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## **K-3 Due Process**

### **Grades K-3: Due Process Freedoms Seeking Facts to Solve Mysteries by Dale Greenawald**

*This scenario about a missing bicycle will help students distinguish between facts and opinions, and then use the facts to solve the mystery. This lesson helps students recognize that legal personnel use facts much more than opinion, as they themselves use a series of facts to draw a reasonable conclusion when determining the innocence or guilt of an individual. The teaching time of this exercise is approximately 30 minutes. A community resource person from the justice system - a lawyer, a judge or police officer who uses fact to develop an argument - is an invaluable asset to this lesson.*

#### **Scenario and Evidence**

Read through the scenario and testimony, stopping periodically to provide students with a definition of fact and opinion appropriate to their level. Ask students to distinguish facts from opinion. Have the class respond to questions at the end of each person's testimony. On May 15, 199\_\_, John's red ten-speed Schwinn bicycle disappeared. Detective Jim Shoes was assigned to investigate the case.

Detective Shoes: "When did you last see the bicycle?"

John: "I rode home after delivering my papers yesterday, May 14th, at about 6:30 p.m. I parked the bike in the corner of the garage. I didn't put the lock on because it was in the garage. When I got up to ride it to school, the bike was gone. I think Lou took it because he wanted a bike like mine and I don't think he likes me."

Class Discussion:

What are the facts?

What are the opinions?

(If no response, re-read the situation and John's testimony and ask the questions again.)

taking John's bike?

What arguments can be made in support of Lou?

How strong is each argument?

Are other arguments possible?

The resource person might explain a case he/she was involved in and indicate what were some of the facts and opinions in that case. Let students try to identify which statements were facts and which were opinions.

Discuss why facts are usually more important than opinions in trials.

### **The Mystery Solved**

John's bike was returned by Mike, who had asked John two weeks before if he could borrow it on the 14th. John had simply forgotten that he had given permission.

*Dale Greenawald is an educator in Boulder, Colorado. This strategy first appeared in the ABA magazine Update on Law-Related Education.*

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## **ABA Lessons 4-6: Due Process Freedoms: Yertle the Turtle Mock Trial**



### **Grades 4-6: Due Process Freedoms Yertle the Turtle Mock Trial**

*by Gayle Mertz*

#### **INTRODUCTION**

Most students are familiar with Dr. Seuss's book Yertle the Turtle. Yertle is the dictatorial and oppressive king of a pond. He decides that his kingdom is too small and demands that the other turtles stand on each other's backs to build a high, then higher, then higher throne for the Mighty Yertle. Yertle's reign is toppled by a simple, innocent act committed by the lowest turtle in the stack.

This entertaining mock trial builds upon the original story by adding a new angle. Tell students that the personal plights of many unidentified characters in this story have been ignored. For example, one of the turtles in the middle of the stack of turtles is named Sadie. Sadie is quiet and well behaved. Because of her youth, Sadie has been told to listen to elders, not to disagree with them, and to cooperatively help them when asked to do so.

Sadie was frightened when she was asked to climb up to the top of the pile of turtles, and even more frightened when additional turtles began to climb onto her, in order to stack turtles higher and higher. But she obeyed. She didn't say a word. She was just a young turtle, and King Yertle was older and in a position of great authority. After the great stack of turtles collapsed, Sadie had a terrible shell ache. She didn't think about it too much until the pain persisted for several weeks. Then her mother took her to the local reptile doctor for an examination. The doctor was concerned and said that Sadie had a thin crack in her shell which may never heal properly. She told Sadie to rest and not to do any heavy work.

Sadie couldn't even walk to school. She was very sad. Her mother was angry and said that King Yertle had no right to tell a young turtle to bear the weight of other turtles on her shell. She said that she would sue the Turtle King and get enough money to take

care of Sadie's medical problems. She also wanted to make sure that Yertle did not abuse other turtles again. Sadie's mother did not think that even a king could ask turtles to risk hurting themselves just to satisfy his need to be even greater.

### Objectives

After completing this lesson, students will:

- Understand the basic mechanics of a jury trial
- Recognize the responsibility of functioning as a juror.

