

**LEVEL PLAYING FIELD:
WHY THE AMERICAN LEGAL SYSTEM MATTERS TO YOU**

◆ A Product of the Arkansas Bar Association ◆

◆EDUCATOR’S GUIDE◆

“The United States is unique, we have a Constitution equal to none and that Constitution is what makes us a secure society. It was Jefferson that coined the phrase “We the People.” Nobody had ever heard that expression and Jefferson gave it a special meaning. It is more than just saying “We the People;” it means that we are a people who govern ourselves. If all men were angels we would not have to have a government, but they are not. So we have to have a government that everyone can take pride in and everyone can find security in that the Constitution was written by the greatest minds ever assembled under one roof in Philadelphia in 1787.”

◆ United States Senator Dale Bumpers

Introduction

This guide facilitates use of *Level Playing Field: Why The American Legal System Matters to You* as a teaching tool with classroom students in secondary grades. Activities are formatted to provide structure for the themes represented in the video. Following an overview of the American Legal System, classroom activities are divided into the following sections reflecting the four themes:

- Theme I: The Rule of Law
- Theme II: Equal Justice under the Law
- Theme III: Fair, Impartial and Independent Judges
- Theme IV: The Jury System

Each section explores an indispensable principle of the American Legal System. Each theme provides focus questions or an activity through which students may pursue and discuss the particular theme. Questions guide students to probe the central idea through classroom discussion as well as through an optional culminating activity. All instructional suggestions may be tailored to the grade level and other areas of study. Each stands alone, and the sections can be used in any order.

Included within each section are the Arkansas Department of Education Social Studies Standards relevant to the principle. You can select and guide the activities to accommodate your objectives and time.

The Resource section contains a variety of books, web sites, and other publications that teachers and students can use for research and further study of the themes. These have been selected with the classroom in mind; however, as with any list of resources, it is a good idea to verify the suitability of materials for your students before integrating them into lessons.

◆ THE STORY OF OUR AMERICAN LEGAL SYSTEM ◆

We Americans live in the greatest nation in the history of the world. What makes America great is not our wealth, our military might or our national resources. What makes America great is that we are a nation of laws, that all men and women are considered equal under the law, and disputes are resolved by the application of the law by fair and impartial judges and by juries comprised of ordinary citizens.

The Declaration of Independence

America's Founding Fathers had lived under a powerful centralized British government ruled by King George III. Those who came together to form America's government were intent upon having a more fair system in place, which gave individual citizens a voice in the government. The idea of independence from Great Britain was discussed in plain language in Thomas Payne's *Common Sense*, published in January 1776.

In June 1776, the Second Continental Congress appointed the "Committee of Five," consisting of John Adams, Benjamin Franklin, Thomas Jefferson, Robert R. Livingston, and Roger Sherman, to draft a declaration of freedom. With the leadership of Thomas Jefferson, they drafted the *United States Declaration of Independence*, a statement adopted by the Second Continental Congress on July 4, 1776, announcing that the thirteen American colonies then at war with Great Britain were no longer a part of the British Empire. The *Declaration* is a formal explanation of why the Continental Congress voted to declare independence from Great Britain.

Concerning the individual rights promised under the *Declaration*, Thomas Jefferson wrote:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

The Articles of Confederation

America's first governing constitution, the *Articles of the Confederation*, was adopted by the Second Continental Congress in 1777 and later ratified by all thirteen states in 1781. These *Articles* left almost all of the power in the hands of the States, in order to decentralize the federal government. The *Articles* set the rules for operations of the "United States" Confederation. Among a few other powers, the Confederation could declare war, negotiate diplomatic agreements, resolve issues regarding the western territories, mint coins, and borrow money inside and outside the United States.

The key criticism that developed concerning the *Articles* was that the federal government lacked taxing authority, and it was left to request funds from the states. Another criticism of the *Articles* was that they did not strike the right balance between large and small states in the legislative decision making process. Under the *Articles*, each of the thirteen states had one votes in the Continental Congress, but, in practice, the larger states were expected to contribute more money to the operation of the federal government.

The United States Constitution

Soon after the *Articles of Confederation* was ratified, it became apparent that in order to have a unified nation, a stronger central government would be required. However, the Founding Fathers were determined to balance that need against the belief that as much power as possible should remain in the hands of individual citizens. Thus, in 1787 leaders from each state met for the purpose of revising the *Articles of Confederation*. They quickly realized that they needed to throw out the *Articles* and start over. Ultimately, the *United States Constitution* was born. The *Constitution* established a nation of the people, by the people and for the people, an approach unique in human history.

The Framers of the *Constitution* determined that the best way to balance the need for a stronger federal government against the rights of individual citizens was to divide federal power among the following three branches of government:

- (1) The Executive Branch (Article I),
- (2) The Legislative Branch (Article II), and
- (3) The Judicial Branch (Article III).

