

Benchmarks Activity 2

Benchmarks Activity 2

Is It Unconstitutional?

The Case of the Scarlet Tag

Topics addressed:

- The Bill of Rights
- Constitutionality and judicial review

Time needed: 30 to 40 minutes minimum

Overview: Participants will review the rights guaranteed in the Bill of Rights and examine some factors to determine if a hypothetical law violates the U.S. Constitution.

Format: This is a fast-paced, multi-dimensional activity that relies on audience participation and small group work. This is more than giving a speech. You are the ringmaster in the audience actively engaging participants.

Preparation: Ask even coordinator to make sure participants have paper and pens for writing. Ideally, each table will have an odd number of persons seated to avoid a tie vote; however, this is not essential. Before presentation, review Scarlet Tag Background Paper to be able to respond to questions posed throughout this exercise. Review Bill of Rights PowerPoint.

Group Size: Ideal for groups of 50 or fewer. However various group sizes can be accommodated.

Handouts:

- ✓ N.J.S.A. 39:4-50.24*
- ✓ Hypothetical scenario
- ✓ Evaluating the law handout

Presentation materials: Bill of Rights PowerPoint. Print out a copy of the PowerPoint (six slides per page) to reference during presentation.

Optional Handouts:

Pocket Constitutions (available for purchase) National Center for Constitutional Studies, 208-645-2625, www.nccs.net/other.html (50 cents per copy)

Equipment: Computer and LCD projector. Contact your event coordinator. Bring Web-based materials on a flash drive or have access to the Internet on-site. Materials available on the NJSBA website, www.njsba.com.

Timing: Five minutes to open including having participants write down rights; five to seven minutes to review Bill of Rights with PowerPoint; five to seven minutes to have participants read hypothetical scenario and statute; 10 minutes for participants to answer

**30 to 40
minutes
needed**



This activity works best for groups of **50 or fewer**

Handouts:
Scarlet Tag scenario
39:4-50.24

Evaluating the law handout

Ask if you need to bring your **laptop and projector**



Pace yourself!



questions about scenario; five to seven minutes to discuss whether hypothetical law is constitutional; five to seven minutes to debrief.

Opening

Write down the rights: Ask participants to work either in small groups or individually and write down as many rights as they can remember from the Bill of Rights. Remind audience that the Bill of Rights includes the first 10 amendments to the U.S. Constitution.

Show Bill of Rights PowerPoint: Using the PowerPoint, engage in a question and answer discussion to review the Bill of Rights. (The PowerPoint contains a question slide and then a corresponding answer slide. Review in advance.) Distribute Pocket Constitutions, if available, after the PowerPoint.

Judicial Review: Let participants know that the U.S. Constitution is the supreme law of the land. Ask participants who the Constitution protects them from. (Answer: the government.) It is the responsibility of the judicial branch to determine if a government action (law, policy or ordinance, etc.) violates the Constitution. This is known as judicial review. For judicial review to take place, a person or entity brings a problem/case to the courts. How are judges different from other elected officials, such as lawmakers? (Note to presenter: Judges make decisions base on the law and should not make decisions based on public opinion or political motivations.) Next, using a hypothetical situation, participants will review a state law to determine if they think the law involved violates the Constitution.

The Scarlet Tag

Hand out Scarlet Tag scenario. Have audience read the scenario then ask what happened. Have people call out the facts. Did the driver do something wrong? Mold and shape the discussion. Make sure all the facts are discussed: What time of night did this happen? Why was the driver stopped? Why did he have this tag? What happened to the driver? Review the hypothetical state law that led to the driver's stop.

Hand out copies of Scarlet Tag hypothetical state law (Title 39:4-50.24): The hypothetical law would require drivers convicted of a DUI offense to have a scarlet license plate. Also distribute the handout on evaluating the law. Allow time for participants to read and highlight important elements of the hypothetical state law. Ask the following questions while walking around the room. Have participants share their thoughts with the full group.

1. What is the problem this piece of legislation is trying to solve? Can you think of a scenario in which a citizen would approach a lawmaker?
2. Summarize the fictitious law.
3. What is the purpose of the law?
4. Is the law fair? Why or why not?
5. Is the law practical and reasonable?
6. Is the law necessary or are there better ways to accomplish the same purpose?
7. What are the strengths and weaknesses of the law?

Ask each person individually to think about the following question. After deciding individually, put individuals into small groups and ask each small group to come to a consensus on the decision using the following question.

