

Guardians of the Past: Using Drama to Assess Learning in American History

Charles F. Howlett

Not long ago, I decided to minimize the stressful emphasis on assessments in learning in my 11th grade American History and Government classes and put the fun back into teaching. Tired of the repetitive aspects of teaching the required state standards related to the U.S. Constitution and Supreme Court cases, I switched gears from simply noting the parts of the Constitution and the various branches of the federal government to emphasizing an understanding of case law and its effects on our society.

I invited attorneys and judges to speak to my classes about how the law works and how, as a society, we govern ourselves.¹ Putting into practice what the visitors had discussed, however, was the real challenge to the assessment process. I found the solution in the production of classroom plays. Writing and performing plays based on case law became the culminating reflection to this exercise.

Students welcomed the guest speakers to class. These were the “real” people making the law work by reading and writing briefs and motions, arguing in court, analyzing case law, and rendering decisions. Before each guest’s arrival, I would suggest cases he or she could discuss with the students—usually Supreme Court cases found in the curriculum. My students listened attentively to the technical aspects of the law and how each case is analyzed and interpreted by the courts: the facts; prior procedural history; the issue; the holding; the judgment; and the reasoning. Although these aspects were difficult for my students to fully appreciate due to their technical nature, these speakers successfully conveyed that the U.S. Constitution, federal statutes, and

state statutes are living and breathing mechanisms that determine the way we live. By listening as each guest broke down a noted case, my students gained a deeper understanding of how the law operates and gained a newfound respect for our legal system. My students now looked at the law not in a negative context—“getting busted”—but as a measure of protection of our individual rights.

Planning and Methodology

I designed this program as both a classroom and at-home research assignment, and set aside four weeks at the beginning of the school year. To begin, a guest attorney or judge explained the process of how the case he or she selected is briefed; the rest of the first week was devoted to students selecting a case, U.S. Supreme Court or other (my students may select an important case decided within the New York courts). Students tended to select the types of better-known cases that frequently appear on the Regents Exam. Students selected cases from the Federal and State Reporters as well as the U.S. Supreme Court Reporter. These are also available in law libraries, local

bar associations, and the Bill of Rights Foundation. High school libraries generally have reference works on leading Supreme Court cases, which can be photocopied and made available for students. During this week, I also reserved time in the library in which I broke each class into five groups with five students apiece. Each group had a “leader” and a “recorder.” Upon finishing their research—at home, in the library, and through Internet searches—each group selected a case.

The second week was devoted to each group writing a legal brief explaining why they thought the case they selected was significant. To assist students, I drew heavily upon Deborah E. Bouchoux’s *Legal Research and Writing for Paralegals*. This work is not overly technical, and the section on how to brief a case is clear and easy to follow.² I also required that students write at least five historical questions from the time period of the case—scope and sequence is encouraged. Such questions were specifically aimed at (1) chronology of the period; (2) major ideas of the period; (3) social, economic, and political factors of the period; (4) the leading figures of the period and their impact; and (5) lessons that can be drawn from the events of that period, and how these events should be interpreted. Student groups gathered together in class to discuss their briefs and to develop questions. During this process,



The 1953 production of Arthur Miller's play, "The Crucible," staged by Jed Harris, is pictured at left.

(AP Photo/Fred Fehrl)

I reminded them of the big picture, and encouraged them not to lose sight of the historical implications of their cases. In terms of assessment, this was one of the more critical components of the project. Questions to interpret meaning and substance require far more skill. Teachers should not overlook this aspect when determining what students learn and how well they learn it.

Classroom Plays

The final two weeks of the project were devoted to writing and performing classroom dramas based on the cases each group had researched and briefed. The third week was devoted entirely to writing a play (groups also worked after school and at home). As a participatory strategy enhancing the assessment process, this aspect represented the high point of the project. The final week was devoted to performing the plays in class. Students were well aware that popular media examples such as *The Crucible*, which focused on Puritan intolerance, and *Inherit the Wind*, which dramatized the issue of creationism and Darwinian evolution in 1920s rural America, were

based on real case law. In fact, *The Crucible* was read as part of the American literature requirement in English classes, and excerpts from the movie were used to highlight important points in the lesson. Students were also encouraged to view the *Inherit the Wind* movie, starring Spencer Tracy, or the television remake, starring Jason Robards. The school library had tapes of *The Crucible* and *Inherit the Wind* readily available for viewing.

