TEACHERS' SUPPLEMENT

Civic Outreach Program, 125th Anniversary of WDNY
January 2025

The goal of this resource is to provide additional background information on the Court, the First Amendment, the Barnette decision, and facilitating class discussions. As the title implies, it has been designed as a supplement to, rather than a substitute for, the Lesson Plan. The sections of the supplement align with the five sections of the Lesson Plan.

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I. Introduction (Background on the Federal Courts)

A. Federal Court Jurisdiction

Federal courts are courts of limited jurisdiction, meaning they can only hear cases authorized by the United States Constitution or federal statutes. The federal district court is the starting point for any case arising under federal statutes, the Constitution, or treaties.

B. Structure

As established by Article III of the U.S. Constitution, the Federal Judiciary has three tiers, the Federal District Courts, the Circuit Courts of Appeal, and the United States Supreme Court.

Federal judges are not elected officials. Pursuant to Article III of the Constitution, all federal judges are nominated by the President and confirmed by a majority vote in the Senate.

Article III judicial appointments are for life to insulate the judges from the electoral process or political concerns and allow the judges to concentrate on the issues presented in the various cases.

1. Federal District Courts

The first tier consists of 94 district courts and are the trial courts of the U.S. federal judiciary, and hear both civil and criminal cases. A district court judge typically is responsible for supervising the pretrial process and conducting trials.

Unique to the district courts are United States Magistrate Judges, who are not appointed pursuant to Article III of the Constitution, but are appointed by a majority vote of the district court's district judges to handle a variety of judicial proceedings specified by 28 U.S.C. § 636, the enabling statute for magistrate judges.

2. **Circuit Courts of Appeal** – 12 Circuit Courts of Appeal. These courts review cases decided in the district courts. They usually sit in a panel of three judges and determine whether or not the law was applied correctly in the district court, as well as appeals from decisions of federal administrative agencies and some original proceedings filed directly with the courts of appeals.

   There is also the Federal Circuit which has more limited jurisdiction than the other Federal Circuits.

3. **Supreme Court** – Consisting of nine Supreme Court Justices, this is the final court of appeal. The Supreme Court generally reviews only cases decided by the Circuit Courts of Appeal.

C. Western District of New York

We are under the jurisdiction of the United States District Court for the Western District of New York. Appeals from cases decided in the U.S. District Court – WDNY are brought to the Second Circuit Court of Appeals.

1. History: Established May 12, 1900.

2. Comprised of 17 counties: Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates.

3. Two Divisions:
   a. Buffalo: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, and Wyoming Counties.
   b. Rochester: Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, and Yates Counties.

4. The WDNY has four district judge seats, two in Buffalo and two in Rochester. At present, there are five district judges who have taken "senior status," meaning they are semi-retired, but continue to serve on the court.

5. Magistrate Judges: The WDNY has five active magistrate judge seats, three in Buffalo and two in Rochester.

6. Appeals from the WDNY: Appeals from cases decided in the U.S. District Court for the WDNY are brought before the Second Circuit Court of Appeals located in New York City, NY. At the Second Circuit Court of Appeals, the district court's decision may be affirmed, modified, or vacated with the action remanded to the lower court for further proceedings which may include a new trial if the action involved a trial.

   After a decision by the Second Circuit, petitions for further appeal may be made to the U.S. Supreme Court, whose decision is final.

II. Preparation (The Bill of Rights and the First Amendment)

A. **The Constitution:** The Constitution was originally ratified by nine states in June 1788, and became effective in March 1789. This document defines the framework of the federal government.

B. **The Bill of Rights:** To ensure the Constitution's ratification, several of the founders believed that it was necessary to include express protections for the fundamental rights of individuals against action by the government. These first 10 amendments, referred to as the Bill of Rights, were ratified in December 1791, only three years after the Constitution was first ratified.

