

We the People

SUPERIOR COURT OF NEW JERSEY

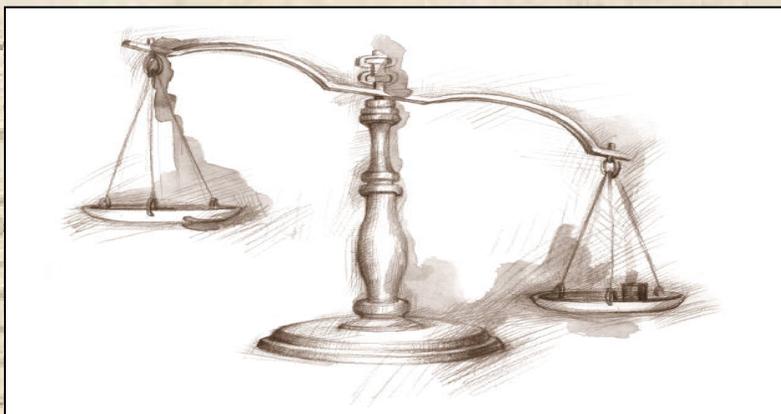


Law Day 2006

LIBERTY UNDER LAW:

SEPARATE BRANCHES,
BALANCED POWERS

Mock Trial Fact Pattern: Grades 3-6



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LIBERTY UNDER LAW: Separate Branches, Balanced Powers

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LIBERTY UNDER LAW: Separate Branches, Balanced Powers

Instructions for Teachers

Familiarizing Students with the 2006 Law Day Theme

Prior to Law Day, the Case of Rudy Rapper should be reviewed and discussed with your students. All students should also be familiar with the 2006 Law Day topic – ***Liberty Under Law: Separate Branches, Balanced Powers***.

Using the information provided in the Introduction section of this booklet, you should discuss the following with your students:

1. The three branches of government. Specifically, the authority of the judicial branch to decide whether or not a law or government action is constitutional.
2. The First Amendment. Specifically, freedom of speech, and situations where this freedom can be limited.

Selections Students to Role Play at the Mock Trial

Four students should be selected to portray the various witnesses in the case of Rudy Rapper. Using the testimony provided in this booklet, these students should be prepared in advance to take the witness stand during the Mock Trial.

The roles are:

Witnesses for the Plaintiff

1. Rudy Rapper – Rapper and Recording Artist
2. Lacey Lyrics – Rudy Rapper’s Agent

Witness for the Defense

1. Donnie Director – Director of the *Eastern Goldfinch Arena*
2. Betsy Blue – President of *9/11 Victims Rights Organization*

The remaining students will observe the mock trial and act as the “jury”. All of the students will also engage with the judge and attorneys in a question and answer session at the conclusion of the Mock Trial.

Creating a Courtroom

The room that will be used for the Mock Trial should be set up as follows. A desk or table should be placed in the center of the room as the judge’s “bench”. Chairs for the attorneys should be placed on either side of the judge’s bench, facing the judge. A “witness box” should be created by placing a chair to left of the judge’s bench.

The Mock Trial

On Law Day, two attorneys and one judge will visit your school and conduct the Mock Trial. The judge will call the court to order and ask the teacher to read the facts in the case of Rudy Rapper. The lawyers will then call their witnesses to the stand to testify.

After the witnesses have given their testimony, the judge will ask the attorneys to each make a short closing statement to the jury. After the closing statements, the judge will ask the teacher to distribute the ballots to the jury. The students will be told not to vote until they have been instructed to do so by the judge. (A sample ballot is provided in this booklet and should be copied ahead of time so that each juror receives a copy. If you prefer, voting may also be done by simply asking the students to raise their hands).

Once the ballots have been given out, the judge will “charge” the jury. He or she will explain to the students how Rudy Rapper has a right to free speech. The State of New Jersey cannot violate this right unless they can show that one of the limitations on free speech applies. The judge will explain each of the limitations. The judge will then tell the jury that they must each decide whether or not Rudy Rapper’s rights were violated. Once the ballots have been collected and counted, the judge will announce the jury’s finding.

At the conclusion of the Mock Trial, the students will have an opportunity for a question and answer session with the judge and attorneys.

LIBERTY UNDER LAW: Separate Branches, Balanced Powers

Instructions for Judges and Attorneys

The students and teachers have received these materials, including the fact pattern, in advance. Four students have been selected to assume the roles of the witnesses. Attached you will find testimony statements for each of the witnesses.

The judge will preside over the Mock Trial and will invite the attorneys to introduce themselves, make a short opening statement, call their witnesses to testify, and conclude with a short closing statement.

