



CITIZEN ADVOCACY CENTER

Military Tribunals

LESSON PLAN AND ACTIVITIES

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Military Tribunals

Lesson Plan and Activities

Grade Level: 9, 10, 11, 12

Subject(s):

- Social Studies: United States Government, State Government, Local Government; and
- Language Arts: Reading, Writing.

Duration: 1 class session

Description: This lesson discusses the use of military tribunals after the terrorist attacks of September 11, 2001 and analyzes the difference between military tribunals and civilian criminal trials.

Note: This lesson should be taught after teaching the First Amendment, the Fourth Amendment and the Fifth Amendment of the U.S. Constitution, as the main effects of the USA PATRIOT Act and Military Tribunals are on freedom of speech, search and seizure, and other procedural due process rights for defendants.

Goals:

Illinois Learning Standards

A. Social Science: 14A, 14B, 14E, 16A, 16B, 18B; and

B. English/Language Arts: 1B, 1C, 4A, 4B, 5A; 5C.

Objectives:

1. Understand the differences between a military tribunal and civilian criminal trial proceeding; and
2. Balance liberties listed in the Bill of Rights versus a need for military tribunals in wartime.

Materials:

1. “Due Process Guarantees” worksheet
2. “Terrorism Case” handout
3. On the board, write the quotes below as background thoughts for the lesson. At the end of the lesson, discuss what these quotes might mean.

George Bush: “We are an open society, but we are at war. We must not let foreign terrorists use the forums of liberty to destroy freedom itself.”

Ben Franklin: “Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.”

Activities

Activity One: Charting the Differences (see “Due Process Guarantees” Worksheet)

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Pass out a blank chart for the students to fill in the differences between a military tribunal and civilian trial. Have the students take a few minutes to fill in as much as they can recall about what the due process guarantees are for civilian trials (covered in the Fifth Amendment lesson.)

Lecture:

President George W. Bush authorized the use of military tribunals through an executive order (Congress did not vote on it) on November 13, 2001. Military tribunals apply only to non-citizens (they can be legal residents of the U.S., but not citizens). According to President Bush, the purpose of military tribunals is to help swiftly fight the “War on Terrorism” by speeding up the process to convict terrorists.

On the board or overhead, fill in the military tribunals side of the chart and have the students follow along.

Now ask the students the following questions:

1. Why do you think that fewer freedoms are guaranteed in military tribunals?
2. Do you think that it is fair for defendants in military tribunals to have fewer rights than defendants in regular courts?
3. Do you think the tribunals will help fight terrorists better than regular criminal trials? What are the advantages and disadvantages of the tribunals compared to criminal trials?
4. How are foreign defendants put on trial in a tribunal different or similar to other kinds of defendants? Are they more dangerous? Less dangerous? Flight risks?

Activity Two: Terrorism Case (See “Terrorism Case” Handout)

Instructions:

1. For this activity, you will need to divide the class into groups of 6 or 7 students. Half of the groups will be acting as juries, half will be acting as military commissions.
2. The juries must come to a **unanimous** decision and *cannot* hear any non-traditional evidence.
3. The commission groups must have a **2/3** majority to convict and *can* hear illegal evidence.
4. The students will need to consider and discuss the facts and evidence for each side to reach a verdict.
5. Each group should record their verdict on the board under a “Jury” or “Commission” category.

Follow-up questions:

1. What are the pros and cons of requiring a unanimous verdict? A two-thirds verdict? Which do you think should be used in a military tribunal? Why?
2. Why do you think criminal civilian courts ban illegally obtained evidence? Do you think such evidence should be allowed in tribunals? Why or why not?
3. Do you think the outcome your group reached was fair? Does one process seem more fair than the other?