C. **The First Amendment:** The First Amendment included in the Bill of Rights protects individual liberties of religion, speech, the press, the right to assemble and the right to petition the government. It provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

III. Presentation (First Amendment in Public Schools)

A. Prayer In School

1. ***Engel v. Vitale*, 370 U.S. 421 (1962):** An official school prayer required to be recited each day in the local public schools violated the Establishment Clause.

2. ***Wallace v. Jaffree*, 472 U.S. 38 (1985):** A daily period of silence in public schools for meditation or voluntary prayer was an endorsement of religion lacking any clearly secular purpose and thus violated the Establishment Clause.

3. ***Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000):** School policy permitting student-led, student-initiated prayer at football games violated the Establishment Clause. The Court was not persuaded that pregame prayers should be regarded as private speech where such invocations were authorized by a government policy and occurred on government property at a government-sponsored, school-related events.

4. ***Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022):** School district violated football coach's Free Exercise and Free Speech Rights when it fired the football coach because he had a practice of praying at the mid-field line after every school football game.

B. Posting of Ten Commandments

1. ***Stone v. Graham*, 449 U.S. 39 (1980):** Held unconstitutional state statute requiring the posting of a copy of the Ten Commandments, purchased with private contributions, on the wall of each public classroom in the state.

C. Student Organizations

1. ***Healy v. James*, 408 U.S. 169 (1972):** College's denial, without justification, of official recognition to student group the Students for a Democratic Society unconstitutionally burdened or abridged the students' rights of free association and expression. The Court recognized that the college's administration could impose a requirement that any groups seeking official recognition affirm its willingness to adhere to reasonable campus rules and that such a requirement did not impose an impermissible condition on the students' associational rights.

2. ***Widmar v. Vincent*, 454 U.S. 263 (1981):** A university that made its facilities generally available for the activities of registered student groups could not close its facilities to a registered student group desiring to use the facilities for religious worship and religious discussion without violating the right of such groups to freely exercise their religion and speech.

3. ***Bd. of Educ. of Westside Cmty. Sch. v. Mergens ex rel. Mergens*, 496 U.S. 226 (1990):** School officials violated the Establishment Clause when they

denied the request of a student for permission to form a Christian club. The Court held that if a public secondary school allows any noncurriculum-related student group to meet, the school may not deny other clubs, on the basis of the content of their speech, equal access to meet on school premises during noninstructional time.

4. ***Christian Legal Soc. Chapter of the Univ. of Cal., Hastings Coll. of Law v. Martinez*, 561 U.S. 661 (2010):** Law school's policy requiring officially recognized student groups to comply with the school's nondiscrimination policy, enforced by requiring the admission of "all comers" to such student groups, did not violate the organization's First and Fourteenth Amendment rights to free speech, expressive association, and free exercise of religion because the "all comers" policy was viewpoint-neutral.

D. Expression by Students

1. ***Tinker v. Des Moines Ind. Cmty. Sch. Dist.*, 393 U.S. 503 (1969):** The Supreme Court upheld the wearing of black armbands by high school students as an expression of opposition to the Vietnam War. The Court held that neither students nor teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate while recognizing the need to prescribe and control conduct in schools. Concluding that the armbands were the equivalent of pure speech, the Court ruled that in order for state-sanctioned school officials to justify the prohibition of a particular expression of opinion, the State must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompanies an unpopular viewpoint. Without evidence that the armbands would substantially interfere with the work of the school or impinge upon the rights of other students, the prohibition could not be sustained.

2. ***Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986):** The Supreme Court upheld school restrictions on obscene or indecent speech by students. A high school student delivered a speech referring to a candidate for student government in terms of an elaborate, graphic, and explicit sexual metaphor. The Supreme Court held that the undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching student the boundaries of socially appropriate behavior, concluding that the constitutional rights of students in public schools were not coextensive with the rights of adults in other settings. According to the Court, the determination of what manner of speech in school settings was inappropriate properly rested with the school board and the school district acted within its permissible authority in imposing sanctions upon the student in response to his offensively lewd and indecent speech.