Each of the branches serves as a check and balance against the actions of the other two branches of the federal government. Generally, the legislative branch (the United States Senate and House of Representatives) passes laws and controls the federal government's budget. The executive branch (consisting primarily of the President, Vice President, and numerous governmental agencies) directs the enforcement of the laws. The judiciary branch (the United States Supreme Court and other federal courts) interprets and applies the laws to disputed situations. All three branches work together to protect the rights and ideals set forth in the *Constitution*.

The *Bill of Rights* consists of the first ten amendments added to the *Constitution* in 1791. Many of the principles included in the *Bill of Rights* had been the subject of heated debate when the Constitution was originally ratified only a few years earlier. Many of the individual rights treasured by Americans are included in the *Bill of Rights*. Among others, these include the rights to free speech, freedom of religious choice, freedom of assembly, protection from unlawful searches and seizures, protection from cruel and unusual punishment, and the right to a trial by jury.

The Legal System

The foundation of freedom is the American legal system. Democracy could not exist without America's laws and courts to interpret them and administer justice.

The Founding Fathers believed that it was crucial for our U.S. Supreme Court, which is at the center of our country's legal system, and other federal courts, to be independent. Even the Declaration of Independence reflects the importance to our nation of an independent judiciary. In the *Declaration of Independence*, the drafters criticized King George III for making "judges dependent upon his will alone for the tenure of their

offices and the amount and payment of their salaries.” Toward that end, the Framers gave federal judges lifetime appointments, thus, they cannot be removed from office unless they are impeached. In addition, federal judges’ salaries may not be diminished during their tenure. While state court judges in Arkansas are elected rather than appointed, our state laws provide other safeguards to protect their independence.

Because the Constitution protects the independence of the judiciary, judges are able to decide cases on their merits, based upon the law and the facts, not political currents or partisan politics. We certainly do not want judges to use public opinion polls to determine the outcome of the cases that come before them.

Our judiciary also protects the rights of all citizens, not just those whose voices are heard most clearly. Our system is not perfect but it has worked very well throughout the life of our country.

“This country would not have survived without the third branch of government. The judiciary is what protects the people, the rights that have been reserved to them under the Constitution, to make sure that those rights are preserved for the people.”

◆ Chief Justice Jim R. Hannah, Arkansas Supreme Court

Core Principles of the Legal System

The American legal system is based on four powerful principles:

- (1) The Rule of Law;
- (2) Equal Justice Under the Law;
- (3) Fair, Impartial and Independent Judges; and
- (4) The Jury System.

All of these principles are contained within and protected by the United States Constitution and various laws that have been developed since the founding of our nation.

Resources:

- Text copy of the Declaration of Independence:
http://www.archives.gov/exhibits/charters/declaration_transcript.html
- Text copy of the Articles of Confederation:
<http://www.law.ou.edu/ushistory/artconf.shtml>
- Text copy of the United States Constitution:
http://www.archives.gov/exhibits/charters/constitution_transcript.html
- Text of the Bill of Rights:
http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html
- Text of Amendments 11 through 27 to U.S. Constitution:

http://www.archives.gov/exhibits/charters/constitution_amendments_11-27.html

- Dumbauld, Edward, *The Declaration of Independence And What It Means Today*. Norman: University of Oklahoma Press (1950).
- Barbara Feinberg, *The Articles Of Confederation* (2002).
- Andrew C. Mclaughlin, *A Constitutional History of the United States* (1935) (available at <http://www.constitution.org/cmt/mclaughlin/chus.htm>)
- Diagram of the Arkansas Judicial System and the Federal Judicial System, *see* “**Appendix A**”

WHAT'S IN THE VIDEO?

The video focuses on four principles of the American Legal System: the Rule of Law; Equal Justice under the Law; Fair, Impartial and Independent Judiciary; and the Jury System. Commentators from various walks of Arkansas society discuss each principle as a cornerstone of the legal system in America. The commentators include elected officials, judges and attorneys who deal with the judicial system on a regular basis.

WHO'S IN THE VIDEO?

Governor Mike Beebe
Justice Robert L. Brown, Arkansas Supreme Court
Senator Dale Bumpers, United States Senator, Arkansas (1975-1999)
Walt Coleman, Referee, National Football League
Judge Mary Ann Gunn, Arkansas 4th Judicial Circuit Court
Chief Justice Jim R. Hannah, Arkansas Supreme Court
Jack Lofton, Law Student
Emmarie McCain, Law Student
Bobby R. McDaniel, Partner, McDaniel & Wells P.A.
Cynthia E. Nance, Dean and Professor of Law, University of Arkansas School of Law
Nicholas H. Patton, Partner, Patton, Tidwell & Schroeder, L.L.P.
Senator David Pryor, United States Senator, Arkansas (1979-1997)
Richard L. Ramsay, President, Arkansas Bar Association (2007-08)
Nick Rogers, Attorney, Chisenhall, Nestrud, and Julian, P.A.
Judge Lavenski R. Smith, United States Eighth Circuit Court of Appeals
Janiella Shirley, Law Student
Judge Cindy Thyer, Arkansas 2nd Judicial Circuit Court
Judge William R. Wilson, Jr., United States District Court, Eastern District of Arkansas

PRE-VIEWING SUGGESTION

- A. Use a Know/Want to Know/Learn (KWL) strategy to elicit prior knowledge of the American Legal System. In the process, students can focus on each of the four principles or the system as a whole. It is the teacher's choice based on the direction in which he/she plans to pursue instruction.

