INTRODUCTION TO THE BILL OF RIGHTS

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Objectives: To provide a simple overview of the Bill of Rights.
To introduce landmark cases on students and the Bill of Rights

Grade level(s): 5-12

Supplies: Copies of the Bill of Rights for all students (Available from The Missouri Bar)

Steps:

1. If your students do not have a background in the Constitution, ask if they know what the Constitution is—the law of the land. Perhaps mention some of the provisions contained in the Constitution i.e. qualifications for President, separation of powers, etc.

2. Distribute a copy of the Bill of Rights. (The Missouri Bar has a booklet available in quantity, *The Bill of Rights: An Introduction.*)

3. Provide a background for the passage of the Bill of Rights through lecture or through class assignment. The Missouri Bar booklet has a simple explanation on pages 3-8. It is important for students to know that the original Constitution had little hope of acceptance without the Bill of Rights.

4. Discuss with the students why the earliest citizens demanded amendments to the Constitution almost immediately. (See "Factors Leading the Bill of Rights" at page 3 in *The Bill of Rights: An Introduction*.)

5. Do a short survey of the Bill of Rights.

    a. When I say what freedoms do you have or what are your rights, what do you think of immediately? Brainstorm with the students. (Usually, most of the freedoms identified are found in the First Amendment and usually most students' first response is Freedom of Speech.). This is the "super" amendment because it contains our most cherished freedoms. Have the students read aloud the First Amendment. A good way to remember all the freedoms found in the First Amendment is to think of **GRASP**. Invite students to make a fist as if they were grasping something. As soon as you were born or entered this country, you had in your grasp all the freedoms guaranteed by the Constitution. Many of those freedoms are guaranteed by the First Amendment—**G**rievance, **R**eligion, **A**ssembly, **S**peech and **P**ress. We will explore more about the First Amendment later.

    b. Read the Second Amendment. Why was this amendment important to the people? (Fear of a government that became too powerful and a fear that the people would not be properly prepared to overthrow that government.) People interpret the Second Amendment in different ways. Some believe that the Second Amendment ensures that people may have guns. Others believe the Second Amendment means that states may have their own armies. In the history of our country, there have been very few Supreme

Court decisions on this amendment—one in the 20th century. None have held that the Second Amendment guarantees an individual right to carry a weapon.

c. Read the Third Amendment. Why do you think this amendment was included in the Bill of Rights? (Colonists were forced to house and feed British soldiers.) The Supreme Court has decided no cases on this amendment.

d. Read the Fourth, Fifth, Sixth and Eighth Amendments. These amendments predominantly address the protections afforded someone accused of committing a crime or suspected of committing a crime. (Point out that the Fifth Amendment also has the "eminent domain" protection that is not related to protections for a suspect or accused.)

e. Briefly read Seventh, Ninth and Tenth Amendments. (See *The Bill of Rights: An Introduction* for information on these amendments.)

6. Explain to the students that they are now going to do a series of role-plays that provide some quick information about the Bill of Rights and introduce them to some landmark cases involving students. Remind the students that we always start with the premise that all freedoms are guaranteed and then we look if there are special circumstances where those freedoms may be limited.

a. **Fire! Fire!** After the students do this play, explain that there are restrictions on the Freedom of Speech—time, place and manner and speech that may cause a dangerous situation.

b. **Aunt Frieda and the Church:** The point of this role play is to help the students understand who we are protected from in the Bill of Rights. This case cannot be taken to the Supreme Court because Aunt Frieda is not the government. Before giving the students the answer, ask them to examine the First Amendment. In the very sentence, it says "that Congress shall not". (Over the years, "Congress" has come to mean any governmental institution.)

Note: The following role-plays are based on landmark Supreme Court Cases involving students and the Bill of Rights. The teacher or the guest lawyer should point out to the students that, except in *It's My Locker*, the original lawsuit was brought by the students' parents because the students as minors could not bring a lawsuit. *It's My Locker* is based on a juvenile case so the minor's initials T.L.O are used.

c. **Budding Journalists** –the background for this role play is *Hazelwood School District v. Kuhlmeier*, which is summarized below:

The student newspaper at Hazelwood East High School in St. Louis County was published by the members of the Journalism II class. The students acted as editors with some oversight by the teacher. The principal of the school would read the typeset copy before it went to press. School Board policy said, "school-sponsored student publications will not restrict free expression of diverse viewpoints within the rule of responsible journalism."