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CIVILIAN CRIMINAL TRIALS	MILITARY TRIBUNALS
DUE PROCESS GUARANTEES	
<ul style="list-style-type: none"> ➤ Defendants can choose either a trial by jury or a bench trial with a judge as the decision-maker. ➤ The jury must all agree unanimously on guilt or acquittal ➤ Illegally seized evidence is excluded from consideration by the jury (Exclusionary Rule) ➤ Defendants can appeal automatically to the appeals court ➤ A defendant must have access to all the evidence against him or her ➤ Defendants have a right to a lawyer ➤ Defendants are innocent until proven guilty ➤ Defendants do not have to testify ➤ Double Jeopardy applies – cannot be charged for the same crime twice (same crime, same victim, same time, same place, same manner, etc.) ➤ Rules of evidence apply 	<ul style="list-style-type: none"> ➤ Applies only to non-citizens who have allegedly performed, aided, abetted, or conspired to commit international terrorism ➤ Military officers judge the case, and military officers are the jury (3-7 appointed members will hear the case) ➤ Unanimous verdicts are not required – only 2/3 of the military commissioners (jury) are needed to convict ➤ The rules of evidence do not apply (ex: hearsay is allowed) ➤ Illegally seized evidence (in violation of the Fourth Amendment) can be admitted as evidence (it would be excluded in a civilian trial) ➤ Defendants that are convicted cannot appeal to a civilian judge, but they can ask for a “review” from a three-member panel selected by the Secretary of Defense. The Secretary of Defense then decides whether to perform the review or not ➤ Evidence can be withheld from defendants and their lawyer whether classified as secret or not ➤ Defendants have a right to a lawyer (unless designated as an “enemy combatant” by the President) ➤ Defendants are innocent until proven guilty ➤ Defendants do not have to testify ➤ Double Jeopardy applies – cannot be charged for the same crime twice (same crime, same victim, same time, same place, same manner, etc.)

CIVILIAN CRIMINAL TRIALS DUE PROCESS GUARANTEES Student Handout	MILITARY TRIBUNALS DUE PROCESS GUARANTEES Student Handout

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TERRORISM CASE HANDOUT

Facts

Ibrahim Mahim was born in Syria and is a citizen of Syria, but has been a legal resident of the U.S. for 20 years, living in Florida for the past 5 years. On February 5, Ibrahim was detained (held) by the Central Intelligence Agency and the Immigration and Naturalization Service. The CIA suspected that Ibrahim was a terrorist and was participating in terrorist activities. Ibrahim had joined a fundamentalist Islamic group while in Syria, and had served in the Syrian military before coming to the United States. He is accused of helping Al Qaeda (an international terrorist organization) plot to blow up several bridges on the Chicago River downtown – a plot that was not carried out.

Evidence for the Prosecution

- Using a search warrant, FBI agents searched Mahim’s home and found a structural diagram of one of the Chicago bridges.
- Police Officer Johnson testified that he saw a man that looked like Mahim looking at a bridge and writing things down in a notebook. When he went to approach Mahim, he ran away. It was nighttime. The notebook was found to contain measurements of the bridge and estimates of traffic on the bridge.
- A witness says she saw Mahim in a nearby gas station talking to a man listed by the FBI as a potential terrorist.
- Mahim’s girlfriend said he had called her a week before his arrest to tell her not to be in Chicago the following weekend because “something big was going to happen.”

Evidence for the Defense

- Ibrahim Mahim testified that he is an engineering student at a local college, and that he had to visit and take various measurements of downtown bridges for a class project. He says he got the bridge diagram from the Internet. Mahim testified that he ran because he knew there were no trespassing signs where he was standing, and he didn’t want to get in trouble for that. He admits that it was wrong to run.
- Mahim says he was in the gas station but that he doesn’t know any terrorists. He says the man he was talking to in the gas station was a family friend, also a student.
- Mahim’s girlfriend admitted that they had broken up and that she has told him in the past that she would “make him pay.”

Non-traditional Evidence – only to be used by the tribunal groups

- By going to a secret court, the FBI tapped Ibrahim’s phone and cell phone, and recorded a conversation between Ibrahim and the man he was talking with in the gas station. This man was a known terrorist. They talked about having a “big celebration soon for all their hard work on this mission.”

Instructions

A defendant is guilty of attempted bombing if the defendant aided (helped/ assisted) in planning the bombing. The prosecution must prove *beyond a reasonable doubt* that the defendant meant to help another person or persons to attempt the bombing. In other words, the defendant must have been aware he was assisting in planning the bombing. Merely associating with someone planning the bombing is not enough by itself to find the defendant guilty.

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