Either the counselor or student prepares a large chart, divided into three columns. At the top of each column is a letter: K, W, or L. As students work through each column, they share what they know about the American legal and judicial systems and what they want to know. At the end of the video, they complete the last column to reflect on what they learned. This process activates prior knowledge and then alerts them to watch for new information as the video progresses.

The chart can be retained for future use as the themes are pursued, with students continuing to add to the L (Learn) column.

- B. Introduce relevant questions from the sections below to encourage active viewing as the documentary proceeds. This directed thinking activity aids students' comprehension of the documentary.

POST-VIEWING: DISCUSSING THE DOCUMENTARY
(Arkansas Social Studies Curriculum descriptors are listed within each section)

Theme I:
◆THE RULE OF LAW◆

“The Rule of Law sets the pattern of behavior or what it is we expect of each citizen in a country. . . . Because you want to know what your rights are you want to know what is expected of you as a citizen and in the society in which you live. That’s why the rule of law is important.”

◆ Cynthia Nance, Dean, University of Arkansas School of Law.

“Wherever Law ends, Tyranny begins.”

◆ John Locke (1690).

“But where says some is the King of America? I’ll tell you friend, . . . that in America the Law is King.”

◆ Thomas Paine, *Common Sense* (1776).

“The powers of the Legislature are defined and limited; and that those limits may not be mistaken or forgotten, the Constitution is written.”

◆ Opinion of United States Supreme Court, *Marbury v. Madison*

Social Studies Descriptors:

- G.3.CAG.3: Examine the role of government in protecting the rights of the people (e.g. courts.)
- G.4.CAG.1: Categorize the characteristics of limited and unlimited government.
- L.9.CAG.6: Identify the source, purpose, and function of laws.

Essential question:

Why is the rule of law important to you as a citizen of the United States?

Summary:

The rule of law is an important constant in the American legal system because it tells the citizenry what is expected of each of us in our society. It tells us what rights we have, what limits we have and what consequences we can expect if we violate the law.

According to the rule of law, both the government and the governed are subject to the law. No government official, no private citizen, no single group of people can claim privilege above the law. Rather, the rules are set forth in advance, are widely known, and are applied impartially to the rulers and the ruled alike. The rule of law is essential to limited government, for in a limited government everyone, including all people in positions of authority, must obey the laws.

The rule of law however means more than having laws or passing legislation; neither is it merely the use of laws to rule a civil society. The “rule of law” opposes arbitrary and capricious “rule of men.” Thus the rule of law is essential to preserving liberty and preventing individuals from deciding for themselves what the law is and how and when the law is to be enforced. --Excerpted from “*Abraham Lincoln and the Rule of Law*,” Lincoln Legal Papers Curriculum, Illinois Historic Preservation Agency, Springfield, Illinois (2001).

The most famous reference to the rule of law is Chief Justice John Marshall’s statement in *Marbury v. Madison* (1803) that our government is a government of laws and not of men. When we have a difference, we resort to the rule of law rather than the rule of men.

The backbone of the survival of the Rule of Law is consistency. The application of the law must be consistent when the facts of a case are similar. Both federal and state Courts across the country must adhere to the previous decisions of the United States Supreme Court. Arkansas trial courts must also follow the prior decisions of the Arkansas Supreme Court when interpreting and applying Arkansas’s laws. The prior decisions of controlling courts are known as “precedent.”

There are eight essential elements of law.

1. That law be general in its application.
2. That it be public.
3. That it operate going forward.
4. That it have reasonable clarity.
5. That it be internally consistent.
6. That it be practical to comply with.
7. That it be relatively stable.
8. That the word of the law be enforced consistently.

Questions for Classroom Consideration:

In a class discussion and subsequent research, students answer the following questions:

- (1) What is the difference between the Rule of Law and the rule of men?
- (2) Why does the Rule of Law mean more than simply having laws?
- (3) What is the relationship between the rule of law and John Locke’s quote above?
- (4) Identify a country that does not operate under the rule of law as we experience it in America. What system of governance does that country use?
- (5) How are you protected by the Rule of Law?

- (6) Consider how our society would operate if we did not have the Rule of Law.
- (7) Based on the research and discussion above, do you conclude that the Rule of Law is important for us as citizens in the United States? Why?

The research process:

Students work individually, in pairs, or in small teams to research questions posed above. Useful resources appear below, but others may also be located. Students may present their findings in presentations to the class in an oral report, through posters or through other visual or performance means.