With background knowledge, perspective, situation, and management, role-playing enabled my students to gain a deeper understanding of complex historical debates and events. According to Kathryn McDaniel of Vanderbilt University, such an exercise not only draws "students in to the lesson in a more active way, [it] also provide[s] students a critical skill that they do not necessarily learn from listening to a lecture: historical perspective." Using case-law plays enabled my students "to delve more deeply into the [various] points of argument and evidence."³

I made Ralph Philip Boas and Edwin Smith's *An Introduction to the Study of Literature* (1925) and Josefina Niggli's

New Pointers on Playwriting (1967) available to my students to assist them in the techniques of writing dialogue and stage setting. The Boas and Smith work is a standard account. Chapter Five is devoted entirely to the principles of dramatic construction—plot, characters, plot complication, setting, and artistic economy. The authors explain the permanent value of drama as literature and history. Students found it helpful that the authors also included 37 skill exercises reinforcing the principles of drama. Niggli's work includes examples from classical and modern plays that illustrate how a play "works" on stage. She also discusses how to handle exposition, develop a storyline, understand the protagonist-antagonist relationship, write dialogue, and make effective transitions.

Each group devoted a great deal of time and effort to developing their dramas. I gave each group one class period to perform their play with time set aside for questions and answers. Since there were five groups for each class, one play was performed each day during the last week of our project. The groups chose not to wear costumes (despite teacher

Significant Supreme Court Cases

Marbury v. Madison (1803)

McCullough v. Maryland (1819)

Worcester v. Georgia (1832)

Dred Scott (1857)

Wabash, St. Louis & Pacific RR v. Illinois (1886)

Lochner v. New York (1905)

Schenck v. United States (1919)

Abrams v. U.S. (1919)

Schechter Poultry v. U.S. (1935)

West Virginia Board of Education v. Barnette (1943)

Korematsu v. U.S. (1944)

Engel v. Vitale (1962)

Gideon v. Wainwright (1963)

Miranda v. Arizona (1966)

U.S. v. O'Brien (1968)

New York Times Co. v. U.S. (1971)

Roe v. Wade (1973)

U.S. v. Nixon (1974)

Baake v. Board of Regents of the University of California (1977)

Board of Education v. Pico (1982)

Hazelwood School District v. Kuhlmeier (1988)

Lee v. Weisman (1992)

Santa Fe Independent School district v. Doe (2000)

Elk Grove Unified School District v. Newdow (2004)

prodding), and preferred to focus more on dialogue than appearance.

One group, with two writers, Elizabeth and Maureen, dramatized the 1969 case of *Tinker v. Des Moines*, which involved the wearing of black armbands to protest the Vietnam War. The following is an excerpt of Act I, Scene V:

Setting: That night at the Tinker home. The family is seated around the dinner table.

Mrs. Tinker: (to John and Mary Beth) What you did was right. I can't believe those people had the nerve to suspend you. Is this not America? (Her voice is getting louder as she speaks.) When they limit our rights, they limit our democracy. We might as well move to China!

Mr. Tinker: Relax, Lorena. There is always going to be opposition to free speech, (he turns and faces John and Mary Beth) but neither of you did anything wrong. You two do not have to return to school until January 4th, when your protest ends. Unless, of course, you want to give in.

Mary Beth: No way!! I'm fighting this thing the whole way through. I did nothing wrong and I will not let anyone suppress me and what I believe. (John is looking at her in disbelief. He cannot believe that his sister has become so obsessed with the cause. She has never been this adamant about anything.) John, I have an idea. Let's wear black even after our protest is over. We can't get in trouble for our clothing.

John: Good idea. And black is the color of mourning....⁴

As this play unfolded, I watched the other students in the class be riveted in their seats rooting for John and Mary Beth Tinker to prevail. At the end of the play, when the Supreme Court decided in their favor, the entire class broke out in applause.

Another group performed a play entitled *Free Speech for Whom?* about *Schenck v. U.S.*, a case involving a social-

ist protest of the draft during World War I. A student named Glen, selected by the group because of his strong writing skills, wrote the play. This group decided to focus on the issues of free speech and the 1917 Espionage Act within the chambers of the Supreme Court itself. In Scene III, Chief Justice Edward D. White asks his fellow justices to come to a decision along with Oliver Wendell Holmes, Jr.'s discussion on the clear and present danger application of the law:

White: All right gentlemen, let's come to a decision.

Brandeis: And fast, I'm supposed to be having dinner with my friends tonight.... [later on in this scene]

White: (interrupting) Thank you, Mr. Day. I guess we have a decision then?

Hughes: Not yet, we still must reach a decision on his free speech. Was or was not his first amendment rights violated? (A brief silence falls amongst the justices)....

