

Tab C

Judicial Processes

IP Event Lesson Plan

1. Topic:

Judicial processes

2. Suggested activities:

- A. Local jail, prison, halfway house, probation officers
- B. Criminal trial, court martial (arrange meetings with judge, jury, prosecutor, and defense counsel after hearing)
- C. Prosecutor and/or criminal defense lawyer
- D. Police station/sheriff's office/state police
- E. Criminal law clinic at law school
- F. Public defender's office
- G. Local court house, circuit court, criminal or civil court, magistrate, justice of the peace

3. Student requirements:

- A. Attire (civilian clothes/uniform)
- B. Event information sheet
- C. Camera and film
- D. Money for emergency phone call or souvenirs

4. Escort requirements:

- A. Advance ticket purchases if necessary
- B. Event information sheets for each international student
- C. Ensure necessary briefing information is available
- D. Brief (pre & post) international students about event(s)
- E. Ensure escorts are familiar with event objectives to guarantee all points are adequately covered
- F. Confirm/arrange transportation requirements
- G. Event evaluation sheets are completed by each student

H. Discuss event with point of contact at event location and ensure escort carries point of contact's name and phone number

I. Ensure point of contact at event location is provided with the objectives to be covered prior to arrival of students

5. Introduce student to following objective(s) (under the universal declaration of human rights):

A. **Article 2:** everyone is entitled to all the rights and freedoms set forth in the universal declaration of human rights, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional, or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

B. **Article 3:** everyone has the right to life, liberty, and the security of person.

C. **Article 5:** no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

D. **Article 6:** everyone has the right to recognition everywhere as a person before the law.

E. **Article 7:** all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination.

F. **Article 8:** everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

G. **Article 9:** no one shall be subjected to arbitrary arrest, detention or exile.

H. **Article 10:** everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

I. Article 11:

(1) everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

(2) no one shall be held guilty of any penal offense on account of any act or omission which did not constitute a

penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.

J. **Article 12:** no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

K. **Article 14:**

(1) everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) this right May not be invoked in the case of prosecution genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the united nations.

L. **Article 29:**

(1) everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) in the exercise of his/her rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) these rights and freedoms May in no case be exercised contrary to the purposes and principles of the united nations.

6. IP area(s) of emphasis:

A. Internationally recognized human rights as outlined in the universal declaration of human rights.

B. Democratic ideals of an elected government and effective civil-military relations that reinforce the government.

7. Other learning objective(s) or teaching point(s):

A. "due process" means that before government can deprive a person of life, liberty or property, a fair hearing must occur. Although procedure must be fair, Constitution does not guarantee "fair" results.

- B. Every person has a right to be tried by jury of his peers (most countries do not have jury trials).
- C. Before police can search your person or property, they must have a warrant (exceptions: consent, "hot pursuit").
- D. Cannot be forced to admit you committed crime. Police must tell a person of his/her right to a lawyer when charged with a crime; if a lawyer is asked to be present and a lawyer is not provided before making a confession, any comments made cannot be used to convict any person.
- E. Before police can stop/detain/arrest a person, they must have "reasonable suspicion" or "probable cause" to believe the person committed crime (border searches different).
- F. Accused is presumed innocent until proven guilty and cannot be found guilty unless jury unanimously agrees accused is guilty "beyond a reasonable doubt" (very high standard; much stronger than 51%).
- G. Accused has right to speedy trial; cannot be held in detention indefinitely awaiting trial.
- H. Accused has right to know charges against him/her so that he/she can defend himself/herself and has right to confront (examine) witnesses against him/her.
- I. Burden of proof is on the government to prove defendant committed crime charged against him/her. Our system is adversarial (truth emerges from conflict between government and defense); many other systems are inquisitorial (judge conducts inquiry, brings in his own experts).
- J. Judges can be appointed or elected, depending on state law. Federal judges have lifetime tenure (if good behavior), which protects independence of judiciary.