The plaintiff's attorney should argue that Rudy Rapper has a constitutional right to free speech, even if he is critical of the government. The defense attorney should stress that Rudy Rapper's right to free speech is limited because his music created a "clear and present danger" of inciting the audience at the EGA to riot or commit other illegal acts.

The students not acting as witnesses will act as the "jury". After closing statements, the judge will ask the teacher to distribute ballots to each of the jurors. The judge should tell the students not to vote until they are instructed to do so.

Once the ballots have been distributed, the judge will "charge" the jury, explaining in simple terms the right to free speech and the "Clear and Present Danger" limitation on free speech. (A sample "jury charge" is provided in this booklet for use by the judge.)

The judge will instruct the students to vote as to whether or not Rudy Rapper's constitutional right to free speech was violated by the State of New Jersey. The voting will take place either by ballot or simply by asking the students to raise their hands.

After the votes have been tabulated, the judge will announce the jury's finding to the students. This will conclude the Mock Trial. At this point, the judge and attorneys should invite the students and teachers to engage in a question and answer session with them.

LIBERTY UNDER LAW: Separate Branches, Balanced Powers

Introduction

The following introductory information may be useful for classroom instruction.

Law Day 2006 Theme¹

Liberty Under Law: Separate Branches, Balanced Powers

It is important that all Americans understand what the Founders intended and accomplished in creating a government of separate powers. The Founders were very concerned that the government they established not have all its powers concentrated in the hands of a few officials. They agreed with Montesquieu that if "the right of making and of enforcing the laws is vested in one and the same man, or the same body of men ... there can be no liberty." The Founders were also concerned that the powers granted to one branch would be balanced by powers granted to others. Congress's power to legislate, for example, is balanced by the executive's power to veto legislation and by the judiciary's power to declare legislation unconstitutional. This system of checks and balances ensures that each branch serves as a constraint on, and is constrained by, the powers of the other branches.

This theme enables Law Day planners to show how the branches have their separate spheres and separate powers, but work together for the common good. The theme also is central to building understanding of the rule of law, which has always been a primary purpose of Law Day.

The Role of the Constitution in Balancing Powers²

The [Founding Fathers](#), the framers of the [Constitution](#), wanted to form a government that did not allow one person to have too much authority or control. While under the rule of the British king they learned that this could be a bad system. Yet government under the [Articles of Confederation](#) taught them that there was a need for a strong centralized government.

With this in mind the framers wrote the Constitution to provide for a [separation of powers](#), or three separate branches of government. Each has its own responsibilities and at the same time they work together to make the country run smoothly and to assure that the rights of citizens are not ignored or disallowed. This is done through [checks and balances](#). A branch may use its powers to check the powers of the other two in order to

¹ From the *American Bar Association* (www.abanet.org/publiced/lawday/theme2006.html)

² From *Ben's Guide to U.S. Government for Kids* (bensguide.gpo.gov/3-5/government/branches.html)

maintain a balance of power among the three branches of government. The three branches of the U.S. Government are the legislative, executive, and judicial.

The **legislative branch** of government is made up of the Congress and government agencies, such as the Government Printing Office and Library of Congress, that provide assistance to and support services for the Congress. Article I of the [Constitution](#) established this branch and gave Congress the power to make laws. Congress has two parts, the House of Representatives and the Senate.

The **executive branch** of Government makes sure that the laws of the United States are obeyed. The President of the United States is the head of the executive branch of government. This branch is very large so the President gets help from the Vice President, department heads (Cabinet members), and heads of independent agencies.

The **judicial branch** of government is made up of the court system. The Supreme Court is the highest court in the land. Article III of the [Constitution](#) established the Supreme Court. All other federal courts were created by Congress. Courts decide arguments about the meaning of laws, how they are applied, and whether they break the rules of the Constitution.

The Bill of Rights: Balancing the Power of Government and the Rights of the People³

When we think of “balanced powers” the first thing that comes to mind is how the power of the government is split between the three branches. However, there is also a balance between the power of the government as a whole and the rights of American citizens. The Constitution, and more specifically the Bill of Rights, again plays an important role.

When the Constitution was ratified in 1789, many people were concerned that it did not protect certain freedoms. They thought that the Constitution should be changed or [amended](#) to protect these freedoms. On December 15, 1791, ten amendments were added to the Constitution. These amendments guarantee certain freedoms and rights, so they are known as the Bill of Rights.

