has already considered as an imaginary court that places very little emphasis on processes. This court might not notify the parties, might not listen to the disputants, or might have judges who are patently incapable of doing 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 in module IV, pages 158-159). If the teacher wishes to use these original or abridged and abridged resource materials, he should freely edit or phrase such materials for student use. He may wish to check with an attorney or attorney representative concerning whether in wording change the intent of the statutes...
OF STRATEGIES

Having arrived at a need for some legal process to help resolve disputes, suggested procedures and resources 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 paraphrase such materials for student use. However, he may wish to check with an attorney or bar association representative concerning whether his changes in wording change the intent of the statute.

DISCUSSION OF STRATEGIES AND RESOURCES
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,

Students may benefit from seeing how
like one they have discussed was a
case in court. If they visit a trial,

might be very helpful in explaining
role in resolving private disputes
opinion is examined, students will

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

- Have them look up particular articles summarized 11 and 12.

- Visiting uniform court system:
  - Addressing a case by notifying the side
  - Filing and removal of
  - Disposition for courts to hear appeals

- View a videotape, film, or presentation on the organization of our lower courts

- Some examples:
  - "Structure and Organization of American Courts." Encyclopedia Britannica Films. b/w, 30 min.
  - Videotape, from the WNBC-TV, 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.**

- Visit a local court to see a trial similar in subject to a dispute discussed in class.
- Talk to the city court clerk or county clerk to make arrangements.
- If not possible to take a large group, 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), Stees 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 case already rendered a decision. The party brought the appeal is challenging the mistaken application of the law. If an opinion is used, it will need substantial editing. (See "The Attorney in the Courtroom," p. xiii). A local lawyer might be willing to help with the editing if the teacher feels it is called for.

A visit from an attorney to discuss the role of the courts could be very interesting to your students. Such a visitor might be most effective if the teacher is able to focus his pre-arranged talk on 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 each of the principals involved in the resolution process will find such a description in Chapter 15 of The American Judicial System.
ON OF STRATEGIES

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DISCUSSION OF STRATEGIES AND RESOURCES

resolving process at a level after a trial court has already rendered a decision. The party who has brought the appeal is challenging this decision as a mistaken application of the law. If an appellate opinion is used, it will need substantial teacher editing. (See "The Attorney in the Classroom," p. xiii). A local lawyer might be willing to help with the editing if the teacher feels such help is called for.

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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." ...go 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 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 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

- Constitution
  - Section I
  
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  ts are -- number of justices -- how they will be chosen -- that the legis-
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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.


--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."


(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 section from the opposite direction against a red traffic light and, moving 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 wife was found lying on the floor of the other automobile, alone and suffering severe injuries.
Article VI - Section XXIII

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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.


(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 relevant to as indicating his ownership of the property, etc.; that Tracy being a stranger, defendant was specially careful to inquire and inform himself that the person he 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 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 in his business as a piano mover. ...that the original plaintiff, for his own 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 his, and that defendant, acting with due caution and in good faith, was thus misled to the ownership of the property, and purchased the same from Tracy."
from a heart attack of which he died shortly thereafter. It was learned that, after operating the automobile normally, he had experienced a sudden and unforeseeable physical seizure depriving him of the capacity to control his automobile before it entered the intersection, so that he was exonerated from responsibility for its operation thereafter, and the plaintiff had no case.

or v. Clark, in Vol. 32, Atlantic Reporter, p. 1029, (1895)

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Module 1


(Unforeseen circumstances complicating performance of a contract)

Plaintiff Charles Leonard et al (and others) sued the architect company of Stees for not completing a three-story business house in accordance with specifications of the contract. The defendants maintained that they could 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 not reason why the contract couldn't have been filled because the agreement with the plaintiffs was nudum pactum, that is, a bare agreement, an agreement made without any money being promised to plaintiffs in consideration of draining the land.

Additional cases:


(Case study which centers on an automobile case; the issues involved on arraignment, 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.


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

(Unexpected circumstances complicating performance of a contract)

Plaintiffs, Charles Leonard et al., and others, sued the architect company of John Stees for not completing a three-story business house in accordance with plans and 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 filled because the agreement with the plaintiffs was nudum pactum, that is, it was a bare agreement, an agreement made without any money being promised to the plaintiffs in consideration of draining the land.

Additional cases:


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

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


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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 people to do things by providing useful guidelines for cooperation. A clearer way of formulating this is to reflect on superhighways. Cars on American superhighways speed along at 70 m.p.h. in the right lanes; cars on British superhighways speed along at 70 m.p.h. in the left hand lanes. How fast could one be able to go safely and efficiently on any superhighway if there were no law establishing direction of traffic in superhighway lanes? Even one would have to creep along at 2 m.p.h. dodging traffic in the other direction, if, indeed, they could move at all. Neither left nor right is any more just, but if the law does not establish one or the other as the rule, no one will be able to go either rapidly or safely.

This understanding, which looks at the need for the guidance of law, treats subjects familiar to students as crime. However, the coordinating-guiding-directing role is likely 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 resolution and protection is 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 not have these 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 where law's guidance directly affects them. It is important to point out that here is a vast 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 we accept the guidance of law as meeting our needs for structured interaction without ever consciously thinking of a punishment 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.
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 say that some law is a system for helping by providing useful guidelines for cooperation. A clearer way of formulating the idea is to say that some law is a system for helping by providing useful guidelines for cooperation.

Cars on American superhighways speed along at 70 m.p.h. in the right hand lanes. Cars on American superhighways speed along at 70 m.p.h. in the right hand lanes. How fast would anyone and efficiently 70 m.p.h. in the left hand lanes. How fast would anyone and efficiently speed along if there were no law establishing direction of speed along if there were no law establishing direction of speed along? Every car would have to creep along at 2 m.p.h. dodging traffic coming from the, indeed, they could move at all. Neither left nor right is any more just than the right lane does not establish one or the other as the rule, no one will be able to drive anywhere safely.

A clearer way of formulating the idea is to say that some law is a system for helping by providing useful guidelines for cooperation.

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

1 societal needs in a modern, complex society go beyond processes for fair dispute resolu-

tions of persons and property from bad acts. Needs such as public health, safety standards, dination of commercial activities, to list only a few, call for some sort of social con-

s and coordinate activity of large number of people living together; if we each 'did our d in the absence of such standards, the result will be, at best, significant confusion and worst, massive chaos.

The best way to approach the guidance of law function with students is to examine some areas directly affects them. It is important to point out that here is a vast body of familiar...
Module 1

B. Teaching Understanding II

OBJECTIVES

1. The student may develop a perception of the law as a necessary guide to everyday action by reviewing situations around him in which guidance is needed for successful interaction and by examining pertinent legal cases.

2. 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

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

USE OF VISUALS

1. Have some students view several films or film loops which portray oncoming traffic and 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 happen in each instance if no standards were set.

2. Individual students or student committees can review the pictures on page 20 and of the class how each portrays a situation in which the people concerned accept the need of law to coordinate the activities of man's daily life.
It may develop a perception of the law as a necessary guide to everyday actions by situations around him in which guidance is needed for successful interaction, mining pertinent legal cases.

Tales and case histories portraying situations in daily life, the student may identify situations in which obedience of law is prompted more by recognition of need for standards than punishment.

Each understanding of familiar activity would be less safe or more confused if law did not operate to set to provide guidance?

If there were no people who would purposely do harm to others if given a chance, why would we like our need some rules for standards and guidance in complex social interaction?

Students view several films or film loops which portray oncoming traffic from the perception point. (The driver education teacher may help you identify such resources.) Should list those situations in which drivers are bound by limits or standards set by then can discuss with the class or another group of students what would happen in practice if no standards were set.

If students or student committees can review the pictures on page 20 and discuss with how each portrays a situation in which the people concerned accept the need of standards. In rating activity, students may take photographs or draw caricatures to portray situations the need of law to coordinate the activities of man's daily life.
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.

—Invoke 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 authority that is enjoyed by materials concerning the resolution of conflicts and need for its fair resolution (Understanding III). Some laws that illustrate the guidance function of law in action.

—Consider why we have these kinds of rules; what if we did not?

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—Invoke the local fire chief to discuss the question of enforcement of fire safety rules. (See pages 19-20.)
Some laws that illustrate the guidance function of law in action.

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 proc sources to unfold the need for the direction of law, initial inquiry into what would happen if we had no law on such subjects. Such laws are o to people's perception that confor advantageous. Because people just students may question whether they necessary. But the assumption that necessary whenever they are gener out a legal threat is misconceived guidance, people would often not k The teacher might deal with this a structing a concrete hypothetical presents the need for a law that i without the potential threat of la

For example, in using the New York ing when Eastern Standard Time and Saving Time shall be in force acro teacher could post this hypothetic

A given state has no law like York so that each county or t standard or daylight time as . In this state Ed Smith and Jones had an auto accident. Smith in Thompson County where the curred, claiming Jones ran a Smith's car broadside. Trial in Thompson County for 1 p.m.
ON OF STRATEGIES

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DISCUSSION OF STRATEGIES AND RESOURCES

acknowledgement of this fact should not impair development of the understanding that dispute settling, guidance, and threat of law are each nec-esary functions of law.

In using any of the suggested procedures and re-sources to unfold the need for the guidance and direction of law, initial inquiry might consider 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 neecessary. 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 teacher could post this hypothetical case:

A given state has no law like that of New York so that each county or town follows standard or daylight time as it sees fit. In this state Ed Smith and John Jones have had an auto accident. Smith has sued Jones in Thompson County where the accident oc-curred, claiming Jones ran a light and hit Smith's car broadside. Trial has been set 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 his case at what he thinks is 1 p.m., but the Judge is not there. The bailiff tells Jones, "You've already lost; you're one hour late. The Judge gave Smith judgment for $10,000 Smith claimed as necessary to pay his doctor and hospital bills. The Judge asked if you had been notified of this suit and concluded that you had and didn't show, you did not contest this case."

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

The above listed procedures and resources together with those already presented in Module I to the teacher some of the kinds of areas that might be examined to reveal the need for law for direction, guidance, or standard setting. The teacher may choose to examine under the initial two procedures for teaching II would be to present several such areas.
ION OF STRATEGIES

- with pupils the need for and function of laws providing for traffic devices and signs:
  - an intersection with a stop sign. Without police present, do most drivers stop?
  - a group of pupils in class design a questionnaire asking drivers if they observe traffic signs and devices if they knew they wouldn't be caught. Then have all pupils fill out the questionnaire and, in turn, take one home and have parents fill out. It might be interesting to compare parent vs. driver response. (See pages 23-24.)

- the need for and function of setting minimum safety and sanitation standards for building construction. Throw open for class discussion the following questions:
  - would our school be like if we had no safety and sanitation standards?
  - your home, the local movie theaters, and businesses be any different without standards? (See page 26.)

- need for and function of laws setting qualifications for public teachers. Have class make a comparison with the colonial school system. (See page 27.)

DISCUSSION OF STRATEGIES AND RESOURCES

- County is on daylight time. Jones is 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 explains to Jones, "You've already lost; you are an hour late. The Judge gave Smith a judgment for $10,000 Smith claimed was necessary to pay his doctor and repair bills. The Judge asked if you had been notified of this suit and concluded, since you had and didn't show, you did not wish to contest this case..."

Once students begin to perceive the need for directive 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 choose 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 Understanding 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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See text p. 16.

DISCUSSION OF STRATEGIES AND RESOLUTIONS

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 pub bus drivers qualify to hold speciE example, breakfast cereal meets pub morning traffic is coordinated by devices; school starts at 8:30 a.m qualified teachers offer directed drills are held according to firen morning traffic is coordinated by devices; school starts at 8:30 a.m. qualified teachers offer directed drills are held according to safety is regulated q, according to cons TV programs broadcast according to waves, etc. After identifying such such laws are necessary, and why s 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.
DISCUSSION OF STRATEGIES AND RESOURCES

The need for and function of laws regarding that certain subjects be included in the public school curriculum. (See page 27.)

The need for and function of laws regulating standards regarding air and pollution. (See page 28.)

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

See text, p. 16.
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 make recommendations to the school authorities with respect to any problems 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.

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.
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 direction 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.

**Resources**


Section 155.3

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

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

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Note: Quotations from statutes are indicated by the use of quotation marks. Other elements are summaries or paraphrases of the statute listed.
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 west from Greenwich, and all courts and public officers and legal official proceedings shall be regulated thereby."


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

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


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

Slaughtering 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 one deer or involving the taking of a deer by the aid of an artificial light are 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 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..."
New York Official Compilation of Codes, Rules and Regulations - "Conservation." 

set up rules and regulations regarding natural resources and wildlife 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 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.


(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 uphill, 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."
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 season 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 open 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.


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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 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 1953 and later must have at least two lamps, one on each side which shall display 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 such horn shall not be unnecessarily loud or harsh.


(Standards for sanitation and building)

The following is only a brief excerpt from many rules and regulations 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 in each room occupied by such guest and also in the public lavatories and bath 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 and laundered and of sufficient width to completely cover mattress and spring... all sheets and pillow slip must be laundered and ironed before being returned to the next guest."
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 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 must have at least one lamp on the rear which shall display a red light. All 1953 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, but such horn shall not be unnecessarily loud or harsh.


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 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 I

"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 to keep out bacteria or, if unwrapped in a sanitary dispenser. ...no single service...paper containers, cups...spoons may be re-used...


--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 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 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 Farenheit or allowed to remain for five minutes in alcohol (70 percent - 80 percent) or some 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 or cup is used for each customer and discarded immediately after use.
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ment any straw, tube or similar device for drinking out of glasses, cups or containers
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0(A) Health, Part 1.

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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 or
cup is used for each customer and discarded immediately after use.

"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 of buildings, in tune with accepted standards of engineering and prevention 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.


--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 the top step. Where landings are provided for, their width shall not be less than the width of the stair of which they are part."
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 and construction materials, in tune with accepted standards of engineering and fire-prevention practices

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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 the top step. Where landings are provided for, their width shall not be less than the width of the stair of which they are part."
Module 1


(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.


(Curriculum guidance standards)

According to rules and regulations set up by the state of New York, certain courses of instruction 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 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 being 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 in connection with various divisions of physiology and hygiene.

27
No person shall be employed or authorized to teach in the public schools of the 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.

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, 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 fitness, 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.
"...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 regulations."

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 generator.

The Federal Government also pledges, through set activities, to prevent, control, or 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 for 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 the district engineer; definite specifications as far as quantities of release of water from specific reservoirs. Flood control regulation in various sections of the country.

Additional Resources

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

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

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References

Kihm, 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 VIOLENT CRIMES AND THEFTS.

A. Explanation of Understanding III

This understanding, which looks at the need for the threat of law, treats aspects of a subject—crime. The teacher can direct students to this need for law by first having them examine examples of laws concerning actions like rape, assault, theft, murder, and arson; i.e. situations of persons and property from the perspective of “bad actors.” Then an inquiry into whether the security of property could be effectively attained by rules alone, with some means of coercively policing 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, 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 freedom. 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 decision.

- The student may demonstrate understanding of the effectiveness of threat by listing forms of 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?
Living in a Modern Society Need Law to Discourage Antisocial Behavior Such as Assaults

III

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II) REACH UNDERSTANDINGS

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de role of a police force important to a legal system?

ere were no people who would purposefully do harm to others given a chance, would criminal

etion and punishment be necessary?
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 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 situations they are.

- Compare the effectiveness of the threat implied in the pictures below and on page 30.

A cartoon has been omitted here because of copyright restrictions. It is from The New Yorker Magazine, Inc. 1971, and was drawn by Weber.
may collect newspaper pictures which illustrate the threat of the law as a deterrent to crime. These may then be analyzed as the effectiveness of the threat. Dramas frequently focus upon crime or attempts to prevent crime. Such episodes are often reported by students, and then discussed, as to how representative of real life they are.

The effectiveness of the threat implied in the pictures below and on page 34.

The New Yorker Magazine, Inc. 1971, and was drawn by Weber.
Module 1
DETAILED DESCRIPTION OF STRATEGIES

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 conceptually step process. First, students should understand the importance of simply having some rules to prevent certain antisocial activity. Paradoxically, most fundamental freedoms of physical persons and property presuppose restrictions on certain kinds of activity. But the second conceptual step—mere prohibition of laws—is not enough. There is also a need for machinery that poses a threat to those who purposefully interfere with others.

Here, unlike dispute-settling law (Understanding II), there is a new kind of law if society had no men who were willing to respect the rights of others in the social contract, society would not have the kind of law if society had no men who were willing to respect the rights of others. Dispute-settling and guidance laws function to perform their necessary functions as society submits to rational procedure and accept direction in social life. Law's coercive threat is only secondarily to help enforce civil judgments; the school official who disregards fire regulations has no advantage of others given the opportunity to help meet the need to protect
1. Need for rules prohibiting antisocial conduct.

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 note prohibitions of criminal law exist for 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 different members of society, most of the time.

The fundamental reason for criminal is treated by examining some actual crime history. This section might conclude reading some current criminal statute. If such statutes are presented they substantial 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 for police force is presented: Here, student interested in seeing the actual law for establishment of police forces duties. It might be pointed out to
SCRIPTION 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.

- Need for the coercive threat of law.

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
Module 1
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 threatening in function. It might interest to consider the role that penal laws other than pen al law: in arbitrating neighborhood disputes, 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 hypothesizing its absence. From this, students might study some examples of the western frontier of the 1800's, they might consider probable resultment machinery was removed from the community.

An alternative approach to present III might be to work through the process reverse order. The teacher could be a town or school, first with no rules, hurtful acts, and second, with such out any coercive machinery to police. After considering the need such circumstances demonstrate for pena laws and enforce students might consider some crime in and history.
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.
Module 1

DETAILED DESCRIPTION OF STRATEGIES

(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.

An editorial cartoon drawn by Pat Oliphant has been omitted here because of copyright restrictions. It is from the Denver Post.

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

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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.


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 [premeditation] 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 another
3) by issuing a bad check

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


(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 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 that 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 acti

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.


McKinney's Consolidated Laws of New York - "Executive Law" - "Division of State Po

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 plea. The superintendent shall receive as salary such sum as may be appropriated by

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 not eligible for retirement, upon termination of his service as superintendent reappointed, without examination, as a member of the state police in the grade held by him prior to his appointment as superintendent notwithstanding the ab of any vacancy in such grade. For the purpose of determining the annual sal to be paid upon such reappointment the period of service as superintendent sh be counted as service in the grade to which reappointed."
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"Law XXIII - If a four-footed animal causes damage, there shall be an action at law against the owner of that animal."


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

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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 managing 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..."


"...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 profession 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."

ney's Consolidated Law of New York - "Unconsolidated Laws" - Town Police Departments.

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"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 streets 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 an 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..."


"...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 profession 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."

Module 1


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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"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 keys.  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!"

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This work considers an example from real life.

"The most recent experiment in educational anarchism has been going through 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 to be without authority.  A motorcycle gang invaded the college and..."
Another description of the 1-day strike by the Montreal policemen and firemen told 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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"The most recent experiment in educational anarchism has been going through this 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..."
Module 1

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


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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1. Resources

R.S., Campbell, A.B., & Bozzone, J.P. Justice and order through law. 1, Chapter III. "Our laws and legal processes -- Do we need them?" Lexington, Ginn and Co. 1973.


(last part of film, The Oxbow Incident.)

Primary They. Modern Learning Aids.
A cartoon by Frank Adams has been omitted here because of copyright restrictions.

Cartoon reprinted by permission of Frank Adams.
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 But like most other tools, laws don't work automatically; they are used by men. Thus, like most tools, laws can 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 how law does what it does. This tells students about the nature of law—gives them a more accurate picture of why rules prohibiting and restricting activity but various resources to facilitate social interaction and to ameliorate problems.

Second, by looking at the ways law can work on a problem, students should better understand why a system may put the wrong resources to work on a problem or (4) law may fail to get necessary support from nonlegal

Third, ours is a complex legal system in which the role of the individual citizen appears frustratingly surveying the various techniques by which law works, one may more accurately identify the roles of private individual influencing, activating, and operating aspects of our legal system. As some of law's resources work, the role of 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 understanding of the complexity of social problems and the limits of law in solving them. Social problems are not always readily amenable to 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 problem—that is, law depends heavily on nonlegal factors in doing its work.

*See footnote on page 1, Module 1.*
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 legal tools or techniques, this unit attempts to convey understandings about the dynamics of the operation of legal system.

For teaching about this subject are fourfold. First, the various legal tools or techniques surveyed represent laws. This tells students about the nature of law—gives them a more accurate picture of what law is: not merely 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 fall or example: (1) some laws may be unsound, (2) sound laws may be unfairly applied, (3) the managers of the long resources to work on a problem, or (4) law may fail to get necessary support from nonlegal forces. Is a complex legal system in which the role of the individual citizen appears frustratingly insignificant. In techniques by which law works, one may more accurately identify the roles of private individuals in creating, 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. 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 legal technique or combinations of techniques. Aiding Scheme.