3. ***Morse v. Frederick*, 551 U.S. 393 (2007):** Student speech can be restricted at a school event when that speech was reasonably viewed as promoting illegal

drug use. The Supreme Court held that schools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use and that school officials did not violate the First Amendment by confiscating a pro-drug banner and suspending the student responsible for it. The Court declined to proscribe all offensive speech in the school context, focusing on the particular concern of promoting drug use rather than whether the student's banner was offensive.

E. Expression by Teachers

1. ***Pickering v. Bd. of Ed. Of Tp. High School Dist. 205, Will County, Ill.*, 391 U.S. 563 (1968):** The Supreme Court held that teachers have a constitutional right to comment on matters of public interest in connection with the operation of the public schools in which they work. In this case, a high school teacher was dismissed from his position after he sent a letter to a local newspaper that was critical of the board and the district superintendent in connection with a proposed tax increase. The board determined that the publication of the letter was detrimental to the efficient operation and administration of the schools of the district. The Court opined that the threat of dismissal from public employment was a potent means of inhibiting speech and that teachers were members of a community most likely to have informed and definite opinion as to how funds allotted to school operation should be spent. The Court determined that it was essential that teachers be able to speak out freely on such questions without fear of retaliatory dismissal.

F. Book Bans

1. ***Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853 (1982):** A plurality of justices ruled that the First Amendment imposed restrictions on the right of the school board to remove books from the schools' libraries, noting that the discretion of the state and local school board in matters of education must be exercised in a manner that comports with the transcendent imperatives of the First Amendment and that First Amendment rights, applied in light of the special characteristics of the school environment, are available to students. According to the plurality, the Constitution protects the right to receive information and ideas, and the characteristics of the school library were especially appropriate for the recognition of the First Amendment rights of students. Further, the discretion of the local school board could not be exercised in a narrowly partisan or political manner. The four dissenting justices suggested that the First Amendment placed no limits on a school board's power to remove books from school libraries.

IV. Comparison (the Pledge, Pre-*Barnette*, and *Barnette*)

A. The Pledge of Allegiance and Jehovah's Witnesses

1. **Francis Bellamy**: Born in Mount Morris, New York and graduated from the University of Rochester and Rochester Theological Seminary. In 1892, Bellamy authored a version of what we now refer to as the Pledge of Allegiance. Originally, this was referred to as the Bellamy Salute.

2. **Text of the Pledge of Allegiance prior to 1942**: The text of the Pledge of Allegiance was slightly different at this time.

   "I pledge allegiance to my Flag and the Republic for which it stands; one Nation indivisible, with Liberty and Justice for all.

3. **What Are Flag Salutes**: Flag salutes were palm-out salutes to accompany the Pledge of Allegiance. At the words "to my Flag," the right hand was extended, palm upward toward the Flag, and remained in that gesture until the end of the pledge, at which point all hands immediately dropped to the side. This version of the salute remained in place until 1942, when Congress passed the amended Flag Code, which decreed that the Pledge of Allegiance should "be rendered by standing with the right hand over the heart," as Bellamy's gesture too closely resembled the Nazi salute.[i]

4. **Schools Adopt Mandatory Pledge Participation**: As the pledge grew in popularity during the early to mid-20th Century, a number of states and localities adopted statutes, regulations, or customs requiring that all public schools display the United States flag and that all public school students salute and pledge allegiance to that flag.[ii]

5. **What are Jehovah's Witnesses**: Jehovah's Witnesses are an evangelical Christian religion founded in Pennsylvania in the 1800's. In 1935, the leader of the Jehovah's Witnesses, Joseph Rutherford, gave a speech at the national convention, encouraging his congregation not to participate in flag-salute ceremonies. As he saw it, as the Word of God, the Bible is "the supreme authority." Therefore, Rutherford believed that pledging allegiance to anything but God violated His Commandments.[iii]

6. **The Conflict Between Religious Rights and Compulsory Flag Salutes**: This created a conflict which set the stage for litigation in federal courts in cases attempting to resolve the conflict between the rights of state and local governments to compel public participation in patriotic flag salutes on the one hand and the rights of individuals participating in a minority religion, such as the Jehovah's Witnesses, to not participate in those activities.