Some of the freedoms and rights protected in the Bill of Rights include:

- Freedom of Religion
- Freedom of Assembly
- To Keep and Bear Arms
- Freedom of Speech
- Freedom of the Press
- Protection for those Accused of Crimes

³ From *Ben's Guide to U.S. Government for Kids* (bensguide.gpo.gov/3-5/citizenship/rights.html)

The First Amendment: First Principles⁴

Often considered the most important amendment in the Bill of Rights, the First Amendment protects rights essential to democratic government and those rights Americans hold most dear: freedom of religion, of speech, of the press, of assembly and of petition.

The First Amendment applies to all Americans. Our nation affirms the truth of inalienable rights for all, working for more than 200 years to make the ideals expressed in the First Amendment a reality in the lives of all Americans. These rights were so important to early citizens and their leaders, many states refused to ratify the Constitution of the United States without the [promise of amendments](#) that would protect individual rights.

The First Amendment reads:

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.

Here are some “First Principles” to help you and your students to interpret these eloquent 45 words and understand how they influence our daily lives.

1. The First Amendment affirms the freedom of the individual.

American government is based upon the concept that all human beings are born with certain rights or freedoms. The First Amendment guards these rights by prohibiting the government from denying citizens their rights. The government does not give us our rights. Its role is to guard the rights that we already have.

We, as individuals, have freedom of conscience. Religious liberty, or freedom of conscience, protects the beliefs of everyone, not just those of recognized faith communities. We are free to worship—or not to worship—as we choose. The government may not tell us what church, synagogue, mosque or temple to attend or whether, where and how we should pray.

As individuals, our ideas and beliefs are our own. We are free to develop and express our thoughts. Through our free press, we have access to a vast range of information. We may criticize our government if we see fit to do so. Judgments about ideas are for individuals to make, not for government to decree.

⁴ From *The First Amendment Center- Freedom Forum*
(<http://www.freedomforum.org/packages/first/curricula/educationforfreedom/FirstPrinciples.htm>)

The First Amendment guarantees we may associate with people and join groups of our own choosing. We may ask or lobby the government to correct certain wrongs or support our beliefs.

2. Free expression is the foundation — the cornerstone — of democracy.

The First Amendment is based on the premise that people who can freely share information (especially about their government) will be informed and able to make sound choices about what leaders to elect, what forms of government they want, what laws to enact. The freedom to exchange information about the government enables people to seek alternatives to bad government.

3. The First Amendment tells the government to keep its “hands off” our religion, our ideas, our ability to express ourselves.

“Congress shall make no law ...” means that as far as possible the government may not interfere with our fundamental rights. The government may not pass laws that take away our First Amendment freedoms or that force us to express ideas — including religious beliefs — that we do not embrace. But the First Amendment is not absolute.

“No law” does not mean “absolutely no law.” For instance, human sacrifice cannot be permitted in the name of freedom of conscience. The Supreme Court has affirmed that some limits must be placed on our freedoms. The government, for example, may regulate the time, place and manner, but not regulate solely on the basis of the *content* of our beliefs, ideas, and expressions. We may need to hold a permit before we march in support of a particular cause, but we should not have to worry about the government telling us we have no right to believe in that cause or express that idea.

4. Other people have rights, too.

The First Amendment is based upon the conviction that all human beings have inalienable rights. Our commitment to rights is inseparably linked to our civic responsibility to guard those rights for all others.

When faced with unpopular views or unrefined speech, members of the public may ask, “Why doesn't the government do something about that?” The answer? Neither government nor a majority of the public has the authority to stop an unpopular idea.

Because the First Amendment belongs to everyone — to each individual — it encourages us to respect the right of others to hold their viewpoints and religious beliefs. The First Amendment protects minority viewpoints

and helps us to understand that limiting the rights of some people may eventually limit the rights of all.

5. When rights collide, government must balance them.

Sometimes the government plays a role in balancing our rights. When two rights collide, tension and controversy may result. What happens, for example, when a person's right to a fair trial conflicts with our right to learn if a fair trial is actually taking place through accounts reported in our free press? What happens when an individual's right to personal privacy conflicts with the free flow of information? The government (through the courts) may make decisions that protect both rights to the fullest extent possible.

In addition to knowing where government officials draw the line when regulating expression, it is important to understand who may and may not control what we say or write or perform.

Public school administrators are government officials and, like city officials, have both power and limits regarding regulation of expression. Although students do not give up their First Amendment rights when they come to school, the United States Supreme Court has determined that school officials may restrict students' rights if the administrators determine that exercising those rights would interfere with the school's mission of educating its students. However, as government officials, they may not control or censor expression to the degree that a private organization or family might. The First Amendment does not apply to private school officials.