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Module 2

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 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 two serious social problems: highway safety and pollution. To help the teacher direct the teacher to how each legal technique works on these problems, suggested questions, topics, and additions be found in section B. As the impact of each legal technique on highway safety and pollution, 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:
   - 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

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 how each technique works on these problems, suggested questions, topics, and additional examples will be considered:

1. Does each legal technique work on a social problem?
Module 2

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 perform?

However, before taking up a specific social problem and showing how the tools of the government and legal system operate, 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 context of the benefit, regulation, and penalty techniques
- 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 channel monies into public benefits; e.g., public highways, welfare assistance, public education. This process involves governmental action and is called a legal technique because the raising of taxes and the conferral of such public benefits is always shaped and ordered in important ways by law.

The regulation technique. A legal system may permit commercial behavior in order to curb abuses. It is obviously desirable to have manufacturers process food, but to also comply with standards of purity. It is desirable for people to drive cars, but cars must be licensed in accordance with standards of safety. When a legal system induces officials to induce manufacturers, drivers, etc. to 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 lawsuits to force defendants to pay compensatory damages (money) to those they have harmed in the course of daily life.

The private arrangement technique. A legal system leaves a great many problems to be left to private arrangements, and private administration. These private activities may be carried on by private groups, organized bodies, corporations, etc. The private arrangements involved may include property transfers, employment relations, and so on. But the law plays an important role private activities for this to be thought of as a distinct legal technique. First, law prescribes such activities. Second, it facilitates them by specifying in the law itself how valid corporate activities are carried on, and how lawful property transfers are made. Third, and o
It initiates use of each technique and who actually operates it? What is the role of the private citizen in it? Why do 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 use, the techniques scheme will be summarized as follows:

If the general description of each legal technique will be followed by an explanation of the reasons for using this relatively unfamiliar scheme in teaching the government and legal system operate.

It may be helpful in showing the legal techniques scheme at a glance.

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

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

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

**Remedy technique.** This basic technique is most familiarly known in the form of court orders, in which defendants to pay compensatory damages (money) to those they have harmed in some way in their life.

**Arrangement technique.** A legal system leaves a great many problems to private decision, and private administration. These private activities may be carried on by individuals, bodies, corporations, etc. The private arrangements involved may include contracts, leases, and other business relations, and so on. But the law plays important enough roles in these arrangements for this to be thought of as a distinct legal technique. First, law permits these arrangements, it facilitates them by specifying in the law itself how valid corporations are formed, how corporations are formed, and how lawful property transfers are made. Third, and of great importance,
when such arrangements break down (e.g., when a contract is broken), the law usually steps in to the arrangement by awarding monetary damages for the loss sustained by the wronged party to 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 a systematic survey of a limited number of distinct legal techniques. The obvious difficulty 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 in 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 serve as a check on the others, thus protecting the governed from the potential oppression of 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 becomes a critical pedagogical purpose as government operates. Students traditionally learn that the legislative branch makes and changes the law, the executive branch enforces the laws; and the judicial branch interprets and applies the laws. Tidy this scheme may be, it is not an accurate and informative way to analyze the operation of 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 what officials of various kinds do than the analysis of the government branch by branch powers notions in this context suggest that law is made by one branch of government, enforced by yet another. This simply is not accurate. While the power to legislate with the legislature, in a very real sense courts, administrative officials, and the executive branch change the 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 cooperation 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 branch (Communications Commission, Federal Power Commission, etc.).
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 a limited number of distinct legal techniques. The obvious difficulties involved in teaching scheme to a less familiar one calls for some justification.

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Module 2

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 which government operates. On the other hand, the legal techniques analysis turns the focus structure of government to analysis of structure in the context of operational processes, working on processes.

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

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

The legal technique scheme is presented in Summers, R.S., Campbell, A.B., and Bozeman, A. Justice and order through law, Unit II, "Our legal tools", Lexington, Massachusetts, Ginn.
The separation of powers analysis unrealistically separates in a rigid way the structure of government from that of law. The government is not only structured by law, but law provides the tools with which it operates. On the other hand, the legal techniques analysis turns the focus from mere government to analysis of structure in the context of operational processes, with the emphasis on the legal techniques approach to the legal system. The legal techniques are the tools in the government's toolbox—a set of resources that can be used or misused in working on the problems of improving human social order.

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

### Module 2

#### Legal Technique Outline of Legal Techniques Scheme

<table>
<thead>
<tr>
<th>Benefit Distribution</th>
<th>COLLECTING TAXES and DISTRIBUTING BENEFITS</th>
<th>EXAMPLES OF THE LEGAL TECHNIQUE AT WORK</th>
<th>SOCIAL NEED OR PROBLEM THAT THE LEGAL TECHNIQUE INTO</th>
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<tbody>
<tr>
<td></td>
<td>(a) System of Public Education</td>
<td>(a) Preparation of Youth for Productive Adulthood</td>
<td></td>
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<td></td>
<td>(b) Social Security System</td>
<td>(b) Care for Aged, Otherwise Care for Themselves</td>
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</tr>
<tr>
<td>Regulation</td>
<td>EXPERT REGULATION OF SPECIFIC ACTIVITY</td>
<td>(a) Coordination and Quality Radio and TV Airwaves</td>
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<td>(a) Federal Communications Commission</td>
<td>(b) Wholesome Products on the</td>
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<td></td>
<td>(b) Food and Drug Administration</td>
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<tr>
<td>Penal</td>
<td>PROHIBITING AND PUNISHING CERTAIN BAD ACTS</td>
<td>(a) Prevention of Violent Acts Persons</td>
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<td></td>
<td>(a) Statute Making Assault and Murder Crimes Punishable by Imprisonment</td>
<td>(b) Protection of Private Property</td>
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<td>(b) Statute Making Thefts a Crime Punishable by Imprisonment</td>
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<td>Private Remedy</td>
<td>LAWSUITS TO REMEDY DAMAGE DONE</td>
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<td></td>
<td>(a) Suit for Assault and Battery</td>
<td>(b) Provide for Rational Disinhibition</td>
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<td>(b) Suit for Slander</td>
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<td>Private Arrangement</td>
<td>SUPPORTING PRIVATE ARRANGEMENTS</td>
<td>(a) Encouraging Private Efforts Meeting Social Needs</td>
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<td>(a) Tax-Free Status of Charities and Private Schools</td>
<td>(b) Orderly Private Exchange and Services in Society</td>
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<td>(b) Enforcement of Contract Promises Between Private Individuals</td>
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<tr>
<td>Legal Technique</td>
<td>Examples of the Legal Technique at Work</td>
<td>Social Need or Problem That Calls the Legal Technique into Play</td>
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<td>(b) Suit for Slander</td>
<td>(b) Provide for Rational Dispute Settlements</td>
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<td>TING PRIVATE AGREEMENTS</td>
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<td></td>
<td>(b) Enforcement of Contract Promises Between Private Individuals</td>
<td>(b) Orderly Private Exchange of Goods and Services in Society</td>
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</tbody>
</table>
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 taxes?
- 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 illustrated and 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.
benefit distribution technique

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techniques.
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Module 2
DETAILED DESCRIPTION OF STRATEGIES

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 highway pollution are especially useful in surveying law's basic resources because these problems (and others) are ones on which all legal techniques may be put to work. The unit is designed to present current coverage concerning the extent to which law deals with highway safety or pollution is in fact available today.

The suggested content and procedure for this legal techniques merely attempt to provide some examples of legal activity of this kind. Such examples by themselves do little in revealing to students what law works. Thus, the teacher has a particular importance in directing inquiry into the distinctive nature of the legal techniques at work.

In looking at expenditure of public funds or in the allocation of tax dollars to promote highway safety, students may consider how tax dollars can promote high pollution. For instance, tax dollars may be spent to build a cloverleaf where many accidents occur or to set aside funds for yellow paint for the highway to prevent a problem. The benefit distribution technique may be considered in these ways.
DISCUSSION OF STRATEGIES AND RESOURCES

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

Highway Safety

Students analyze the chart and graphs showing the proportion and expenditure annually on highway construction and maintenance. Compare with expenditures. Which is the highest? The least? Do they think the expenditures are fairly distributed?

Discussion: Pupils, through class discussion, justify ways public moneys might be used on the problem of highway safety. Following are some of the possible ways:

- Construction of safe highways (grants for highway construction may be conditioned on meeting quality standards)
- Construction 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.)
- Coordinating traffic flow
- Search 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 from them into certain benefits, and distributing members of the public is called a legal process because the law structures and orders it to be carried out. As indicated in section (c) statistics can be presented for illustrative purposes to show something of the specific legal process known as benefit distribution technique. The public method, beginning, may need assistance in studying the statutes and editing them for study purposes. An alternative way to emphasize the legal process of taxing and spending is to have students play legislators in the process of formulating legislation which problems the state's taxes will be used to solve.

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 answer the following questions about the operation of this technique:

- How does it get at the problem? What problems does this technique solve?
- How may this technique fail to solve a problem? What limits are there to its effectiveness?

- What are its limits?
check back issues of newspapers for stories public money on highway antipollution techniques. Them make a bulletin board the materials they have indicating the relationship play to benefit distribution.

main pupils in class the lacking newspapers for stories accidents that were caused part by failure of them to make use of the benefit in technique to build "safe" for the driving public. Have pupils read their selections and call on various classmates they are in agreement as to fault lies.

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and 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?
Module 2
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 filmstrip series to help make pupils more aware of the problems, and some of the various remedies suggested.

DISCUSSION OF STRATEGIES AND RESOURCES

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

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

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

Pollution

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

- Federal money to assist sewage construction projects
- State funds to assist local in the construction and maintenance of sewage treatment plants
- Federal money for research development of solutions to the pollution problem
- Fewer roads and more mass transit

Great interest and concern aspects of pollution today, many audiovisual materials dealing with all aspects of this subject 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:

- "Pall 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 technique to work on certain problems?

DISCUSSION OF STRATEGIES AND RESOURCES

While executives, judges, and legislators are familiar to students, administrative officials are not so familiar. Yet officials play a key role in carrying out the legislature's benefit distribution technique, implementing certain other legal techniques. While the regulation technique is primarily the responsibility of the state or federal administrative officials do much of the detailed work, often they are experts in the creation of administrative agencies like the highway department, the internal revenue department, the food and drug administration, etc. But the executive branch and the administrative officials play a key role in creating the benefit distribution technique as used in this course.

Combating pollution and working for a better environment are by no means the only functions that administrative officials perform. Students are urged to consider other examples of this benefit distribution technique at work on such problems as highway safety, the war effort, tax dollars for hospitals, a welfare system, public facilities, conservation, the public school system, national defense, and even pollution. It is likely that students will recognize that the given technique, as used, does work effectively on the problem under discussion. For example, some of the students will (e.g., we do not spend enough tax dollars on pollution), and (2) even if the given technique is not used...
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

- Why can't the allocation of moneys result in the end of all traffic fatalities and pollution problems?

If students do not raise these points, they should. They should be pursued in that: (1) each legal technique needs to be evaluated to a legal system that can be well used as effectively as possible, solve the problem at hand (e.g., highway construction would not end pollution or traffic fatalities), (2) some techniques are better suited to work on a given problem than others in working on a given problem, so we should not use several techniques work on the same need; (4) even where legal techniques are used, some problems are very complex and may not be in the reach of legal solutions.
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.

DO YOU HAVE CITY SAG?

Smog smarting eyes?

Gasoline fumitis?

Crowd claustrophobia?
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.
A student may be assigned to play the role of a state governor (depending on the level of government being simulated). Students as team members might put pressure on the executive branch which will bring about complete decentralization of the process. See also references to Mehlinger and co-authors, 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

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<th>Program</th>
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#### 1973-74 Program Summary

(Regular and First Instance Funds)

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<tr>
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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

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

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<th>Program</th>
<th>Reappropriations</th>
<th>New Appropriations</th>
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<td>Federal to Public Authorities</td>
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<tr>
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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 legal technique?
. How might the regulation technique as it is used in our legal system be made more

DETAILED DESCRIPTION OF STRATEGIES

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 simply indicate examples of the regulation technique at work. To develop an understanding of the regulation technique, the teacher will stimulate student inquiry to the special work resource. The same series of questions used to examine the benefit distribution technique should be answered about the regulation technique.

How does this technique generally work? Who decides to put this technique into practice? What other problems does this legal technique treat? How does the technique fail to solve the problem? What are its limits?

The regulation technique generally works by setting qualifying standards and guidelines for the conduct of private citizens and regulating by licensing "safe" drivers. Such standards and guidance try to coordinate things for people engaged in certain activities.
standing I - 2. Regulation Technique

REACH UNDERSTANDING

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

ION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

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

Highway Safety

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 RESOURCES

or to prevent the occurrence of utilize from the activity. For example, highway safety, we need standards who is qualified to drive on the standards and licensing drivers by regulation technique is better the decision up to each individual as qualified to drive safely. Likewise for keeping unsafe vehicles off the road is desirable. Standards for limiting emissions of pollutants into the air help protect the environment. Usually by qualifications or standards the regulation technique sets for getting a license people as to when they may hunt and the species of wildlife. People are protected in the marketplace because they are informed of standards concerning drugs by the regulation technique.

Another key function of the regulation technique is coordination of certain activity. Coordination, auto or air traffic flow which as well as very congested. Coordination of radio or TV airwaves would be important regulation of their use.

Questions on the Operation of the Regulation Technique

As with the distributive technique administrators play the key roles...
TION OF STRATEGIES

Discriminating traffic flow
Determining and requiring uniform
efficient control devices
Intersectional control
Markings

Above information can be learned
in or other in the New York State
Manual which can be obtained from
Department of Motor Vehicles office.

With class various ways the
Possibility technique might work on the
Amount of pollution. Some of the areas
Where there have been attempts at
Possibility include the following:
Amount of permissible
Emissions into the air from industrial

Amount of motor vehicle air

Air pollution standards regulating pollution
Water pollution standards regulating pollution
Ocean pollution

For class study primary
Resource material that illustrates
Regulation technique at work on
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.)

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 individual, interest groups, and the legislature decides that a particular subject is in need of regulation, and then goes about creating administrative commissions and bureaus to carry out a regulatory program. The legislature may make broad guidelines for regulating pollution, and then these experts go about the day-to-day regulating of making and implementing regulations.

- The executive, private individuals, interest groups, and the legislature usually appoints experts to do this task. For example, shortly after taking office President Nixon made it clear
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 festival

One 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 RESOURCES

Congress to create a new administration to regulate environmental abuse more effectively. Interest groups like the Environmental Protection Agency or the auto manufacturers' lobby can influence the legislature to increase or decrease regulations in an area like pollution control. Administrators are moved to action by citizens. The highway department might have the need.

Again, it is appropriate to look at the technique critically: Why might it have failed to address the problems it addresses? Legal unsound regulations; for example, standards might be dangerously lax. The Mona Lisa might fail to use the regulatory technique; for example, the regulation of air pollution until effective standards might be set, but they might fail to be enforced or they might be enforced only occasionally. Landlord violations of building codes in many places are some examples. And finally, even where the regulation works well, the problem on which it is complex that alone or in combination with other techniques it still cannot "solve" completely. So long as there are bound to be some auto accidents.
ION OF STRATEGIES

ems of highway safety and tion, and how they contribute d improving the area mentioned.

an you explain the occurrence many auto accidents and different of pollution despite the manyictions to ensure highway safety
onservation of our natural orces?
pils check newspapers for reports regulation technique at work and bulletin board display. See if n discover some areas right in own school.

student group role-play adminis- who are called on to make regu- concerning the following sies:
fying to be a public school her
fying to use a snowmobile
ing a permit for a rock festival
ight play the role of principal, r superintendent of schools, and hers might play the part of the f education members.
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. Pri- vate 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

Discuss the strategies and resources available to talk about how these officials go about regulating their 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

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

DETAILED DESCRIPTION OF STRATEGIES

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.

DISCUSSION OF STRATEGIES AND RESOLUTIONS

Here again, a series of examples is presented. With the help of similar examples, the class will see this legal technique generally gets who operates this technique, other legal technique treats, and possibly this 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 function; if antisocial acts result will in theory be deterred from occurrence. Some manufacturers are the effect on others of dumping r into a river or billowing black so but if these activities result in outweigh the advantages of pollutants. Social industrialist may be discouraging. Likewise, the individual who with the dangers to himself and o
standing I - 3. Penal Technique

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

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.

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

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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, to protect the security of people by discouraging those who might otherwise do them physical injury, punishing drug sales try to deter some people who do not care about the consequences they may do.

Also, the penal technique serves to substitute for the penal and the regulation technique. There may be a true overlap. Often if one fails to meet a penalty, the regulation technique with a penalty (the penalty technique is to drive without meeting the standards for driver licenses and prohibiting murder or theft. These have an important difference in the penal technique serves to help guide the regulation technique. There may be a true overlap. Often if one fails to meet a penalty, the regulation technique with a penalty (the regulation technique is to drive without meeting the standards for driver licenses and prohibiting murder or theft. These have an important difference in the penal technique serves to help guide the regulation technique. There may be a true overlap. Often if one fails to meet a penalty, the regulation technique with a penalty (the regulation technique is to drive without meeting the standards for driver licenses and prohibiting murder or theft. These have an important difference in the penal technique serves to help guide the regulation technique. There may be a true overlap. Often if one fails to meet a penalty, the regulation technique with a penalty (the regulation technique is to drive without meeting the standards for driver licenses and prohibiting murder or theft. These have an important difference in the regulation standards where guidance is necessary, people and direct and coordinate activities would be less safe if everyone on high-speed roads were required to drive. On the other hand, laws that are primarily penal, such as prohibiting rape, the function of the penal technique is to deter people from an activity which they know is wrong; the regulation technique is to help
TION OF STRATEGIES

Pollution

The pupils identify ways the penal technique might work on the problem of pollution. Some possible areas to consider are the following:

- Driving may come within the penal provisions prohibiting "public nuisances".
- For example, California Penal Code defines "public nuisance" as: "Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the 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 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 protect 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 regulation 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 proceeds 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 prohibiting rape, the function of the law is not primarily 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 penal technique are similar (fines, the moral disgrace and condemnation of the penalties of the penal technique), the strategies of the penal technique are not left

Questions on the Operation of the Penal Technique

Like the two techniques already discussed, officials have roles in putting the techniques to work. The legislature decides what conduct is to come within the reach of the criminal laws it defines crimes. Public opinion, political movements, specific events may influence the legislature in their process of defining what acts are crimes. Legislatures may respond to public demands for more severe penalties by the penal technique or specific events may influence the legislature to stiffen penal law of a particular sort. Nixon did with provisions to combat drug use with penal laws that harshly punished drug sellers, and possessors of drugs. Events like plane hijackings may present a "ill to the legislature, and may present a call to the legislature, and may present a need to the legislature, and may present a need for the legislature to define certain anti-terrorism crimes.

Although the legislature decides what acts are, and the penalties for such acts, the application of the penal technique is not left...
sive pollution may be a violation of specific penal laws. Sisive auto exhaust a misdemeanor. A violation of Water Pollution Control provisions subjects one to a fine of from $250 to $2500 per violation and if such violation is willful, it constitutes a misdemeanor. Later is subject to a fine of $400 to $2500 or a maximum of 1 year in prison or both. A violation of the Oil Pollution Act of 1972 by certain discharges of oil into the sea is punishable as a misdemeanor fine of $500 to $2500 and prison up to 1 year or both.

class the task of collecting primary data material that illustrates the technique at work on the problems. In line with the above, assign the following as a project: Write to the United States Attorney General requesting such information.

lowing questions and strategies related to the penal technique:

1. Are some further examples of the technique at work on the problems of highway 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 disregard the regulation technique, they normally must confront penalties characteristic of the penal technique. While sanctions of the penal and regulation 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 preventing some violations of the penal law. The police try to apprehend those suspected of having committed crimes. From this point the prosecutor (district attorney) takes over. He brings the case before the court. Further officials may be involved in convicting - probation officers, wardens, etc.

The deterrent function of criminal law is not the only function that the penal law performs. In theory, after certain convicted, they are to be rehabilitated and reintegrated into society. However, the deterrent function of criminal law, to isolate antisocial people from society, cannot do more harm. Though modern society generally frowns on earlier retributive theory of criminal law, orderly off the hook of 'bad actors' often serves as a haven for private retaliation by the victim or their friends and family.

The penal technique, too, sometimes well in controlling antisocial conduct. The legislature simply passes unwisely some laws. In some states, it is a serious crime to have sexual relations between a black and a white person in some states until the Supreme Court declared the laws unconstitutional in the 1960s. Some drug laws are at least subject to criticism if all penal laws were sound, they
ON OF STRATEGIES

Are any other ways of ensuring highway safety other than the technique (public conscience)? Are some examples of the penal technique working on other social or problems of our society? Areas to be considered are the problems of drugs and abortion.