Holmes: Are we sure we are looking at this through the right perspective. Could it be possible that he violated the first amendment?

Devanter: I'm not sure I understand.

Day: Neither do I. Could you explain more?

Holmes: This would be protected at peacetime yet not wartime. What should be protected anyway? Is it possible he isn't protected? Any other time, this defendant would be covered by his constitutional rights yet the character of this act depends upon the circumstances.

McKenna: I don't think I follow you Oliver.

Holmes: (after pausing to think) Alright, take this situation. Is a man protected by his first amendment if he yells fire in a crowded theatre? I would think not. Now the same thing applies. What Mr. Charles T. Schenck

has done is that he has created a clear, (*pausing once again to think*), a clear and present danger. And this clear and present danger is a question of proximity and degree. He has chosen to hamper the country during a time of war and thus deserves no protection by the Constitution...⁵

There were many interesting plays performed during the years I conducted this project. One play dealt with academic freedom and religious conscience in New York State during World War I, *McDowell v. Board of Education of the City of New York*.⁶ Other plays involved more familiar cases such as *Brown v. Board of Education*, *Plessy v. Ferguson*, and *Dred Scott*. The latter cases struck a chord with my students since many were African American.

When debriefing about each play, students made the following comments: (1) briefing the cases helped, but the plays were far more entertaining and useful for learning about the Constitution and

its role in history; (2) the best part of the four-week project was the independent research and writing of the plays; (3) they spent considerably more time perfecting their writing skills and clarity of thought because they did not want to be embarrassed in front of their peers, and it was fun writing this way; and (4) as one former student remarked, the plays “offered up an interpretation based on facts” and helped to “avoid the problem of presentism clouding objectivity.”⁷

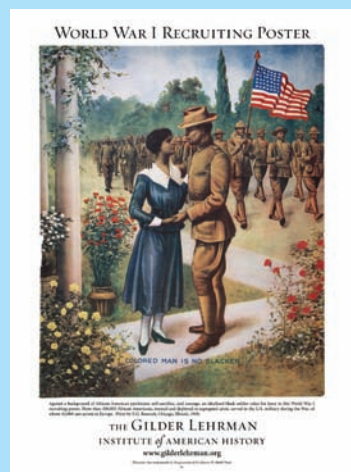
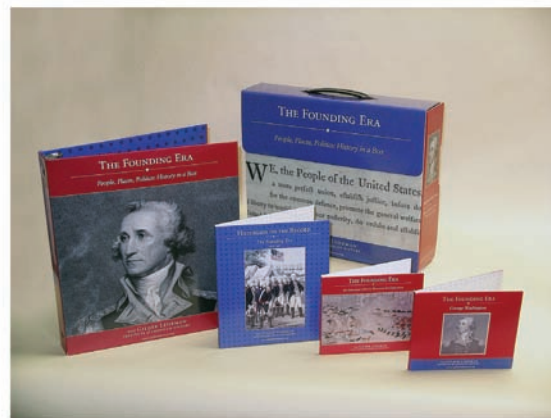
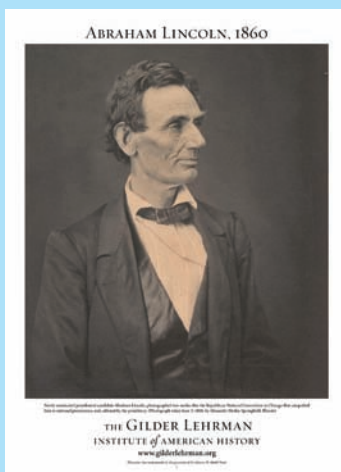
Assessment

Many teachers may think the best way to measure student learning is through testing, document-based questions, and thematic essays. However, for this project, my focus was on creative thinking skills. Rather than having students answer questions, the groups developed their own questions for the plays they created. In this way, the students were challenged to ask compelling questions that would elevate critical thinking skills. For example, with the *Tinker* case, one interesting question

the group asked was “How does this case support freedom of expression without disrupting the learning environment?” With respect to *Schenck*, students posed questions such as these: “Discuss current situations that may involve the clear and present danger concept”; “If you had been a lawyer for Schenck, would you have tried a different strategy? If so, what would it have been?”; and “If this had taken place in present times, do you think the case would have been treated differently? Support your reason.” Students working on *McDowell* developed questions examining a teacher’s freedom of conscience as weighed against the state doctrine of *in loco parentis*. Other cases such as *Brown* and *Plessy* led to some interesting questions involving the due process clause of the Fourteenth Amendment and what historical circumstances led the High Court to finally outlaw segregation. Each group was given the opportunity to explain the questions they created and defend their significance.⁸