6. The First Amendment helps us make choices.

In the “marketplace of ideas,” we may choose which views to support and which ones to reject. When all ideas are allowed to flourish, we — as individuals — may decide what ideas and concepts to question, embrace or reject.

First Amendment advocates say it best: The antidote to distasteful or hateful speech is not censorship, but more speech.

What do the words of the First Amendment mean?

Freedom of religion

The First Amendment prevents the government from establishing an official religion. Citizens have freedom to attend a church, synagogue, temple or mosque of their choice — or not to attend at all. The First Amendment allows us to practice our religion the way we want to.

Freedom of speech

The First Amendment keeps the government from making laws that might stop us from saying what we think. People have the right to criticize the government and to share their opinions with others.

Freedom of the press

A free press means we can get information from many different sources. The government cannot control what is printed in newspapers and books, broadcast on TV or radio or offered online. Citizens can request time on television to respond to views with which they disagree; they may write letters to newspaper editors and hope those letters will be printed for others to see. They can pass out leaflets that give their opinions. They can have their own Web pages and offer their opinions to others through the many means made available by the Internet.

Freedom of assembly

Citizens can come together in public and private gatherings. They can join groups for political, religious, social or recreational purposes. By organizing to accomplish a common goal, citizens can spread their ideas more effectively.

Right to petition

“To petition the government for a redress of grievances” means that citizens can ask for changes in the government. They can do this by collecting signatures and sending them to their elected representatives; they can write, call or e-mail their elected representatives; they can support groups that lobby the government.

Freedom of Speech: Are There Limits?⁵

Does the First Amendment mean anyone can say anything at any time? No. The Supreme Court has rejected an interpretation of speech without limits.

Because the First Amendment has such strong language, we begin with the presumption that speech is protected. Over the years, the courts have decided that a few other public interests — for example, national security, justice or personal safety — override freedom of speech. There are no simple rules for determining when speech should be limited, but there are some general tests that help.

⁵ From *The First Amendment Center- Freedom Forum*
(www.freedomforum.org/packages/first/curricula/educationforfreedom/supportpages/L04-LimitsFreedomSpeech.htm)

(Please note that only one of these limitations will be explored in the Mock Trial case of Rudy Rapper – the **Clear and Present Danger** limitation. The others are listed here for further information.)

Clear and Present Danger

Will this act of speech create a dangerous situation? The First Amendment does not protect statements that are uttered to provoke violence or incite illegal action.

Justice Holmes, speaking for the unanimous Supreme Court, stated, “The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.”

Fighting Words

Was something said face-to-face that would incite immediate violence?

Libel and Slander

Was the statement false, or put in a context that makes true statements misleading? You do not have a constitutional right to tell lies that damage or defame the reputation of a person or organization.

Obscenity

In June 1973 in *Miller v. California*, the Supreme Court held in a 5-to-4 decision that obscene materials do not enjoy First Amendment protection.

Conflict with Other Legitimate Social or Governmental Interests

Does the speech conflict with other compelling interests? For example, in times of war, there may be reasons to restrict First Amendment rights because of conflicts with national security.

The Case of Rudy Rapper

The Case of Rudy Rapper, found in this booklet, explores the topic of “balance of powers” in two ways.

First, the role of the judicial branch is highlighted. One of the roles of the judicial branch is to determine whether a law, or an action taken by the government is Constitutional. In the Rudy Rapper Case, the issue is whether the State of New Jersey, violated Rudy’s constitutional right to free speech as guaranteed in the Bill of Rights. The legislative branch does not have the power to settle this issue. Neither does the executive branch. Only the judicial branch can decide such a question.

Second, the Rudy Rapper case highlights how the power of government is not only balanced between the three branches, but must also be balanced by the rights of individuals. The government cannot use its power to infringe upon the constitutional rights of the people. Some times an individual’s rights may be limited, but only when the

government has a valid reason to do so. In the case of Rudy Rapper, only one limitation will be discussed, i.e., the limitation that allows censorship when speech presents a “clear and present danger” of inciting violence or illegal action.

The case of Rudy Rapper was originally created by a fifth grade class at Dorchester Elementary School in Woodcliff Lake, NJ. It was published in Mock Trial Exercises, a publication of the New Jersey State Bar Foundation. It has been modified for use in the 2006 Law Day Mock Trial exercises.

RUDY RAPPER

v.

STATE OF NEW JERSEY

Statement of Facts

Donnie Director is the Director of the Eastern Goldfinch Arena (EGA). The EGA is owned and operated by the State of New Jersey. On June 22, 2001, Director called Lacey Lyrics, the agent of Rudy Rapper, to say that he was interested in booking Rapper to perform at a concert at EGA on November 1, 2001.

