



## Training for *Dialogue on America* Leaders

### *Student Rights to Free Speech: How Free?*

#### I. Introduction:

- A. Concept of “*Dialogue on America*” – Not A Lecture or A Law School Class
- B. Informal, Engaging, Challenging

#### II. Program Elements of Operation Protect & Defend

- A. Readings & Teacher Presentations
  1. Day 1: Intro. to Student Speech Rights & Limits (Political Cartoons)
  2. Day 2: *Tinker/Morse* – Student Free Speech (Socratic Seminar)
  3. Day 3: *Layshock/DC v RR* – Student Cyber-bullying (Questions)
- B. *Dialogue on America* – that’s YOU!
- C. *Story of America* Essay Contest, *Modern Masters of America* Art Contest and Law Day Awards Dinner (May)

#### III. Materials (attached)

##### A. Additional Dialogue Materials: Questions, Dress Code, Tucson Shooting,

This package includes some additional materials that you may choose to copy (assuming 30 students) and use during your *Dialogue*:

- Questions will give you a starting place for discussion, if the class does not immediately engage. Some teachers may have asked students to prepare questions for you, but you may need to start the discussion. While the student package includes a Socratic seminar, this is not a law school Socratic discussion. These questions are intended to give you only an opening, not an entire dialogue.
- Mock Dress Code is based largely on the Kennedy High School dress code, but made more restrictive, to encourage greater discussion. You may choose to copy and pass out this dress code, to see if they can identify the First Amendment problems. Note the broad discretion of the principal at the top.
- Tucson Shooting discusses responsibility for the alleged shooter in the recent Tucson shooting, who had exercised his free speech rights – in “uncomfortable” ways – at college and on the Internet.

##### B. Student Pack: Introduction, Cartoons, Case Summaries, Exercises

You previously received the student curriculum. In preparation for your *Dialogue*, the teacher will lead the class through some or all of these materials. We require the teachers, at the very least, to do the first part of this student package, but recommend the entire 2-3 day curriculum. You may want to see how much your students have worked on this package, so you know how much you may need to supplement your discussion.



#### **IV. Outline of Student Free Speech Rights: How Free?**

- A. *Tinker & Morse*: Assuring Student Speech Rights (Vietnam & Bong Hits)**
- B. *Layshock & DC v RR*: Student Speech on the Internet**
- C. Competing Interests – Constitutional Rights & Education of Others**

#### **V. Important Messages**

- A. Importance of Free Speech to Democracy**
- B. Role of Lawyers & Courts in Protecting Constitutional Rights**
- C. Rights AND Responsibilities of Exercising Constitutional Rights**
- D. The Challenge of Balance: Time, Place & Manner on Campus**
- E. Courage to Stand Up For Your Rights: Story of Mary Beth Tinker**

#### **VI. Methods: Teacher Presentation**

- A. Contact Your Teacher and *Dialogue* Partner**
- B. Understanding Your Audience**
  - 1. Knowledge**
  - 2. Gauging Interest**
- C. Engagement by Questions: Using Information Students Don't Have**
- D. Use of Personal Stories – Theirs and Yours**
- E. Sharing Leadership/Dialogue between Attorney and Judge**
- F. Having Fun**



## *Dialogue on America*

### Questions to Get Conversation Started

#### I. DETERMINE AUDIENCE KNOWLEDGE AND INTEREST

- A. How many of you had the chance to read the entire case summaries for all four cases?
1. If very few read the cases, explain the progress from *Tinker* to *Morse*.
  2. If a significant number read the cases, focus questions on those students so they can share the rules on student speech.
  3. If most read the excerpt, continue with the questions.
- B. What's the fundamental rule about protection of student speech?
1. *Tinker*: Students do not shed rights at schoolhouse gate. (armbands)
  2. *Morse*: Schools can prohibit messages advocating illegal drug use.
  3. *Layshock*: Student speech on outside social media gets protection.
  4. *DC v. RR*: Cyber-bullying can be "true threat" subject to civil action.
- C. Do you think the rules about student speech are fair or right?
- D. Is it right to allow principals to do a strip search in any kind of situation?

#### II. INTRODUCE CONSTITUTIONAL RIGHTS

- A. What's the Constitutional right that these cases raise?
- B. Why do we have a right to free speech?
- C. What would happen if we did not enjoy the right to free speech?
- D. Why do courts play an important role in protecting these rights?
- E. Should a court be able to strike down a law that Congress or a legislature passed and the President or governor signed? Why?
- F. What other Constitutional Rights do you think are important? How do such rights protect you?