Discuss to put the penal technique to use in solving social problems. Who actually uses this legal technique? How the individual's influence be in the operation of the legal system? Could they as minors part in the penal technique? Does the penal technique fail to solve some accidents or some problems? Is there such a thing as a law? (Pupils might wish to study laws in their own language.)

DISCUSSION OF STRATEGIES AND RESOURCES

Private individuals have an important role in bringing some violations of the penal law to the attention of the police. The police try to stop people in the process of breaking penal laws and to apprehend 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., discouraging 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) 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 RESOURCES

would not be omnicompetent. Violent laws often "get away with it." It is
sible to have enough police to catch most, of the people who drive while
drag race, pollute, murder, etc. A there are good penal laws there may
for their application. Accused pe
New York City jail for a year wait; convicted persons may be sent to co
tutions that do more to turn them i
minals than to correct them; or
may not be equally applied—the rich
possesses marijuana may get a quiet
wrist, the poor boy may get 5 year

Once students have been presented t
legal techniques, it might be helpf
the relative effectiveness of the v
on the problems of highway safety a
Also, they might consider the appro
various roles played by officials.

Would legislatures be as well suit
try criminal cases or be as well su
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Discussion of Strategies and Resources

would not be omnicompetent. Violators of these laws often "get away with it." It would be impossible 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 institutions 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 pollution 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 RESULTS

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

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See text, p. 49.
ION OF STRATEGIES

Research, urge pupils to use Periodical Literature.

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

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:


(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. To the private remedy technique in the courtroom. Alternatively, a film presenting a case study of a lawsuit. Or a practicing lawyer may visit the class to explain the private remedy technique in repairing injuries.

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

This technique differs from many presented. Its main function is to repair damages that have occurred. When one private party claims to be fully damaged by another. If the private party claims to work out a settlement between the parties (the plaintiff) can (the defendant) before a court. If the plaintiff's claim has mer
Private Remedy Technique

REACH UNDERSTANDING

Essary 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?

ION OF STRATEGIES

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

Local Safety

An attorney speak to the class on the subject of suing a negligent to recover for personal injuries suffered in an auto accident. Ass to visit a local court to see trial of an actual automobile negligence case.

Class on a case study of a traffic accident arising from an auto accident. Possibility is the following: Public Issues Series, The Lawsuit. Case study.

One of the pupils devise a skit they may role-play the characters in an actual lawsuit. Include plaintiff, defendant, lawyers, judges, juries, 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.)

DISCUSSION OF STRATEGIES AND RESOURCES

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 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

Some common types of injuries for which private parties sometimes use private remedy technique are injuries caused by others' carelessness (negligence), injuries caused by interference with one's reputation (written libel or spoken slander), injuries caused by attacks (assault and battery), injuries caused by interference with one's peace of mind (nuisance or trespass). Harmful conduct may rise to a civil suit between private parties to recover money (damages) or to have the conduct stopped (enjoined). Such conduct (for example, 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 is called for from similar conduct.

This legal technique aims at remedying the individual's harm to another by ultimately obtaining a court order saying either pay for the wrong done (a judgment) or stop the harmful action (a 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 active conduct. This legal technique is operated by the putants, their lawyers, and the court.
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), injuries 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 injunction).

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 disputants, 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 by another. However, it may be very hard to determine who may be very hard to determine who. (2) With 14 million auto accidents, pollution injury to almost everyone may be an impossible administrative courts; in some places it may take to get before a court. (3) The results in private lawsuits may not be sure damages for negligently causing to enjoining pollution when the polls serves to employ the entire community person wishing to sue may not be a lawyer to take his case to court (constitutionally guaranteed in some cases). (5) The person being sued no money with which to pay damages for lawyer to defend himself. (6) The no money with which to pay damages for lawyer to defend himself. (6) The determination of its own merits, but, the question of which party hired the
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?
2. How does the law support certain private arrangements?
3. What are some problems encountered in leaving certain social tasks to private legal

DETAILED DESCRIPTION OF STRATEGIES

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

DISCUSSION OF STRATEGIES AND RESOURCES

In the private arrangement technique, private decisions, and private are at the forefront. Many social problems tackled through means of this kind through the various forms of direct determinations. Thus, it is largely through private market forces that choices are made by legal systems. In some legal systems, determinations are made by legal of than through private arrangements.

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

Then there are social problems which partly by private arrangements and techniques. The problems of highway safety and air pollution control illustrate t
I. Private Arrangement Technique

Private arrangement technique at work on a social problem.

1. Safety

With class legally supported arrangements that work on the problem of highway safety. Some following items may be discussed:

- Recognition: Corporate tax status of AAA programs: safety education, research, movies, publications, etc.
- Recognition and backing up private contract arrangements to pay claims caused by accidents
- Liability insurance arrangements
- Pension insurance arrangements
- Might implement private arrangement techniques in the following ways: 

In the private arrangement technique, private judgment, 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 producing 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.
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 RESOLUTION

Discussing these, it is important to consider some of the detailed workings of the private arrangement technique. In this legal technique consists of two elements.

First, it grants permission to private organizations to make certain arrangements and to carry on actual activities. Thus, persons may be granted the right to make contracts, leases, wills, etc. Organizations of a certain kind thus have the advantage of joint action (greater intellectual resources, greater effort, etc.) The AAA in the field of automobile accidents is one such organization. The Environmental Defense Fund in the field of pollution is another. These organizations exist to carry on. Even law permits the various activities of these organizations to continue.

Second, law facilitates the activities of these organizations. By giving tax exempt status, it helps them to continue. By allowing them to collect dues and to charge fees, it helps their activities. By helping to prevent interfering with their activities, it not only recognizes their right to carry on, but also affirmatively promotes their activities. Thus, if someone should interfere with the work of the AAA or the Environmental Defense Fund, the legal system could be used to prevent such interference.
DISCUSSION OF STRATEGIES AND RESOURCES

Chapter 18

In many areas of the American Automobile Association for publications and
insurance agents and companies, legal arrangements are made that work on the
prevention of pollution. The following arrangements that work on the
prevention of pollution. The following
might be included:
- legal recognition for such
organizations as the Sierra Club
the Environmental Defense Fund,
permission to use the courts to
pletely the ends that have been
pursued by these groups.
- us tax incentives to influence
decisions to clean up envir-
(legal tax deductions
PURCHASING air pollution control-
meant, tax exempt status for the
mental Defense Fund, tax deduc-
s for donors to certain organiza-
ations)

The following questions and strategies
ated to the workings of the private
arrangement technique:
- are some further examples of the
arrangement technique at work
- 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 charger, 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 RESOURCES

Third, the legal system promotes private arrangements by supporting them when they break down. For example, private insurance companies contract with car owners which provide who are hurt in highway accidents shall to certain sums. When these owners into such arrangements seek payment fully refused, they may turn to the private technique and secure judicial judgment.

Questions on the Operation of the Private Arrangement Technique

As with the private remedy technique, private arrangement technique places heavy emphasis on the role of the individual citizen. These techniques simply do not perform their proper function if private individuals do not take them into use. In the private arrangement technique, private individuals actually "make the rules" for themselves, and duties (i.e., the legal contract, a will, a mortgage, a lease, etc.) are defined not by legislative rule makers, but by the parties to the arrangements. Similarly, the purposes and activities of a corporation or an organization 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 set by the rules for legally effective
ON OF STRATEGIES

Problem of highway safety or 
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Some examples of the private 
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e?

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 con-
tracts 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 wrong-
fully 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 tech-
niques 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 denied 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. The pupils should not be led to believe that they are making the "real thing"; in fact, minor capable of making any legal arrangements. The purpose of this exercise is to demonstrate familiar law is made and administered by private parties and their lawyers.

DISCUSSION OF STRATEGIES AND RESOURCES

Like the other techniques, the private arrangement technique has possible defects. That the legal system sets up for private arrangements and stand real arrangements if they break down.

Also, the legal system may simply organize private efforts to combat the effects of poverty. The NAACP on occasion has been disbarred on its orderly efforts to be organized and in 1970 the Federal government removed the tax exempt status of environment organizations.

By leaving distribution and exchange services primarily to private arrangements, society does, some social needs are unmet. In the richest society in history, some are starving and dying of diseases not known.
agreement

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on family's experiences.)

role-play a meeting of
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divide in groups and draft a
al arrangement; for example,
employment as a paper boy,
 an apartment, a Will,
tgage on a house.

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 arrange-
ment 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 segrega-
tion; in 1970 the Federal government considered taking
away the tax exempt status of environmental protec-
tion 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.

In arrangements in real life normally calls for the assistance of a lawyer. Students
are led to believe that they are making the "real thing"; in fact, minors are legally in-
taking any legal arrangements. The purpose of this exercise is to demonstrate how much
miliar law is made and administered by private parties and their lawyers.
Module 2

RESOURCES*


(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 levels of air quality, standards set concerning emissions of substances from vehicles or engines, hearings for failures to abate pollution.


(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 who will regulate the activities of the board. This same commissioned 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 what 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 summaries or paraphrases of the statute listed.
RESOURCES


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

Excerpts from statutes are indicated by the use of quotation marks. Other statements are paraphrases of the statute listed.
Module 2


This is a report of the Ralph Nader Study Group on Air Pollution and their
for more government control.

The Foreword of the text by Ralph Nader is an excellent summary of the pur-
the group and some of Nader's own thoughts on air pollution and role of co-
in their continuation of biological trespass on citizens by fighting gove-
co-opting administrators, and refusing to let people know the facts.

Note to teachers: The reading level might be a little difficult for eight
pupils. Certain pupils might wish to use it as a research source. Teach
use it as background material.


(Prohibited unsafe highway activity)

Section 1180 - Speeding

--a person is prohibited from driving his vehicle at a speed that is gr
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
area (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 c
person engage or aid any motor vehicle speed contest on the highway unl
secures permission from the proper authorities in the area where the ra
being sponsored. Not only must a permit be secured, but also the entire
over which the race is to be run must be fully and efficiently patrolle
violation of this law would be considered a misdemeanor.
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 corporations 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 may use it as background material.

ork Vehicle and Traffic Law.

hibited 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 set in any area (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.
Module 2

Section 1192 - Drunk Driving

The person who operates a motor vehicle or motorcycle while his ability to it is impaired is guilty of a traffic infraction. There can be a conviction a plea of not guilty if a chemical test is given within 2 hours of the de arrest and ten-hundredth of 1 per centum or more by weight of alcohol is his blood; if the defendant is under 21 years of age, and the amount in th blood is five-hundredth of 1 per centum there can be a conviction. The m or chemical analysis may be of breath, blood, urine, or saliva.

Section 1115 - Interference with Official Traffic Control Devices, Railroad or Signals, and other Highway Mechanisms

--any person is prohibited by law without lawful authority to alter, def injure, knock down, cover, remove, or in any way interfere with any traf device or railroad sign. This would also include any lamppost, walk, t or other object on a highway right of way. Deface would include damagi destroying, erasing any of the above-mentioned objects by the use of ch 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 w a 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--neglig homicde case.)

Section 1192 - Drunk Driving

The person who operates a motor vehicle or motorcycle while his ability to operate it is impaired is guilty of a traffic infraction. There can be a conviction after 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 medical or chemical analysis may be of breath, blood, urine, or saliva.

Section 1115 - Interference with Official Traffic Control Devices, Railroad Signs or 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 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 lower form or degree of recklessness].

Public Issues Series. Rights of the accused. 1968. (Case study--negligent homicide case.)

Module 2


(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 purposes. This caused the water to become unfit for livestock consumption.

The Martins were awarded $71,506 for the loss of use of their land and were $20,000 for the deterioration of their land.


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.

This particular lawsuit, the Martins, who owned a cattle ranch, sued the Reynolds Metal Company because they believed that their aluminum reduction plant near Portland, 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. It 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 awarded $10,000 for the deterioration of their land.


Robert, R.; Campbell, B., & Bozzone, J. *Law in our society, our laws and legal processes -- Do we need them?* Unit II - Chapter One - Lessons 1-6.


A well-organized program for examining the lawmaking process. Although it offers greater depth than this alternative strategy suggests, teachers will find detailed development helpful in planning.

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 have to decide which legal technique(s) to work on a problem; and this may help explain why the legal system may vary in its effectiveness.

The procedures and resources section of Understanding II seeks in three ways to teach the students contributions of each legal technique in treating the problem of pollution or highway safety. Briefly consider the kinds of difficulties that would arise if only a single technique were to be 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 techniques (overemphasis of the penal technique). Finally, the materials suggest reviewing a contemporary case and consider whether our legal system today is putting the most effective combination of techniques to work on a problem.

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.

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.

The 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 legal techniques in treating the problem of pollution or highway safety, they might consider 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 is an example in American history of attacking a social problem with inappropriate resources (the penal technique). Finally, the materials suggest reviewing a contemporary problem to see how our legal system today is putting the most effective combination of techniques to work to understand II

REACH UNDERSTANDING

Considering some legal techniques more appropriate than others in working on a particular social problem, what putting 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 indicate to students something of the distinctive character of the resources of a legal system to draw on. The procedures of understanding II directly the matter of calling on the right combination of resources to deal effectively with problems. Some legal techniques are more effective than others to deal with particular problems. Yet there is no assurance that the legal system will call into play in the most productive way the resources that might be more appropriate.

One way the legal system could fail effectively in addressing a social problem is by overemphasizing reliance on a particular technique and not approach the problem by using the resources that might more appropriate.

Thus, students might consider the only one of the legal techniques, to the exclusion of the others, were set into motion the problems that has been under examination.

It may be useful to examine the problem of pollution or highway safety problem in terms of single legal technique. By contrast, the single legal technique, to the exclusion of the others, set into motion the problems that has been under examination.

The prohibition years, students may have a notion of the possibility of failure to the criminal justice system of a social problem by failure to use all legal resources to work on the problem. This provides an excellent example of the effects of unwise allocation of legal resources.
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 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) relating treatment of the problem, and (2) promoting public disrespect for the law.

With this background, the class might make a critical analysis of the legal system of some contemporary social problem. Analysis might consider (1) whether techniques at work could be used more effectively, (2) whether a different combination of 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

If the legal system combats pollution only by penalizing polluters, is the use of the regulatory, distributive, or remedial techniques?

With pupils a case in American history, where an imprudent choice of techniques to work on a social problem resulted in aggravation of the problem, is the use of alcohol an excellent example of this era of prohibition. Have pupils in the U.S. Constitution, the 18th Amendment (1919) (prohibition) and the 21st Amendment (1933) (repeal). Then compare the effects on the flow of alcohol abuse of nearly exclusive reliance on a legal technique (penal technique) that alone was appropriate to combat this problem:

Effective treatment of the problem might bring out the "speakeasy era"; the period of the "Feds"; Elliot Ness; the "Untouchables"; "Bath Tub Gin". Contrast the current legal techniques in this regard with the legal system's relative effectiveness in treating the social problem of alcohol abuse.

DISCUSSION OF STRATEGIES AND RESOURCES

Meeting social problems: (1) relatively ineffective 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 techniques at work could be used more effectively, (2) whether a different combination of resources or redistribution 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

- 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

--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?
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?
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 inches in size.

*Direct quotations from statutes are indicated by the use of quotation marks. Other sections are summaries or paraphrases of the statute listed.
Ion 2 - Statement of State's policy in regulating this area

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

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 help in relieving or avoiding many of the social problems that law confronts. Perhaps the single most powerful force at work on the problem of highway safety is individual interest in self-preservation. If this force is absent, 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 force of individual interest.

Understanding III briefly surveys some nonlegal forces that contribute to the legal system's efforts to confront 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?
SOCIAL CONTROLS MAY MAKE IT POSSIBLE FOR LEGAL TECHNIQUES TO WORK MORE EFFECTIVELY.

at work in various ways is not the only force at work in confronting social problems. Without compulsion, direction, encouragement, or assistance from the law are concerned for 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, law would be of limited effect. However, it is also unlikely that any combination of non-
1d 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 how both legal resources and support from nonlegal forces are necessary for effectively con-

some nonlegal factors that work on the same problems that law works on? law made more effective when it works with the support of such nonlegal factors? 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 RESOLUTION

The persistence of many social problems simply the failure of the legal system to deal adequately with them. Some important nonlegal forces are working on some of the same problems that are already being addressed by law, such as those suggested not only by the problems of highway safety and pollution but also by the problems of personal respect and economic advantage.

Students might identify some important nonlegal forces that also work on problems like highway safety and pollution by considering the actions some people might have about the environment and reckless driving. Legal efforts to regulate, or penalize, to reduce a problem tend to be relatively inefficient if people perceive the problem to be no immediate threat to themselves or others, (2) are unconscious of the problem, and (3) fail to disregard the problem.
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.
Module 2

DETAILED DESCRIPTION OF STRATEGIES

—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 control behavior. Law helps to settle disputes, law helps to keep potential wrongdoers in line. These are only some of the jobs law does. 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 private process technique. All these legal techniques might be used on some social problems. Thus, Module II examined all five legal techniques 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 the processes for using our legal resources should be well designed, and officials should follow them. As officials use legal resources to solve problems, citizens should be concerned about the fairness of the processes involved, and whether officials act in good faith.

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 be well designed or badly. In this module, students will analyze in detail some basic processes of the penal technique of law. They will learn of the value of the processes of the penal technique, and some possible social costs involved in maintaining a legal system that is concerned with the fairness of processes.

2. Why This Focus?

Three understandings about legal processes of the penal technique will be considered through illustrations from the field of law known to lawyers as criminal procedure. The law of criminal procedure consists of rules specifying how criminal cases must be enforced or carried out. These provide ground rules for legal officials (legislators, police, prosecutors, judges) in handling criminal cases 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 from the penal technique. First, when a citizen is apprehended and prosecuted pursuant to this legal technique, a great deal of their liberty is at risk (liberty) and society's (order). This, along with students' relative familiarity with criminal law, make student interest in the subject matter. Secondly, our society has had long experience with attempts to design and use processes for use of this legal technique; such was a primary concern of our forefathers in drafting the Bill of Rights. Third, the value of some of the processes in the penal technique is currently being debated and will continue to be in the coming years.

A caution may be appropriate at this point. This unit considers the value of good legal processes. It is important to keep in mind that good processes are not always practiced. To point out that good processes are important is not to say that in practice good processes are always followed. On the contrary, the legal system's failure to pursue fair and sound processes is probably more often a result of systems failure than of legal rules which are unjust.

One helpful method for teaching the importance of having and following good legal processes is that of preparing students for examples. To point out that good processes are important is not to say that in practice good processes are always followed. On the contrary, the legal system's failure to pursue fair and sound processes is probably more often a result of systems failure than of legal rules which are unjust.

One helpful method for teaching the importance of having and following good legal processes is that of preparing students for examples. To point out that good processes are important is not to say that in practice good processes are always followed. On the contrary, the legal system's failure to pursue fair and sound processes is probably more often a result of systems failure than of legal rules which are unjust.

*See footnote on page 1, Module I.
seeks to do many different jobs in society. As we have seen in Module I, law helps to guide and coordinate activities, resolve disputes, law helps to keep potential wrongdoers in line. These are only some of the jobs law may try to do.

We also seen in Module II, law does its job with particular resources, what we have called legal techniques; the on 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 of highway safety and pollution. Module II also considered that for the law to be effective, the appropriate legal used. Finally, we discussed the influence of nonlegal forces at work on social problems.

Assignment of the right legal technique to a social problem is important, but so is the process by which it is used. In our legal resources should be well designed, and officials should follow them. As officials use legal techniques to citizens should be concerned about the fairness of the processes involved, and whether officials actually follow these

First understanding of Module I, students were introduced to legal processes for dispute settling—the legal processes n technique. The processes for any of the legal techniques can be analyzed. These processes can be designed well module, students will analyze in detail some basic processes of the penal technique of law. They will focus on ques- tions of sound processes of the penal technique is important, the citizen's role in securing fair criminal law pos- sible social costs involved in maintaining a legal system that is concerned with the fairness of how law operates.