Rudy Rapper was hot! His albums were at the top of all the charts and his videos were on all the major music networks, including MTV and BET. Many of his songs however, had lyrics that were violent and that criticized the United States. Even so, EGA had in fact, signed a contract with Rapper a few months earlier and he had performed many of these songs at EGA in January 2001.

After weeks of negotiating, the performance contract was signed on August 1, 2001. The contract said that Rudy Rapper shall perform five to ten of his most popular songs, and one new song that has never been performed in public before.

After the tragic event on September 11, 2001, the management of the EGA decided to donate the proceeds from the upcoming November 1st show to the victims of the World Trade Center tragedy. Additional artists were hired to perform at the concert, especially artists who performed songs with lyrics that were peaceful and patriotic.

Donnie Director felt that the concert of November 11th was not the time to perform songs with lyrics that were violent or critical of the United States. They believed that Rudy Rapper's songs would incite violence in the crowd and would be grossly offensive to an American audience. After September 11th Rudy Rapper had written a new song. Director heard this song, which had lyrics that criticized the United States, and seemed to be almost sympathetic to the suspected terrorists responsible for the World Trade Center bombings.

Donnie Director asked Rudy to change the lyrics of the songs for the concert because of the way Americans were feeling after the September 11th tragedy. Rudy refused. He argued that the original contract did not say what he could or could not perform. He argued that according to the contract he had to perform five to ten of his "most popular" and one new song. He also pointed out that Donnie Director did not object when he performed the same songs in his January 2001 concert at the EGA.

Rudy Rapper showed up to perform at the concert on November 1, 2001. Donnie Director told Rudy Rapper that he could not perform. Rudy Rapper was led away from EGA escorted out by the police.

Rudy Rapper has filed two lawsuits, one for breach of contract and a second against the State of New Jersey for violation of his First Amendment right of free speech. Today we will consider the second suit, where Rapper claims that his constitutional right to free speech was violated.

Issue

Did the State of New Jersey violate Rudy Rapper’s constitutional right to free speech when they did not allow him to perform his songs? Or, was the State of New Jersey allowed to censor Rudy Rapper’s songs because they presented a “clear and present danger” that violence or illegal activity would result from them?

Relevant Constitutional Law

The First Amendment of the United States Constitution reads:

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.

Witnesses for the Plaintiff

Rudy Rapper – Rapper and Recording Artist

Lacey Lyrics – Rudy Rapper’s Agent

Witness for the Defense

Donnie Director – Director of the *Eastern Goldfinch Arena*

Betsy Blue – President of *9/11 Victims Rights Organization*

LIBERTY UNDER LAW: Separate Branches, Balanced Powers

Witness Testimony and Sample Questions

The following testimony statements should be used to prepare the students who are acting as witnesses in the Mock Trial.

The students will not read these statements verbatim but will use them to answer the questions asked of them on the witness stand.

Following each testimony statement is a list of sample questions for the use of the attorneys.

Testimony of Rudy Rapper

My name is Rudy Rapper. I am a rap artist. I write and perform all of my own songs. On August 1, 2001, I signed a contract with EGA. In the contract I agreed to perform five to ten of my most popular songs and one new song at a concert on November 1, 2001.

Some people think that the words in my songs are violent or anti-American. But I still have a right to express my opinions about our country and our government in my songs.

The last time I performed these songs at EGA, on January 1, 2001, no one had a problem with them.

After the World Trade Center was bombed on September 11, 2001, my agent, Lacey Lyrics got a phone call from Donnie Director. He is the Director of the EGA. He said that he wanted to meet with Lacey and I. At the meeting, he said that he wanted me to change the words in my old songs. He also said that he didn't want me to sing my new song at all. He said that the lyrics were too violent and anti-American. They said that they decided to make the concert a fundraiser for victims of 9/11 and that my songs were not appropriate. He said that my songs might make the audience angry. He was afraid that they might even riot or throw things at me while I was on stage! My songs have never caused any kind of violence. They only cause people to dance! Then Donnie told me that if I didn't agree to change my songs, I would not be able to perform at the concert.

I told Donnie that I was going to show up on November 1, 2001 and perform all of my songs, just like I had promised to do in the contract that I signed. I told Donnie that I expected him to let me go on stage and perform, like they promised to do in the contract.

On November 1, 2001, I showed up at the EGA. Instead of letting me go on stage to perform, the EGA asked the police to physically remove me from the building.

The EGA violated my First Amendment freedom of speech. According to the U.S. Constitution, I have a right to perform my songs, even if my lyrics are violent or anti-American.