For one particular issue, the students had written two articles that met with the disapproval of the principal: (1) an article on teenage pregnancy which had quotes from unnamed students about sexual activity and birth control methods. The principal thought the pregnant students could be identified by the text of the article and would violate their privacy and thought the article was inappropriate for younger students; and (2) an article about divorce that quoted, by name, a student who said her father did not spend enough time with the family before the divorce and was always out of town on business. The principal thought that the quoted student's parents should have had the opportunity to comment on the article or to consent to it before publication. Due to the principal's claim that there was not enough time left in the school year to carry out major revisions or reviews of the articles, he did not give the editors the opportunity to revise the articles. The principal ordered that the two articles be deleted from the newspaper.

The student editors, through their parents, sued the school district in federal court, alleging that their First Amendment freedom of the press right had been violated. The Federal District Court held that no First Amendment violation occurred when the principal ordered that the articles be deleted. The United States Court of Appeals for the Eighth Circuit, however, reversed the district court, finding that there had been a violation. The school's lawyers argued that the student newspaper was not a public forum and was part of a journalism class. The articles that the students wanted to print did not meet the standards of the journalism class. Schools have a duty to screen materials for appropriateness for its students. The students' lawyers argued that in the case of ***Tinker v. Des Moines Independent Community School District***, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d. 731(1969), the Supreme Court held that a student's First Amendment right to free speech does not end at the school door. The articles were about issues that are important to teenagers. The privacy of everyone concerned had been protected.

The United States Supreme Court held that the principal's decision to disallow two articles in the school newspaper did not violate the First Amendment. The court held that "a school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school." The United States Supreme Court further held that school facilities may be deemed to be public forums only if the school has opened its facilities for "indiscriminate use by the general public." Since the Hazelwood School District did not open its facilities to the public at large, its student newspaper was not considered a public forum, and, therefore was not entitled to the same First Amendment protection as a public newspaper.

Food for thought: If a school newspaper is not part of a journalism class, would that make a difference? If the school newspaper allowed advertisements from outside businesses, would the newspaper then be a "public forum?"

d. **Graduation Prayer**—the background for this role play is the Supreme Court case of Lee v. Weisman:

Principals of public middle and high schools in Providence, Rhode Island, are permitted to invite members of the clergy to give invocations and benedictions at their schools' graduation ceremonies. Petitioner Lee, a middle school principal, invited a rabbi to offer such prayers at the graduation ceremony for Deborah Weisman's class gave

the Rabbi a pamphlet containing guidelines for the composition of public prayers at civic ceremonies and advised him that the prayers should be nonsectarian. Deborah Weisman's parents filed suit asking that school officials be prohibited from including the prayers in the ceremony. Deborah and her family attended the ceremony, and the prayers were recited. Subsequently, Weisman sought a permanent injunction barring Lee and other petitioners, various Providence public school officials, from inviting clergy to deliver invocations and benedictions at future graduations. It appears likely that such prayers will be conducted at Deborah's high school graduation. The Federal District Court granted the injunction on the ground that it violated the Establishment Clause of the First Amendment.

The following portions of the Supreme Court's decision are very informative:

Held: Including clergy who offer prayers as part of an official public school graduation ceremony is forbidden by the Establishment Clause.

State officials here direct the performance of a formal religious exercise at secondary schools' promotional and graduation ceremonies. Lee's decision that prayers should be given and his selection of the religious participant are choices attributable to the State. Moreover, through the pamphlet and his advice that the prayers be nonsectarian, he directed and controlled the prayers' content. That the directions may have been given in a good faith attempt to make the prayers acceptable to most persons does not resolve the dilemma caused by the school's involvement, since the government may not establish an official or civic religion as a means of avoiding the establishment of a religion with more specific creeds.