Understanding about legal processes of the penal technique will be considered through illustrations drawn from the m to lawyers as criminal procedure. The law of criminal procedure consists of rules specifying how the law of crimes or carried out. These provide ground rules for legal officials (legislators, police, prosecutors, judges, etc.) in ore a private citizen is charged by the government with violating a criminal statute, that is, committing a crime. ations could be drawn from the other legal techniques. However, there are several reasons for drawing them from the First, when a citizen is apprehended and prosecuted pursuant to this legal technique, a great deal is at stake, both liberty and society (order). This, along with students' relative familiarity with criminal law, may contribute to in the subject matter. Secondly, our society has had long experience with attempts to design and protect good pro- this legal technique; such was a primary concern of our forefathers in drafting the Bill of Rights. Thirdly, the he processes in the penal technique is currently being debated and will continue to be in the coming years as concern on may be appropriate at this point. This unit considers the value of good legal processes. It looks to criminal law mples. To point out that good processes are important is not to say that in practice good processes are always tol- onary, the legal system's failure to pursue fair and sound processes is probably more often a source of injustice which are unjust.

ful method for teaching the importance of having and following good legal processes is that of pointing out actual de- on or application of our penal law processes, either in society at large or in the school community. This is a method tably used throughout this module.

page 1, Module 1.
Module 3

3. Outline of the Teaching Scheme:

This module attempts to have students reach three main understandings by evaluating processes of one legal 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 in the first place and protecting them from disregard by officials. Third, the value of good conflict with other values so that good processes can be maintained only at some social cost, costs we may have to 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 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 the Constitution. The reason for not introducing the unit with the Bill of Rights is this: by examining and evaluating certain basic processes of law before noting their constitutional status, it is usually easier to get students to consider why certain criminal important. This approach avoids possible circular reasoning—our basic rights are important because they are in the vice versa. However, the teacher may feel that the best way to introduce criminal processes is to survey their embodiment of Rights, and if this is the case, the initial materials from Understanding II on the Bill of Rights are an obvious choice. The teacher might then return to Understanding I to examine and evaluate several of the selected processes by using...
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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 free education, laws calling for licensing drivers, laws punishing rape, etc. But none of these laws are self-executing or self-applying. There must be further rules for determining how, for example, the implementation of these laws will be carried out, how suspected rapists may be detected, apprehended, questioned, and punished. When we evaluate the operation of law we usually focus only on legal outcome.
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.

SUMMARY OF UNDERSTANDINGS

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

The processes by which laws are implemented, such as the law on implementing, determine if suspected rapists may be detected, apprehended, questioned, held, tried, and executed. When we evaluate the operation of law, we usually focus only on legal outcome or result. For
Module 3

QUESTIONS TO REACH UNDERSTANDING

. How can the basic legal processes enumerated below be evaluated with respect to the goal 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 concerned without considering the results they may produce?

USE OF VISUALS

. Using a picture of an individual being interrogated by the law, students may develop an idea 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 the audio track turned off, or without the script in the case of a filmstrip. From the expression of the accused, students may make statements concerning the opinion of the public 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 as regardless of the results they produce?

Can the basic legal processes enumerated below be judged as far as fairness is concerned considering the results they may produce?

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 scenario projected may then be analyzed with respect to fairness to the accused.

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 sounds 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 by rerunning the film using audio or printed script.
Module 3

DETAILED DESCRIPTION OF STRATEGIES

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.

DISCUSSION OF STRATEGIES AND RESOURCES

The procedures and resources of the four basic processes of the criminal concern (1) making prohibitions, (2) allowing suspects to remain silent, (3) that the disposition of a case will be made by a tribunal, and (4) allowing a suspect to speak in his own favor.

Evaluation of legal processes should be based on two grounds: the suitability of the process for securing desirable outcomes and the value of the process. The main desirability in applying criminal laws is convicting the innocent. Understanding the processes followed in applying laws increases the likelihood of reaching desirable outcomes. A process that does not value should be familiar. It is wrong because the pressure of a thumb screw, is itself inhumane and unfair. Even if one who confesses might be innocent; it is torture itself inhumane and unfair.

With each of the four legal processes, hypothetical stories are presented to point out abuses. By presenting the processes from the point of view, students may realize the good process by criticizing a bad one. The
1. Should our processes give people a chance to know in advance what acts will be punished as crimes?

For example, did the process allow 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 conduct group discussion and report back. The class on the following question: If the individual in the case was guilty, were the facts he was notified in such a way that a particular act was considered a crime?

Students 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 cases will undoubtedly draw on their personal experience.

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 by the notion that defendants are called on to construct further evidence of abuse of the process values. Stories 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, the wrong outcome serves a protective purpose that lawmakers cannot strike at an unproven guilty person by defining an act he has already committed as a crime. With similar reasoning, courts may strike down certain laws that prohibit "vagrancy" or "vagrancy in vagrancy" in vague or indefinite terms. These laws do not make clear in advance what is prohibited. Second, the simplest reason for advance notice is that fairness demands that no one be punished unfairly for an act that he had no advance notice that he had already done. This is true, at least, in the case where the act in question involves breaking a rule (sliding into base, failing to cover home opposed to purposefully hurting someone). In the latter case, morality should tell us that the act is wrong, and he isn't taken by surprise.

One point might be clarified to avoid confusion about the meaning of the process of giving advance notice. The important thing we are talking about is the process that makes sure the accused defendant is given the chance to know in advance that what he is doing is a crime. This is not the same as saying the 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 boc) 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
Module 3
DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RES

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 will increase the evidence in order police. This will increase the innocent will be convicted. The or unfairness of a process of if the third degree is the other for evaluation. There is something about forcing a person to give himself that will in turn be used person his life, liberty, or property. The most effective way to make this whether it is fair or right to in a case where the only evidence that was starved or be normal procedure that courts to has been gathered through improper prohibit the use of such evidence exclusion of evidence is consid 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?

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 unfairness 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.
Module 3
DETAILED DESCRIPTION OF STRATEGIES

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 full cooperation of investigation. In the now famous Miranda v. Arizona, 384 U.S. Report the court declared two restrictions in the interrogation of suspects. Any evidence forced to be given by a suspect is not good in court; any evidence forced is not good unless he has first been warned of his rights to stay silent and his right to help in answering police questions. Supreme Court limited or clarified the Miranda by saying in the case of Harris v. New York cit 400 U.S. Reports, (1971) that it gives self-incriminating evidence by the witness with a different incriminating evidence can be shown in order to show that the suspect might have logic and good sense of either the Harris case might provide the basis for classroom debate.
OF STRATEGIES

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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 lawyer 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.
Module 3

DETAILED DESCRIPTION OF STRATEGIES

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. This 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 discuss 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 erroneous outcome and inherent itself are again relevant. An jury are free of outside influence place in reaching a decision based a case. Examples of such improper might impair the impartiality of prejudice, personal dislike, political financial interest in the outcome.

Obviously, if the judge or jury outcome of the case may be erroneous fail to accord with relevant laws. But, in addition to this, there is unfair about convicting a man in impartial. Again, the most effective this point may be to consider what suspect is guilty, we would still wrong if he is convicted in a case him guilty anyway.
3. Should our processes of trial provide for an impartial judge and jury free of undue influence?

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.
Module 3

DETAILED DESCRIPTION OF STRATEGIES

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.
4. Should our processes be ones that allow the suspect a chance to defend himself before he is punished?

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.
Sample Court Cases


Masino convicted of negligent homicide for his careless construction of a high project that resulted in loss of lives; the carelessness occurred before the making negligent homicide a crime was passed.


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: "Any student who fails to have covers on his or her textbooks will have to stay after school hour recess for three days." It so happens the teachers didn't bother to tell the body about the new rule. One day a few weeks later a teacher, Mr. Chamber, having trouble with discipline in a class. He suddenly decides to hold a check and instructed six eighth graders whose books were not covered to re-attend 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 ship 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 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


Masino convicted of negligent homicide for his careless construction of a housing project that resulted in loss of lives; the carelessness occurred before the statute making negligent homicide a crime was passed.


Diaz was convicted of loitering under a statute that prohibits loitering without defining it term any further. Since no one could tell in advance what exactly such a vague minimal statute was prohibiting, the appeals court reversed the conviction.

Hypothetical Cases

1 -- Throw the Book at Him

In a teachers' meeting the junior high teachers make a new school rule: "Anyone who is to have covers on his or her textbooks will have to stay after school or miss recess for three days." It so happens the teachers didn't bother to tell the student body about the new rule. One day a few weeks later a teacher, Mr. Chamberland, is 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 after school. They did so and learned for the first time of the new school rule on bookcovers which they had broken.

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. Cause of this, before the final game, the umpires made a new rule: "Anyone who dives is out." But they forgot to tell either team.

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

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Module 3

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 are 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 before you are 18, with a 5-year punishment. The law has not yet been publicized in newspapers.

Bud Schaefer, a 14-year old, drinks a beer at the local tavern and is convicted under the new, unpublished law.


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)


Jones was convicted of murder. His conviction was based on a confession he made to police. Jones was beaten twice a day for 4 days by police. On the fourth day, he confessed.
At 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 home run 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 field, park.

#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 time 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 before you are 18, with a 5-year punishment. The law has not yet been publicized in local papers.

Schaefer, a 14-year old, drinks a beer at the local tavern and is convicted under the new, unpublished law.


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Court Cases (to be used with strategy 2a)


Jones was convicted of murder. His conviction was based on a confession he made to police. Jones was beaten twice a day for 4 days by police. On the fourth day, he confessed.

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."
Excerpts 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 and Longaker, Crimes and Justice, pp. 48-51; as well as the Oregon State Bar Association reference listed below.

Although the case In Re Gault (1967) was concerned with other questions also, the concern 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 in cases concerning adults; it can certainly be used for comparisons and reinforcement. 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 Law, 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 Gault case listed 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 material. (See AV listing.)

Summers, R.S., Campbell, A.B., & Bozzone, J.P. Justice and order through law. UCA and Company.

Sample Court Case (to be used with strategy 3a)

"...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
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Court Case (to be used with strategy 3a)


..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
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
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
hunting down and shooting of many negroes and also by the killing of Clinton Lee,
October 1, a white man, for whose murder the petitioners were indicted.

(the Negroes) say that their meeting was to employ counsel for protection aga
extortions 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
purpose of lynching them but were prevented by the presence of United States
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 petition
puts it, they would execute those found guilty in the form of law, ... . Acco
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, info
that a certain lawyer was appointed their counsel and were placed on trial by
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 defense 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 urge(s) him not to
fer 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 (co
petition for the writ is that the proceedings in the State Court, ... were only a form, ... 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, 19, a number of colored people assembled in their church were attacked and fired on 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 hunting down and shooting of many negroes and also by the killing on October 1 of 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 wished it, 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 disqualified 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, killed no witnesses for the defense 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 urged 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
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
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
the duty of examining the facts for himself when if true as alleged they make
absolutely void. ...it appears to us unavoidable that the District Judge shou
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 alm
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 shop
lifting, 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 so
studies department chairman at each school was sure his school's team would wi
Each was so sure they bet 1 year's salary on the outcome of the game. It so
that the social studies chairman from your school is also the umpire for this
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 Sou
lawyer -- deals with problems of prejudicial justice and its effect on the co
(cans group) protests against a contemplated commutation of the sentence of four petitioners and repeats that a 'solemn promise was given by the leading citizens 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 escape his duty of examining the facts for himself when if true as alleged they make the trial utterly void. ... it appears to us unavoidable that the District Judge should find her the facts alleged are true and whether they can be explained so far as to leave state proceedings undisturbed.

The case to stand for hearing before the District Court.

Hypothetical Cases (to be used with strategy 3b)-

-- Now It's My Turn

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 after class. Mary just made the honor roll and Liz did not. is the chief judge on the local youth court. Mary has been accused of shoplifting, but says there must be some mistake. is the judge at Mary's trial. is found guilty.

-- Will He Call 'em Like He Sees 'em?

inning 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. was so sure they bet 1 year's salary on the outcome of the game. It so happens the social studies chairman from your school is also the umpire for this game. school wins.

1 A Mockingbird" (Harper Lee). 129 min. (In AV Section of Bibliography)
Harry Peck, Brock Peters, Mary Baham -- Pulitzer Prize novel -- tale of Southern life -- deals with problems of prejudicial justice and its effect on the community.
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 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, ( ) 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 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 that he appeared before (the Board of Education) at its April 7 regular meeting, he was not given an opportunity to present witnesses on his behalf or to cross 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 the information.

"The Commissioner's ruling supported the student. He noted that the petition was not provided with those 'proper safeguards of procedural fairness.' He ordered 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 jeans, shows up in new belts, a double-breasted blazer, a new bodyshirt, and a new tie. He 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 walking back of the gym about 4:00 p.m. the day of the theft."
The Hypothetical Cases (to be used with strategy 4a)

#1 -- The Case of the Expelled Student  (From a Report of a Commissioner’s Hearing)

In March 17th, petitioner's son...was expelled from attendance at High School. Petitioner's father was informed of this action by letter dated March 18th, in which he was given the opportunity to appear before (the Board of Education) on April 7th, 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.

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The coach brings all this information to the attention of the principal, and the principal tells 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..."

Summers, R.S., Campbell, A.B., & Bozzone, J.P. Justice and order through law. Unit 1, Chapter One, Lessons 3 and 4 - "Process values -- how our law does its job, also..."
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 that now, Dudley, we have already discussed the evidence in your case and you are expelled.

Bozzone, J.P. Justice and order through law. Unit IV, Part One, Lessons 3 and 4 - "Process values -- how our law does its job, also counts." School and Company.
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 regulations and trial process does not assure that an occasional policeman will not coerce an individual.

Thus, a legal system that strives for fairness will need to provide some ways of surveillance of officials to insure they actually follow prescribed processes. Understanding II focuses on 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 caused by ignoring prescribed processes. The checks to be considered here are: (1) providing the accused with the help of a lawyer, (2) processes constitutional status, (3) prohibiting the use of evidence gathered while disregarding a prescribed process, (4) ensuring for review of official decisions by higher officials, and (5) establishing civilian boards to hear complaints about how officials are doing their jobs.

In practice, some of these checks are not very effective. As a result, some injustices in the operation of our legal system results not from ill-designed processes, but from official disregard for good processes.

B. Teaching Understanding II

OBJECTIVES

Given statements made by the accused concerning unlawful action of enforcement personnel in the incident of rule infraction or lawbreaking, the student can suggest ways in which an official may be checked so that unfair actions will not result.
RELY HAVING RULES FOR SOUND PROCESSES IS NOT, BY ITSELF, A GUARANTEE THAT THE LEGAL SYSTEMS WILL BE FOLLOWED BY OFFICIALS, LEGAL SYSTEMS NEED EFFECTIVE WAYS OF ASSURING THAT OFFICIALS WILL CONFORM TO SOUND PROCESSES.

If Understanding II

that provide good processes are not self-enforcing. Well-designed processes—those which likelihood of a desirable result and which are inherently fair ways of applying the law—may be official. Merely having a rule saying that suspects have a right to silence in the investi-process does not assure that an occasional policeman will not coerce information from a legal system that strives for fairness will need to provide some ways of checking on are they actually follow prescribed processes. Understanding II focuses on the need for officials and describes some of the reasons for these checks: (1) Checks may operate to official from disregarding prescribed processes, (2) checks can undo injustices when officials prescribed processes, and (3) checks can provide for redress against officials who have by ignoring prescribed processes. The checks to be considered here are: (1) giving certain tutional status, (2) providing the accused with the help of a lawyer, (3) making a crime certain processes, (4) allowing private lawsuits against officials who have disregarded prohibiting the use of evidence gathered while disregarding a prescribed process; (5) provid-official decisions by higher officials, and (7) establishing civilian boards or other r complaints about how officials are doing their jobs.

vice, some of these checks are not very effective. As a result, some injustice that occurs of our legal system results not from ill-designed processes, but from official disregard.

Understanding II

statements made by the accused concerning unlawful action of enforcement personnel in ant of rule infractions or law breaking, the student can suggest ways in which the enforcement may be checked so that unfair actions will not result.
Module 3

Given a list of types of checks upon the application of legal processes by officials, one 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 or to basic fair processes in the application of criminal laws?

USE OF VISUALS

- Students experienced in photography can provide pictures for class discussion. Staged portrayals of 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

- the Constitution serve the purpose of protecting basic fair processes?
- officials sometimes disregard basic processes?
- Important roles must private citizens play in the process of checking on official conformity of fair processes in the application of criminal laws?

experts experienced in photography can provide pictures for class discussion. A scene can be portraying detection by authorities of an alleged student infraction of rules. The role of the authorities in the picture may then be analyzed concerning motivation for disregard of basic processes and possible actions of students to prevent such disregard of basic processes.

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Module 3

DETAILED DESCRIPTION OF STRATEGIES

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 that having good processes by which large processes that are themselves real ways of doing things as well as means to achieve the desired outcome. Because our legal system is designed (overcrowded courts, poorly run institutions), some people call it legal justice in general with constitutional processes afforded.

Understanding II focuses on the problem of good legal processes available and how that good legal process in general with constitutional processes afforded the accused. What is needed is not contempt for the justice system, but a constructive attitude towards the justice system. In the area of the criminal law, it is clear that the legal system provides for protecting and maintaining sound processes, a system that provides us with good processes by which large processes that are themselves real ways of doing things as well as means to achieve the desired outcome. Because the language in which the constitutional status set forth in the Bill of Rights and the Constitution is written is somewhat technical, a paraphrased list
OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Constitutional status given to certain basic processes of criminal law enforcement.

Is the task of looking up IV, V, VI, and VIII in the Bill of Rights of the United States important. They should be able to specifically the basic legal guaranteed by these amendments that ultimately only the be punished, and that justice will prevail.

- view a film or filmstrip to see how the rights of the protected. In discussion, teacher should try to get point out what constitutional were afforded the accused.

- the alarming increase in crime public has demanded passage of measures to combat this "mushroomber." Great controversy has been about the fairness, constitutu- and "ability to convict" of measures. Discuss with class measures and ask them to them in light of the above

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 constitutional 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 somewhat 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

b) The second part of Understanding I officials might disregard prescribed law. The first thing that comes to corruption or self-dealing. But not, official non-adherence to good from reasons like overzealous attainment of desired outcome, misjudgment as to what requires, or inertia (failure to change needs). The easiest to demonstrate the diverse reasons officials may not adhere to good process. The remaining procedures and resources of 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 crimes are checked.

b) The remaining procedures and resources of the police in enforcing the law.
ON OF STRATEGIES

Read a hypothetical case with the issues involved, trial, appeal, and constitutional such cases. Questions study can promote much fruit on certain constitu-

discussion of strategies and resources

is suggested. These provisions may be more meaning-
ful 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.

Pupils to recall some cases or taken up already in this module which of the following reasons most explain why officials disregard good process. Some possible might be: 

- Arrogance of an official
- Being overzealous in trying their jobs
- Misjudgment by officials as to what is required by law
- Against any individual based on appearance or background

3. Checks on the processes that are followed by the police in enforcing the law.

As a short summary of the Ex Parte Court decision (p. 117). Ask them to why the processes followed by law en agents in dealing with alleged
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 rel 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 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 RESOURCES

The first check on police adherence processes is provision for a suspect to have a lawyer with him once he is picked up. Alone is not likely to know what police must follow to be fair to him. Police are more likely to respect a suspect if his lawyer is there. Police are more likely to be listened to by the public than would the suspect alone. The judge explains how "the defendant needs counsel most is immediately after arrest and until trial."

The second check on police procedure is liability for the police themselves to disregard process rights. A criminal statute setting out such liability for the police is shown below. A case under this statute is shown below.

The third possible check on police civil liability. The suspect who is injured by officials' disregard for the protection of his rights can sue the officials and claim a right to recover money. The Federal civil rights statute is cited as is the leading Supreme Court decision in the leading Supreme Court case. The Federal civil rights statute allows a civil suit against the officials under the Federal statute.

The fourth check on police procedure is probably the most effective and controversial. It is the rule. This simply means that any evidence gathered while disregarding a process (e.g., the fruits of an illegal forced confession) must be excluded...
TION OF STRATEGIES

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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 def-
fendant 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 sus-
pact (e.g., the fruits of an illegal search or
forced confession) must be excluded from evidence
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?

Civilian review boards and police are relatively new checks on police initiated in some places.
PTION OF STRATEGIES.

Arguments for, the other against, this. pupils' opinions on board. Bring his idea in summing up their opinions: police generally serve as protectors citizens. Therefore, in a lawsuit against a policeman, the jury may be un- likely to make a policeman pay a person suspected of a crime, even though the ceman abused that person's rights. on the people who suffer from disre- d of processes are the poor, disad- aged, or minority members of society--le who do not normally get much public Pathy.

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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.
Checks on the police like those suggested are not always effective. As each check is implemented, students should also consider some of the implications of these checks. Notwithstanding these checks, such protections are important if good processes are to be maintained.

4. Checks on the trial processes in applying the law.

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
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.

**Discussion of Strategies and Resources**

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
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 RESOURCES

are in the best possible position to result.

This is not the only way the judiciary be carried on. In some systems, the inquiry rather than leaving the initiative to lawyers. The principal argument in the adversary system is that the adversary process leave relatively few stones unturned. The criticism of this approach is that it come a contest of lawyer's skills rather than means to reaching a just result.
DISCUSSION OF STRATEGIES AND RESOURCES

are in the best possible position to reach a fair result.