Allow 5 minutes to open



Ask audience to **list rights** from Bill of Rights

Allow 5 minutes to review Bill of Rights **PowerPoint**

Explain what judicial review is

Hand out Scarlet Tag Scenario

Allow 10 minutes for Q&A



Allow 5 to 10 minutes to review Scarlet Tag law using handout for evaluating the law

8. Do you think the hypothetical law is unconstitutional? Why or why not? Cite specific provisions within the law that you think are unconstitutional. What specific sections of the Constitution or Bill of Rights does it violate? Seek decisions from throughout the groups.

Debriefing

Let the audience know that similar legislation was proposed in other states and Ohio now has similar legislation, although that legislation does not include the probable cause section. (Note: Please see “Drivers Seeing Red” in background paper.) In 1986, the 2nd District Court of Appeals ruled it was not cruel or unusual and did not infringe on the First Amendment to require a DUI offender to place a bumper sticker on his vehicle that read: “CONVICTED DUI—RESTRICTED LICENSE.”

This exercise was developed by Annette Boyd Pitts, executive director of the Florida Law Related Education Association, Inc. Permission is granted to Bar members to use for educational presentations.



Debrief:
Tell audience other states have similar laws

Allow 5 to 7 minutes for debriefing and closing



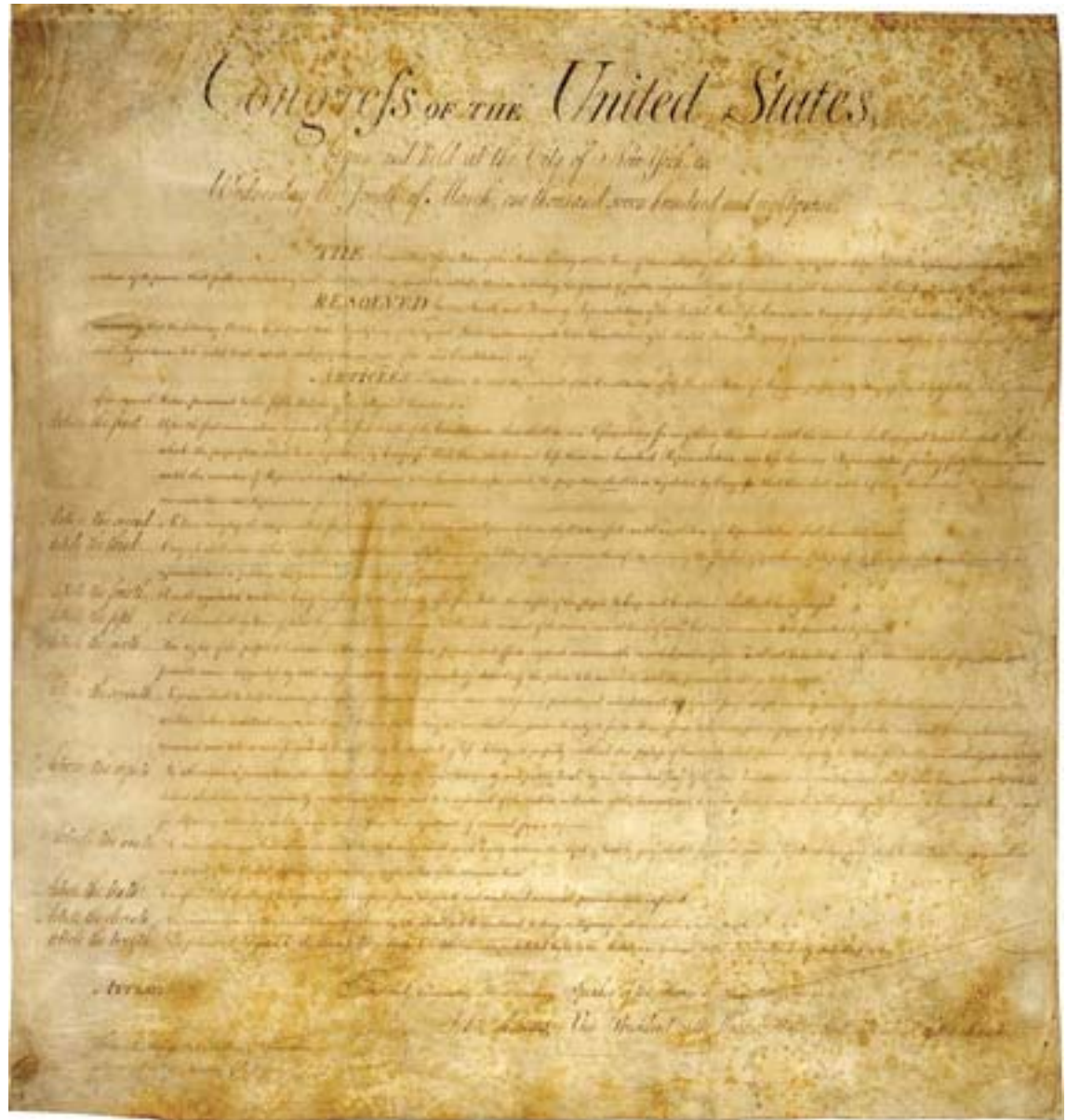
The Bill of Rights

A Refresher

*New Jersey Benchmarks Civics Project. Used with permission
of the Florida Law Related Education Association, Inc.*

How many
amendments are in the
Bill of Rights?

10



What are the five rights
listed in the First
Amendment?

The first amendment—5 rights mentioned

- Freedom of Speech
 - Freedom of Religion
 - Freedom of the Press
 - Freedom of Assembly
 - Right to petition the government
- Note: Only 2 % of Americans could name all five rights in the First Amendment.



What right is listed in the
Second Amendment?

**The right of
the people
to keep
and bear
arms.**



2nd Amendment—Right to bear arms

- “A well-regulated militia, being necessary to the security of a free state, the right of the people to bear arms shall not be infringed.”
- Does this mean all people have the right to own a gun or just the militia/military/ national guard??



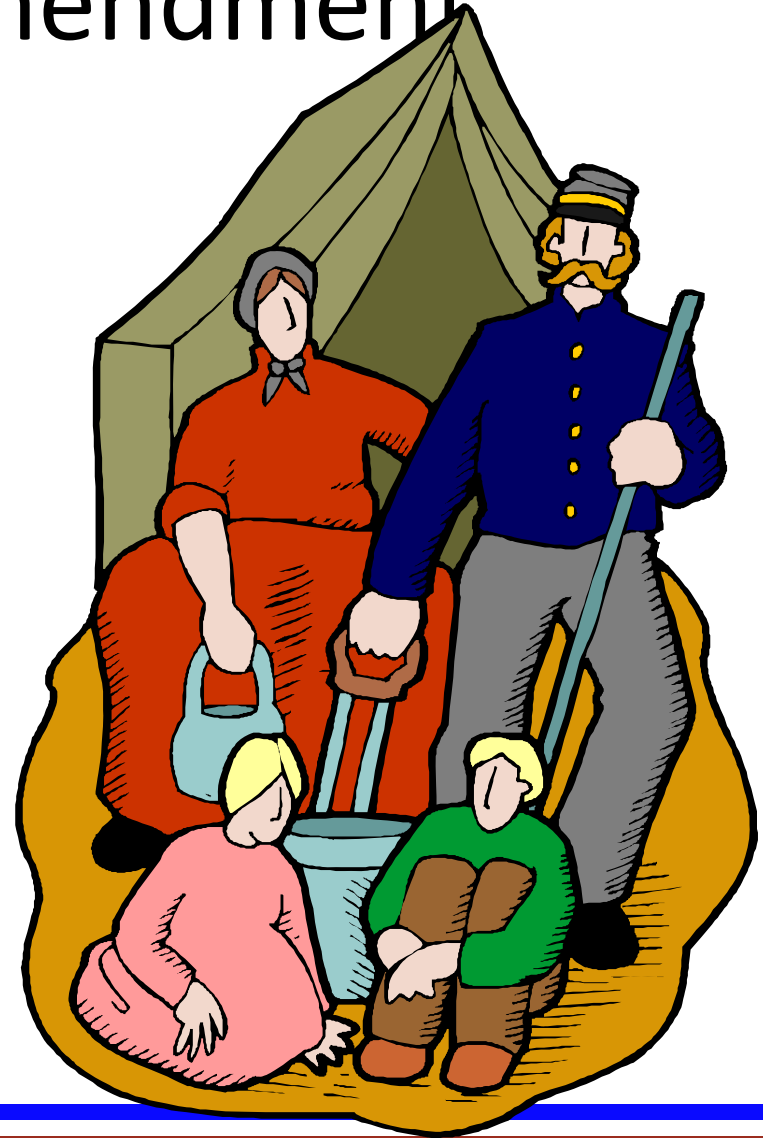
According to the Third Amendment, who is not allowed to be quartered in your house without your consent?