IP Event Information Sheet

United States Judiciary Processes

The founders of the U.S. Constitution believed that the best form of government was one that promoted the common welfare versus promoting the welfare of one person such as a dictator or one social class. They favored the middle class as the one most likely to promote the common welfare since they felt that the poor and the rich would be more concerned with promoting their own interests. To the founders, the common welfare also meant protecting each individual's "natural rights" to life, liberty and property. The form of government they chose is called "republican" government.

The system of the time that best exemplified republican government was England's because its powers of government were divided and balanced among the king and the two houses of parliament (the houses of lords and commons). One of the framers of the U.S. Constitution, James Madison, defined a republic as a country whose laws are made and administered by representatives of the people. He favored election of these representatives by a large number of

people and not a small class, figuring that such a government would serve society at large and not special interest groups.

Along with their notions of the common good, natural rights, and republican government, the founders wanted a written Constitution that would set out the rights of all citizens and limit the power of government.

A Constitution sets forth the fundamental rules and laws by which a government is organized and operated. Although many nations have Constitutions (both written and unwritten), what distinguishes a "Constitutional" government from a dictatorial one is that the powers of the government are limited by a Constitution which the government must obey. By way of contrast, a dictatorial government is characterized by its unlimited power over the nation and its resources. Because such rules also control the nation's military and police, it becomes difficult for the people to force such tyrannical rulers to obey the law.

The Constitution in a Constitutional government sets out:

- (A) its citizens' basic rights to life, liberty, and property;
- (B) the government's responsibility to protect those rights;
- (C) the limitations on governmental powers;
- (D) those areas of citizens' lives in which the government cannot interfere;
- (E) procedures by which the government can be changed with the consent of its citizens.

To protect against abuses of power by the government, the framers of the Constitution looked to the British model and devised a series of "checks and balances." Powers are given to different branches of government so that no one branch can dominate the others, and each branch's powers are "checked" because they are shared with the others. In a Constitutional government, power is

Legislative branch	responsible for making laws;
Executive branch	responsible for carrying out and enforcing laws; and

This particular informational program (IP) event centers around the judicial branch of the U.S. government. The following comments are not all inclusive, but provide general information which may be useful while participating in this IP event. Please remember to ask questions to clear any uncertainties.

All countries have rules or bodies of law which govern people's relationships with each other. There are also other kinds of rules by which human relationships are ordered such as custom, accepted morality, and religion. The law differs from these types of social rules in that it is applied exclusively by organized government.

Our judicial system appears somewhat complex, with courts at many different levels -- municipal, county, state, and federal. Interrelationships are not always easy to understand. But there are laws which clarify jurisdiction and assign responsibility.

The foundation of our system is that nothing and nobody in this country stands outside or above the law. In the U.S. the penalty for running a red light in a vehicle is the same for a general or admiral as it is for a private or seaman.

Belief in the primacy of law is basic to our way of life. The law is the ultimate arbiter, and the courts (the judges) are its guardians. All actions of other branches of government at all levels must be consistent with the law.

Every United States citizen is subject to the law regardless of his/her social position, official status, wealth, religion, or political creed. This is one of the major goals of American justice.

Thus the courts enforce the same laws upon the powerful and the powerless. In this regard, the law and the courts may be said to be the fundamental guardians of equality in United States public life.

When a person is accused of a crime, he/she is regarded as innocent until proven guilty in a court. This means the burden of proof is on the prosecutor; the accused need not prove his/her innocence.

A person accused of violating the law may insist that he/she be tried by a jury. Juries are composed of ordinary citizens chosen to serve temporarily in court to listen to the evidence in a case and decide whether the accused is guilty or innocent. Jurors are not government officials.

As mentioned earlier, the judiciary is a separate branch of government in the United States. Although it is subject to the same kinds of checks and balances as the executive and legislative branches, it does not fall under the control of either of them. This means that courts often do not do exactly what executive and legislative officials would like them to do. It also means that the administration of justice is somewhat removed from partisanship which dominates the other branches of government.