Questions for Rudy Rapper

What is your name?

What is your occupation?

On August 1, 2001, did you sign a contract with EGA?

What did you promise to do in that contract?

Are your songs violent or anti-American?

Do you have a right to express your opinions in your songs?

Have you ever performed these songs at the EGA before? When?

Did the EGA have a problem with your performance in January 2001?

After the World Trade Center bombings on September 11, 2001, did your agent receive a phone call from the EGA?

What did the EGA say?

Did you agree to change your songs?

Have your songs ever caused an audience to riot or

What happened when you got to the EGA on November 1, 2001?

Do you think the EGA violated one of your constitutional rights? Which one?

Testimony of Lacey Lyrics

My name is Lacey Lyrics. I am Rudy Rapper's agent. I help Rudy whenever he needs to sign a contract to perform at a concert. Donnie Director contacted me because he wanted Rudy to perform at the EGA on November 1, 2001. On August 1, 2001, Rudy signed a contract and promised to perform five to ten of his most popular songs, plus one new song.

After the World Trade Center bombings on September 11, 2001, Donnie Director called me and said that he wanted to meet with Rudy and I. At the meeting he told us that the concert was now going to be a fundraiser for victims of 9/11. He said that a lot of the victims or their families would be in the audience that night. He said that these people would become angry when they heard Rudy's songs because they were violent and anti-American. Donnie said that letting Rudy perform would be dangerous because people might riot. Rudy performs all the time and his audience has never rioted!

Rudy and I thought this was unfair. Rudy performed at the EGA before in January 2001 and Donnie Director knew what his songs were like. Rudy has a right to free speech – he should be allowed to perform his songs!

Rudy told Donnie at the meeting that he was going to show up at the EGA on November 1, 2001 and perform his songs, just like he promised in the contract.

On November 1, 2001, I went with Rudy to the EGA. When he got there, the police physically removed him from the building.

Questions for Lacey Lyrics

What is your name?

What is your occupation?

Did Donnie Director contact you to see if Rudy Rapper could perform at a concert on November 1, 2001?

What happened on August 1, 2001?

What did Rudy promise to do in the contract that he signed?

Did Donnie Director contact you again after the bombings on September 11, 2001?

Did he ask to have a meeting with you and Rudy?

At the meeting, what did Donnie tell Rudy?

Did Rudy agree to change his songs?

Has Rudy's music ever caused an audience to riot before?

Has Rudy ever performed at the EGA before? When?

What happened on November 1, 2001?

Do you think that Rudy's right to free speech was violated?

Testimony of Donnie Director

My name is Donnie Director. I am the director of the Eastern Goldfinch Arena (EGA). On August 1, 2001, I signed a contract with Rudy Rapper. Rudy agreed to perform five to ten of his most popular songs and one new song at a concert on November 1, 2001.

Rudy performed at the EGA once before on January 1, 2001.

Everything was fine until the bombings on September 11, 2001. After the bombings, we wanted to do something to help the victims and their families. We decided to make the concert on November 1, 2001 a fundraiser for the victims. We gave over 1,000 tickets to the *9/11 Victims Rights Organization* so that the victims and their families could attend the concert.

We hired some more performers whose songs were peaceful and patriotic. I was worried that Rudy's songs would not be appropriate for the concert any longer because they might offend the people in audience, especially the victims of 9/11 and their families. I was even worried that Rudy's songs could cause a riot in the audience. If the crowd became angry, they might throw things at the stage. People could be hurt!

I called Lacey Lyrics to set up a meeting so that we could talk about this. At the meeting, I told Rudy that I wanted him to rewrite his songs, because they were too violent and anti-American. I told him that his new song should not be performed at all.

Rudy told me that he refused to make any changes to his songs. He said that he was going to show up on November 1, 2001 and perform his songs exactly as he had written them. I told him that if he did not change his songs, I would not allow him to perform.

On November, 1, 2001, Rudy showed up at the EGA and I had to ask the police to remove him from the building. I received a letter from his lawyer a few days later saying that we had violated his right to free speech because his songs are political statements. I don't agree with Rudy, his music could have been dangerous that night! His songs are so violent and anti-American that the audience could have rioted! Since there was a danger of this happening, we had a right to prevent him from performing!

Questions for Donnie Director

What is your name?

What is your occupation?

Did you ask Rudy Rapper to perform at a concert on November 1, 2001?

Did you and Rudy sign a contract on August 1, 2001?

What did the contract say?

Did Rudy ever perform at the EGA before this? When?

After the bombings on September 11, 2001, did you decide to make the concert a fundraiser for victims of 9/11?