Soldier(s)



Third Amendment

- The Government cannot force you to shelter soldiers in your home without your consent in time of war or peace.



Rights of the Accused Amendments #4-8

Important to preserve freedom



According to the Fourth
Amendment, in most
circumstances, a search and
seizure is not permitted
without ...

Warrant / Probable Cause

11/26/2006 01:00 NJ 194 P02

POLICE DEPARTMENT
CITY OF PHOENIX, ARIZONA
SEARCH WARRANT
COUNTY OF MARICOPA, STATE OF ARIZONA

DR: 2006-62243993
WARRANT NO
SW 2006-029692

TO ANY PEACE OFFICER IN THE STATE OF ARIZONA:

Proof of affidavit having been made this day to me by Officer Kurt Sipmann #7535.

I am satisfied that there is probable cause to believe that

[x] on person(s) of Suspect #1 Webster, Alan Neil B/M, DOB 11/28/1950, black hair, brown eyes, 6'0", 185 lbs., Suspect #2 Webster, Nita M W/F, DOB 10/08/1965, brown hair, brown eyes, 5'05", 120 lbs. and Suspect #3 Campbell, Joseph L. B/M, DOB 04/13/59, black hair, brown eyes, 6'02", 300 lbs.

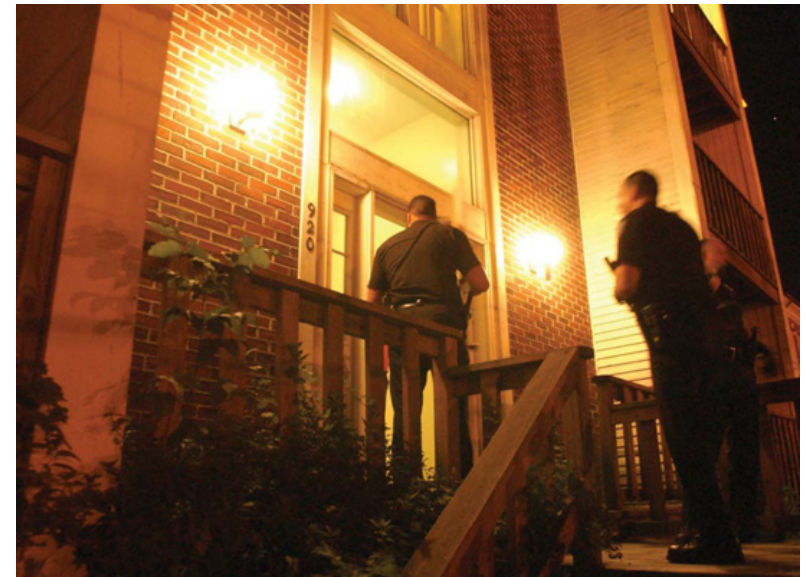
[x] on the premises described as 2501 E. Van Buren Street, The Flamingo Inn, #219. This being a multi unit motel complex constructed of stucco painted yellow with red trim. Apartment #219 is located in the south east corner of the building. The motel door faces west and is red in color with the number "219" on the door.

In the City of Phoenix, County of Maricopa, State of Arizona, there is now being possessed or concealed certain property, persons or things described as:

Drug Paraphernalia:
A usable amount of crack cocaine, a narcotic drug.

Firearms:

Indicia of occupancy, residency, and/or ownership of the premises described above, including, but not limited to utility, telephone bills, and canceled mail.



What four principles are
part of the Fifth
Amendment?

Self-Incrimination

Double Jeopardy

Due Process

Eminent Domain



Fifth Amendment

- You cannot be tried for the same crime twice—called “Double Jeopardy”
- You do not have to testify against your self. “I plead the fifth” (self incrimination)
- You must have *due process* of law before you are convicted
- The government cannot take your land unless it pays.

What rights relating to a trial are afforded to the people in the Sixth Amendment?