### **III. EXPLAIN FREE SPEECH RIGHTS AT SCHOOL**

- A. What are the public interests that schools balance when it comes to Free Speech rights of students?**
- B. Is there a difference between political speech and other speech, at school?**

### **IV. EXPLAIN IMPORTANCE OF FOLLOWING THE LAW**

- A. How do the Constitution and judges protect you and your right to free speech?**
- B. Why do your Constitutional rights make it important for everyone, including you and judges to follow the law?**
- C. What would happen if the federal or state government stopped abiding by the Constitution to make sure no one said anything offensive or racist, which might lead to controversy or violence?**
- D. What happens if the courts stopped abiding by the Constitution?**

### **V. PROMOTE EMPATHY AND UNDERSTANDING**

- A. What did you think of Mary Beth Tinker, wearing an armband when she knew that the principal had forbidden wearing such armbands?**
- B. What would you do if you felt strongly about a political issue and wanted to wear a T-Shirt with a political message?**
- C. What would you do if, after wearing that T-shirt, someone called you names or used obscenities toward you?**
- D. Whose free speech rights should be protected?**
- E. When should teachers or the principal intervene?**

### **VI. RELATE CONSTITUTIONAL RIGHTS TO STUDENT LIVES**

- A. Can anyone identify a Constitutional right that you have exercised?**
- B. Are there any constitutional rights that you want to exercise?**



## **Barack Obama High School** *The Pride of Sacramento*

The California Code of Regulations, Title 5, Section 302, requires that students give proper attention to personal cleanliness and neatness of dress while attending school or school-related activities. The Principal shall have complete discretion in determining the propriety of student clothing, including any messages contained therein.

### **Expectations:**

- Clothing must not interfere with the instruction or other activities.
- Student dress must be clean and modest.
- No gang-related clothing and accessories (gang markings or pictures, gang color, etc.)
- Clothing accessories or markings that advertise obscene, vulgar, offensive or discriminatory phases or symbols, and/or controlled or illegal substances are prohibited.

### **Shoes, Shirts, Blouses or Tops:**

- Students must wear shirts, blouses or tops at all times.
- Bare midriffs are not allowed.
- Any top that shows cleavage, bras, or tops or shirts with oversized armholes, tank tops and spaghetti straps are not permitted.
- Clothing shall be designed and worn in such a manner as to expose only legs, arms, neck and head.
- Students must wear shoes at all times. No bare feet, slippers or Flip Flops

### **Pants, Shorts or Skirts:**

- Jogging or gym shorts are not permitted to be worn outside of gym classes.
- Cut-offs, shorts (minimum 3" inseam), or skirts must not be too short or split to the point of being indecent. Walking shorts are acceptable.
- Low sagging pants are not permitted.
- Belts are not to dangle below the waist. Military buckles with initials are prohibited.

### **Hats, Head Coverings and Sunglasses:**

- Only hats with Obama logos are allowed to be worn on campus.
- Other hats, caps, scarves, do-rags and other types of head coverings are prohibited.
- Sunglasses must be removed while in buildings and as requested by staff.
- Unauthorized hats will be confiscated. Parent may pick up within 10 days. Unclaimed hats will be kept at the school until the end of the school year.
- Subsequent violations will result in confiscation of items until the end of the school year.

### **Consequences for Violation of Dress Code:**

- 1<sup>st</sup> Offense: Parent contact. Student sent to make appropriate changes or sent home.
- 2<sup>nd</sup> Offense: Parent conference plus one-hour detention
- Subsequent Offenses: Saturday School, Suspension or a Behavior Hearing



## Responsibility for Free Speech: The Tucson Shooting

On January 8, 2011, a lone shooter shot Congresswoman Gabrielle Giffords and killed several others (including a federal judge) in Tucson, Arizona. The alleged shooter had a history of “nonsensical outbursts” in class at a community college and appearances on YouTube. In other words, he had a history of exercising his free speech, but in ways that, according to one student at his community college, “made a lot of the people really uncomfortable, especially the girls in class.” After the shooting, there was debate as to whether others should be held responsible for the alleged shooter, given his history of speech.

At a press conference, Pima County Sheriff Clarence Dupnik condemned the "atmosphere of hatred and bigotry" that he said has gripped the nation and suggested that the 22-year-old suspect being held in the shooting was mentally ill and therefore more susceptible to overheated messages in the media. During televised remarks, Sheriff Dupnik commented:

*"There's reason to believe that this individual may have a mental issue. And I think people who are unbalanced are especially susceptible to vitriol. . . . People tend to pooh-pooh this business about all the vitriol we hear inflaming the American public by people who make a living off of doing that. That may be free speech, but it's not without consequences."*

*Washington Post*, January 9, 2011.

Last year, Pima Community College suspended the alleged shooter for disruptions at school. Campus police had made five “contacts” with him for disruptions in class and the library. After meeting with campus officials, he withdrew from school, which would not allow him to return to campus unless he had a letter from a mental health professional assuring that he was not a danger to himself or others.

<http://www.cbsnews.com/stories/2011/01/10/national/main7231560.shtml>

1. Sheriff Dupnik seems to suggest that “militant language” used by some politicians and members of the media might have incited the violence in Arizona. Do you agree?
2. Should Congress ban the use of language that creates an “atmosphere of hatred and bigotry” in American politics? Why or why not? What would be the implications on First Amendment if Congress imposed such a ban?
3. Should students be banned from using “militant language” in discussing politics or current events at school? Can you make an argument for or against such a ban?
4. Should Pima Community College have done more or less, to address the “uncomfortable” speech in class?
5. Is there a difference between banning “militant language” in school and banning it from society at large? Should “militant language” be construed as “disruptive,” and thus, subject to regulation by school administrators? If so, how should “militant language” be defined and what are the implications for First Amendment rights?