B. *Minersville School District v. Gobitis*, 310 U.S. 586 (1940)

1. Historical Context:

i. Throughout the country, local governments were enacting mandatory flag salute policies while the Jehovah's Witnesses opposed participating in those activities.

ii. Europe was embroiled in World War II, but the United States was not yet involved in the war. In May and June 1940, around the time of the decision, the Battle of France was being waged. During this era of the war, German troops invaded Belgium, Luxembourg, the Netherlands, and France. The *Gobitis* decision is sometimes referred to as the "Fall-of-France Opinion."

iii. Approximately three weeks before the decision issued, the Supreme Court in *Cantwell v. Connecticut*, 310 U.S. 296 (May 20, 1940), held for the first time that the Free Exercise Clause of the First Amendment is enforceable against state and local governments through the Due Process Clause of the Fourteenth Amendment.

2. The Parties: The action was commenced by Walter Gobitas on behalf of his two minor children, Walter (age 10) and Lillian (age 12), against the Minersville School District. Walter and Lillian were expelled from the public schools of Minersville, Pennsylvania, because they refused to participate in the salute to the national flag as part of a mandated daily school exercise. Because school attendance was compulsory, their parents were forced to send them to private school which would cost up to $1,200 for Lillian and $2,000 for Walter.

3. The Arguments:

i. Plaintiffs maintained that participation in the mandatory pledge recital was forbidden by their conscientiously held religious beliefs as Jehovah's Witnesses. According to plaintiffs, their expulsions violated their liberty interests under the Fourteenth Amendment and their First Amendment rights to freely exercise their religious beliefs. They requested an injunction prohibiting the School District from "exact[ing] participation in the flag-salute ceremony as a condition of [the] children's attendance at the Minersville school."

ii. The School District maintained that it had a governmental interest in promoting national unity and that its regulation mandating participation in the national flag salute promoted this interest.

4. Procedural Posture: The District Court ruled in favor of the plaintiffs, finding that they held sincere beliefs that saluting the flag was an act of

worship which was against the plaintiffs' religious conviction that such acts should be rendered to God alone. The District Court also determined that the refusal of the plaintiffs to participate in the salute did not "remotely prejudice or imperil the safety, health, morals, property or personal rights of their fellows." The District Court granted an injunction restraining the School District from requiring the plaintiffs to participate in the pledge as a condition of their right to attend the school. On appeal, the Third Circuit agreed with the District Court and affirmed its decision.

5. **The Decision:** In an 8-1 decision the Supreme Court reversed, in an opinion authored by Justice Felix Frankfurter. In the decision, the Court acknowledged that freedom of religion was protected by the First Amendment to the Constitution and that, as a general matter, the government is not permitted to pass laws that interfere with an individual's religious practices. Nevertheless, the Court determined that the right to religious freedom was not absolute and that the government is not prohibited from enacting secular laws that are not directed at restricting or promoting religious beliefs. According to the Court, the regulation at issue had the secular (or nonreligious) purpose of promoting a legitimate government concern – that of patriotism and national unity. In describing the government's interest in promoting national unity, the Court reasoned that it was "inferior to none in the hierarchy of legal values." Weighing the government's interest against the plaintiffs' individual interests, the Court concluded that School District could compel all of its students to participate in the pledge.