Speedy and public trial

Impartial jury

**Informed of nature and
cause of accusation**

**Confronted with
witnesses**

**Obtain witnesses in
favor**

Assistance of counsel



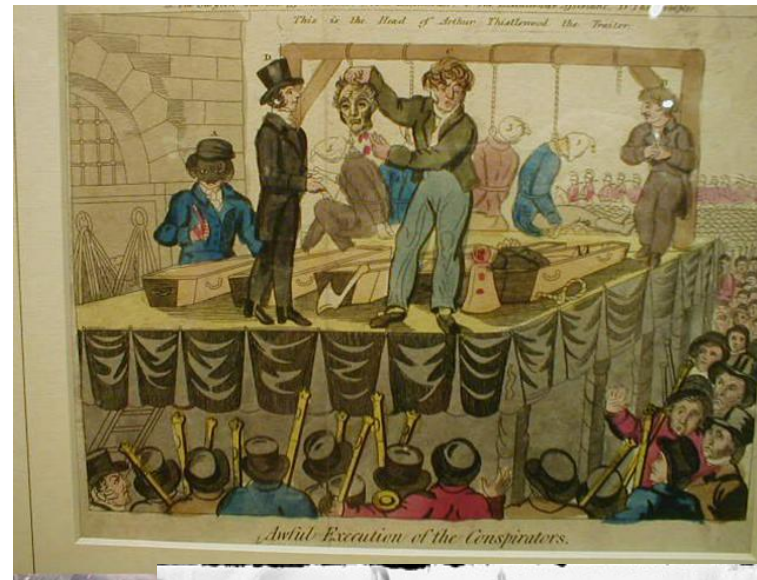
The Seventh Amendment guarantees the right to a trial by jury in most of these kinds of cases.

Civil



What type of punishment is not allowed according to the Eighth Amendment?

**Punishment
that is cruel
and
unusual**



Name that amendment

- *It states that there are certain rights listed in the Constitution, but that does not mean that there aren't other rights that the people have that are not listed.*

Ninth

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article 1

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

It is here agreed that a Representative shall not have returned to the Office of Jurors for four Years, and then seven Years a Citizen of the United States, and shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and electors shall be appointed among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and including Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after they first meet, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty thousand, and each State shall have at least one Representative; and until such Enumeration shall be made, the State of New Hampshire shall be entitled to three, Maryland to three, Virginia to three, New York to four, Pennsylvania to five, Delaware to one, North Carolina to five, South Carolina to three, and Georgia to three.

When vacancies happen in the Representation from any Cause, the Electors in each State shall fill such Vacancies.

All Cases of Impeachment shall have their original Jurisdiction in the House of Representatives.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six Years, and each Senator shall have one Vote.

Immediately after they shall be assembled in Congress, the first Election, it ought to be decided as equally as may be into three equal Parts, the first Part of the first Election shall be considered as the Electors of the second Year, the second Part of the first Election as the Electors of the third Year, and the third Part as the Electors of the fourth Year, so that one third may be chosen every second Year, and if Vacancies happen by Resignation, Death, or other Causes during the Course of any Session of Congress, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, in which they shall fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be the President of the Senate, but he shall not vote, unless he be equally elected.

The Senate shall choose their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the Oath of the United States shall have been taken, and no Oath or Affirmation shall be administered, the Oath or Affirmation shall be administered by the Clerk of the Senate, or by the Clerk of the Court.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Trust or Profit under the United States; but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Execution according to Law.

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Place of choosing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be in the first Monday of December, unless they shall by Law appoint a different Day.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business, and a Majority of each shall also be necessary to pass any Bill or Resolution, and to adjourn from day to day, and to suspend the Attendance of absent Members, in such Manner, and on such Conditions as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and with the Concurrence of two thirds expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Journal of the Proceedings of each House shall be published, except on the Oath of the President.

Neither House during their Session shall adjourn for more than three Days, nor in any other Place than that in which the last Session shall be sitting.