Did you change your mind about letting Rudy perform? Why?

Did you think that Rudy's songs could cause the audience to fight or riot? Why?

Did you ask Rudy to make any changes to his songs?

Did Rudy agree?

What happened on November 1, 2001?

Do you think that Rudy's right to free speech was violated?

Testimony of Betsy Blue

My name is Betsy Blue. I am the president of the *9/11 Victims Rights Organization*. I started this organization after the horrible bombings that took place on September 11, 2001. Mr. Donnie Director contacted me after 9/11 and told me that he was planning a concert at the EGA for November 1, 2001 and that he wanted it to be a fundraiser for the victims and their families.

Mr. Director sent me 1,000 free tickets so that some of the victims and their families could attend the show. I asked him who was performing. Donnie started to read the names of all the artists. When he said Rudy Rapper, I was shocked!

I told Donnie that it could be dangerous for Rudy Rapper to perform that night. I know that his songs sometimes criticize the government. Sometimes the words in his songs even seem to be supportive of terrorists!!

I told Donnie that if the audience heard Rudy's songs, it could be a dangerous situation. People could become angry and throw things at the stage. They might even try to run up on to the stage and attack Rudy.

If a fight broke out, it could be a disaster. The EGA holds ten thousand people. So many people could get hurt in a violent situation.

Donnie told me not to worry. He said that unless Rudy agreed to change his songs, he would not let Rudy perform at the concert.

Questions for Betsy Blue

What is your name?

What is your occupation?

Why did you start the *9/11 Victims Rights Organization*?

Did Donnie Director contact you about a fundraiser at the EGA?

Did Donnie Director send you free tickets? How many? Who were the tickets for?

Did Donnie Director tell you that Rudy Rapper was scheduled to perform?

How did you feel about that?

What did you tell Donnie?

Are you familiar with Rudy Rapper's music?

Do you think that Rudy Rapper's music would have caused violence if he had been allowed to perform?

What did Donnie say when you told him you were against the idea of Rudy Rapper performing?

LIBERTY UNDER LAW: Separate Branches, Balanced Powers

Jury Charge

At the conclusion of the Mock Trial, the teacher will distribute ballots to each juror. The judge will then “charge” the jury.

The judge should mention the following:

1. My name is Judge _____ of the New Jersey Superior Court. You are the jurors in this case. I am going to give you some instructions. Please do not vote until I tell you to do so.
2. The First Amendment to the Constitution reads:

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.
3. All individuals have a right, under the First Amendment to free speech, even if that speech is critical of the government.
4. The government cannot violate the right to free speech unless the speech creates a “clear and present danger”. This means that the speech is likely to incite violence or other illegal activity.
5. Rudy Rappers has come before the court today claiming that his right to free speech was violated.
6. The State of New Jersey owns the Eastern Goldfinch Arena (EGA). The EGA would not let Rudy Rappers perform because they thought that his music created a “clear and present danger”.
7. As members of the jury, you must decide whether or not Rudy Rapper’s right to free speech was violated.
8. If you think that Rudy’s music did not present a “clear and present danger” and his right to free speech was violated, check off “YES” on your ballot sheet.

9. If you think that the Rudy's music did present a "clear and present danger" and his right to free speech was not violated, check off "NO" on your ballot sheet.

10. Are there any questions?

11. Please vote now.

After the students have voted, the teacher should collect the ballots and tally up the responses. The judge will then announce the jury's finding to the students.

At the conclusion of the Mock Trial, the judge and attorneys will invite the students to engage in a question and answer session.

LIBERTY UNDER LAW: Separate Branches, Balanced Powers

Vocabulary List

Bill of Rights: A bill of rights is a list of rights that belong to the people. The government is not allowed to break these rights. Some of these rights might sound familiar: the right of free speech; the right to practice your own religion; the right to be silent if you are arrested. The original Constitution had no bill of rights. Many of the Framers did not think it was needed. But many people wanted one. So, promises were made to add one. Once the new government was running, one would be added.

Soon, the new government started meeting. Congress proposed the Bill of Rights. A list of twelve changes was sent to the states. In 1791, ten of those changes were agreed to by the states. The ten changes were added to the Constitution. These ten changes are called the "Bill of Rights."

branches of government: See *executive branch, legislative branch, judicial branch.*

Constitution of the United States: The Constitution is the highest law in the United States. All other laws come from the Constitution. It says how the government works. It creates the President. It creates the Congress. It creates the Supreme Court. Each state also has a constitution. The constitutions of the states are their highest law for that state. But the United States Constitution is higher.