This is not the only way the judicial process can be carried on. In some systems, the judge directs inquiry rather than leaving the initiative to the lawyers. The principal argument in favor of the adversary system is that the adversary clash should leave relatively few stones unturned. The principal criticism of this approach is that court cases become a contest of lawyer's skills rather than a means to reaching a just result.
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 that one is guilty. (4th)
- Right to be secure from "unreasonable search and seizure." (4th)
- Protection from warrants for search or seizure unless the warrant is particularly the place, person, or thing to be searched or seized. (4th)
- An accused will be protected from prosecution of serious Federal offenses unless the 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 Wilets

Film follows two people arrested for a misdemeanor offense; shows how the procedures in arrest, arraignment, and trial protect the rights of an accused person. 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

Process protections of the Bill of Rights:

- Right to be free from arrest unless there is "probable cause" to believe the accused 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 specifies 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)
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- 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)
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The film follows two people arrested for a misdemeanor offense; shows how the procedures used in arrest, arraignment, and trial protect the rights of an accused person. Settings are real -- actual policemen, lawyers and judge appear as participants using their own words -- everyday language of law and law enforcement.

Quotations from statutes are indicated by the use of quotation marks. Other statements are either statements or paraphrases of the statute listed.
Traces a hypothetical case from incident to verdict.

Goodykoontz, William. Law, you, the police and justice. pp. 61-75.
Gibson, W. M., Lessons in conflict.

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:
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.
Sample Statute:

"Civil Action for Deprivation of Rights."

"Every person who, under cover of any statute, ordinance, regulation, custom 
usage, of any State or Territory, subjects or causes to be subjected any U.S. 
or other person within the jurisdiction of U.S. to the deprivation of any 
privileges, or immunities secured by the Constitution and laws shall be liable 
an action at law, a suit or other proper proceeding for redress."

Sample Cases:


Allowing a suit against 13 Chicago policemen who entered a house at 5:30 a.m. 
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, and released the man after finding there wasnt any evidence against 
(Case also discussed in The Law and American History, p. 147-148.)


The court reversed a conviction of possession of lewd literature where all the 
for conviction came from a search that disregarded processes limiting search. 
The court noted that if "excluding from evidence" all information gotten when 
are disregarded is the only way to discourage disregard of process, the const 
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 compel 

Symposium, "The Right to Counsel and the Unpopular Cause," in vol. 20 University 
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 hi
The Statute:


"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 in an action at law, a suit or other proper proceeding for redress."

The Cases:


Loving a suit against 13 Chicago policemen who entered a house at 5:30 a.m. without warrant, stood a husband and wife and six children naked before them, called them names, beat them, took the man in for 12 hours of questioning without letting him call anyone, and released the man after finding there wasn't any evidence against him. (This case is also discussed in The Law and American History, p. 147-148.)


The court reversed a conviction of possession of lewd literature where all the evidence for conviction came from a search that disregarded search powers. The court noted that if "excluding from evidence" all information gotten when processes were disregarded is the only way to discourage disregard of process, the constitution requires such "exclusion." (This case is also discussed in Liberty Under Law, op. cit., 23-26.)


"...the right to counsel means the right to adequate representation. ...this means that an accused, regardless of what he is charged with and regardless of his own
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 the fact. There are some people and many newspaper editors who are ready and to associate the supposed guilt of the client with the lawyer himself. And a accused of a crime which happens to be unpopular at a given time is liable to that he cannot get a "respectable" lawyer to take his case because the lawyer afraid of being associated with the public reputation of his client.

"The problem of representing an unpopular cause is certainly not new to our As far back as 1770 honorable members of the Bar of this country felt the im anger of public opinion when defending an unpopular cause. ...Josiah Quincy, John Adams, were asked to defend the British soldiers who had participated in 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 writing some 50 years later, still felt its effects... ...It is perhaps 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 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 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 quickly resulting in their decreasing competence to provide adequate representation when they do take an unpopular case. In short, more and more reputable lawyers the big cities are saying, 'I'm not really competent to help the client even when 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 stand in favor of the right to counsel. It must give its members the support 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. were from friends of the lawyer begging him to refuse a retainer from an unpopular client. After reading a few of the letters, Mr. Justice Brandeis sa
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.

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"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 positive stand in favor of the right to counsel. It must give its members the support of its influence and prestige and help them thereby to overcome countervailing social pressures."

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'Before you reject this cause, I suggest you consider resigning from the bar.' He continued to say, 'On further consideration, you might even resign from the human race.' Few men have seen the right to counsel so clearly or put importance so plainly.

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

(Drawing by Thelwell. Copyright September 16, 1970, Punch Magazine. Reprinted by permission of Roth Agency, Inc.)
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Module 3

UNDERSTANDING III

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

A. Explanation of Understanding III

One important value our legal system pursues is good processes. As is often the case, this 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. An obvious example is 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 for obtaining that evidence. If other evidence is unavailable, this may mean that a guilty man will go free. It is police in this way to respect rights to silence, rights to privacy, rights to counsel, etc. Only do these processes serve to protect the innocent; they may also protect the guilty. Finally, the formalities of pursuing good processes mean that efficiency 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 that efficiency is made harder. Not only do these processes serve to protect the innocent, they may also protect the guilty.

B. Teaching Understanding III

OBJECTIVES

- For each personal protection of the individual, the student can list a social and a dollar cost that society must pay 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 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?
Understanding III

The most important value our legal system pursues is good processes. As is often the case, this value conflicts with other values that the law pursues, values such as protecting society from convicted criminals, ensuring the efficient performance of the jobs of law enforcement officers, and running a fair and efficient court system. In some circumstances, good processes are achieved only at some expense in terms of protecting society from convicted criminals, ensuring the efficient performance of the jobs of law enforcement officers, and running a fair and efficient court system. Thus, it can be said that securing good processes has some social "cost." This is most evident when one considers that one very effective way to protect adherence to good processes by police is to require that evidence that is collected in disregard of the relevant processes for gathering evidence is unavailable; this may mean that a guilty man will go free. By compelling law enforcement officers to respect rights to silence, rights to privacy, rights to counsel, etc., their job of 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 than just ideals.

Therefore, the student can list a social and a dollar cost for the application of legal processes. 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.

An statistical evidence of the cost of law enforcement and of the court systems, the student can list a social and a dollar cost of the worth of these costs to the individual.

REACH UNDERSTANDING

What maintenance sound processes of criminal law involve some cost to society? What are the social and dollar 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 the cost of applying basic legal processes to protect the accused.

- Convert statistical evidence of the cost of applying legal processes to protect to pictorial charts or collages intended to persuade the average citizen that the fiable cost of government.

- Use the program from the New York State Historical Association, Painting as Social 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 be 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?
In such as those in E.B.F.'s series on the Bill of Rights, with students prompted to think in terms of social costs of the application of legal processes; using the drawn from the film or films, debate the question: Resolved, society cannot afford of applying basic legal processes to protect the accused.

Statistical evidence of the cost of applying legal processes to protect the individual.

What evidence is there of the application of legal processes intended to persuade the average citizen that this is a justi-

program from the New York State Historical Association, Painting as Social History: '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? Why do you think that there might be a difference in the degree of justice for the

What kind of person would be most likely to get justice in this court?
Module 3

DETAILED DESCRIPTION OF STRATEGIES

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.

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

Having looked at the value of good Understanding I and the need to protect officials to such processes in Understanding II surveys the cost of good processes in the area of crime society. Thus, in the area of crime in general, like the accused individual at stake. Without effective crime, courage people from interfering with the property of others, the most basic freedom and security that goes along with a threatened society.

However, securing good law process is possible at the expense of protecting "bad actors." To state an extreme example, life would be more orderly and greater security from criminals if we did not have to respect any process required of a citizen. The remaining procedures of the chapter look at particular costs of good processes in applying the crime context.
DISCUSSION OF STRATEGIES AND RESOURCES

1. The scope of the problem of crime control in our society.

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 preserving 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.

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.

Perhaps securing sound processes of the criminal law is most costly the police. Law enforcement is only do certain processes make in some cases these processes must part of the police practically problem is this: in order to proceed in a fair manner, t being forced to "coddle" some g
ION OF STRATEGIES

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with the hypothetical cases

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,
Module 3
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 criminals. The stories suggested in the procedures attempt to show how an interest in efficient law enforcement can clash head-on with an interest in preserving good processes. The answer to such clashes is not often easy, and the courts continually struggle to balance these interests.
Module 3
DETAILED DESCRIPTION OF STRATEGIES

Discussion of Strategies and Resolutions

1. 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.

2. 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 in a literal sense. Courts and cost money as police work and handled criminals do. Much more could be saved by improving the processes by which criminals are handled. For example, millions of tax dollars are spent by the local government in accordance with the job they perform, to increase the numbers of courts and judges, and to improve the processes so that rehabilitation might be possible.

In recent years, plea bargaining has saved the time of overworked district attorneys and the expense of trials. Plea bargaining between the district attorney who pleads guilty to a less serious possession of drugs rather than a more serious crime, settled by plea bargaining, i.e., a person guilty, but he might not want to risk being found guilty of a more serious crime.
PION OF STRATEGIES

for class discussion and comments

Following: Bumper stickers read:

think there are problems that our society which result in

Pupils' concepts of what Ice and what a hippie mean to them

brought out in discussion.

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 criminals may get off easy in society, possibly to do more harm.

CHART 1

CRIME AND POPULATION 1966-1971
PERCENT CHANGE OVER 1966

CRIME + CRIME INDEX OFFENSES
CRIME RATE + NUMBER OF OFFENSES PER 100,000 INHABITANTS

(FROM United States Dept. of Justice, Federal Bureau of Investigation, Uniform Crime Reports)
ION OF STRATEGIES

- well spent on areas that are
or improvement such as pollution,
and education?

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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.

<table>
<thead>
<tr>
<th>Year</th>
<th>Crime Index Offenses</th>
<th>Crime Rate (Number of Offenses per 100,000 Inhabitants)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1967</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1968</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1969</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1970</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1971</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

CHART 1

Crime and Population 1966-1971
Percent Change over 1966

Crime = Crime Index Offenses
Crime Rate = Number of Offenses per 100,000 Inhabitants

- Crime up 81%
- Crime Rate up 74%
- Population up 5%

(FBI Chart: FBI Uniform Crime Reports, page 2.)
## Chart #2 - Index of Crime, United States, 1971

<table>
<thead>
<tr>
<th>Area</th>
<th>Population</th>
<th>Total Crime Index</th>
<th>Violent Crime</th>
<th>Property Crime</th>
<th>Murder and Non-negligent Manslaughter</th>
<th>Forcible Rape</th>
<th>Robbery</th>
<th>Aggravated Assault</th>
<th>Burglary</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>United States Total</strong></td>
<td>206,256,000</td>
<td>5,995,211</td>
<td>810,018</td>
<td>5,185,193</td>
<td>17,627</td>
<td>41,889</td>
<td>385,908</td>
<td>4,595</td>
<td>2,368,423</td>
</tr>
<tr>
<td>Rate per 100,000 inhabitants</td>
<td></td>
<td>2,906.7</td>
<td>392.7</td>
<td>2,514.0</td>
<td>8.5</td>
<td>20.3</td>
<td>187.1</td>
<td>176.8</td>
<td>1,146.3</td>
</tr>
<tr>
<td><strong>Standard Metropolitan</strong></td>
<td>145,878,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Statistical Area</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Area actually reporting</td>
<td>97.6%</td>
<td>5,107,494</td>
<td>709,246</td>
<td>4,397,248</td>
<td>13,675</td>
<td>35,106</td>
<td>370,643</td>
<td>289,822</td>
<td>1,988,830</td>
</tr>
<tr>
<td>Estimated total</td>
<td>100.0%</td>
<td>5,173,916</td>
<td>715,731</td>
<td>4,458,185</td>
<td>13,845</td>
<td>35,575</td>
<td>372,486</td>
<td>293,825</td>
<td>2,015,759</td>
</tr>
<tr>
<td>Rate per 100,000 inhabitants</td>
<td></td>
<td>3,546.7</td>
<td>490.6</td>
<td>3,056.1</td>
<td>9.5</td>
<td>24.4</td>
<td>255.3</td>
<td>201.4</td>
<td>1,381.8</td>
</tr>
<tr>
<td><strong>Other Cities</strong></td>
<td>23,068,000</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Area actually reporting</td>
<td>89.1%</td>
<td>393,215</td>
<td>39,332</td>
<td>353,883</td>
<td>1,026</td>
<td>1,965</td>
<td>7,083</td>
<td>29,258</td>
<td>154,562</td>
</tr>
<tr>
<td>Estimated total</td>
<td>100.0%</td>
<td>436,145</td>
<td>44,522</td>
<td>391,623</td>
<td>1,192</td>
<td>2,177</td>
<td>7,874</td>
<td>33,279</td>
<td>171,744</td>
</tr>
<tr>
<td>Rate per 100,000 inhabitants</td>
<td></td>
<td>1,890.7</td>
<td>193.0</td>
<td>1,697.7</td>
<td>5.2</td>
<td>9.4</td>
<td>34.1</td>
<td>144.3</td>
<td>744.5</td>
</tr>
<tr>
<td><strong>Rural</strong></td>
<td>37,309,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Area actually reporting</td>
<td>74.8%</td>
<td>304,206</td>
<td>33,089</td>
<td>271,117</td>
<td>1,705</td>
<td>3,044</td>
<td>4,068</td>
<td>24,272</td>
<td>146,321</td>
</tr>
<tr>
<td>Estimated total</td>
<td>100.0%</td>
<td>285,150</td>
<td>49,765</td>
<td>335,385</td>
<td>2,590</td>
<td>4,130</td>
<td>5,548</td>
<td>37,491</td>
<td>180,920</td>
</tr>
<tr>
<td>Rate per 100,000 inhabitants</td>
<td></td>
<td>1,032.3</td>
<td>133.4</td>
<td>898.9</td>
<td>6.9</td>
<td>11.1</td>
<td>14.9</td>
<td>100.5</td>
<td>484.9</td>
</tr>
</tbody>
</table>

1. Population is Bureau of the Census provisional estimate as of July 1, 1971.

2. Violent crime is offenses of murder, forcible rape, robbery and aggravated assault; property crime is offenses of larceny $50 and over and auto theft.

3. The percentage representing area actually reporting will not coincide with the ratio between reported and estimated crime rates since these data represent the sum of the calculations for individual states which have varying populations.

(From United States Department of Justice, Federal Bureau of Investigation, Uniform Crime Reports.)
### Chart #2 - Index of Crime, United States, 1971

<table>
<thead>
<tr>
<th>Population</th>
<th>Total Crime Index</th>
<th>Violent crime</th>
<th>Property crime</th>
<th>Murder and non-negligent manslaughter</th>
<th>Forcible rape</th>
<th>Robbery</th>
<th>Aggravated assault</th>
<th>Burglary</th>
<th>Larceny $50 and over</th>
<th>Auto theft</th>
</tr>
</thead>
<tbody>
<tr>
<td>206,256,000</td>
<td>5,995,211</td>
<td>810,018</td>
<td>5,185,193</td>
<td>17,627</td>
<td>41,889</td>
<td>385,908</td>
<td>364,595</td>
<td>2,368,423</td>
<td>1,875,194</td>
<td>941,576</td>
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<tr>
<td>2,906.7</td>
<td>392.7</td>
<td>2,514.9</td>
<td>8.5</td>
<td>20.3</td>
<td>187.1</td>
<td>176.8</td>
<td>1,148.3</td>
<td>909.2</td>
<td>456.5</td>
<td></td>
</tr>
<tr>
<td>145,878,000</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>97.6%</td>
<td>5,106,494</td>
<td>709,246</td>
<td>4,397,248</td>
<td>13,675</td>
<td>35,106</td>
<td>370,643</td>
<td>289,822</td>
<td>1,988,830</td>
<td>1,542,374</td>
<td>866,044</td>
</tr>
<tr>
<td>100.0%</td>
<td>5,173,916</td>
<td>715,731</td>
<td>4,458,185</td>
<td>13,845</td>
<td>35,575</td>
<td>372,486</td>
<td>293,825</td>
<td>2,015,759</td>
<td>1,566,821</td>
<td>875,602</td>
</tr>
<tr>
<td>3,546.7</td>
<td>490.6</td>
<td>3,056.1</td>
<td>9.5</td>
<td>24.4</td>
<td>255.3</td>
<td>201.4</td>
<td>1,381.8</td>
<td>1,074.1</td>
<td>600.2</td>
<td></td>
</tr>
<tr>
<td>23,068,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>90.1%</td>
<td>393,215</td>
<td>39,332</td>
<td>353,883</td>
<td>1,026</td>
<td>1,965</td>
<td>7,083</td>
<td>29,258</td>
<td>154,562</td>
<td>163,293</td>
<td>36,028</td>
</tr>
<tr>
<td>100.0%</td>
<td>436,145</td>
<td>44,522</td>
<td>391,623</td>
<td>1,192</td>
<td>2,177</td>
<td>7,874</td>
<td>33,279</td>
<td>171,744</td>
<td>179,867</td>
<td>40,012</td>
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<tr>
<td>1,890.7</td>
<td>193.0</td>
<td>1,697.7</td>
<td>5.2</td>
<td>9.4</td>
<td>34.1</td>
<td>144.3</td>
<td>744.5</td>
<td>779.7</td>
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<tr>
<td>37,309,000</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>74.8%</td>
<td>304,206</td>
<td>33,089</td>
<td>271,117</td>
<td>1,705</td>
<td>3,044</td>
<td>4,068</td>
<td>24,272</td>
<td>146,321</td>
<td>103,926</td>
<td>20,870</td>
</tr>
<tr>
<td>100.0%</td>
<td>285,150</td>
<td>49,765</td>
<td>335,385</td>
<td>2,590</td>
<td>4,130</td>
<td>5,548</td>
<td>37,491</td>
<td>180,320</td>
<td>128,503</td>
<td>25,962</td>
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<tr>
<td>1,032.3</td>
<td>133.4</td>
<td>898.9</td>
<td>6.9</td>
<td>11.1</td>
<td>14.9</td>
<td>100.5</td>
<td>484.9</td>
<td>344.4</td>
<td>69.6</td>
<td></td>
</tr>
</tbody>
</table>

*Of the Census provisional estimate as of July 1, 1971.

**Notes:**
- Offense of murder, forcible rape, robbery and aggravated assault; property crime is offenses of burglary, auto theft.
- Presenting area actually reporting will not coincide with the ratio between reported and estimated crime totals.
- Present the sum of the calculations for individual states which have varying populations, portions reporting, areas.

*Department of Justice, Federal Bureau of Investigation, Uniform Crime Reports.*
# Chart # 3
CRIMINAL JUSTICE SYSTEM—PUBLIC EXPENDITURES, 1970, BY LEVEL OF GOVERNMENT

[Expenditures in millions of dollars except per capita.]

<table>
<thead>
<tr>
<th>Level of Government and Activity</th>
<th>Expenditures</th>
<th>1970</th>
<th>Per capita</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All governments</td>
<td>28,571</td>
<td>281.56</td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td>5,080</td>
<td>524.63</td>
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</tr>
<tr>
<td>Judicial</td>
<td>1,190</td>
<td>12.10</td>
<td>21.4</td>
</tr>
<tr>
<td>Prosecution</td>
<td>442</td>
<td>4.63</td>
<td></td>
</tr>
<tr>
<td>Indigent defense</td>
<td>102</td>
<td>1.04</td>
<td></td>
</tr>
<tr>
<td>Correction</td>
<td>1,706</td>
<td>17.47</td>
<td></td>
</tr>
<tr>
<td>Federal Government</td>
<td>929</td>
<td>9.29</td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td>589</td>
<td>6.06</td>
<td></td>
</tr>
<tr>
<td>Judicial</td>
<td>129</td>
<td>1.31</td>
<td></td>
</tr>
<tr>
<td>Prosecution</td>
<td>102</td>
<td>1.04</td>
<td></td>
</tr>
<tr>
<td>Indigent defense</td>
<td>56</td>
<td>.57</td>
<td></td>
</tr>
<tr>
<td>Correction</td>
<td>83</td>
<td>.85</td>
<td></td>
</tr>
<tr>
<td>State Government</td>
<td>22,134</td>
<td>221.34</td>
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<td>Police</td>
<td>689</td>
<td>7.01</td>
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<tr>
<td>Judicial</td>
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<td>2.71</td>
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</tr>
<tr>
<td>Prosecution</td>
<td>83</td>
<td>.85</td>
<td></td>
</tr>
<tr>
<td>Indigent defense</td>
<td>9</td>
<td>.10</td>
<td></td>
</tr>
<tr>
<td>Correction</td>
<td>1,051</td>
<td>10.51</td>
<td></td>
</tr>
<tr>
<td>Local Government</td>
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<td>254.54</td>
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<tr>
<td>Police</td>
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<tr>
<td>Judicial</td>
<td>779</td>
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</tr>
<tr>
<td>Prosecution</td>
<td>257</td>
<td>2.64</td>
<td></td>
</tr>
<tr>
<td>Indigent defense</td>
<td>37</td>
<td>.38</td>
<td></td>
</tr>
<tr>
<td>Correction</td>
<td>572</td>
<td>5.72</td>
<td></td>
</tr>
</tbody>
</table>

1 Based on estimated population as of July 1, 1971, excluding Armed Forces abroad.
2 Includes residual amounts not shown separately.
3 Prior to 1969, not included as part of the criminal justice system totals.