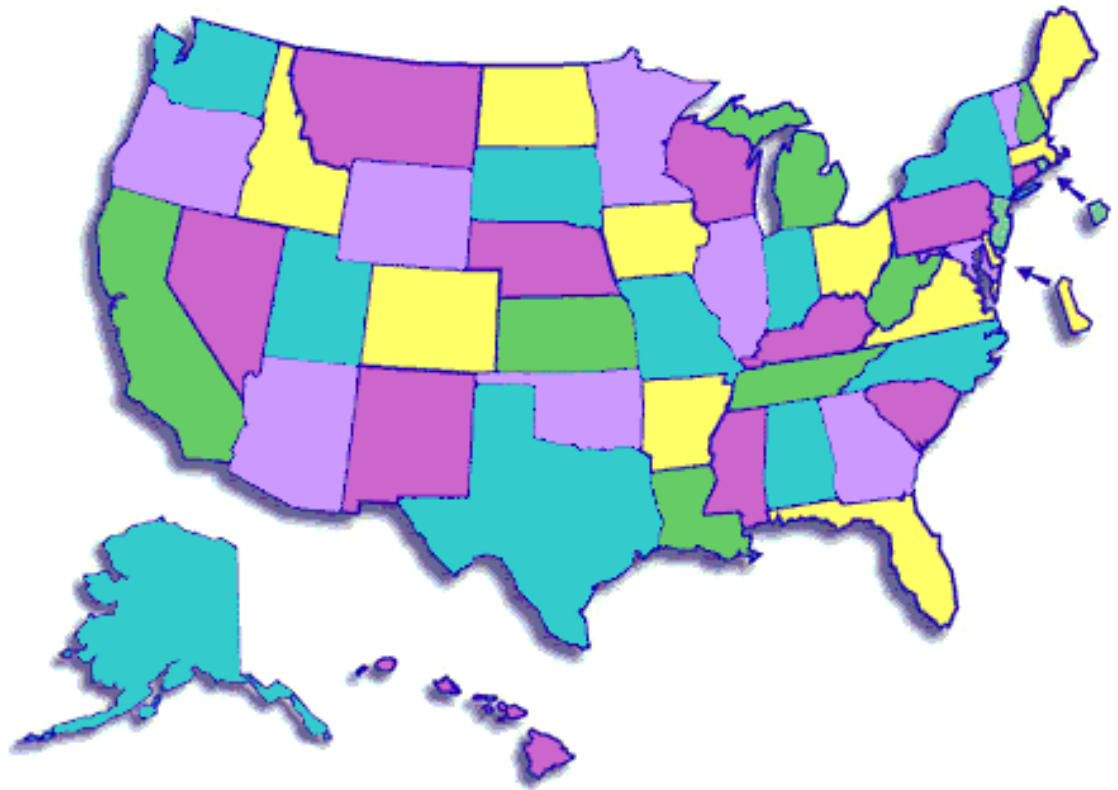
Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases except Treason, Bribery, or other Crimes, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same, provided for every Civil or Criminal Case, they shall not be imprisoned in any other Place.

No Senator or Representative shall, during the Term for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emolument whereof shall have been increased during such Term, or be appointed to any Office under the United States, which shall have been created, or the Emolument whereof shall have been increased during such Term, or be appointed to any Office under the United States, which shall have been created, or the Emolument whereof shall have been increased during such Term, or be appointed to any Office under the United States, which shall have been created, or the Emolument whereof shall have been increased during such Term.

Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as to the Form thereof, which shall have effect as if they had originated in the House; and all Bills for raising Revenue shall originate in the House of Representatives, but the Senate may propose or concur with Amendments as to the Form thereof.

According to the Tenth Amendment, the powers not delegated to the United States by the Constitution are reserved to the...

States



Benchmarks Activity 2

A Hypothetical Case Scenario* The Case of the Scarlet Tag

On June 14, 2009, Ross Landry was stopped by the Warren County Sheriff's Office while he was driving home after work at approximately 10 p.m. Mr. Landry, 23, was stopped because the deputy observed that his car displayed a courtordered, red DUI license tag. Mr. Landry was not speeding or violating any traffic laws at the time of the stop.

Mr. Landry told the deputy that he had been issued the tag as a result of a DUI arrest and conviction earlier in the year. According to 39:4-50.24 (attached), law enforcement officers do not need probable cause to stop vehicles displaying such tags, pursuant to the law that was passed in 2008.

Upon stopping Mr. Landry's vehicle, the deputy thought he observed an open bottle of wine in the vehicle. Mr. Landry explained that he had just been to the grocery store and purchased a bottle of wine for home and that the bottle had not been opened. Mr. Landry was asked to get out of his car while the deputy examined the bottle. The bottle was indeed closed. Mr. Landry told the deputy that he needed to leave to make it home in time for his wife to go to work so he could look after the children while they slept. An argument began and Mr. Landry was arrested for disorderly conduct.

Mr. Landry was convicted of disorderly conduct by the trial court. He appealed the conviction and questioned the constitutionality of the initial stop under 39:4-50.24. Landry argued the stop and the statute were violations of his Fourth Amendment rights to be free from unreasonable searches and seizures. Because the statute allows law enforcement to stop anyone with a DUI tag without probable cause (which is a good reason to believe the person is violating a law), Landry felt the statute was unconstitutional. Landry challenged other aspects of the statute as well.

What do you think?