Resources:

- For an initial review of other countries' legal systems, see "The Democratic Rollback," by Larry Diamond from *Foreign Affairs*, ([March/April 2008](#)). From this point, you can pursue a particular country for a comparative study.)
- http://en.wikipedia.org/wiki/Legal_systems_of_the_world
- <https://www.cia.gov/library/publications/the-world-factbook/fields/2100.html>
- <http://jurist.law.pitt.edu/world/>
- <http://usinfo.state.gov/products/pubs/principles/law.htm>
- http://www.uiowa.edu/ifdebook/faq/Rule_of_Law.shtml
- Link to U.S. Supreme Court's decision in *Marbury v. Madison* (1803):
http://www.law.cornell.edu/supct/html/histories/USSC_CR_0005_0137_ZO.html
- Peck, Robert S. *We the People: The Constitution in American Life*. New York: Harry N. Abrams Publishing, 1987.

**Theme II:
EQUAL JUSTICE UNDER THE LAW**

It ought to be possible for American students of any color to attend any public institution without having to be backed up by troops. It ought to be possible for American consumers of any color to receive equal service in places of public accommodation, such as hotels and restaurants and theaters and retail stores, without being forced to resort to demonstrations in the street, and it ought to be possible for American citizens of any color to register and to vote in a free election without interference or fear of reprisal. . . . In short, every American ought to have the right to be treated as he would wish to be treated, as one would wish his children to be treated.

◆ President John F. Kennedy, Address to Nation on Civil Rights (June 11, 1963)

“We have, I believe, in this country the best judicial system in the world, but if a person can’t walk through those courtroom doors because of who they are, the color of their skin, their religion or their financial status . . . then having the greatest judicial system in the world means absolutely nothing to them.”

◆ Chief Justice Jim Hannah, Arkansas Supreme Court

“I think what we mean by equal justice is the equal protection of the law, and that means that the law truly is blind when it comes to minority groups. It is not the majority will that controls, it is justice for everyone whether you are a member of a minority or not. The best example in the past 50 years obviously is the two Brown decisions in 1954 and 1955, Brown v. Board of Education, which eliminated all state laws that allowed for or provided for segregation in our public schools. And those laws under the 14th Amendment which provides for equal protection under the laws.”

◆ Justice Robert L. Brown, Arkansas Supreme Court

Social Studies Descriptors:

- USC.6.CAG.5: Analyze the consequences of constitutional amendments on citizenship, voting rights, *due process* of law, and societal changes.
- USC.7.CAG.2: Examine the fundamental rights of individuals as incorporated in the *Bill of Rights*.
- USC.7.CAG.4: Analyze court cases that demonstrate how the United States Constitution protects the rights of individuals (*e.g. Brown v. Board of Education, Miranda v. Arizona, Tinker v. Des Moines, Gideon v. Wainwright*)

Essential Question:

The phrase “Equal Justice Under Law” is engraved above the entry to the United States Supreme Court in Washington D.C. What does this phrase mean, and why is it essential to a successful judicial system?

Summary:

The second principle of the American legal system is the concept of *equal justice under the law*. The Fourteenth Amendment, passed in 1868, to the United States Constitution states, “*Nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.*”

In the last half century, the constitutional command requiring equal protection of the laws for all people has been critical in the great social movements that have secured equal legal rights for minority groups, women, and other groups in the United States. In concept it is one of the noblest statements in the American Constitution, and in practice one of the most powerful. Without the authority of the 14th Amendment, it is unlikely that America would have achieved as much social progress as it has in the past 50 years, and many Americans might still be subjected to an institutionalized prejudice that made them second-class citizens, unable to vote or enjoy all rights.

When Thomas Jefferson wrote in the Declaration of Independence that “all men are created equal,” he and the other Founding Fathers, intended that each citizen in the nation should be given the opportunity to make the most of his abilities. This required that all men stand before the law on an equal footing. Both the rich and the poor and the powerful and the meek would be subject to the same set of laws. This ideal was very important to the Founding Fathers because they had been subject to the unequal and arbitrary form of justice that the British crown had imposed upon the colonies in early America.

Interestingly, no mention of equal opportunity can be found in either the original body of the Constitution or the Bill of Rights. Such wording was not deemed necessary until after the Civil War when it became apparent that some states had no intention of treating the newly freed slaves fairly. Congress responded by passing the 14th Amendment to the Constitution which prohibits states from denying any citizen not only due process of law but also equal protection of the laws. Even though the 14th Amendment makes no reference to race, its interpretation and application by the Courts was shaped for many years due to the reason it was passed in the first place. In his dissenting opinion in *Plessy v. Ferguson*, Justice John Marshall Harlan wrote:

In view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind and neither knows nor tolerates classes among citizens.

Copy of case at http://www.law.cornell.edu/supct/html/historics/USSC_CR_0163_0537_ZS.html

In *Plessy v. Ferguson* (1896), the United States Supreme Court ruled that the 14th Amendment allowed “separate but equal” facilities for the different races. This ruling was challenged in the 1950s when a family wanted their African-American daughter to attend a local school that was open to white students only. See Case Study in Equal Justice—*Brown v. Board of Education* in **Appendix B**.