### Target Group: Intermediate and up

Time Needed: 1 week

Materials Needed: Yertle the Turtle by Dr. Seuss (Random House, Copyright renewed 1986, ISBN 1-394-80087-7); Student Handout (below); "courtroom" props; optional: character props, masks, or costumes

### Procedures

1. Explain to students that they will participate in a mock trial of Yertle the Turtle. Read, or remind them of, the original story. Share the part of the strategy introduction that explains who Sadie is and what has happened to her. Tell students that Yertle is not only tyrannical, but also lazy and irresponsible. Since he didn't want to bother ensuring justice for his subjects by hearing their cases himself, he established an independent judiciary. And now he is going on trial. This will be a civil trial, however, so Yertle may not be put in jail. He may be required to pay for Sadie's actual damages as well as an additional amount for having violated her inalienable turtle rights.
2. Photocopy and share the materials with students: "[A Note to Jurors](#)" and "[How to Conduct Your Mock Trial](#)." Assign students the roles there [ [Roles for Students](#)] and/or others they may choose to develop.

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## ABA Lessons 4-6: Due Process Freedoms: Seeking Facts to Solve Mysteries



### Grades 4-6: Due Process Freedoms Seeking Facts to Solve Mysteries

by Dale Greenawald

Using role play techniques, students will distinguish between facts and opinions and discuss why courts rely upon facts more than opinion. This exercise should help students develop critical thinking skills. This exercise will take about 45 minutes.

#### Getting Started

- Brainstorm with the class what a fact is. List all of the responses and discuss them. Develop an acceptable definition of what is a fact.
- Brainstorm with the class what an opinion is. List all of the responses and discuss them. Develop an acceptable definition of opinion.
- Have student volunteers assume the various roles and conduct a mock trial of James Phillips v. the Radio Shop. After each person has testified, review the testimony, distinguish between facts and opinion, and list each under a separate heading on the board.
- After all of the testimony is given, review all of the facts. Review all of the opinions and discuss how important and influential each may be. Discuss why facts are more reliable than opinion. After examining the facts and opinions, discuss the legal issues raised and what arguments might be presented for each.
- As either a class or in small groups discuss what you would decide and why. After the class discusses how it would decide the case, the resource person can explain how a real judge would probably decide the case and why.

#### Mock Trial: James Phillips v. the Radio Shop

**Facts.** In this case James Phillips purchased an inexpensive radio from the Radio Shop and later attempted to exchange it because it did not work. The date of the sale was November 14; the return was made ten days later. The sales slip has the following language typed at the bottom: "This product is fully guaranteed for five days from the date of the purchase. If defective, return it in the original box for credit toward another purchase."

The store refused to make the exchange and James brings this action in small claims court. Evidence. James has (1) the sales slip for twenty-five dollars paid to the Radio Shop and (2) the

broken radio. He claims to have thrown away the box the radio originally came in.

**Witnesses**

**For the plaintiff:** 1. James Phillips, 2. Ruby Phillips, James' sister.

**For the defendant:** 1. Al Jackson, the salesman, 2. Hattie Babcock, store manager.

**Procedure**

The judge should provide an opportunity for James to make his case and should give the representatives of the store a chance to tell the court why the money should not be returned. Both sides should call their witnesses.

At the end the judge should decide the case and provide reasons for the decision.

**James Phillips:** I went into the Radio Shop to buy a transistor radio. I looked at a few different radios but the salesman talked me into buying the Super Electro Model X-15. I paid him the twenty-five dollar price and he gave me the radio in a cardboard box.

When I got home to listen to the radio, I found that it didn't work. I went back to the store to get my money back, but the salesman wouldn't return it. He said I should have brought it back right away. I explained to him that my mother had been sick and I'd been busy. Here's the broken radio and the receipt as proof. I want my money back!

**Ruby Phillips:** All I know is that when James got home the other day he was all excited and wanted to show me something. He called me into the kitchen to show me his new radio. I said, "Let's hear how it works." He turned it on and nothing came out but static. He moved the dials around but couldn't get it to play. Was he ever mad! I told him that he ought to take it back to the store and demand his money back.

**Al Jackson:** I sold the kid the radio, but as far as I know it worked OK. All the table models worked well enough, so why shouldn't the one boxed and straight from the factory? I'll bet what really happened is that he dropped the radio on his way home. Or maybe he broke it during the ten days he had it. That's not my fault, is it?

**Hattie Babcock:** As Jackson said, all the other X-15's have

worked fine. We've never had a single complaint about them. We have a store policy not to make refunds unless the merchandise is returned within five days in the box we sold it in. Also, the guarantee on the radio says that the radio must be returned in the original box. That's the reason Jackson didn't give the kid his money back. Otherwise, we'd have been more than happy to give him credit toward a new purchase. After all, pleasing our customers is very important to us. Personally, I agree with Jackson. The kid probably didn't bring back the box because it was all messed up after he dropped it.