Courts play an important role in the shaping of public policy. Since the adoption of the Constitution in 1789, state and federal courts have exercised the power to declare an action of the legislative or executive branch unconstitutional and therefore null and void. Thus, American courts are important not only because they administer justice, but also because they help shape public policy.

Courts provide legal interpretation for both criminal law and civil law. Courts also shape policy through trials and appeals.

Many feel that American justice is too slow. It is true that court dockets are very full, but that is one price paid to assure fairness. If cases go through a series of appeals, then years may pass before there is a final judgment. However, the actual length of time varies from jurisdiction to jurisdiction, time of the year, and complexity of cases.

It cannot be denied that the special problem of justice for the poor is as yet unsolved. Lawyers are expensive, and appeals involve additional costs. Much progress has been made. In all courts, state and federal, a poor defendant who cannot afford a lawyer is entitled to have one appointed by the court. The attorneys are paid from public funds. In civil cases, various legal aid groups provide poor people some assistance.

The American judiciary is an integral part of the system by which the rights of the people are protected against undue government interference. The courts are so structured that they retain a considerable degree of independence from other government agencies. Judicial principles strive

to protect the innocent and the economically disadvantaged. American courts are also involved in the shaping of public policy because they have the power to review acts of other governmental agencies and to declare them unconstitutional.

The above information should provide a fundamental basis of how our judicial system works, as well as how the American judicial system relates to the following Articles in the universal declaration of human rights:

Article 2

Everyone is entitled to all the rights and freedoms set forth in the universal declaration of human rights, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional, or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

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no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

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Article 7

all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

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no one shall be subjected to arbitrary arrest, detention or exile.

Article 10

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(1) everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

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Article 12

no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 14

(1) everyone has the right to seek and to enjoy in other countries asylum from persecution.

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(1) everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) these rights and freedoms May in no case be exercised contrary to the purposes and principles of the united nations.

IP Questions and Answers

Civilian and Military Judicial Systems

What is the Main Principle of the System of Justice in the United States?

The guiding principle of the United States system of justice is engraved in the Vermont marble pediment above the portico of the United States supreme court building, "equal justice under law."

The Courts

By What Authority are the United States Federal Courts Established?

Article III of the Constitution provides that there shall be one supreme court and such inferior courts as the Congress May ordain and establish. Additionally, Article I, section 8 provides that Congress has the power "to constitute tribunals inferior to the supreme court".

What is the Highest United States Court and How is it Organized?

As mandated by the Constitution, the supreme court of the United States is the highest court. Since 1869, the court has been composed of the chief justice of the United States and eight associate justices. Congress, which governs its organization by legislation, has varied the number of associate justices from 6 to 10. Congress now requires six justices for a quorum.

What is the Jurisdiction of the Supreme Court?

The Constitution provides that "in all cases affecting ambassadors (to the United States), other public ministers and consuls, and those in which a state shall be party," the supreme court has original jurisdiction. This was modified by the 11th Amendment to preclude citizens from suing a state. Additionally, the Constitution provides that Congress May regulate the appellate jurisdiction of the court. Congress has authorized the supreme court to, *among other things*, review decisions of the lower federal courts and the highest courts of the states.

What is the Process by Which the Supreme Court Reaches a Decision and Who Sets This Process or Procedure?

The internal review process of the court has largely evolved by custom while the procedure to be followed by petitioners to the court are established in rules set forth by the court.

After individually examining each case submitted, the justices hold a private conference to decide which cases to schedule for oral argument, which to decide without argument, and which to dismiss. If at least four justices agree, a case will be taken by the court for a decision, with or without oral argument, and the other requests for review will be dismissed. If oral argument is heard, a total of 1 hour is generally allowed the parties to argue the issues and respond to questions of the justices. Later, in conference, the justices make their decision by simple majority or plurality vote. A tie vote means that the decision of the lower court is allowed to stand. Such a vote could occur when one or three justices do not take part in a decision.