Brown v. Board of Education is perhaps the most significant case that the United States Supreme Court decided in the 20th Century. In *Brown*, the Court confronted segregation head on and recognized that it had made a mistake in *Plessy v. Ferguson*. The Court ruled that the practice of “separate but equal” violated the constitutional mandate of equal protection under the laws. Chief Justice Earl Warren wrote:

Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other “tangible” factors may be equal, deprive the children of the minority group of equal educational opportunities? We conclude that it does. . . . We conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal.... Such segregation is a denial of the equal protection of the laws.

Other examples of how the law assures equal application of the laws of the land include:

(1) Right to Counsel.

An example of how equal justice is protected by the Constitution can be found in the Sixth Amendment, which states:

In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defense.

In the United States it has been established that, at least in criminal matters involving the loss of liberty, a person cannot be considered to have adequate access to justice unless that person is provided with legal counsel. In a landmark decision in 1963, the U.S. Supreme Court held that the U.S. Constitution requires that counsel also be provided to indigent defendants in state felony proceedings (*Gideon v. Wainwright*, link: http://www.law.cornell.edu/supct/html/historics/USSC_CR_0372_0335_ZS.html).

(2) Women’s Suffrage and Equality.

A woman’s right to equal voting status was secured in 1920 through the ratification of the 19th Amendment to the United States Constitution. Even with the right to vote, many women were denied opportunities in the workplace and in the community simply because of their gender. Many women in the 19th and 20th Centuries fought hard to gain equal treatment under various laws. These efforts culminated in the passage of the Civil Rights Act of 1964. Title VII of the Act prohibited employment discrimination on the basis of race, religion, national origin, and gender. A somewhat recent example of the courts

enforcing equal treatment of women under the laws came in the United States Supreme Court's 1996 decision in which it ruled that female students must be allowed to attend a state sponsored military school due to the protections afforded women under the Equal Protection Clause. See *United States v. Virginia* (Virginia Military Institute), link at: <http://supct.law.cornell.edu/supct/html/94-1941.ZS.html>.

(3) Public Facilities.

Equal protection has also come to mean that all persons must be free to participate in the community's public life, depending on their inclination and financial means, even those aspects that might normally be seen as belonging to private persons. The Civil Rights Act of 1964 made it illegal to discriminate on the basis of race, gender, or ethnicity in "public accommodations," such as restaurants, hotels, and theaters, even though these businesses might be owned privately. Prior to 1964, prevailing law held that the owner of a business had the right to serve whom he chose, and could therefore exclude blacks, women, Catholics, or other groups. The Fourteenth Amendment directs that "no state" can discriminate, and for many years it was thought that private discrimination could not be reached by public law. In the 1960s, both the courts and Congress recognized that to be denied access to such public accommodations may not have violated the letter of the Fourteenth Amendment, but the notion that somehow all people could partake of equal citizenship without convenient access to travel, lodging, dining, and culture certainly went against the spirit of it.

Questions to Consider:

- (1) Analyze why the 14th Amendment is important to the American people having confidence in the judicial system.
- (2) Identify a pioneer in the movement for women to gain equal rights throughout American history. What actions did this person take to further the movement? How did the laws of the land operate or change to assist or hinder this person's efforts?
- (3) Explain how the meanings of Thomas Jefferson's statement "All Men are Created Equal" and the 14th Amendment's guarantee of "equal protection of the laws" differed at the times they were written.

The research process:

Students work individually, in pairs, or in small teams to determine which amendment (or amendments) to the U.S. Constitution has the most impact on their lives now. They must justify their choice(s) with examples drawn from resources or from their own lives. Useful resources appear below, but others may also be located. Students may present their findings in presentations to the class in a format of their choosing or submit a written analysis to the teacher.

Resources:

- Kenneth L. Karst, *Belonging to America: Equal Citizenship and the Constitution* (1989)
- <http://usinfo.state.gov/products/pubs/rightsof/equal.html>
- For a more thorough discussion of the concept of Due Process of Law, and several examples ranging from when the police may search your car to whether the school can search lockers, see:
www.abanet.org/publiced/lawday/schools/lessons/dueprocess_questions.html
- For a classroom activity geared toward students debating the principles of equal protection based upon race, gender, sexual orientation, and military service, see:
<http://oncampus.richmond.edu/academics/education/projects/webquests/supremecourt/>

**Theme III:
FAIR, IMPARTIAL AND INDEPENDENT JUDICIARY**

“All the rights secured to the citizens under the Constitution are worth nothing, a mere bubble, except guaranteed to them by an independent and virtuous judiciary.”

◆ President Andrew Jackson

“A judiciary independent of a king or executive alone, is a good thing; but independence of the will of the nation is a solecism, at least in a republican government.”