Benchmarks Activity 2

Scarlet Tag Scenario

N.J.S.A. 39:4-50.24*

An act relating to license plates; requiring a driver whose driving privileges are restricted because of a violation related to driving under the influence of alcohol (DUI) to have a red DUI plate on any vehicle that he or she operates; providing for the Motor Vehicles Commission (MVC) to develop such plate; providing a surcharge for the plate; providing for the use of such surcharges; authorizing a law enforcement officer to stop a vehicle bearing such plate without probable cause; providing an effective date. (Section 1) MVC shall develop a red DUI license plate that must be displayed on any vehicle that is operated by a person whose driving privileges are restricted because of a violation related to driving under the influence of alcoholic beverages or other specified substances. (Section 2) The plate shall be a bright red color that is easily distinguishable from other plates issued in this state. The words "New Jersey" must appear at the top of the plate and the first three letters in the alphanumeric numbering system used on the plate must be "DUI". (Section 3) In addition to the other license plate fees and charges collected, an annual surcharge of \$20 shall be collected for each DUI plate. The proceeds from the surcharge shall be deposited into the Autism Medical Research and Treatment Fund and used according to the purposes set forth in C.30:6D-60 and in C.30:6D-61. (Section 4) A law enforcement officer may stop any vehicle that bears a DUI plate without probable cause.

(*This is a fictitious New Jersey law. It is not on the books.)

Benchmarks Activity 2

Handout: Evaluating laws

QUESTIONS	ANSWERS
1. What is the problem this piece of legislation is trying to solve? Can you think of a scenario in which a citizen would approach a lawmaker?	
2. Summarize the hypothetical law (39:4-50.24).	
3. What is the purpose of the law?	
4. Is the law fair? Why or why not? • Does it discriminate unjustly against any group or person? • Is the punishment cruel or unjust? • Does it violate any other rights? Identify which ones.	
5. Is the law practical and reasonable? • Is it worth the cost and effort of enforcement? • Is it enforceable? • Is it easily understood and possible to follow?	
6. Is the law necessary or are there better ways to accomplish the same purpose?	
7. What are the law's strengths and weaknesses?	
8. Is the law unconstitutional? Why or why not? Cite specific provisions of the U.S. Constitution that it may violate.	

Benchmarks Activity 2

Scarlet Tag Background

What is the hypothetical law and the purpose of the law?

State government has required that any person convicted of a DUI more than once must display a red tag on his or her car to indicate the offense. Police do not need probable cause to stop vehicles with these tags. The purpose of the law is to reduce DUIs and to identify DUI offenders.

Is government involved with this policy?

Yes

Why?

Government is involved because it is a New Jersey law adopted by the state legislature.

What level of government is involved?

State government

What rights may be violated by this policy?

- Cruel and unusual punishment
- Unreasonable search and seizure
- Privacy
- Expression

Where are these rights located in your Constitution?

Cruel and unusual punishment is located in the 8th Amendment.

Unreasonable search and seizure is located in the 4th Amendment.

Expression is a 1st Amendment right in the U.S. Constitution.

Privacy is a penumbra of the 1st, 3rd, 4th and 9th amendments to the U.S. Constitution

Review articles at the end of this backgrounder relating to similar issues. They are:

- “Drivers Seeing Red: DUI License Plates” www.alcoholalert.com
- “DUI License Plates—A Shameful Trend” www.duianswer.com

Controversial requirement

Requiring license plates for DUI offenders is controversial. Critics complain of the potential privacy issues and the possible unconstitutional treatment of people. This also creates issues for family members and friends when they drive the car with the license plate. It will be assumed that they are the drunk driver and they will be labeled for it. Some believe the plates will not even be effective. These license plates have been called the new Scarlet Letter. The attempt is to use shame to deter people. This creates the possibility that police officers may just pull over someone if the car has the plate. They would consider the plate to be probable cause and past convictions should not be considered probable cause.

Are there any court cases or rulings relating to this policy or a similar policy?

Case: Goldschmitt v. State (2nd District Court of Appeals, 1986)

The 2nd District Court of Appeal ruled on the constitutionality of a DUI offender being required to place a bumper sticker on his vehicle that read “CONVICTED DUI—

RESTRICTED LICENSE.” The court rejected the claim that this infringed upon the First Amendment. The court also said that the bumper sticker was not cruel and unusual punishment. The issue of probable cause was not an element in that specific case.

