

Lesson 3

Understanding the Evidence

Lesson Objectives

Students will be able to:

- Analyze and make connections between pieces of evidence for a trial.
- Craft an argument on the fairness of the pretrial process.

Materials

- Case Packet
- Handout 9: The Litigation Process
- Handout 10: Venn Diagram of Evidence
- Handout 11: The Discovery Process

Lesson Assessments

- Checks for understanding (Do Now responses, class discussions)
- Venn Diagram of Evidence responses
- The Discovery Process responses

Instructional Activities

Anticipatory Set

- Distribute **Handout 9: The Litigation Process**.^{*} Students will review the steps of the pretrial process. Make sure to highlight that discovery is the longest part of the pretrial process.
**The beginning of this lesson assumes that students have completed Unit 1 or have otherwise learned about the litigation process during class. If students have not learned this material, give students enough time to read through and annotate the handout with a partner and engage in a class discussion about the different aspects of the litigation process. Unit 1: Lesson 2 on the [Clearinghouse Website](#) provides a more thorough plan for teaching this material.*
- Ask students to think about what kinds of questions they would ask if they were lawyers in the case looking for evidence. When gathering and evaluating the evidence, they need to keep the law always in mind: the point of the evidence is to establish their side of the case, or undermine their opponents' side. Here, the law dictates that the evidence should address both the *purpose* of the military policy (does it serve a compelling government

interest?) and the *operation* of the policy (is it the least restrictive means of achieving the government interest?).

- Possible questions students might ask:
 - What is the actual military policy?
 - Does this policy hurt the plaintiff? What kinds of evidence does he use to support why it hurts him?
 - What is the purpose of the military policy?
 - Is this a “good reason”? How do we know if it’s a good reason? Do the parties have actual facts to support their reasoning?
 - Do the parties talk about ways that the policy can be made “less restrictive”? If so, what are the ways in which it can be done? Is there factual data to support this way?
 - If the party argues that the policy cannot be made “less restrictive,” does it have evidence as to why alternatives wouldn’t work?

Guided Practice

- Provide students with the *Case Packet* and read through all the documents together in order to ensure that students understand what evidence is provided. The *Case Packet* has selected documents and document excerpts from the [Civil Rights Litigation Clearinghouse](#) website, editing them only slightly. An alternative to this activity for advanced students is asking students to go through all the evidence on their own to make a case. You may also see evidence you would like to add to this collection.
- Distribute **Handout 10: Venn Diagram of Evidence**. In pairs, ask students to complete the chart. Students should place the evidence that is useful to the plaintiff’s case on the Plaintiff side of the diagram and evidence that is useful to the defendant’s case on the Defendant side of the diagram. Evidence that is neutral, or useful to both parties should be placed in the middle of the chart.
- Ask pairs to report out and discuss their views on which pieces of evidence are useful to the plaintiff’s case and which are useful to the defendant’s case. As the students share out, create a chart or class Venn Diagram and facilitate a whole-group discussion about where the evidence fits. Try to come to a consensus as a class and ask students to explain why each piece of evidence they have identified better supports one of the party’s arguments. Once the Venn Diagram is complete, you may challenge the students to reframe any of the evidence so that it supports the other party’s argument.

Independent Practice

- If desired, ask students to identify pieces of evidence they think are missing and seek them out on the case site OR ask students to do some independent research on relevant court cases that might serve as precedents for the case.

Unit 6: Lesson 3
Religious Freedom

Closure

- Distribute **Handout 11: The Discovery Process**, which asks students to analyze the discovery process, commenting specifically on its application to the facts of this unit's case. Do they think the process contributes to a fair trial in this case?