*Dale Greenawald is an educator in Boulder, Colorado. This strategy first appeared in the ABA magazine Update on Law-Related Education.*

## Law Day -- May 1



### For Schools: Lessons

#### High School Students Teaching About Due Process

##### Bill's Bad Day

( [download this handout as a word document](#) )



As he sits in his living room one afternoon, Bill encounters a string of problems. His teenage son is sent home from school, suspended for three days. There is no note or reason given for the suspension.

The police knock at the door, wanting to search his house. They don't have a warrant.

An Internal Revenue Service Agent appears, wanting to ask him questions about his income tax deductions last year.

A social worker from the family protection service also arrives, looking for Bill's eight year old daughter who does not attend school. The social worker wants to remove the daughter from the home and place her temporarily in shelter care. Bill's wife provides home schooling to the daughter.

In the mail, Bill receives three letters. The first, from the state government, informs him that the state is building a highway where his house is located. It plans to take it and give Bill \$100,000, half of what Bill thinks it is worth. The second, from his employer, the city government, notifies him that he is fired from his job, due to a recent conviction for passing bad checks. Bill has never been arrested for anything, let alone convicted. The third letter, from the social security office, states that it is stopping the disability benefits his wife has been receiving, without giving reasons.

He picks up the paper and reads about the case of a convicted murderer, in which the jury is considering a death sentence.

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# Law Day -- May 1





## For Schools: Lessons

### High School Students: Due Process Teaching about Due Process of the Law

#### QUESTIONS

##### 1. Can the government do that?

The [scenario](#) poses a range of takings and intrusions, from minor to extremely serious. The key point of the lesson is that the government can only deprive a person of life, liberty or property in accordance with due process of law. That begs the question, "What is due process of law?"

Distilled to its essence, due process requires notice and an opportunity to be heard. Stated another way, due process means that the government must indicate some justification or cause for its actions and must give attention to and take seriously the response or position of the person being affected. The starting point of due process analysis in each of the above situations, then, is to identify the government's authority or reasons for its actions.

In each of the instances in "[Bill's Bad Day](#)," the government or community has interests it seeks to enforce against the person. For instance, in the case of the school suspension, the school's interest is to maintain a learning environment. *Goss v. Lopez*, 419 U.S. 565 (1975). In the case of the death penalty, the government's interest is to punish and prevent serious crime.

##### 2. What could happen to me?

The second step in the analysis is determine how much process is due in a given situation. The key concept is that due process is not a rigid set of identical rules for all situations, but flexible procedures varying with the situation. Basically, due process depends on an assessment of the balance between the degree of the loss a person could possibly suffer and the importance of the government's interest, including the cost or difficulty in providing the process. *Mathews v. Eldridge*, 424 U.S. 319 (1976). In the [scenario] instances, the possible loss ranges from missing a few days of school to losing one's life.

**Teaching point:** After examining the scenario's situations, the teacher or presenter can ask students to identify the government interests and their importance, then to identify the person's interest and its importance, and the degree of the possible loss.

##### 3. What can I do about it?

The issues here are what procedures or safeguards are provided by the government in the way of justifications and opportunity to respond, and whether they are adequate. In general, this requires an assessment of the government's and person's interest, discussed above, and "risk of an erroneous deprivation of [a person's] interest...and the probable value, if any, of additional or substitute safeguards...." *Mathews v. Eldridge*, 424 U.S. 319, 321 (1976).

The possible procedures may include the following: right to a free or retained lawyer, a formal trial and rules of evidence, opportunity to call witness or to cross-examine, appeal, impartial jury, prompt hearing, public trial, burden of proof, transcript, written opinion or decision stating facts relied on, informal hearing, written notice of charge or pending government action, arraignment or presentment, bail, independent review of executive action by judiciary (e.g., search warrant), standard for intervention (e.g., reasonable suspicion, probable cause), statement of rights (e.g., at preliminary hearing and Miranda warnings) and specified procedures, including setting of mitigating and aggravating circumstances, a separate sentencing hearing, and an elaborate appeals process (death penalty). See 18 U.S.C.A. 3591-3595 for specific federal protections in federal death penalty cases.

**Teaching point:** Ask students to brainstorm or list the due process protections they are aware of. To prompt some ideas, ask them to read the 4th, 5th and 6th Amendments, recall a case they are familiar with, watch a video clip (e.g., a scene from Gideon's Trumpet or more recent film) or read an appropriate newspaper article. Once you have a list, have students work in pairs to classify the protections, e.g., as "essential, very important, not so important." Another approach would be to make a 6th Amendment "ladder," a paper with six lines or steps; ask them to put the most important on the top rung or step, the next most on the second rung, and so on.

The issue of what process is due for any particular situation is developed in the more specific student questions, which follow below: