

**Summary Classroom Curriculum Outline for the Western District of
New York's 125th Anniversary**

I. Overview of Federal Courts

- a. Federal Court Jurisdiction
- b. Structure
- c. WDNY

II. Judicial Independence and Separation of Powers

III. The First Amendment

Ask students to list the five freedoms contained in the First Amendment. Discuss with students what each of these freedoms means. Ask students why these five freedoms are important and why they think that they were placed as the first amendment to the Constitution. How does the First Amendment apply to their lives?¹

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

i. Background

- The Pledge of Allegiance

Ask students to summarize the meaning of the Pledge of Allegiance. Note that the inclusion of words, "under God," happened during the Eisenhower administration in 1954. Ask why some students might find that requiring the pledge and flag salute might violate their religious beliefs or right to freedom of speech.²

- Minersville School District v. Gobitis, 310 U.S. 586 (1940) - Students who practiced the Jehovah's Witnesses faith argued that the daily pledge and salute to the flag violated their First Amendment rights. "Their religion held that saluting and pledging an oath to the flag was like worshipping a graven image or idol, an offense against God." The

¹ This activity is from the Robert H. Jackson Center - <https://www.roberthjackson.org/lesson-plan/the-flag-salute-case-west-virginia-state-board-of-education-v-barnette-1943/>

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Supreme Court ruled that the Pennsylvania flag-salute law was constitutional.

- ii. Barnette - just three years after Gobitis, the Supreme Court, in an opinion drafted by Supreme Court Justice Jackson, found that compulsory flag salutes violate the First Amendment. At issue was a West Virginia statute that compelled students in public schools to salute the American flag as part of the school's activities. Parents or guardians of students not complying were subject to a fine not exceeding \$50 and a jail term not exceeding 30 days. The Barnette children were Jehovah's Witnesses instructed by their parents to not salute the flag or say the pledge and were expelled from school for following their parents' instructions.

V. Exercise³

All-American High School has a school anthem "fight song" that is played and sung at athletic events. The school requires all students to stand and sing the words. Adam and Betty are high school juniors who wear tie-dyed shirts and are avid vegetarians. They love to watch the All-American High football team games, but they refuse to stand and sing the fight song because they think that sports should be played for fun, noncompetitively, without winners and losers. They think that the fight song is too aggressive. (They particularly object to a line that says, "All-American, let's all hail/ Let's go kick some Eastern High tail/When we fight, fight, fight/ They'll all start to bail/ All-American, hail, hail, hail!")

The school principal asserts that "Adam and Betty are causing a disturbance by setting a bad example for younger students and undermining school spirit." He suspends them for one day for failing to stand and sing.

Using Barnette, the classroom shall argue the competing positions.

Those arguing for the right not to stand and sing along might consider arguing on the basis of the Barnette holding that citizens are free not to be forced to speak against conscience even in the face of majority insistence. Voltaire is quoted as saying, "I disapprove of what you say, but I will defend to the death your right to say it." What values are served by a community's toleration of dissenting opinions? Is there a danger to coercing individual conformity in this way? What passages from Barnette can you quote on your side?

³ This exercise is from the Supreme Court Historical Society (<https://supremecourthistory.org/classroom-resources-teachers-students/we-the-students-west-virginia-state-board-of-education-v-barnette/>)

Those arguing that Adam and Betty have no right to refuse to participate can distinguish this case from Barnette by explaining how it does not involve rights of religion or conscience. They might point out that students are asked to do things all of the time that they may disagree with (like homework) and that finding a right to refuse to participate in this case would lead down a “slippery slope” that would end with students getting out of doing anything they disliked, like writing essays on books that they disapprove of or taking tests on human evolution when they believe in creation. Moreover, Barnette focused on freedom of thought in politics and nationalism, but nothing so exalted is at stake here. Brainstorm what could happen if the precedent were set that students could get out of required exercises whenever they disagreed with them.

Resources:

<https://www.roberthjackson.org/lesson-plan/the-flag-salute-case-west-virginia-state-board-of-education-v-barnette-1943/>

<https://www.roberthjackson.org/article/if-there-is-any-fixed-star-jackson-on-west-virginia-v-barnett/>

<https://thejacksonlist.com/2023/06/14/barnette-at-80/>