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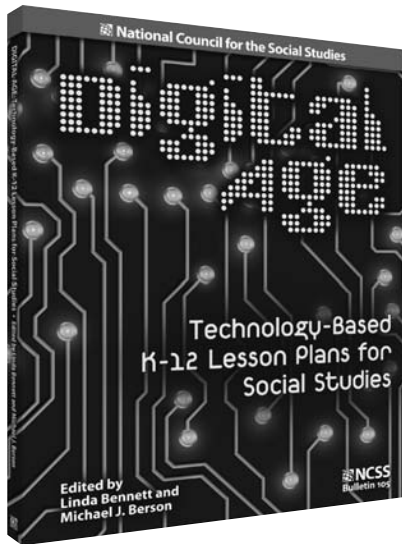
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Linda Bennett and Michael J. Berson, editors

NCSS Bulletin No. 105, 200 pp. 2007

Exemplary K-12 social studies lessons that infuse technology are the focus of this bulletin. At least one of the authors is a classroom teacher in the majority of the lessons presented. The lessons are based on the NCSS standards. Each lesson includes links with NETS-S (National Educational Technology Standards) and suggests technology applications appropriate for the grade level. In addition, the bulletin includes a section on tools and techniques concerning classroom management, Internet safety, software, images, and podcasting.

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content. Students must be able to read and comprehend books and other materials that convey information about the social studies. Using foreign films with English subtitles encourages students to read and gather information on a variety of social studies themes. Subtitled foreign films serve to supplement reading and the social studies curricula. Turn down the lights and turn up the learning. 🎬

Notes

1. Karl A. Matz and Lori L. Pingatore, “Reel to Reel: Teaching the Twentieth Century with Classic Hollywood Films,” *Social Education* 69, no. 4 (2005): 189-192;
2. John E. O’Conner and Martin A. Jackson, *American History/American Film* (New York: Ungar Publishing Company, 1988); Robert A. Rosenstone, *Visions of the Past: The Challenge of Film to Our Idea of History* (Cambridge, Mass: Harvard University Press, 1995); Matthew J. Paris, *ERIC Clearinghouse for Social Studies/Social Science Education* (Bloomington, Ind.: ERIC Document Reproduction Service No. DOSO9714, 1997); W. Russell, *Using Film in the Social Studies*. Lanham, Md.: University Press of America, 2007).
4. Patricia Wolfe, *Brain Matters: Translating Research Into Classroom Practice*. (Alexandria, Va.: Association for Supervision and Curriculum Development, 2001).
5. David A. Sousa, *How the Brain Learns* (Thousand Oaks, Calif.: Corwin Press, 2001), 5.
6. Richard C. Anderson, *Interestingness of Children’s Reading Material*, Report No. ED 248 487 (Washington, D.C.: National Institute of Education, ED, 1984).
7. Sousa, *How the Brain Learns*.
8. Kerry Holmes, *Engaging Reluctant Readers through Foreign films* (Lanham, Md.: Scarecrow Education, 2005).
9. Ibid.

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Conclusion

I found that while developing a project or unit plan such as this takes time and effort, it is well worth it. Students want to be engaged in the learning process. Not only did they learn more about the time period involved and the historical implications, they also learned how to properly analyze cases and understand the principle of judicial reasoning. They worked with “real” cases and implemented them in the form of a creative, interactive lesson. In this way, students found an appropriate means of assessing the historical and constitutional implications of past events without depending on a teacher’s notes or textbook.

Over the years, by using an item analysis of the multiple choice questions and comparing essay responses from the New York State Regents Exam, I found that students’ retention of subject-matter was significantly higher on the government section than on other parts of the test.⁹ Their written essays demonstrated an ability to accurately analyze and interpret the information, provide relevant outside information with correct facts, examples, and details, and offer a logical and clear plan of organization. This exercise also enabled them to write more clearly and effectively. Committee graders were struck, for instance, when one student observed that restrictions on free speech can and do provide absolute power to governmental authority during an international crisis. She weighed her response with a reflection on the true meaning of democracy and its application to civil liberties. When asked on the regents how much power government should have in promoting civil rights, another student explained the historical reasoning behind the enactment of the Fourteenth Amendment during Reconstruction and its application to the 1950s and 1960s with particular reference to the *Brown* and *Heart of Atlanta Motel* cases. These results proved what I had already suspected: Creative lessons

that encourage participatory involvement can result in greater historical understanding as well as improved reasoning and writing skills. 📖