◆ President Thomas Jefferson

“Our founding fathers ... did not want our judges to be subjected to the whims of a president or the whims of a parliament at that time, so the Constitution guarantees federal judges life time appointments so their salaries cannot be changed, so that if a president is unhappy with an appointment that president cannot boot the person out of office or reduce his salary to a level he would no longer be willing to serve, that is one of the benchmarks of our Constitution..”

◆ Judge Cindy Thyer, Arkansas 2nd Judicial Circuit Court

Social Studies Descriptors:

SG.8.CAG.3: Discuss the judicial branch of government at the federal and state levels: purpose, organization, authority, function.

Essential Question:

What qualities are most important for judges to possess, and what benefit is derived from judges not being subject to losing their jobs if they make an unpopular decision?

Summary:

Overview of Federal and State Court Systems

Essentially, the federal judiciary is made up of three levels. The federal District Courts are trial courts in which a judge and/or a jury hear and decide lawsuits. The federal judiciary is also made up of specialized courts, such as the Bankruptcy Court and the Tax Court. The Courts of Appeal decide appeals from the rulings handed down in the District Courts and the specialized courts. These appeals are generally heard and decided by a panel of three judges. Finally, the United States Supreme Court may hear appeals from the various Courts of Appeals. The Supreme Court may also consider appeals from the highest courts of the 50 states. In recent years the Supreme Court has been asked to consider about 10,000 cases per year, but it only granted a Writ of Certiorari (an Order of the U.S. Supreme Court agreeing to consider a particular case) and hears oral arguments

in about 100 cases per term. A decision of the United States Supreme Court is the final law of the land.

Federal judges are appointed by the President subject to the approval of a majority of the United States Senate. Article III, Section 1 of the U.S. Constitution provides, “the judges, both of the supreme and inferior courts, shall hold office during good behavior.” Section 1 also states, “The judges shall . . . receive for their services, a compensation, which shall not be diminished during their continuance in office.” These provisions ensure lifetime appointments for federal judges, making it difficult to remove them except through cumbersome impeachment proceedings. They also prevent Congress from lowering their salaries during their terms of office. A diagram of the Federal Court System is included in **Appendix A**.

Arkansas’ court system is generally made up of three levels. District Courts are found in many cities in Arkansas, and these courts primarily resolve local matters, traffic violations and disputes valued at less than \$5,000. Circuit Courts are located in each of the 75 counties throughout the State. These courts have general jurisdiction to hear matters ranging from civil disputes over business contracts, to adoptions, to criminal murder trials. Based upon the topic of the lawsuit, the decisions of the Circuit Court may be appealed to the Arkansas Court of Appeals or the Supreme Court of Arkansas. In rare instances the decisions of the Arkansas Court of Appeals may also be reviewed by the Supreme Court of Arkansas. Arkansas’s state court judges and appellate court justices are elected by a vote of the people. Judges are elected to six year terms in non-partisan elections. State court judges are not subject to removal from office by the Governor, the General Assembly, or any other elected official. A diagram of the Arkansas Court System is included in **Appendix A**.

Judicial Independence

Judicial independence in a democracy means acting impartially, making just decisions, and being perceived to act without the undue influence of outside forces. An independent judiciary upholds three critical values for a democratic society:

- (1) **The Rule of Law:** ensuring that every individual, of whatever social standing, is subject to the same protections and restrictions under the law and that powerful people do not manipulate legal proceedings.
- (2) **Constitutional Integrity:** preserving the ability of the Constitution to protect freedoms and order in our society by ensuring that one societal institution has the power to overturn laws that violate the Constitution; and
- (3) **Enforcement of the Laws:** guaranteeing that legitimate laws will actually be enforced not simply stated as theory.

The principle of judicial independence, reflected in the federal and state constitutions and in American legal and political history, allows judges to make decisions based on the law and the facts of each case, rather than on popular opinion or political considerations. The

laws are interpreted by fair, impartial and independent judges. We may not always agree with a court's decisions, but we respect them and abide by them.

The government of our nation was designed as a constitutional democracy based on a system of checks and balances. A judge is called on to interpret the law to keep the courts working and decide cases, to explain legal proceedings and make procedural rulings, to mediate among parties to settle disputes and to make fair and impartial decisions after listening to the facts and applying the law as necessary. Judges must set aside the personal characteristics of the litigants in their courtroom. Judges cannot place any importance on a litigant's race, gender, appearance or financial status.

A fundamental part of the checks and balances system is the existence of an independent judiciary. Judges have to be able to act without concern for the day-to-day whims of politics. Judges help make the American constitutional design of government work for everyone by protecting every citizen's individual liberties and to prevent a tyranny of the majority.

When state legislatures created poll taxes and literacy tests to screen African Americans out of the voting booth, it was judges who recognized the right of minorities to participate in democracy. Such decisions were not popular throughout local communities at the time, but the judges making the decisions had the protections afforded an independent judiciary to avoid the outcries from the majority. Our society has been able to progress due to the fact that our judiciary acts on the basis of what is right under the law and not what is popular at the moment.