**How are these cases similar or different from the case you are reviewing today?
How would they apply as precedent?**

Based on your analysis, do you think this policy is constitutional?

Yes or No? Why?

Articles

Drivers Seeing Red: DUI License Plates

www.alcoholalert.com

Like the figurative scarlet letter for adulterers, California drunk drivers will have scarlet license plates if a state lawmaker gets his way. Assemblyman Ray Haynes, R-Murrieta, is proposing a law that would force those convicted of [driving under the influence](#) to replace their regular plates with red ones that would remain on the car for two years at least.

Specifically, the proposal would require persons convicted of two or more [DUI offenses](#) within a ten-year period to surrender the regular plates for all cars registered in his or her name and pay \$250 for a new red license plate for each vehicle. The person must keep the plates on his or her car for two years or the entire period of probation, whichever is longer.

During that time, the person would be prohibited from driving other vehicles, with company vehicles excepted.

The assemblyman believes that the scarlet plate would serve two purposes: it would alert other drivers to watch out for the car, especially if it's around closing time near a bar; and it would shame drivers out of driving drunk again.

He thinks extreme measures are necessary because none of the [DUI laws](#) currently in place seem to have had any effect on [DUI-related fatalities in California](#). Nearly a decade ago, about 30% of automobile fatalities involved alcohol; now that percentage is up by six points.

Not surprisingly, the bill is quite controversial. Critics complain of the potential cost as well as privacy issues and unjust, and possibly unconstitutional, treatment of people who may have made one small mistake or no mistake at all.

In single car households, a car with red license plates may have to be driven by people who were not convicted of [drunk driving](#), causing them to be unfairly labeled as

something they are not. Some critics are even concerned that repeat offenders with serious alcohol problems will just find other cars to drive.

Additionally, the plates may not even work. Ohio has had a similar policy in effect for several years, adopting yellow plates for DUI offenders in the 1990s. It is not yet known if the plates have had their intended consequences. Ohio public officials say they have been generating debate, however.

DUI License Plates—A Shameful Trend

www.duianswer.com

Several State legislatures—including those of Ohio, Iowa, Minnesota and Oregon—have added a new, imaginative punishment for those convicted of DUI...Special, brightly colored license plates. This new “scarlet letter”—as many have called it—is in addition to the already-long list of punishments that offenders are subjected to: jail time, steep fines, higher insurance rates, a suspended license, mandatory drug and alcohol counseling, and others.

The apparent rationale is that shame is a powerful deterrent. It would also give other motorists the opportunity to steer clear of the vehicle that bears the visually striking plates.

The assumption seems to be that those with a DUI in their past are usually, if not always, drunk whenever they get behind the wheel. So, naturally, they should be given the widest possible berth.

If you take a moment to imagine the kinds of occurrences that DUI would yield, we end up with a pretty frightening picture.

Carrying a DUI plate would surely prompt snap judgments and angry, disapproving looks from other motorists. The non-judgment person might still be irresistibly compelled to stare, if only to see what someone convicted of DUI looks like. These are behaviors, as we all know, that everyone is prone to. However, who's to say that the person driving the car was the same person who was convicted of DUI? Imagine a family, in which the husband was recently convicted of DUI, that shares one car. Imagine, further, that the wife now has to take the kids to school in car with the incriminating, bright yellow plates.

A paranoid and overcautious driver, upon seeing the plates on another car, would be inclined to get as far away from the car as possible—effectively assuming, again, that a past offense means a perpetually drunk driver. This kind of response, if anything, would cause accidents and disrupt the flow of traffic.

Police officers—who are human, after all—couldn't help but be far more likely to pull someone over if the car bore the fluorescent plates. Past DUI convictions do not, and should not, constitute probable cause.

The point is that, when we actually think about the real, everyday effects that DUI license plates would have, we realize that...well, we realize that supporters of the idea didn't really think about the real, everyday effects they would have. They were just thinking that DUI is bad, so harsher penalties must be good.

In principle, the idea is cruel, unfair, excessive and extremely problematic. In practice, it would be far worse.

Surely, MADD—Mother's Against Drunk Driving, the nation's most passionate anti-DUI crusaders—would strongly support the idea of special DUI plates.

No so.

According to Katherine Kovacich, regional administrator for MADD in the Pacific Northwest, Mothers Against Drunk Driving "is not into shunning" convicted DUI offenders.

It's a strange world we live in when those who are convicted of DUI are forced to endure the type of shame-based punishments that we otherwise reserve for sex offenders.