Who Writes the Opinions of the Supreme Court?

When the justices have decided a case, the chief justice, if he voted with the majority, will assign an associate justice to write the opinion of the court. If the chief justice is in the minority, the senior associate justice in the majority will make the assignment. The individual justices may, of course, write their own opinions in any decision.

Why is So Much Importance Placed on a Supreme Court Decision?

Article VI of the Constitution provides that the Constitution and the laws of the United States made "in pursuance thereof" shall be the supreme law of the land. Thus when the supreme court decides a case, particularly on Constitutional grounds, it becomes guidance for all the lower courts and legislators when a similar question arises.

With All the Decisions Appealed From the State and Federal Courts, How Can the Supreme Court Possibly Review and Decide Them All?

Each year, the court receives for review nearly 4,000 decisions from lower state and federal courts. The justices examine each case submitted and agree to hear arguments on less than 200 each term. Another 100 or so lower court decisions are disposed of by decision of the court without oral argument and the rest of the petitions for review are either denied or dismissed.

What Are the United States District Courts and How Are They Organized?

These courts, created by Congress, are the trial courts in the federal judicial system. It is in these courts that most federal cases are first tried and decided. There is at least one district court in each state as well as the district of Columbia, Puerto Rico, Guam, the virgin islands, the northern mariana islands, and the canal zone. Each court has 1 to 27 judges and trials in these courts are generally heard by 1 judge.

What Are the United States Courts of Appeals and How Are They Organized?

They are the intermediate appellate courts, often called circuit courts, in the United States judicial system. There are 12 circuits, each having 4 to 24 judges. Principally, the jurisdiction of these courts is over appeals from the United States district courts and appeals from action of government agencies. Cases are generally presented to the courts sitting with three-judge panels.

What Other Federal Courts Are There?

There are several special courts of the United States, so called because they have jurisdiction over special subject matter. The title of each generally indicates its jurisdiction. The oldest is the United States court of claims, which hears claims against the United States. Other special courts are: the court of international trade, the court of customs and patent appeals, the tax court and the United States court of military appeals, judges are appointed to sit *on these courts*. Additionally, there are several other courts composed of regular United States district and appellate judges *who render this service* in addition to their regular duties.

The Judges

What are the Qualifications Required to be a Justice of the Supreme Court?

There are neither Constitutional nor statutory qualifications for appointees to the supreme court. Determining the qualifications of the individuals selected is left up to the president who nominates, and the members of the Senate, who confirm individuals to the court.

What is the Tenure of a Federal Judge?

Judges of the United States court of military appeals and the United States tax court have terms of 15 years and judges of the district courts in Guam, the virgin islands, and the northern mariana islands have 8-year terms. The judge of the district court in the canal zone had a term that expired in April, 1982. Otherwise, the judges of the courts mentioned in the preceding questions

have "good behavior" tenure as specified in the Constitution. This is generally considered to be life tenure.

Why do Most Federal Judges Have Good Behavior Tenure?

The framers of the Constitution believed that by allowing this tenure and prohibiting the diminution of a judge's compensation while in office, the independence of the federal judiciary could be preserved. If a judicial decision displeased the executive or legislature, or even a majority of the population, the judges could not be punished for it. This judicial independence was considered to be a key part of the system of checks and balances established by the Constitution.

How, and for What Reasons May Judges With Good Behavior Tenure be Removed From Office?

As officers of the United States, such judges May be removed from office by impeachment for treason, bribery, or other high crimes and misdemeanors. One statute specifically states that justices or judges appointed under the authority of the United States who engage in the practice of law are guilty of a high misdemeanor. Otherwise, it is up to Congress to determine if certain judicial misbehavior meets the definition of a high crime and misdemeanor.