6. **The Dissent:** The dissent was authored by the lone dissenter Justice Harlan Stone. In his dissent, Stone recognized the competing interests of the government and the individual plaintiffs. In Stone's view, the government's interest in promoting national unity through compulsion should not overcome the individual right to religious freedom guaranteed by the First Amendment.[iv]

C. The Aftermath of *Gobitis*

1. **A Wave of Anti-Witness Persecution:** Almost immediately after the decision was issued, the United States experienced an increase in the persecution of Jehovah's Witnesses. As described by Brett G. Scharffs:

> The wave of anti-Witness persecution which swept the country after the *Gobitis* decision is legendary. Although this was probably only partially due to the decision itself, it was undoubtedly an important contributing factor, and indeed a trigger. Hundreds of instances of vigilantism against Jehovah's Witnesses who refused to salute the flag were reported in just the week following the decision. These included mob beatings, burning of Jehovah's Witnesses Kingdom Halls, and attacks on houses where Jehovah's Witnesses were believed to live. To some horrified observers, it appeared that the Supreme Court, by

denying the children the constitutional right to be exempt from saluting, had declared open season on the Witnesses. One of the most common occurrences of vigilantism was the arbitrary imprisonment of Jehovah's Witnesses. Sometimes this imprisonment was for the purpose of protecting the Jehovah's Witnesses from mobs, but more often it involved authorities who were complicit in the persecutions of Jehovah's Witnesses in the aftermath of *Gobitis*.[v]

2. **An Increase in Mandated Flag Salutes:** Many more local and state governments adopted flag-salute statutes, and as a result, scores of Witness students were expelled from school.

3. **A Shift in United States Sentiment:** The political context underwent a seismic shift between 1940 and 1943. By 1943 the United States was at war with Nazi Germany – "'a country whose policies were aimed precisely at suppressing a religious minority. To liberals, tolerance, not saluting, had become the American form of patriotism.'"[vi]

D. *West Virginia State Board of Education v. Barnette,* 319 U.S. 624 (1943)

1. **The Parties:** The action was commenced after Marie and Gathie Barnett, ages 9 and 11, were expelled from their school outside of Charleston, West Virginia, after they refused to recite the Pledge of Allegiance and salute the flag of the United States. An expelled child was considered unlawfully absent from school, and their parents faced potential prosecution, for which the penalties included a fine not exceeding $50 ($908 in 2024 dollars) and/or jail for not longer than 30 days.

2. **The Arguments:**

   i. Plaintiffs argued that the Board of Education's resolution requiring students and teachers to salute the United States flag while saying the Pledge of Allegiance violated their religious beliefs as Jehovah's Witnesses. Plaintiffs contended that the law was an unconstitutional denial of the freedom of religion and the freedom of speech, and in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Plaintiffs sought to enjoin enforcement of the requirement against Jehovah's Witnesses.

   ii. The Board of Education argued that the resolution was consistent with *Gobitis* and complied with a state statute requiring schools to promote the goal of "teaching, fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government."

3. **Procedural Posture:** The district court ruled in favor of the plaintiffs, enjoining enforcement against them and those who were similarly situated. The Board of Education directly appealed the case to the Supreme Court, although it did not ask for

a stay pending its appeal. Marie and Gathie Barnett returned to school while the case was on appeal.

4. **The Decision:** In a 6-3 decision written by Justice Jackson, the Supreme Court overruled *Gobitis* and affirmed the district court's judgment enjoining the enforcement of the Board of Education's resolution. The Court determined that compelling individuals to salute the flag is "a form of utterance," and thus, violated the First Amendment. In doing so, it did not create an exemption from generally applicable laws for the Jehovah's Witnesses or other religious adherents, but rather held that the state does not have the power to compel this form of expression. In other words, the state cannot require anyone to salute the flag – including the Jehovah's Witnesses.

5. **Notable Quotes** (from the majority opinion):

    i. *630: "The freedom asserted by these appellees does not bring them into collision with rights asserted by any other individual."

    ii. *634: "To sustain the compulsory flag salute we are required to say that a Bill of Rights which guards the individual's right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind."

    iii. *642: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us."