(Adapted from Statistical Abstract.)
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, 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 midnight?

Look at the language of the fourth amendment. What about the boys' right to be protected from "unreasonable searches and seizures...except upon probable cause..."? What if the policemen 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 arrested and convicted on four prior occasions for armed robbery. In fact, each time Louie has been released from serving a sentence, he has committed a robbery within 3 days of being released. 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. Louie waits to be called.

Look at the language of the eighth amendment. What about Louie's right to bail and not to be considered innocent until proved guilty in a court of law? And what if 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 acquitted. As it turns out the police got their original lead in apprehending a "stool pigeon" that the robberies weren't done by teenagers, but by an adult in disguise. Before the "stoolie" gave the tip, he had the police promise they would never reveal his identity. The "stoolie" feared, and the police suspect the fear might have been well-founded.

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

Suppose the police, the next week, arrest a suspect in this robbery case, and it is not a teenager at all, but Little Louie. Louie is connected with organized crime and has served time on four prior occasions for armed robbery. In fact, each time Louie has finished 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 robbers is to set bail so high that Louie can't possibly raise it or else deny bail completely while Louie waits to be tried.

Look at the language of the eighth amendment. What about Louie's right to bail and 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 did show up for trial. As it turns out the police got their original lead in apprehending Louie from a stool pigeon's tip that the robberies weren't done by teenagers, but by Louie 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 well founded. Quotations from statutes are indicated by the use of quotation marks. Other statements are paraphrases of the statute listed.
founded, that Louie's organized crime connections might "rub him out" if they fou
he was the squealer. Louie says the-stoolie's information is untrue, and he want
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 "co
with the witnesses against him"? But what happens to an important source of pol
and information if the identity of "informers" must be made public?

Dan Smith is a young teacher. Outside school he works with several civic groups. chairman of the local Vietnam War protest group for November 15, 1970.

The November 15 moratorium, contrary to what local officials have warned, is peace well supported. On the night of November 15, Dan's home is bombed with powerful 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 evide single lead. They get an anonymous phone call that simply says, "You might check Bomber in connection with the Smith murders." The caller hangs up. The police, on basis of this phone call alone, arrest Bomber. Bomber refuses to talk until he gets lawyer. The police refuse to let him see his lawyer until he talks. While objecting 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. 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?
ded, that Louie's organized crime connections might "rub him out" if they found out as the squealer. Louie says the stoolie's information is untrue, and he wants his er to show this on cross-examination at a public trial.

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**********

Smith is a young teacher. Outside school he works with several civic groups. He is man of the local Vietnam War protest group for November 15, 1970.

November 15 moratorium, contrary to what local officials have warned, is peaceful and supported. On the night of November 15, Dan's home is bombed with powerful explosives. loses a leg and his eyesight; his wife and two baby children are killed.

Police go to work on the case. After a week they don't have a shred of evidence or a lead. They get an anonymous phone call that simply says, "You might check Joe er in connection with the Smir murders." The caller hangs up. The police on the s of this phone call alone arrest Bomber. Bomber refuses to talk until he gets a er. The police refuse to let him see his lawyer until he talks. While objecting to refusal of his request for counsel, Bomber confesses to the bombing. The police have their evidence. At the trial, Bomber denies everything.

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A cartoon by Tidy has been omitted here because of copyright restrictions. It is from Punch Magazine, July 1, 1970.

It is from Punch Magazine.
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 phrase makes it sound as if laws could do anything and everything. Laws can and do accomplish many important tasks 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 a process for people to settle private disputes when they cannot settle them on their own. Laws also beck like wills, leases, and employment agreements.

   Law performs many important functions in society, but often law is not successful or effective in accomplishing its intended goals. Many things might explain the ineffectiveness of law: (1) A law might be ineffective because it is an unsound piece of legislation. (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 administered is so wasteful or unfair; criminal statutes might be unreasonable, but their enforcement and prosecution is so inefficient that suspects must wait months in jail before being tried.) (3) A law might be ineffective because governmental officials may put inappropriate legal resources to work in accomplishing it. (A welfare law might be sound, but the enforcement and prosecution of it is so wasteful and unfair; criminal statutes might be reasonable, but their enforcement and prosecution is so inefficient that suspects must wait months in jail before being tried.)

   The three possible explanations for ineffective operation of laws (unsound content; unsound processes; 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 inherent limitations to what can be reasonably expected of law, and the legal system. The result of this might be loss of respect for the rule of law which is necessary in a democracy, laws in large part reflect what concerned people demand. Many students today want to improve our legal change. By learning about some of law’s limits, tomorrow’s citizens may be able to spend their energies in a more productive way.

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 develop a general concept of law. One of the characteristics of law is that law is not all-powerful. Second, many people in society today, and some of this disrespect is undeserved. Certainly, laws can be improved and used more effectively on some issues because there are limits to what can be reasonably expected of law, he may become unduly and unnecessarily harsh, and the legal system. The result of this might be loss of respect for the rule of law which is necessary in a democracy, laws in large part reflect what concerned people demand. Many students today want to improve our legal change. By learning about some of law’s limits, tomorrow’s citizens may be able to spend their energies in a more productive way.

3. **Outline of the Teaching Scheme.**

   Five understandings in this unit provide illustrative examples of some tasks that, by the very nature of the teaching scheme, are beyond the capacity of law to perform: (1) laws cannot simultaneously promote conflicting valid interests, (2) even with support of certain nonlegal factors, (3) laws cannot control certain intangible things like thoughts and cannot repair some kinds of injuries; and (5) laws cannot always determine the “true” facts. Each of the five understandings in this unit provides an example of how law as an instrument of social control is not all there is no order that is necessarily proper in treating the five understandings. The teacher might organize and present these understandings as he sees fit.

*See footnote on page 1, Module 1.*
People who gripe about some problem, frequently voice this plea. This little phrase, "There ought to be laws that could do anything and everything." Laws can and do accomplish many important things in society. They are collected and spent on public benefits such as education, parks, hospitals, defense, etc. Laws help regulate those activities that might otherwise be unsafe or inefficiently conducted such as transportation, communication, manufacturing certain harmful acts to discourage those who might take advantage of others. Through lawsuits, laws provide a means to settle private disputes when they cannot settle them on their own. Laws also back up private arrangements such as employment agreements.

Any important functions in society, but often law is not successful or effective in accomplishing what its framers might expect. The ineffectiveness of law may be explained in several ways: (1) A law might be ineffective because it is an unreasonable rule (2) A law might be ineffective because the time it is applied is wrong, not the law's content. (A welfare law might be sound, but be administered in a manner so that it could be unfair if the accused or if courts are so crowded that cases to be heard.) Active governmental officials may put inappropriate legal resources to work on a given problem. (During the prohibition era, the government used almost exclusively to deal with alcoholism; since the repeal of prohibition laws, regulation resources have also been put to work on problems of alcohol abuse.)

There are many explanations for ineffective operation of laws (unsound content; unsound processes; unsound allocation of resources) in some detail in the material for Modules II and III and will not be repeated here.

In this unit is that even when law is operating effectively, there are certain inherent limitations on what it can accomplish. Because of the nature of law, men, and society, some things are beyond law's reach even when law is effective. No law can make people respect human dignity or even force a person to love another person. The understanding that this unit provides for some inherent limitations of law.

The different limits of law in a law unit for social studies? First, in studying law, we wish to know important about law's nature, one of which is simply that law is not all-powerful. Second, many people disrespect laws because they are not respected. Certainly, laws can be improved and used more effectively on some problems, but unless 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, a large part of the respect that concerned people demand. Many students today want to improve our society through orderly and legal means. This unit provides examples of some tasks that, by the very nature of law and society, are impossible 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 of occupation and (5) laws cannot always determine the "true" facts. Each of the five understandings illustrates this unit is designed to reach—that law as an instrument of social control is not all-powerful, but limited. 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 ACTIVITY 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 LIMIT OF POWER TO REPAIR OR COMPENSATE.

V. ALTHOUGH LAW USES MANY RULES AND PROCEDURES TO RESOLVE DISPUTES RATIONALY 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, 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 including a healthy environment. Laws help keep community peace. Laws help secure basic needs. Laws 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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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.

G 1

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of Understanding I

used in society to help promote numerous interests or ends. Laws help promote human health 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 wealth. 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 promote another. For example, law's efforts to help secure private ownership may in some circumstances interfere with the 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 is to get decent housing. Law's efforts to secure basic freedoms may in some situations work against the 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 frustrated.

Thus, one of the most fundamental limits of law is something of a logical limitation: valid 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 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 correct the disorderly, even at times at the risk of being peace.

Ask the students to bring in newspaper and magazine pictures or cartoons that they find in current interest.
One please may mean no equal opportunity for racial minorities when it comes to securing basic freedoms. 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.

One of the most fundamental limits of law is something of a logical limitation—valid to conflict, or even be mutually exclusive. Therefore, sometimes law cannot fully protect interests at the same time.

**Understanding I**

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:

- Identify the consequences of the ruling for each party.
- Determine whether the ruling is in the best interests of society in general and support his conclusion with valid arguments.

By reading newspaper articles or other sources of current interest, the student can identify at least one situation in which legitimate interests of various parties are in conflict—and assess consequences of a proposed decision to each party.

**Each Understanding**

It mean to say that valid interests of law sometimes clash?

One limited when valid interests conflict?

Important to look very closely at the facts of a case in which valid interests of law

Students discuss the statement of Judge Learned Hand that the function of law is "not to reform the characters of people, but to control the disorderly, even at times at the risk of making them angry." Students are asked 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

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 student: 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 understanding of the case, have them suggest a rule which would protect the interests of both. 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 find their way into court do not a
to the students a hypothetical situation in which a student, running for student government, organized a demonstration in the cafeteria during the lunch hour. Several students and faculty members complained of the noise and confusion during lunch.

The "fishbowl" technique in which two in the inner circle speak for a candidate, two for the student opposition, and two for the school faculty. An empty chair for the student who is absent, and the "fishbowl observers" discuss the students' performances, focusing upon setting valid interests represented in the discussions.

Subsequently, the teachers may then decide whether any rule could be developed that would allow a maximum of 20 minutes. The "fishbowl observers" discuss the students' performances, focusing upon setting valid interests represented in the discussions.

The procedures suggested for this understanding involve conflict of interest between the interests of the community in maintaining order on the streets and the community's interest in maintaining freedom of expression. The law's "right" and "wrong" side. But often, conflicts that find their way into court do not afford the law.

1. Conflict of valid interests in free expression and public order and welfare.
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.


DISCUSSION OF STRATEGIES AND RESOURCES

Our legal system seeks to protect views regardless of their popularity has been thought of as one of civil liberties; peaceful expression and dissent serve both as a giving knowledge and as a process for by subjecting government officials An equally fundamental interest of is preserving order in society, for there is little security for perso

Interests in free expression and are not always compatible: in man restricted peaceful free express speech, the student protest, the s interfere with orderly operations the other hand, a society of maxin suppress all expression except the doctrine. Because such valid inte is limited in the extent to which circumstances simultaneously prote it must examine in detail situatio interests conflict and determ.ne the case which interest will be prote will give way.

The same rationale holds true when police procedures and efficient la fair trial and free press come in
DISCUSSION OF STRATEGIES AND RESOURCES

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.)


-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.


DISCUSSION OF STRATEGIES AND RESOURCES

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er vs. New York, vol. 388 U.S. Reports,

1 (1967) (See page 150.)

nda vs. Arizona, vol. 384 U.S. Reports,

36 (1966) (See page 150.)
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)


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

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.

"Irving Feiner, an articulate young Syracuse University student, ...in a loud, pitched voice, urged his audience of some seventy-five to eighty whites and to attend a meeting that evening on racial discrimination and civil rights. During course of his speech Feiner called the then President Harry S. Truman a 'bum' referred to the Mayor of Syracuse as a 'champagne sipping bum.' He remarked the 'American Legion is a Nazi Gestapo,' and that the colored people 'should' up in arms' and fight for their rights. After about twenty minutes of listen Feiner, the crowd became somewhat restless and there was some shoving, pushi milling around. There were two policemen at the scene, but they seemed more with the movement of traffic...than in Feiner's speech. But the crowd became 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 get down off the box so that the crowd could be dispersed but Feiner refused officer arrested him for disorderly conduct.

"Feiner was convicted in the local trial court and sentenced to thirty days in ment. After the conviction was sustained by...the highest state court, Fein 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 testim and contradicting the judgment of the police officers that a clear danger of threatened. After weighing this contradictory evidence, the trial judge reac tion that the police officers were justified in taking action to prevent a b ...The courts below recognized petitioner's right to hold a street meeting a locality, to make use of loud-speaking equipment in giving his speech, and t ory remarks concerning public officials and the American Legion. They found officers in making the arrest were motivated solely by a proper concern for motion of order and protection of the general welfare and that there was no ev could lend color to a claim that the acts of the police were a cover for sup petitioners views and opinions. Petitioners was thus neither arrested nor 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.

Feiner, an articulate young Syracuse University student, in a loud, high-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 "rise 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 jostling 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 wooden box or he would pull him off himself. Thereupon one of the officers asked Feiner to sit down off the box so that the crowd could be dispersed but Feiner refused. The officer arrested him for disorderly conduct.

Feiner was convicted in the local trial court and sentenced to thirty days imprisonment. After the conviction was sustained by...the highest state court, Feiner brought his case to the Supreme Court.

Chief Justice Vinson delivered the opinion of the Court.

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 petitioners' views and opinions. Petitioner was thus neither arrested nor convicted for the making or the content of his speech.

Notes from statutes are indicated by the use of quotation marks. Other statements are or paraphrases of the statute listed.
"...The findings of the state courts as to the existing situation and the imminent possibility 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. . . ."


"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. Tinker 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 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.
"The school officials banned 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 interfering] 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. The 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. ...."
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The case of Tinker vs. Des Moines School District can also be found in the following:


Some students might be interested in comparing Edwards vs. South Carolina (1963) with Adderly vs. Florida (1966). Sources:


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.


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.


[Testimony included in the report of the Supreme Court decision]

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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 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 to me at the time.'

"...He saw one of the men leave the other one and walk southwest on Huron Road, pass some stores. The man paused for a moment and looked in a store window, then walk 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 scrolling 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 the 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, head 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 duty as a police officer to investigate further. He added that he feared 'they must 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 observe. 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 in response to his inquiries, Officer McFadden grabbed petitioner Terry, spun him
acted by two men, Chilton and Terry, standing on the corner of Huron Road and 1 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 man for 39 years and a detective for 35 and that he had been assigned to patrol the vicinity of downtown Cleveland for shoplifters and pickpockets for 30 years. He explained that he had developed routine habits of observation over the years 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 at the time.’

Saw one of the men leave the other one and walk southwest on Huron Road, past stores. The man paused for a moment and looked in a store window, then walked a short distance, turned around and walked back toward the corner, pausing once to look in the same store window. He rejoined his companion at the corner, and they conferred briefly. Then the second man went through the same series of motions, limping down Huron Road, looking in the same window, walking on a short distance, peering in the store window again, and returning to confer with the 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 standing together on the corner, a third man approached them and engaged them 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. This had gone on for 10 to 12 minutes, the two men walked off together, heading on Euclid Avenue, following the path taken earlier by the third man.

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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 garment 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 men 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 be..."

*Chilton died before the case was tried by the Supreme Court, so the decision in only the case of Terry.
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but it is doubtful that the case of Terry.

147
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.' 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.' Beek vs. Ohio, supra, at 97. 

"...Officer McFadden...had observed Terry, Chilton, and Katz go through a series of actions that, 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 corner, perhaps waiting for someone. Nor is there anything suspicious about people in 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 pace along an identical route, pausing to stare in the same store window roughly 24 hours apart 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 man for a half block 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 fail 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 the investigation. ...there is the more immediate interest of the police officer's steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly, it was unreasonable to require that police officers take unnecessary risks in the perf of their duties. American criminals have a long tradition of armed violence, a year in this country many law enforcement officers are killed in the line of duty, 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 may lack probable cause for an arrest. When an officer is justified in believing individual whose suspicious behavior he is investigating at close range is armed presently dangerous to the officer or to others, it would appear to be clearly unjust to deny the officer the power to take necessary measures to determine whether the 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 indiv rights which must be accepted if police officers are to be conceded the right to 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, fr and perhaps, humiliating experience. ...

"Our evaluation of the proper balance that has to be struck in this type of case to conclude that there must be a narrowly drawn authority to permit a reasonab for weapons for the protection of the police officer, where he has reason to bel he is dealing with an armed and dangerous individual, regardless of whether he cause to arrest the individual for a crime. The officer need not be absolutely th that the individual is armed; the issue is whether a reasonably prudent man in stances would be warranted in the belief that his safety or that of others was i...

"...We think on the facts and circumstances Officer McFadden detailed before the judge a reasonably prudent man would have been warranted in believing petitioner and thus presented a threat to the officer's safety while he was investigating h behavior. ...

"...Officer McFadden confined his search strictly to what was minimally necessary whether the men were armed and to disarm them once he discovered the weapons. He conduct a general exploratory search for whatever evidence of criminal activity find.

"We conclude that the revolver seized from Terry was properly admitted in evidenc him. ...Such a search is a reasonable search under the Fourth Amendment, and any seized may properly be introduced in evidence against the person from whom they
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Challenge to a conviction of conspiracy to bribe a city official on the ground that 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.


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 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.
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 was improper to move trial to another location after a local TV station broadcast an interview 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 that having guilt determined at trial should prevail in these circumstances. So a change of venue was given.

Estes vs. Texas, vol. 381 U.S. Reports, p. 532 (1965)

Challenge to conviction of swindling on grounds that TV coverage at the trial prejudice the accused. Weighing the interest in the public being informed of what occurs...

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Tresolini, These liberties. pp. 46-60.

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Louisiana, vol. 373 U.S. Reports, p. 723 (1963)

Age to conviction of robbery, kidnapping, and murder on grounds that judge refused to change venue after a local TV station broadcast an interview where suspect confessed to the charges. Weighing an interest in free dissemination of news 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 accused was allowed to change venue.

Texas, vol. 381 U.S. Reports, p. 532 (1965)

Age to conviction of swindling on grounds that TV coverage at the trial prejudiced accused. Weighing the interest in the public being informed of what occurs in courts against the interest in free dissemination of news of criminal proceedings, the Supreme Court decided an interest in free dissemination of news should prevail.
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courtroom, the Supreme Court decided an interest in fair trials should prevail
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other reasons, TV was psychologically disturbing to jurors and judge. Note that
Federal court cases bar live TV coverage as do all but two states. Many pupil
probably aware of this fact.


Challenge to conviction of murder on grounds that extensive news coverage befo
and during the trial implied to the public (including the jurors) that the sus
was guilty and otherwise prejudiced his trial. Weighing an interest of subjec
the judicial process to public scrutiny through an unrestrained press against
interest in preventing impairment of jury impartiality, the Supreme Court dec
an interest in fair trials should prevail in these circumstances.

See also: Bassiouni et al. Crimes and justice. pp. 54-56.

Investigate the actual unfairness that could be caused by the presence of a TV in the courtroom, the Supreme Court decided an interest in fair trials should prevail in these circumstances. Court decided that accused was not allowed due process. Among reasons, TV was psychologically disturbing to jurors and judge. Note that all trial court cases bar live TV coverage as do all but two states. Many pupils are likely aware of this fact.


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 subjecting judicial process to public scrutiny through an unrestrained press against an interest in preventing impairment of jury impartiality, the Supreme Court decided interest in fair trials should prevail in these circumstances.

Also: Bassiouni et al. *Crimes and justice.* pp. 54-56.

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 that are safer and easier. Of course, laws are only one kind of social control; familiar include custom, tradition, morality, and even the basic interest in self-preservation. Some legal factors are stronger than the control of law, and law may be limited by the extent to which legal factors are consistent with these factors. For example, suppose that tomorrow cigarettes and alcohol were put on a list of dangerous drugs whose use is subject to serious penalty. Such a law would have to conflict against the grain of common custom and popular morality. And in all likelihood, lack of support for 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 attempt to resolve a conflict, analyze each alternative in terms of the moral principles involved, and suggest the action that is most palatable to the public.

Given a case in which the question of self-preservation is involved, the student can analyze and explain the actions of each of the principal participants in terms of the values held by each.