Notes

1. Teacher notes, November 1995-98. Notations and reflections recorded in files of author, Social Studies Department, Amityville Memorial High School, New York. Some of the invited speakers were New York State Supreme Court Justice Daniel Luciano; Richard Handler, Esq., a village attorney; and former New York State Assistant Attorney General and Prosecutor Patricia Howlett, Esq. The Suffolk County, N.Y., Bar Association also has a list of members who volunteer their time to address classes at the invitation of the teacher. This is a very valuable resource.
2. Deborah E. Bouchoux, *Legal Research and Writing for Paralegals* (Boston: Little, Brown & Co., 1994), chapters 1-4.
3. Kathryn N. McDaniel, "Four Elements of Successful Historical Role-Playing in the Classroom," *The History Teacher* 33 (May 2000): 357-362.
4. Elizabeth Gonsler and Maureen Winter, *Tinkerv. Des Moines*, Student Classroom Play, November 1995, Amityville Memorial High School. Copy in author's possession. See also, *Tinker v. Des Moines*, 393 U.S. 503, 504-526 (1969); Sheldon H. Nahmod, "Beyond Tinker: The High School as an Educational Forum," *Harvard Civil Rights Law Review* 5 (1970): 278-300. With respect to teacher symbolic expression refer to the matter of *James v. Board of Education of Addison, N.Y.*, 461 F.2d (1972).

5. Glen Bernius, *Free Speech for Whom?*, Student Classroom Play, November 1996, Amityville Memorial High School. Copy in author's possession. See also, Nat Hentoff, *The First Freedom: The Tumultuous History of Free Speech in America* (New York: Dell Publishing Co., 1980), and Richard Harris, *Freedom Spent: Tales of Tyranny in America* (Boston: Little, Brown & Co., 1976).
6. *In the Matter of Mary S. McDowell*, 104 MISC. 564, 172 N.Y. Supp 590 (1918); Charles F. Howlett, "Conscience in the Classroom," *New York Archives* 5 (Spring 2006): 20-23; see also, Frances H. Early, *A World Without War* (Syracuse: Syracuse University Press, 1997); Kathleen Kennedy, *Disloyal Mothers and Scurrilous Citizens* (Bloomington, Ind.: Indiana University Press, 1998).
7. Teacher notes, November 1995-1998. For further analyses of these cases consult, Jerome A. Barron, *Constitutional Law* (St. Paul, Minn.: West Publishing Co., 1986) and John E. Nowak, Ronald D. Rotunda, and J. Nelson Young, *Constitutional Law* (St. Paul, Minn.: West Publishing Co., 1986, 3rd edition).
8. Teacher notes, November 1995-1998 and questions from Gonsler and Winter, *Tinkerv. Des Moines*, and Bernius, *Free Speech for Whom?*
9. Annual statistical data for Regents exams was compiled by the Social Studies Department, Amityville Memorial High School, and kept on file in the school district office as well as the department chair's office. Robert Blackey, "A Guide to the Skill of Essay Construction in History," in *History Anew: Innovations in the Teaching of History Today*, ed. Robert Blackey (Long Beach, Calif.: University Press, California State University at Long Beach, 1993), 50-51.

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- (See Supreme Court Cases Listed in Box on Page 306)

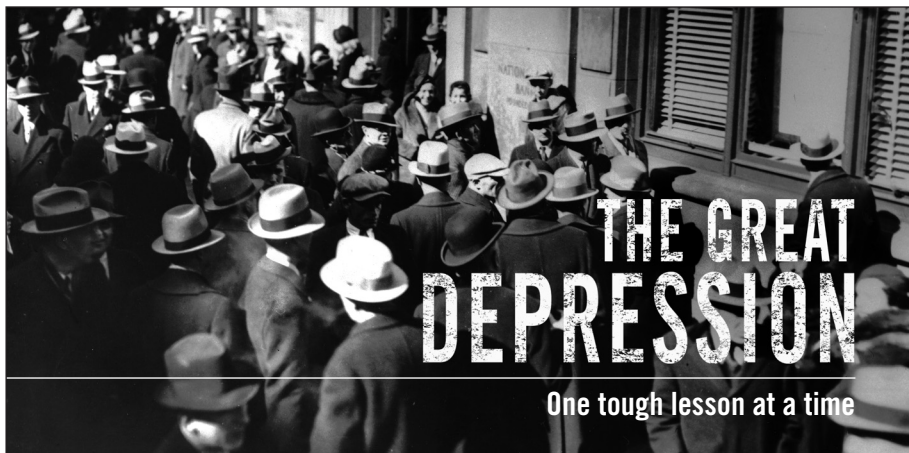
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