6. **The Concurrence:** Justices who were in the majority in *Gobitis* changed their position in this case. Why? They explained that they were reluctant in the prior case to conclude that states could not regulate conduct considered to be against the public's welfare. However, the justices believed that this principle, while still valid, was not appropriate in this particular case because the West Virginia statute violated the "full scope" of religious freedom protected under the First and Fourteenth Amendments and that compulsory "oath tests" had little value to the country.

7. **The Dissent:** Justice Frankfurter, who wrote the majority opinion in *Gobitis*, wrote that the pledge and the flag salute did not put "the slightest curbs upon free expression." He noted that in four previous cases, the Court had upheld similar requirements imposed by schools, and wrote that the Court should not base its decision-making on "the pressures of the day." (*i.e.*, public sentiment, politics). He viewed the majority as impermissibly exerting its power over the will of the state legislature, a political branch.

8. Justice Jackson

a. Justice Jackson, the author of the opinion, had joined the Supreme Court just two years earlier. Prior to that he had served as both the Solicitor General and Attorney General. He was the first person to hold all three offices.

b. He was a Jamestown, New York native and was the last individual appointed to the Supreme Court who had not graduated from law school. He attended Albany Law School for a year and never went to college.

c. Jackson was also notable for his work as Chief United States Prosecutor at the Nuremberg trials of Nazi war criminals following World War II.

d. Justice Jackson's legacy is ensconced at the Jackson Center in Jamestown, New York, and the Buffalo courthouse which bears his name.

9. Additional background that may be of interest:

a. The Barnett family's name was misspelled in the case caption, just as the Gobitas family's name was in *Gobitis*.

b. The Board of Education instituted the requirement for students to salute the flag and state the pledge in January 1942, one month after the bombing of Pearl Harbor.

c. Before the Board of Education's resolution was passed, some entities opposed the form of the salute as too closely resembling that of Hitler and the Nazi party. The Supreme Court noted that the salute appeared to have been modified as a result, so that the right arm is extended up, with the palm up.

d. The Jehovah's Witnesses offered to make an alternative pledge, in which they would pledge their allegiance to Jehovah while stating that they "respect" the flag and "acknowledge it as a symbol of freedom and justice to all." But the Board of Education would not accept this.

V. Expression (Strategies for Leading Class Discussions)

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Strategies for Leading Discussion Sections[vii]

By the Bok Staff

Leading discussion sections effectively requires a lot more listening than speaking, and the speaking done by the instructor comes, in large part, through questions. There are many types of questions you can use to guide discussion, and the following is a taxonomy of common types.

Planning Discussions

- Consider background knowledge. First, think about the material in light of your students' knowledge and experiences. The sorts of questions you start with should meet students where they are.

- Plan your questions. Think of lines of questioning that will—whether they arrive at answers or just more questions—get students thinking their way from where they are toward the concrete objectives of the section (e.g., helping them process or apply a new concept, preparing them for an upcoming assignment, or introducing a set of unresolved questions that will take up the next few weeks of the course).

- Share concrete objectives. Whether you lay out the objectives in an email before section or write them on the board at the start of class, it's important that students have a clear sense of what the goals of the section are, and why.

Getting Students Involved and Keeping the Discussion on Track

- Clearly identify discussion questions in advance. Hand out or email to students two or three discussion questions before class so they can prepare. Allow each student to become the "expert" on some aspect of the discussion.

- Ask students to prepare for discussion by writing a short paragraph or responding to prompts. Look at the responses ahead of time so you can plan the discussion based on student input. You can do this by having students email their comments to you or by having them post to the course website ahead of time.

- Develop a joint agenda. Tell students that you will ask them to suggest topics for discussion before each class (you may want to begin the list with a few topics of your own). Have the group pick the ones they want to discuss or the ones they found most provocative or difficult.

- Ask students to take a position on a text or an argument. Students can also pair up or divide into small groups to present different sides in a debate.

- Encourage study groups. Explain the virtues of collaborative work and exchanges of information. In many courses, it is appropriate for students to study together, even as they pursue independent efforts.