Given a hypothetical conflict situation in which he himself is involved, the student can apply the concept of valuing 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

The 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.

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 nonlegal factors are stronger than the control of law, and law may be limited by the extent to which it is supported by these factors. For example, suppose that tomorrow cigarettes and alcohol were added to the list of drugs whose use is subject to serious penalty. Such a law would have to operate in large part on the grain of common custom and popular morality. And in all likelihood, lack of support from these factors would limit the effectiveness of legal prohibition.

Understanding II

In a conflict situation, the student can identify the possible actions that can be taken, evaluate each alternative in terms of the moral principles involved, and suggest the solution that is attalble to the public.

In a case in which the question of self-preservation is involved, the student can describe the values held by those individuals. In a hypothetical conflict situation in which he himself is involved, the student can demonstrate the meaning of the valuing process by explaining why a specific course of action would be consistent with his values.

REACH UNDERSTANDING

Do nonlegal factors influence social interaction?

Do the effectiveness or ineffectiveness of law influenced by nonlegal factors of social interaction?
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.
its study the cartoons below and on page 132. Check understanding of the cartoons through
ion and analysis questions (for example: What is happening? - Why is this situation
en have groups of students attempt to write a law related to the situation depicted
soon. The class may then discuss the chances of these laws being obeyed.

Children’s Painting
Competition—Number One

Red coloring has been omitted here because of copyright restrictions. It is from
the 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)


Law may be viewed as a social control only social influence at work in rules of law may be limited by the they are consistent with or support forces. Law may be most effective to these nonlegal forces.

Perhaps the strongest of nonlegal influencing social interaction is self-preservation. We have hundreds of relations aimed at helping people in safety. But each driver's interest in preservation is the strongest influence. The traffic regulation to be ignored is the one that the to be unnecessary to his own safety. Thus, the law is limited by the ex against one's concern for self-pre

The most dramatic example of this of self-defense. The law punishment tended to discourage those who might law almost universally makes an ex another in self-defense. Because is such a strong instinct, a legal it very difficult to enforce a law killing in self-defense.

The three remaining resources under present cases where people were p where the choice was between kill themselves. in each case, the limi
1. Circumstances where law tries to operate against the grain of human interest in self-preservation.

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 back-

ing 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 lack of "public support" to the effectiveness of law. To the extent the grain of popular morality tradition, it may be of limited effec-

tion era of the 1920's provides a case in American history. The social prob-

abuse were met with comprehensive pro-

manufacture and sale of alcohol. Yet, largely morally condoned and socially result—massive numbers of "respectable" officials disregarded the law with im-

Some of the most controversial interp-

the U.S. Constitution of the Warren Court confronted the same limitation of law. Board of Education, in 1954, determined equal protection clause of the U.S. C forbids segregation of school children. Nevertheless, more than a decade and that case was decided, more than half children in America attend predominantly schools. Lack of popular and moral support has a large portion of our population in im-

requirements set forth in Brown probaexplain the relative ineffectiveness
ON-OFF 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."

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 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.

An introduction to the topic of religious exercises in the public school system, the teacher might poll the class to see how many have attended schools where religious exercises were part of the daily procedure. A question might then be asked: Why is this act so controversial and what legal action, has been initiated about religious exercises in public schools? This would be a natural point to study the case of Bible Reading Prayers in Public Schools. (See page 165 references.)
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.
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 such person or of a third person; ...

[Exceptions]

(a) The defendant acted under the influence of extreme emotional distress 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. ...

(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, the first degree, sexual abuse in the first degree, escape in the first degree, escape in the second degree, and, in the course of and in furtherance of such crime or of immediate flight therefrom, thereby causes the death of a person other than 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 request, command, importune, cause or aid the commission thereof;

(b) Was not armed with a deadly weapon, or any instrument, article 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.
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

Explanations from statutes are indicated by the use of quotation marks. Other statements or 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 in

to engage in conduct likely to result in death or serious physical

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
in using physical force upon another person in order to defend himself or
son from what he reasonable believes to be the use of imminent use of unlawful
force by such other person, and he may use a degree of force which he realizes
is necessary for such purpose; except that deadly physical force may not be
the actor reasonably believes that such other person is (a) using or about
lawful deadly physical force, or (b) using or about to use physical force
occupant of a dwelling while committing or attempting to commit a burglary,
dwelling, or (c) committing or about to commit a kidnapping, robbery, force
or forcible sodomy.

"2. Notwithstanding the provisions of subdivision one of this section, a person
justified in using deadly physical force upon another person if he knows 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
thereto, or (c) by complying with a demand that he abstain from performing
which he is not obligated to perform.

"3. Notwithstanding the provisions of subdivision one of this section, a person
justified in using physical force if (a) with intent to cause physical injury
death to another person, he provoked the use of unlawful physical force by
person, or (b) he was the initial aggressor,...or (c) the physical force in
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.

New York 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 reasonably 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 aggressor,...or (c) the physical force involved was the product of a combat by agreement not specifically authorized by law.
Module 4

Sample Cases


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 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 was 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.


Hypothetical story of five men lost in a cave for 30 days without food. Lots were cast and the loser was eaten. Case presents the murder prosecution of the other.


"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 politics. In addition to these two major causes, there was the argument that enforcing prohibition the productivity of the nation would be enlarged, because it 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
Cases


Our 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 rescue of the remaining three men. Only two of the men were tried; the others had gone along with their plan. The final sentence was the death penalty.

* States vs. Holmes, in Federal Cases, Book 26 (cases 15, 244 to 15,819), p. 360 (1842)

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Hypothetical story of five men lost in a cave for 30 days without food. Lots were cast and the loser was eaten. Case presents the murder prosecution of the other four.


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 liquor 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 workers would be more efficient and the money theretofore spent for liquor would be invested in more productive enterprises. Business interests, convinced that sober employees 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 raised...
"All these factors were skillfully exploited by the driving force against liquor, 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. It 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 a local reputation, the average consumer was forced to accept 'bath tub' gin that had been 'cut,' colored and flavored to resemble whisky. Bootleggers who did business, charged high prices, paid their taxes in the form of protection money to corrupted local, state, and national officials. Thus the unholy alliance between law 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 explain this failure. Congress refused to establish an adequate enforcement outfit. 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 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 did the combined enforcement appropriations of the states equal one million dollars. 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 officials of the law were unable to cope.

"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 commanded by Constitutional command not to indulge in even a glass of mildly euphoric beverage to the disregard of the law by the wealthy who were able 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, widespread violation of the laws that had been enacted pursuant to the power in the Amendment, there arose a general disregard for law and order. It is no wonder that Prohibition caused the most havoc, for law and order, respect for
All these factors were skillfully exploited by the driving force against liquor, 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 a national or local reputation, the average consumer was forced to accept 'bath tub' gin or alcohol that had been 'cut,' colored and flavored to resemble whisky. Bootleggers did a thriving business, charged high prices, paid their taxes in the form of protection money and corrupted local, state, and national officials. Thus the unholy alliance between liquor and politics, one of the causes of Prohibition, returned in an aggravated form. With political protection assured, the bootlegging element branched out into other criminal activities, particularly into the fields of racketeering and gambling.

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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
are basic to the well-being of any government. The effort to eradicate the ac
evils of the pre-Prohibition era resulted in the greater evil of disrespect fo
and violation of law.

"Such a situation could not long endure. ... Prominent leaders who had thereto
donnoncommittal or active supporters of the Amendment publicly announced their op
A Literary Digest poll in 1930 indicated that the Amendment was very unpopular
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provide the necessary impetus for economic recovery. Federal and state govern
their budgets unbalanced for relief expenditures and decreased tax returns, lo
anxiously for new sources of revenue. Eventually these forces became sufficie
and on December 5, 1933, Utah, the thirty-sixth state, ratified the Twenty-fir
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 situat
ions and includes pertinent text.

I do not want to offend anyone not interested in sexually oriented litera
If you are not over 21 years of age or if you are not interested in seeing
ally oriented material please destroy this envelope without opening and yo
will receive no further advertising from this company.

You will receive my future offerings only if you specifically request the
mailed to you—otherwise you will receive no further advertisements.

Thank you.

(Signature of Publisher)
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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 sensationalism for commercial gain;

2. that such matter is profoundly shocking and offensive to many persons whether it be received, unsolicited, through the mails;

3. that such use of the mails constitutes a serious threat to the dignity and security of the American home and subjects many persons to an unconscionable and unwarranted 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 believe might be harmful to the normal and healthy ethical, mental, and social development of such 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 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 consonant with the public policy of the United States for the facilities and service of the United States Postal Service to be used for the distribution of materials to persons who do not wish their privacy invaded in this manner or to persons who wish to protect their minor children from exposure to such materials.
Progressive Findings and the Statute

Congressional findings which support the Goldwater amendment are contained in \( \text{Pub.L. } 91-375 \), which reads:

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(a) The Congress finds——

- that the United States mails are being used for the indiscriminate dissemination of advertising matter so designed and so presented as to exploit sexual sensationalism for commercial gain;
- that such matter is profoundly shocking and offensive to many persons who receive it unsolicited, through the mails;
- 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.
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 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 or willfully violates any regulations of the Board of Governors issued under such sections; or

(2) sells, leases, 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, 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 2]
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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735. 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, except for the purpose expressly authorized by section 3010 of title 39, uses a mailing 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. ...
Module 4

Resources Concerning Bible Reading and Prayer in Public Schools


James, The supreme court in American life. pp. 146-156.


Oregon State Bar Association. Liberty and the law. Unit 7, Church, State, and

Concerning Bible Reading and Prayer in Public Schools


M., *Liberty and law.* pp. 139-151.


State Bar Association. *Liberty and the law.* Unit 7, Church, State, and Education.

Module 4

UNDERSTANDING III

Since law cannot readily control thoughts and beliefs; to be effective, the law must regulate some overt behavior or activity to regulate.

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 and wives loved each other, 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 requiring all spouses to love each other, and requiring people to think good thoughts? Obvious 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 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, 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 it do so?
- 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 thoughts had a chance to take the form of antisocial activity. So why not have laws uses to love each other, and requiring people to think good thoughts? Obviously, such somehow go beyond the effective limits of law. Legal officials may try to use law for illing beliefs, emotions, thoughts, and the like. However, such regulation of intangibles ction of some tangible conduct, activity, or behavior is generally beyond law's limited

Understanding III

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REACH UNDERSTANDING

cors limit the capacity of law to regulate what goes on in the minds of people? law, could regulate intangibles such as thoughts and beliefs, how might this do more harm d? law less limited in regulating overt activity than in regulating intangibles such as and beliefs?
Module 4

USE OF VISUALS

- Have students find pictures in newspapers and periodicals of overt situations which are punishable 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 or opinions. What visual clues reveal this? (Many commercial films such as The Shop on Main Street can be used in this context.)
You 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). Identify situations in which individuals fear that they may be punished for thoughts. 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

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. Tension may defy resolution until respect for human dignity is fostered. Problems probably will not be overcome until morally compelled to respect other property. Some aspects of the problems may remain insolvable in the tradition of our society until more people are morally compelled to respect other property. Some aspects of the problems may remain insolvable in the tradition of our society until more people are motivated to respect each other's property.

Why not simply bring about these changes by law? Pass a law saying—"You must love your spouse and child if you wish to remain in our society." Such legislation would be an attempt to go beyond the limits of law. Why is it that we can coerce beliefs limited in two senses, such laws go beyond the province of legal control. Given our limited view and control man's minds, such laws might still be beyond the limits of law. Even if we assume that an Orwellian society could bring about such laws to control men's thoughts, feelings, and beliefs, such laws might still be beyond the limits of law. Even if we assume that an Orwellian society could bring about such laws to control man's thoughts, feelings, and beliefs, such laws might still be beyond the limits of law.

Law which attempts to coerce beliefs is limited in two senses. First, such laws are virtually unenforceable. The effect of laws is bound to be limited. Even if we assume that an Orwellian society could bring about such laws to control men's thoughts, feelings, and beliefs, such laws might still be beyond the limits of law.
FTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Rules regulating intangibles.

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 may 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 individual 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 dramatize how limited law is in controlling people's thoughts or beliefs. As thoughts or beliefs manifest themselves as antisocial activity, they enter the sphere of legal regulation. For example, argue that a law requiring citizens to place the flag would be either enforceable law punishing children's refusal to do so is easily enforced, but raises difficult questions of propriety. In several cases, courts have struggled with these laws which conflict in an expression of belief. On
ION OF STRATEGIES

The attitudes in the following hypothetical school rules:

- a school rule that will help trust between teachers and students.
- a school rule that will reduce prejudice among people at the pool.
- a school rule that will encourage students, teachers, and administrators to respect the rights of others in school.

After they have devised these rules, there might be problems in enforcing them. The reasons cited should be recorded on a bulletin board or poster for reference in the ensuing study.

2. The more overt the things prescribed the less limited law is in regulating.

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 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.


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.


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 RESOURCES

With pupils the following cases that examine the question 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? Given on page 172.


Do persons have a right to either omit destructive acts on the U.S. flag? Go over the actions of individuals in each of the following cases without revealing the court's ruling. See if pupils can figure the court's ruling in each case. Given on page 173.


Government control what a person may say. See one of the pupils in class react to John Stuart Mill's "The Liberty of the Press," illustrate efforts of the government to circumscribe the freedoms of the press. By tracing case studies of legal attempts to encourage 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 operate 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.

Laws prohibiting acts of destruction of the flag have presented easier questions. Here overt activity expressing an unpopular belief is at issue.
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."
Many pupils who were Jehovah Witnesses in West Virginia were expelled from school because they refused to say the Pledge of Allegiance. In accordance with West Virginia law, expulsion of a pupil was considered to be unlawfully absent and subject to proceedings against the pupil. 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 not a permissible method of achieving national unity.

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 board 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 students would not say the pledge because he was an atheist and objected to it because it begins "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.

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.
pupils who were Jehovah Witnesses in West Virginia were expelled from school because they refused to say the Pledge of Allegiance. In accordance with West Virginia law, the expelled pupil was considered to be unlawfully absent and subject to proceedings as a delinquent. If the pupil could be prosecuted, and if adjudged guilty, could be fined $50 and jailed for four months. 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 is not a permissible method of achieving national unity.


Several school authorities, 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 protesting 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 'In God we trust.' The other two pupils did not feel there was liberty and justice for all in the pledge. The court ruled that pupils had a right to remain in the classroom, even though they did not participate.


who were members of Jehovah's Witnesses were suspended from school for insubordination because they refused to stand for the singing of the national anthem. The United States Court of Appeals ruled that this action of the school was a violation of the pupils' rights under the first amendment guaranteeing freedom of religion. The board could not exclude pupils from school unless their conduct was disorderly and materially disrupted the order and discipline of the school.

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.

(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 a piece of flag as protests against the Vietnam War. He was found guilty of violating the New York Penal Law which states that the American flag cannot be defiled. The court ruled that in no way did the defendant violate his right to freedom of speech under the first amendment.


(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. He was arrested and charged with malicious mischief for violating the New York Penal Law stating it was a crime to publicly mutilate the flag either by word or acts. He said to the arresting officer, "We don't need no damn flag if they let me happen to Meredith." The New York Court of Appeals ruled that they could not hear to this contention that he had the right under the first amendment to express his protest 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 his house, even if it is his own, on the ground, however sincere, that he does so. One may not justify breaking the windows of a government building on that basis. The prohibition against flag burning on the thoroughfare being valid, the misdemeanor is not excused because it is an act of protest."
In hearing the news that James Meredith, the civil rights leader was shot, Street took American flag that he owned and burned it on a street corner near his home. He was tested 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 heard to say to the arresting officer, "we don't need no damn flag if they let that open to Meredith." The New York Court of Appeals ruled that they could not agree with the contention that he had the right under the first amendment to express his opinion in such a fashion. The court upheld the opinion that Street was guilty of a misdemeanor but imposed 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. He may not justify breaking the windows of a government building on that basis. Protest is 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, 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 some criminal activity. But all acts that cause injury are not crimes (to wit, many auto 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, come into play in the form of a lawsuit. The person who has been injured can sue the person caused the harm and try to get the court to make the latter repair the harm. If the injured party loses the lawsuit, the court will normally give a judgment of money damages. Thus, with a civil suit 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 to a dented fender is one thing; rectifying things when the injury is, for example, lost limb, or a ruined marriage is quite another. Effective repair of some injuries is be

B. Teaching Understanding IV

OBJECTIVES

Given the details of a personal injury accident case, the student can identify that the victim is hurt by the actions of the other party and can differentiate 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 has changed in the last 100 years.
IV

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

If Understanding IV

Large numbers of people live together in a society, some harm others. Harm can take many forms.
Physical (assaults) or intangible (slander). Harm can be purposefully inflicted (murder), or it
accidentally or through carelessness (auto or hunting accidents.)

Moral acts are crimes, and the actor may be punished. The threat of punishment discourages
activity. But all acts that cause injury are not crimes (to wit, many auto accidents and-
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
in the form of a lawsuit. The person who has been injured can sue the person who supposedly
and try to get the court to make the latter repair the harm. If the injured person wins
the court will normally give a judgment of money damages. Thus, with a civil law suit the law
things when one person harms another.

There are many kinds of harm that are beyond the limited powers of law to repair. Money
fender is 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

The details of a personal injury accident case, the student can identify the various ways
the victim is hurt by the actions of the other party and can differentiate between those
which can be corrected by law and those which cannot be so compensated.

A student can suggest reasons why the legal interpretation of compensation for personal injury
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 by those involved in the incident depicted. Show the film again, noting visual clues personal damage to individuals, both as to physical impairment and emotional distress.
. At class discussion, attempt to reach consensus concerning which of these can be satisfied financially.

. 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.
ACH UNDERSTANDING

How provide for repairing things when one person has harmed another?

Limited in its capacity to repair harm done one person by another?

Dealing with an automobile accident. (Your Driver Education teacher may have selections.) Have students identify all possible grievances that might be raised involved 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.

Photograph an actual or staged altercation among students. Ask others viewing 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

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.)


An important function that law fulfills is providing a rational process by which third party (a court) can settle one party claims to have been injured and the two cannot work things out themselves. However, the law is limited in how much it can repair harm; it has a limited number of tools at its disposal. The principal way to repair harm done is with money: If the court determines the party is at fault, the court orders the injured person the amount of money necessary to pay for the harm done. The other available to courts is the injunction demanding that the wrongdoer stop their activity or do something specific to repair their injuries. Yet the kinds of injuries that men inflict on each other in living together do not all permit to satisfactory repair by such legal means. In a further respect, law is limited in its effectiveness because even negligence results in property damage that can be medically cured, an awareness of the permanence of injury. But no amount of money or nothing a court might order can replace a friend or a loved one carelessly made up for a permanent physical injury. Notwithstanding its inability for such harms, law in its limited what it can towards repair by assessing damages.
1. Lawsuits for carelessly causing a death.

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 RESOURCES

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.
   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?

3. Lawsuits 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 law's limited effectiveness in concerns unique possessions. If someone destroys the property of someone else and force payment for replacement property. But if the lost property (coin collection or heirloom) the more hardly a satisfactory substitute for
DISCUSSION OF STRATEGIES AND RESOURCES

2. Lawsuits for interference with marital happiness.

If they know the meaning of "alienation of affections," examine New York State Law concerning the possibility in bringing a lawsuit against an individual for alienation.

In the case of Moulin vs. Monteleone, Southern Reporter, p. 447 (1927) for discussion.

In discussion that laws about issues may vary from state to state, take place in New York? Why.

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.

3. Lawsuits to repair harm done by destruction of unique goods.

Class into three distinct cases. Each jury at a foreman who might conduct the concern the amount of money awarded to the individual who may be irreplaceable. The report back to the class what is.

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 a 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.
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.)
TION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

1. Suppose your mother took her wedding ring, which has been in her family for 150 years, to the jeweler to be cleaned. The jeweler carelessly throws the ring into the incinerator. Your mother sue the jeweler for the wrong he had done. As the jury, have the class determine how much mother should recover from the jeweler. Consider whether any damage can really satisfactorily repair the ring.

2. Suppose Suzie is an orphan girl whose parents died in an auto accident when she was 12. She has only one photograph of her parents. As a practical joke, a friend of hers took this picture. Suzie sued this friend for the harm he has caused her.Sit as the jury, have the class determine whether any judgment can really satisfactorily repair this wrong.

3. In the movie, "Blackboard Jungle," students destroy the teacher's rare placeable collection of jazz records which he has brought to class. Could the teacher sue? Should he sue? Can this harm be repaired at all?

Each pupil to work with a partner to come up with an instance where one individual intentionally or negligently injures another either by word or deed and no amount of money can be taken by law to rectify the harm. (The members of the class may feel that 'reparable' harm can be corrected.)
"[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. Revised by Constitutional Convention of 1938 and approved by vote of the people November 22, 1938.)"  