Our system of government is carefully designed to foster fair and impartial courts while maintaining judicial accountability through a series of checks on judicial power. Generally, the legislative branch of the federal and state government has the ability to review and approve the annual budget for the judiciary. This serves as a check on the judiciary to ensure that the government's resources are being spent wisely. Here are some other examples of established procedures that keep courts accountable.

- (1) If a party believes a judge made a wrong decision or error, the party may appeal to a higher court to review the judge's ruling.
- (2) If the legislature disagrees with the way a court has applied or interpreted a law, it may pass legislation to amend the law and prospectively change the impact of the court decision.
- (3) When citizens disagree with a court's interpretation of a constitutional provision, they have the power to amend the Constitution to undo the court's interpretation.
- (4) Because Arkansas state judges are elected, it is possible that when a judge's elected term is completed the voters may decide not to reelect the judge for an additional term.
- (5) In Arkansas, when a judge engages in unethical conduct, habitual intemperance, or persistent failure to perform duties, the Arkansas Supreme Court can discipline the judge and even remove the judge from office.

Questions to Consider:

In a class discussion and subsequent research, students answer the following questions:

- (1) How would confidence in the American judicial system be impacted if the President or the Governor could remove a judge if he or she chose?
- (2) What qualities are most important for judges to possess, and why is it important that judges not be subject to losing their job if they make an unpopular decision?
- (3) Federal judges are appointed by the President for a life term. Arkansas state judges are elected by the voters for a six or eight year term. Which do you believe is the better method of selecting judges? What are the advantages and disadvantages of each system?
- (4) Students may take part in a comparative study of the level of judicial independence in other nations around the world.
(China) http://www.cecc.gov/pages/annualRpt/annualRpt05/2005_5c_judicial.php
(Arab Nations) <http://www.pogar.org/publications/judiciary/sherif/jud-independence.pdf>
<http://www.uscourts.gov/outreach/resources/judicialindependence/worldview.html>

The research process:

What exactly is judicial independence? One way to understand it is to ask participants when and by what it is jeopardized. The handout entitled “What is Judicial Independence” (included in **Appendix C**) sets forth situations that may threaten judicial independence. You may want to divide the class into several small groups and distribute the handout. Ask each group to consider whether each practice violates judicial independence. Give them five to ten minutes to discuss the items and decide, by majority vote, whether or not each of these violates principles of judicial independence. Then ask one group to report on its findings as to one situation, and explain their reasoning, and see if the rest of the class agrees. Repeat the process with each situation.

Resources:

- http://findarticles.com/p/articles/mi_m0MLB/is_2_57/ai_n24262257/pg_1?tag=artBody:coll
- <http://usinfo.state.gov/products/pubs/principles/judiciary.htm>
- <http://www.supremecourtus.gov/about/about.html>
- http://www.ajs.org/cji/pdfs/Keith_854.pdf
- Pryor, William H., Jr., Honorable. *Judicial Independence and the Lesson of History*. Alabama Lawyer (September 2007). Judge Pryor takes a close look at three instances in American history when judicial independence was under challenge, and discusses the importance of judicial independence today.
http://www.alabar.org/publications/articles/Sept07/judicial_independence.pdf
- Keith, Linda Camp. "Judicial Independence and Human Rights Protection Around the World." *Judicature* 85: 195 (January 2002). This article examines the progress

countries have made in adopting international standards of constitutional (or formal) judicial independence from 1976-1996. The authors also investigate the relationship -- if any -- between the constitutional provisions for judicial independence and the countries' levels of human rights protection.

http://www.ajs.org/cji/pdfs/Keith_854.pdf

**Theme IV:
THE JURY SYSTEM**

“I consider trial by jury as the only anchor yet imagined by man by which a government can be held to the principles of its constitutions.”

◆ President Thomas Jefferson

“The purpose of a jury is to guard against the exercise of arbitrary power—to make available the common sense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps over conditioned or biased response of a judge.”

◆ Justice Byron White, United States Supreme Court

“Jury service is a privilege. We consider patriotism to be extremely important now, and it is. But if you are not fighting in the military, one of the best forms of demonstrating your patriotism is by saying, I’ll serve as a juror, I’ll be fair & impartial, I’ll support this form of government and I’ll see to it that justice is done.”

◆ Bobby McDaniel, Attorney at Law

Social Studies Descriptors:

- USC.7.CAG.2: Examine the fundamental rights of individuals as incorporated in the *Bill of Rights*.
- G.3.CAG.3: Examine the role of government in protecting the rights of the people (e.g. courts).
- L.9.CAG.9: Explain the phases of a criminal case: hearing, indictment, arraignment, trial, penalty.

Essential Question:

Why is the right to a trial by jury an essential element of the American form of democracy?