- Call on students by name and encourage them to do the same. They will be gratified to hear that you think their ideas are important and that you're creating a more personal discussion environment.

- Take notes on what students say (maybe listing the most important points on the board) and use them to refer back to their contributions.

- Don't fill every silence. Leave sufficient time for students to consider a question before repeating it, rephrasing it, or adding further information.

- Don't bail yourself out by always calling on the most eager students. Rather, look for students who are obviously thinking, i.e., who might want to speak but seem hesitant, and invite them to weigh in.

- Rephrase students' questions and partial answers and direct them back to the students. This can keep students talking to each other and help maintain the momentum of a discussion that is turning into a question-and-answer session with the teacher.

- Stimulate discussion with relevant outside examples or material objects, such as poll results, historical documents, pictures, anthropological artifacts, etc.

- Divide a large section into smaller groups that will focus on a specific question or topic from a list. You can then visit each group. Leave some time for the class to reassemble so that the groups can report to each other and you can tie up loose ends.

<u>Arriving at Closure</u>

- Leave time to recognize what students have accomplished during section. Make sure to leave a few minutes at the end of class for debriefing and looking ahead.

- Gather a summary of the important points raised during discussion, write them on the board (if you haven't already) and walk through them with students to lend a narrative to the discussion you had.

- Tie the outcomes of discussion to goals you set beforehand (Which ones did you meet? What's the gameplan for the ones you didn't meet? Did you meet goals you hadn't imagined at the outset?)

- Look ahead to upcoming homework, course themes, or major deadlines. This sort of framing can remind students that the progress made in any given section is in fact progress toward more general goals and milestones within a course.

- Invite students to reach out if they have unresolved questions or concerns based on the discussion. If the discussion has gone well, they should!

VI. Endnotes

[i] For more information about the Bellamy flag salute, *see* https://www.thoughtco.com/why-americans-gave-the-bellamy-salute-3322328; https://www.ushistory.org/documents/pledge.htm; https://www.smithsonianmag.com/smart-news/rules-about-how-to-address-us-flag-came-about-because-no-one-wanted-to-look-like-a-nazi-180960100/

[ii] *See* Daniel Gordon, Life's Complexities: Rethinking Barnette, the Flag, Totalitarianism, and the First Amendment, 17 U. Mass. L. Rev. 142, 155 (2022) ("In the mid-1920s, the American Legion distributed millions of pamphlets promoting the flag salute and urged lawmakers to pass bills to make the pledge mandatory in public schools. By 1942, twenty states had implemented such laws"); Lori A. Catalano, Totalitarianism in Public Schools: Enforcing A Religious and Political Orthodoxy If There Is Any Fixed Star in Our Constitutional Constellation, It Is That No Official, High or Petty, Can Prescribe What Shall Be Orthodox, 34 Cap. U. L. Rev. 601, 605–06 (2006).

[iii] Jeffrey S. Sutton, Barnette, Frankfurter, and Judicial Review, 96 Marq. L. Rev. 133, 134 (2012).

[iv] Additional Resources: https://ny.pbslearningmedia.org/resource/bf09.socst.us.globalpeace.mingobv/minersville-school-district-v-gobitis/

[v] Brett G. Scharffs, Echoes from the Past: What We Can Learn About Unity, Belonging and Respecting Differences from the Flag Salute Cases, 25 BYU J. Pub. L. 361, 371–73 (2011).

[vi] *See id.* (quoting Noah Feldman, Scorpioins: The Battles and Triumphs of FDR's Great Supreme Court Justices, 179-180 (2010).

[vii] The "Strategies for Leading Discussion Sections" tipsheet was developed by the Derek Bok Center for Teaching and Learning at Harvard University. It is reprinted here with express permission from the Bok Center. For more information on the Bok Center, or more helpful "tipsheets," visit https://bokcenter.harvard.edu/.