"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 to 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 and killed 2 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 deportment, trustworthiness, and ambition. It was established that he helped his father at 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 jury had justified an award of only $7,500, plus $979.50 for funeral and burial expenses. This would be 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' 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 earning capacity of a child prior to his majority, the speculative costs of his rearing. The difference, any, we say is the parents' pecuniary loss. ...

[Decision]

"This, then, was the day from which our precedents come, [from which] a day; when employed children of tender years was the accepted practice and their pecuniary contribution...

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

State Constitution, Article I, Section 16.

for injuries causing death.] §16. The right of action now existing to recover for injuries resulting in death, shall never be abrogated; and the amount received shall not be subject to any statutory limitation. (Formerly §18. Renumbered by the Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)"


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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. There precedents...tell us that the value of the life of a child must be measured solely by the standards of the day when he peddled 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 put a fair valuation on 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 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 countenanced 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.]


"[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...
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 cawash of time and civilization...where precedents...tell us that the value of life a child must be measured solely by the standards of the day when he peddled the skill his hands and the strength of his back at the factory gates. ... 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 has been taken and it is our duty, as best we can, to put a fair value on it. In so doing, we will keep in mind that the act is remedial in its character and our duty is to construe 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 modern 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 by perpetuated in 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."


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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 the 6 1/2-month period prior to her death earned $1,104.95. She purchased her own needs with earnings after paying for various items for the house, and gifts for her father out of her earnings. She paid 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
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
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 adva
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ly and adequately reflect the pres monetary value of any future contributions they or services which you find Sandra would have made to her father during the der of their lives had she not been killed in this accident. In other words, 
verdict is for the plaintiff you must decide from the evidence what pecuniary nancial loss the plaintiff has sustained, but you may not include any amount as sation for the father's grief, sorrow or mental anguish, nor are you permitted an award for the father's loss of his daughter's comfort, society or companion-

is no contention that the court was in error in telling the jury that they could elude damages for the father's grief, sorrow, or mental anguish. It is asserted the error lies in the fact that the instruction limited recovery to loss in terms lars and that in context the instruction permitting recovery for 'contributions services' referred to labor or other employment performed pursuant to an understand- with the survivor and excluded from the consideration of the jury such and substantial losses, which might be considered as having a pecuniary advantage
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 of 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."


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. No contract to marry made or entered into in 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."


"...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 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 cousin. 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 postmark, ' Removed.' Meanwhile, Monteleone, it was alleged, had paid frequent visits to noted attention to Mrs. Moulin, entertaining her at suppers and drinking parties.
the survivor and which would be encompassed within the broad term of society and
relationship. ...

The Supreme Court, Murphy, J., held that pecuniary-loss test limiting recovery by
parents for death of a child by wrongful act to loss of earnings, contributions and
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of vice, comfort, assistance and protection which jury might find to be of a pecuniary
nature to the parent if child had lived."

R.S., Campbell, A.B., & Bozzone, J.P. Justice and order through law. - Unit V -

Civil Rights Law, Section 80-a.

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. No act
within this state shall operate to give rise, either within or without this state,
by 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 or right
of action for its breach."

vs. Monteleone, vol. 115 Southern Reporter, p. 447 (1927)

The facts disclosed...are that the plaintiff and the offending spouse were married in
Texas 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 cousin of his.
Correspondence with her daily, by letters and telegrams and telephone messages, or 12 or
16 days, when she ceased replying, and his letters were returned unopened, bearing the
mark, 'removed.' Meanwhile, Monteleone, it was alleged, had paid frequent visits and
sent attention to Mrs. Moulin, entertaining her at suppers and drinking parties, at
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 participants criminally. 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
UNDERSTANDING 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 TRUE FACTS.

A. Explanation of Understanding V

In a criminal case, the district attorney, as the people’s representative, accuses a person 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 necessary to determine 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 some cause of 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 rules of law — and 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 disputed issues like the auto negligence case; both parties may agree that the defendant was speeding, but they disagree on the question of who was driving the car at the time of the accident.

Generally speaking, it is the job of the judge, with the help of the lawyers, to determine what really happened. On the other hand, there is a right to have a jury settle disputed facts.

Finding out what really happened when people are presenting conflicting stories is one aspect of “adjudication.” The law uses several techniques to make this process 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 of admissibility of evidence, and the jury must determine whether the results are admissible. Generally, both parties are allowed to present evidence that is relevant to the case, but there are certain presumptions of criminal cases, 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 course of events.
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.

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 some possession of an item or to recover money when someone's carelessness caused harm.

In both criminal and civil cases there are trials. Cases go to trial, unanswered questions of two kinds may arise. First, it may not be clear which law controls the case. For example, what is the law concerning possession of an unuseable marijuana? Or will the law allow a civil suit to recover money when someone's carelessness killed an unborn child?

Often, when a case goes to trial, the law itself is not the issue; both parties usually agree on the law. They are disputing the facts of the case. For example, the district attorney says it was murder and that self-defense is a valid excuse, but they disagree on what was the facts. Likewise, in civil cases, trials are usually concerned with disputed facts. In an automobile accident case, both parties may agree that driving on the left side of the road is negligent, but there may be a question about who was driving on which side of the road when the accident happened.

In some instances, it is the job of the judge, with the help of the lawyers, to figure out the law. In other cases, there is a right to have a jury settle disputed facts.

Out what really did happen when people were presenting conflicting stories is a complex question. The law uses several techniques to make this process of fact finding as fair and understandable. 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 whether evidence is admissible. There are certain presumption rules—in some cases, a person is presumed innocent until proven guilty beyond any reasonable doubt; in other cases, a person is presumed to have intended the natural consequences of his actions.
Module 4

But even with all these rules and processes for finding the facts, the law cannot arrive at the true facts. Instead, it must try to reach a resolution of disputed facts by a fair and rational procedure. 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 correctly identify 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 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 true facts?

USE OF VISUALS

Using the New York State Historical Society's Painting As Social History, program "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 due process is more desirable than having no trial at all.
ven 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

A report of an incident, or testimony from a court case, the student can correctly separate which can be proven from observations open to question or misinterpretation. Student can list reasons why the facts behind certain reports cannot be ascertained. Viewing a film of a court proceeding, the student can identify those aspects of the testimony that appeal to the emotions of the listener and thereby obscure the facts.

REACH UNDERSTANDING

Facts facts? Elements help explain why law often must deal in probabilities rather than absolute facts? As the public go along with a legal process that sometimes cannot be certain of determining facts?

ALS

the New York State Historical Society's Painting of Social History, program "Justice's Court Backwoods" identify all the factors that might obscure the facts of the case being presented. Identify those factors that help to reveal the facts. Discuss the reasons that such a procedure is more desirable than having no trial at all.
Module 4

DETAILED DESCRIPTION OF STRATEGIES

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."
DISCUSSION OF STRATEGIES AND RESOURCES

1. Imperfections in human memory and sense perception.

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 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 RESOURCES

The suggested procedures within this module attempt to illustrate two things. Each student describe an event he has witnessed and then comparing these descriptions graphically that past facts are not inconsidered. In considering why this is so, elements of memory, infallible sense perception, and 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 so-called foolproof task of simply sorting out the lies. Often the jury, without truth, reaches a result by following a deliberate procedure that is mere produce a fair result with maximum accuracy.
DESCRIPTION OF STRATEGIES

Before any discussion, have each member of the class record in detail what 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 could be held to establish the facts in the incident.

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.

2. Limitations of judicial fact finding.

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.

Entire for 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 jury in whose favor the fact dispute is decided 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 asks to his story.

Some of the members of the class are present in 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 theories presented.
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 Wilets 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 New Yorker Magazine, Inc. (1972) has been omitted here because of copyright restrictions.
Sample Cases:

**People vs. Ivy, vol. 244 California Appellate Reports, Second Series, p. 406 (1959)**

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 events was in fact true?

Ivy appealed the jury's decision on the basis that the judge made certain comments prejudicial to him before they made their deliberation. The appellate court decided in the appeal case that according to California law it was within the province of the 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.


District attorney's witness claimed X was raping and robbing her at the time of the crime. 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 are the "true" facts of this case?


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?

Sample Hypothetical Case:

Suzie Butts is caught by the principal in a smoke-filled girls' room. Suzie 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?

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


A narcotics officer claimed to have bought three "joints" from Ivy. Ivy claimed to have been 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.


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?


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Hypothetical Case:

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Statutes from statutes are indicated by the use of quotation marks. Other statements or paraphrases of the statute listed.
OPTIONAL BACKGROUND READING MATERIAL FOR TEA

MODULE I - UNDERSTANDING I


MODULE I - UNDERSTANDING II


MODULE I - UNDERSTANDING III


MODULE II - UNDERSTANDING I


BACKGROUND READING MATERIAL FOR TEACHERS

STANDING I


STANDING II


STANDING III


STANDING I


*New York public health law.* Sections 1250, 1252.


*United States code.* Title 26, "Internal revenue code of 1954." Sections 501(c)3 and from tax on (certain organizations).

New York State Education Department. *Consumer education, materials for an elective.* Reprint. See units on "Housing: Apartment Rental and Purchasing a Home," "Short Credit," and "Life and Health Insurance."

**MODULE II - UNDERSTANDING II**


The problems of overuse of private arrangement techniques in fair distribution resources.


The problems of overuse of penal technique in treatment of the marijuana use p

vehicle code. Sections 27153, 42002.
health law. Sections 1250, 1252.

e. Title 33, "Navigation and navigable waterways." Section 109.


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3. Title 26, "Internal revenue code of 1954." Sections 501(c)3 and 4, "Exemption certain organizations")

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MODULE III - GENERAL BIBLIOGRAPHY


C. "Social justice through civil justice," in vol. 36 University of Chicago law review. 669.
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TANDING V

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Casebooks for General Reading


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- Bible reading and prayer.
- Right to legal counsel.
- Privilege against self-incrimination.
- Citizenship.
- Fair trial vs. free press.
- The right to privacy.
- Using tort cases in the classroom.
- Due process and the juvenile court.


- Public Issues Series*:
  - Community change—Outler, Charles & Pearson, Craig, eds.
  - The lawsuit—Pearson, Craig, ed.
  - Rights of the accused—Pearson, Craig, ed.
  - Taking a stand—Pearson, Craig, & Sparks, D.G., eds.

- Oregon State Bar and Portland Public Schools.
  - Liberty and the Law Series*:
    - Church, state and education.
    - Citizenship.
    - Civil liberty and military necessity.
    - The flag salute cases.

*Pertinent titles within series.


Center, Tufts University, John S. Gibson, Director.


Counsel. Legal counsel.

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Counsel against self-incrimination.

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m. Counsel against self-incrimination.

n. Counsel against self-incrimination.

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c. Counsel against self-incrimination.

b. Counsel against self-incrimination.

a. Counsel against self-incrimination.
Liberty and the Law Series (cont'd.)

Free press—fair trial.
Freedom of expression.
The privilege against self-incrimination.
Right to counsel.
Search and seizure.


Ratcliffe, R. H., gen. ed. Sponsored by Law in American Society Foundation, Chicago Bar Association and Chicago Justice in Urban America Series

Crimes and Justice—Bassioni, M.C., et al.
Landlord and tenant—Ranney, George, Jr., & Parker, Edmond.
Law and the consumer—Berger, Robert, & Teplin, Joseph.
Poverty and welfare—Bennett, Robert, & Newman, Thomas.

Starr, Isidore.
Our Living Bill of Rights Series

The Feiner case.
The Gideon case.
The Prince George County case. Chicago. Encyclopaedia Britannica Corp. 1968.


Related Periodicals

Law in American Society. Journal of the National Center for Law-Focused Education. Law in American Society LaSalle Street, Suite 1700, Chicago, Illinois 60602.

Anthologies of Readings, Statutes, and Cases on Law's Role in Society


Law Series (cont'd.)

Fair trial.

Expression.

Right against self-incrimination.

Search.

Seizure.


, gen. ed. Sponsored by Law in American Society Foundation, Chicago Bar Association and Chicago Board of Education. An America Series

Justice--Bassioni, M.C., et al.

Tenant--Ranney, George, Jr., & Parker, Edmond.

City--Groll, Richard, & Zevin, Jack.

Consumer--Berger, Robert, & Teplin, Joseph.


All of Rights Series

Case.

George County case. Chicago. Encyclopaedia Britannica Corp. 1968.


Readings, Statutes, and Cases on Law's Role in Society


**Texts for College Undergraduate Course on Law's Role in Society**


Franklin, M. A. *The dynamics of American law; courts, the legal process, and freedom of expression.* Minneapolis. $10.95.


**Films and Filmstrips**

The commercial source of each of these entries is listed. However, teachers are reminded to check with local availability or for rental arrangements used by their school system. In some cases, regional collections at BOCES center. Some videotapes have been made available by the State Education Department to these centers. Some videotapes have been made available by the State Education Department to these centers. Videos of the New York State Bar Association, sets of *The Bill of Rights in Action*, have been distributed in this Department has videotapes for several titles in the *Living Bill of Rights Series* deposited in these regional centers.

*An Imaginary They.* Film. Modern Learning Aids, 212 Avenue of the Americas, New York 10036. 22 min. sd

*Bill of Rights in Action Series.* Films. Bailey Films Associates, 221 Michigan Avenue, Santa Monica, Cal. 16 mm.

- Subtitles: *De Facto Segregation.* 22 1/2 min.
- *Due Process of Law.* 22 1/2 min.
- *Equal Opportunity.* 22 min.
- *Freedom of Speech.* 21 min.
- *Right to Privacy.* 23 min.
- Story of a Trial. 22 min.

*Due Process of Law Denied.* Film. Teaching Film Custodians. sd. 30 min. b/w 16 mm. 1943.


- Subtitles: #36 The Justice Machine
- #38 Framwork of Freedom (The Supreme Court and Constitutional Rights)
- #39 Men of Justice
- #40 Supreme Court and Society

*In the Name of the Law.* Film. NBC Educational Enterprises, 30 Rockefeller Plaza, New York 10020. 14 min.

The Undergraduate Course on Law's Role in Society


& The dynamics of American law; courts, the legal process, and freedom of expression. Mineola. Foundation Press.


The actual 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 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.

Hey. Film. Modern Learning Aids, 212 Avenue of the Americas, New York 10036. 22 min. sd. color. 16 mm. (No date)

De Facto Segregation. 22 1/2 min.
Due Process of Law. 22 1/2 min.
Equal Opportunity. 22 min.
Freedom of Religion. 21 min.
Freedom of Speech. 21 min.
Right to Privacy. 23 min.
Story of a Trial. 22 min.

Law Denied. Film. Teaching Film Custodians. sd. 30 min. b/w 16 mm. 1943.


Videotape. The State Education Department, Bureau of Mass Communications, Albany, New York 12224.

#36 The Justice Machine
#38 Framework of Freedom (The Supreme Court and Constitutional Rights)
#39 Men of Justice
#40 Supreme Court and Society

the Law. Film. NBC Educational Enterprises, 30 Rockefeller Plaza, New York 10020. 14 min. sd. color. 16 mm. 1968.
Our Living Bill of Rights Series. Films. Encyclopaedia Britannica Educational Corporation, 425 North Mic
I1inois. 16 mm. Subtitles: Bible Reading in the Public Schools: The Schenck Case. 27 min. sd. b/w and color.
Freedom to Speak: The Neiman Case. 27 min. sd. color. Free Press vs. Fair Trial by Jury: The Shepherd Case. 27 min. sd. color.
Right to Counsel: The Gideon Case. 27 min. sd. b/w and color. Right to Remain Silent: The Miranda Case. 27 min. b/w and color.


Police Power. Film. Indiana University, Audio Visual Center, Bloomington, Indiana 47401. 60 min. sd.

Structure and Organization of American Courts. Film. Films Incorporated, 1150 Wilmette Avenue, Wilmette, 30 min. sd. bw. 16 mm. 1962.

Super Cop. Film. NBC Educational Enterprises. 25 min. sd. color. 16 mm. 1970.

To Kill A Mockingbird. Film. Universal Sixteen, 445 Park Avenue, New York 10022. 129 min. sd. b/w. for rental.)

Witness To An Accident. Film. Indiana University, Audio Visual Center. 11 min. sd. b/w. 16 mm. 196

Your Rights and What They Really Mean. 6 filmstrips and 3 cassettes. Eyegate, 146-01 Archer Avenue, Jam

Collections of Study Prints

Documentary Photo Aids, Box 2620, Sarasota, Florida 33578. (Ask for listing.)

New York State Historical Society, Cooperstown, New York.
Exhibit Portfolios
Growing Up Black
Neighbors on the Block
The Lower East Side
Painting As Social History
Justice's Court in the Back Woods

Silver Burdett Company, P.O. Avenue & Columbia Road, Morristown, N.J. 07960
Pictures That Teach: Environmental Education

Holt, Rinehart & Winston, Inc., 383 Madison Avenue, New York 10017
Holt Databank System
Data Pack 8: The Poor
Data Pack 9: Pollution

"Letter of Choice." Film. NBC Educational Enterprises. Reel I - 26 min. Reel II - 27 min. sd. color. 16 mm.

"The Guards."

Indiana University, Audio Visual Center, Bloomington, Indiana 47401. 60 min. sd. b/w. 16 mm. 1965.


NBC Educational Enterprises. 25 min. sd. color. 16 mm. 1970.

"The Third Court." Film. Universal Sixteen, 445 Park Avenue, New York 10022. 129 min. sd. b/w. 16 mm. (Only available on loan from Indiana University, Audio Visual Center."

"The Incident." Film. Indiana University, Audio Visual Center. 11 min. sd. b/w. 16 mm. 1961.

"That They Really Mean." 6 filmstrips and 3 cassettes. Eyegate, 146-01 Archer Avenue, Jamaica, New York 11435.

By Prints

Allds, Box 2620, Sarasota, Florida 33578.

Historical Society, Cooperstown, New York.

"The Block" and "The Backwoods." The New York Historical Society, Park Avenue & Columbia Road, Morristown, N.J. 07960

"The Teaching System.""The Pollution" System.

Winston, Inc., 383 Madison Avenue, New York 10017
Simulations And Other Media


_Innocent Until:_ A role-play simulation for 13 to 30 players, which recreates the courtroom drama of a trial upon the case presented in the AEP pamphlet, _Rights of the Accused._

_Pollution:_ For 12 to 16 students, role-play of community consequences of different forms of pollution and abatement programs. Players are faced with the real-life dilemma of high short-term costs for abatement programs versus disastrous long-term effects of unabated pollution.

_Raid:_ Role-play simulation for 5 to 15 persons, using the dynamics of the inner city "protection" racket.

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


$60 for 2 years. One volume every 2 years, quarterly supplement, monthly bulletin plus reference service for subscribing to this publication. Example of reference service: questions concerning published state or local laws, provide the teacher with the brief of the case.
Other Media


The trial: A role-play simulation for 13 to 30 players, which recreates the courtroom drama of a trial by jury; based on the AEP pamphlet, Rights of the Accused.

For 12 to 16 students, role-play of community consequences of different forms of pollution and of abatement. Players are faced with the real-life dilemma of high short-term costs for abatement programs versus the long-term effects of unabated pollution.

Simulations, Inc., 2147 University Avenue, St. Paul, Minn. 55114.

A Criminal Justice Simulation replicates the public administration of the Omnibus Crime Control and Safe Streets Act. Copies available; developed by LEAA and the Minnesota Department of Education.

Simulations, Inc., 209 Court Street, Middletown, Conn. 06457.

Decision Games, including New Highway; Open Space; New School.

CPS


Carnegie Research, Inc. 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 the librarian using the brief of the case.
### Statutes Compiled by Subject

#### Federal Statutes


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 that depth.

**THE CONSOLIDATED LAWS OF NEW YORK**

| 1. Statutes | 20. General City | 46. Public Officers |
| 4. Banking | 25. Indian* | 49. Real Property |
| 7b. Civil Practice Law Rules (civil procedure)* | 30. Legislative* | -- Soil Conservation |
| 9. Civil Service | 32. Membership Corporations | 54a. State Departments |
| 9a. Condemnation | 33. Mental Hygiene | 55. State Finance |
| 10a. Co-operative Corporations | 35. Multiple Dwelling* | 57. State Printing |
| 11. County | 37. Negotiable Instruments | 59. Tax |
| 15. Education* | 40. Personal Property | 63. Village |
| 17a. Employers' Liability | 42. Public Buildings | 64. Workmen's Compensation |
| 18. Executive* | 43. Public Health* | 65. Unconsolidated Corporations |
| -- General Associations | 44. Public Housing | 66. Code of Criminal Procedure |

*These volumes are suggested for reference collections in schools in which depth studies are contemplated. $10 per volume.
Compiled by Subject

State Statutes

The Consolidated Laws of New York

Published 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

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Volumes are suggested for reference collections in schools in which depth studies are contemplated. Approximately 11 volumes - price approximately $7/volume.