Summary:

The right to a trial by jury is one of the principles that the colonies fought for in the Revolutionary War. The Declaration of Independence pointed out that King George III had deprived Americans in many cases of the benefits of trial by jury, and therefore, the founding fathers embedded trial by jury in several amendments in the Bill of Rights. According to the Sixth and Seventh Amendments to the U.S. Constitution, American citizens have a right to a trial by jury in all federal criminal matters and in most federal civil disputes. A similar right to a jury trial is guaranteed by most State Constitutions, including Arkansas’s.

In the jury system, disputes are resolved by the collective wisdom of people from all walks of life in the community. A jury of one's peers is a cornerstone of American democracy and along with voting is one of the main ways people take part in the public life of this nation. By entrusting jurors from the community to decide legal cases, we reinforce our belief that everyday people can make the right decision and that we are an open and democratic government. By giving ordinary people a central role in the justice systems, we also put a human face on the law. The laws might be made by Congress or the State Legislature, but each jury applies it locally. Instead of the law being interpreted and enforced by bureaucrats we have law administered by the people.

Study after study shows that juries reach the right conclusion almost all the time. Jury service helps us all become better citizens. Not only does the institution of the jury help improve the law, it helps improve the jurors too by educating them about the law and the legal process and providing a concrete example of how they can be a better citizen.

A series of Supreme Court cases has held that the requirement of an impartial jury means that jurors must be chosen from a representative cross section of the community, with no persons excluded on the basis of race, sex, or other impermissible factors. In *Taylor v. Louisiana*, 419 U.S. 522 (1975) the Court wrote "The purpose of a jury is to guard against the exercise of arbitrary power to make available the common sense judgment of the community as a hedge against the overzealous or mistaken prosecutor." In years past, minorities and women were excluded from jury service altogether. Presently, a potential pool of jurors in Arkansas is chosen through a random selection process of the voter registration records. This pool of potential jurors undergoes a pre-selection *voir dire* process in which the lawyers for both sides and/or the judge question potential jurors to determine whether they might be biased or unfair. Both defense and prosecution can dismiss jurors for cause, if for some reason the juror might be prejudiced.

There are two forms of juries with two distinct purposes: the grand jury assesses evidence in criminal cases and issues a decision as to whether the prosecution may indict an individual; the petit jury decides guilt in criminal cases, or liability and monetary damages in civil cases. The grand jury is used in the federal court system, but it is only used in 14 states across the country to issue indictments for all criminal prosecutions. Grand juries listen to evidence only for criminal cases. They are composed of between 6 and 23 jurors, hence the name grand, and serve for a period of time (often several months), potentially hearing many cases. The grand jurors do not have to agree unanimously for the prosecutor to issue an indictment, in many places a 2/3 or 3/4 majority is required. Petit juries, or trial juries, are smaller-usually 12 people--though the number of jurors varies by state. In criminal cases, trial juries must reach guilty verdicts unanimously, but in more than a third of the states, only an extraordinary majority is needed to render a verdict in civil and minor criminal cases. If the jurors cannot agree on a verdict, a "hung jury" occurs, and a new trial is held, or the case may be dismissed.

Questions to Consider:

- (1) Why is the right to a trial by jury an essential element of the American form of democracy?
- (2) Interview your parents or some other adult about jury service. Have they served? Were they dismissed? If not, for how long did they have to serve? What surprised them about the case or procedures? What did they learn? Did they feel they were fulfilling an important civic duty by serving?
- (3) In a criminal trial the jury verdict must be unanimous. In a civil trial, a unanimous verdict is not always required. Do you think requiring unanimity is a good idea? Why difference exists between criminal and civil proceedings that one would require a unanimous verdict?

The research process:

The United States is one of few countries that relies heavily on juries. It has been estimated that the United States accounts for 95% of all jury trials in the world. Even England no longer uses juries as heavily as we do. What arguments could be made for why juries fill an important role in a democracy? What arguments support severely limiting their role?

Resources:

- Newsweek. *The Jury System* (1999).
- Aaseng, Nathan. *You are the Juror*. Minneapolis, Minn.: The Oliver Press, 1997. Book for young adult readers puts them in the role of jurors in eight famous trials.
- Council for Court Excellence. *Guilty or Not Guilty: You Decide: A Participatory Jury Experience for Students*. Washington, D.C., 1999. Through a short dramatization of an actual murder trial, this interactive educational video places secondary school level and above students on a jury receiving instructions from an actual judge on issues they must consider when deciding the case. A companion Teacher's Guide contains background information on the jury system, discussion questions, suggested exercises and readings, and follow-up issues relating to the student's jury experience. Order online at: <http://www.courtexcellence.org>
- Remarks by Sandra Day O'Connor, Associate Justice, Supreme Court of the United States before the Arab Judicial Forum, Manama, Bahrain, September 15, 2003, concerning the importance of judicial independence: <http://usinfo.state.gov/journals/itdhr/0304/ijde/oconnor.htm>

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**Level Playing Field:
 Why the American Legal System Matters to You**

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