The Constitution can be changed. The Constitution is changed by an "amendment." Among the amendments is a list of the rights of the people. By listing these rights, they are made special. It is illegal for the government to violate those rights. As of 2004, there are 27 amendments. Not all of them involve rights, but many do. The first ten amendments are special. They are called the Bill of Rights.

The Constitution sets up the government. It is split into three branches. The First is the Legislative. The second is the Executive. The third is the Judiciary. Each one has its own role in how the law is made and used.

defendant: The person against whom a court case is [filed](#). See also *plaintiff*.

Executive Branch: The role of the Executive is mainly to make sure the law is carried out. The President heads the Executive. The Executive also includes the Vice President. The Secretaries of all the departments are also in the Executive. One department is the Department of Homeland Security. Another is the Department of Education. And one more is the Department of Defense.

Before a law becomes a law, the President must agree to it. If he does not agree, he rejects, or vetoes, the law. When he vetoes a law, he sends it back to the Congress. Congress can then try to pass the law again. The President can also refuse to sign a law - if he does, it will become a law any way. The government has lots of checks and balances. This is one example of the checks and balances. The Congress must pass laws the President will agree to. The President is accountable for his decisions regarding laws.

See also *judicial branch* and *legislative branch*.

First Amendment to the Constitution: 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.

judicial branch: The last branch is the Judiciary. This includes all the federal courts, all the way up to the Supreme Court. States have their own court systems, too. The state courts are under the national courts. The role of the Judiciary is to interpret the law.

The law might say, "It is illegal to break into someone's home." If someone is caught breaking into a home, the courts will ask several questions. First, can the government make this illegal? If it cannot, the law is called "unconstitutional." Such laws are invalid. Next, the court will ask if the person is actually guilty. Usually, a jury will find someone guilty or not guilty. Sometimes just a judge decides this.

A trial by jury is a right. It means that other people from your area will decide if you broke the law. Sometimes juries, and courts, make mistakes. If someone is found guilty, they can "appeal." There is a set of special courts set up for appeals. The last court of appeal is the Supreme Court. Whatever the Supreme Court says is the end. There is no appeals court higher than the Supreme Court.

See also *executive branch* and *legislative branch*.

Legislative Branch: The Legislature makes the law. The legislature is called the Congress. It is split into two parts. The first is the House of Representatives. The second is the Senate.

Each Representative comes from a district in one of the states. That person's job is to represent the people in that district. The people elect the Representative. They have the right to tell him or her how they feel about issues. There are 435 Representatives. Bigger states have more Representatives. Every state has at least one.

The Senate is made up of 100 Senators. There are two Senators from each state. The people elect Senators. Senators should represent the interests of all of the people.

When the Congress wants to pass a law, both the House and the Senate must agree to the exact same law. If they cannot agree, then the law cannot pass.

See also *executive branch* and *judicial branch*.

plaintiff: The person that brings a case to court. See also defendant.

separation of powers: The Separation of Powers devised by the framers of the Constitution was designed to do one primary thing: to prevent the majority from ruling with an iron fist. Based on their experience, the framers shied away from giving any branch of the new government too much power. The separation of powers provides a system of shared power known as [Checks and Balances](#).

Three branches are created in the Constitution. The Legislative, composed of the House and Senate, is set up in [Article 1](#). The Executive, composed of the President, Vice-President, and the Departments, is set up in [Article 2](#). The Judicial, composed of the federal courts and the Supreme Court, is set up in [Article 3](#).

Each of these branches has certain powers, and each of these powers is limited, or checked, by another branch.

For example, the President appoints judges and departmental secretaries. But these appointments must be approved by the Senate. The Congress can pass a law, but the President can veto it. The Supreme Court can rule a law to be unconstitutional, but the Congress, with the States, can amend the Constitution.

All of these checks and balances, however, are inefficient. But that's by design rather than by accident. By forcing the various branches to be accountable to the others, no one branch can usurp enough power to become dominant.

The following are the powers of the Executive: veto power over all bills; appointment of judges and other officials; makes treaties; ensures all laws are carried out; commander in chief of the military; pardon power.

The definitions found in the glossary were taken from *The U.S. Constitution for Kids* at: www.usconstitution.net/constkids.html

**LIBERTY UNDER LAW:
Separate Branches, Balanced Powers**

Jury Ballot

DID THE STATE OF NEW JERSEY
VIOLATE
RUDY RAPPER'S
CONSTITUTIONAL RIGHT TO
FREE SPEECH
WHEN THEY DID NOT ALLOW HIM
TO PERFORM AT THE
EASTERN GOLDFINCH ARENA
ON NOVEMBER 1, 2001?

YES _____

NO _____