The Establishment Clause was inspired by the lesson that in the hands of government what might begin as a tolerant expression of religious views may end in a policy to indoctrinate and coerce. Prayer exercises in elementary and secondary schools carry a particular risk of indirect coercion. The school district's supervision and control of a high school graduation ceremony places subtle and indirect public and peer pressure on attending students to stand as a group or maintain respectful silence during the invocation and benediction. A reasonable dissenter of high school age could believe that standing or

remaining silent signified her own participation in, or approval of, the group exercise, rather than her respect for it. And the State may not place the student dissenter in the dilemma of participating or protesting. Since adolescents are often susceptible to peer pressure, especially in matters of social convention, the State may no more use social pressure to enforce orthodoxy than it may use direct means. The embarrassment and intrusion of the religious exercise cannot be refuted by arguing that the prayers are of a de minimis character, since that is an affront to the Rabbi and those for whom the prayers have meaning, and since any intrusion was both real and a violation of the objectors' rights.

Petitioners' argument that the option of not attending the ceremony excuses any inducement or coercion in the ceremony itself is rejected. In this society, high school graduation is one of life's most significant occasions, and a student is not free to absent herself from the exercise in any real sense of the term "voluntary." Also not dispositive is the contention that prayers are an essential part of these ceremonies because, for many persons, the occasion would lack meaning without the recognition that human achievements cannot be understood apart from their spiritual essence. This position fails to acknowledge that what for many was a spiritual imperative was for the Weismans religious conformance compelled by the State. It also gives insufficient recognition to the real conflict of conscience faced by a student who would have to choose whether to miss graduation or conform to the state-sponsored practice in an environment where the risk of compulsion is especially high.

Inherent differences between the public school system and a session of a state legislature distinguish this case from Marsh v. Chambers, 463 U.S. 783 , which condoned a prayer exercise. The atmosphere at a state legislature's opening, where adults are free to enter and leave with little comment and for any number of reasons, cannot compare with the constraining potential of the one school event most important for the student to attend.

e. **It's My Body** and **It's My Locker** are Fourth Amendment Cases. It's My Locker is based *T.L.O. v. New Jersey*:

On March 7, 1980, a teacher at Piscataway High School in New Jersey found two girls smoking in a restroom. Since this was a violation of school rules, the teacher took the two students to the principal's office. The assistant vice-principal questioned the two

girls separately. One student admitted that she had been smoking. However, T.L.O. denied that she had been smoking in the restroom and claimed she did not smoke at all. The assistant vice principal then asked to see T.L.O.'s purse. When he opened the purse he found a pack of cigarettes and also noticed a package of rolling papers which the vice-principal knew were associated with marijuana use. He then searched the purse more thoroughly and found a small quantity of marijuana, a pipe, several empty plastic bags, a substantial amount of money, a card that appeared to be a list of students who owed T.L.O. money, and two letters that implicated T.L.O. in the distribution and sale of marijuana, a crime under New Jersey law.

The State of New Jersey brought delinquency charges against T.L.O. in Juvenile Court. T.L.O. argued that the vice-principal violated her Fourth Amendment rights to be free from unreasonable searches and seizures by government officia ls because the vice-principal had no reason to believe a crime had been committed and had no search warrant. The Juvenile Court agreed that a vice-principal was a government official and that Fourth Amendment protections applied to searches by school officials, but found that the vice-principal's search of her purse was reasonable. The New Jersey Supreme Court reversed the Juvenile Court and found that once the vice-principal had found the cigarettes in T.L.O.'s purse, the search should have ended and there should have been no further exploration of the purse.

The school argued that the vice-principal's search of the purse was reasonable because a teacher had told the vice-principal that T.L.O. had been smoking. Thus, the vice-principal had *reasonable cause to suspect* a school rule had been broken. When the vice-principal was searching for the cigarettes, the drug-related evidence was in plain view. Plain view is an exception to the warrant requirement of the 4th Amendment. T.L.O. argued that the vice-principal had no probable cause to believe that T.L.O. had committed a crime when he searched her purse. Possession of and use of cigarettes (at that time) were not crimes. Belief that a school rule has been broken is not grounds for a warrantless search. Furthermore, even if the vice-principal had the right to search T.L.O.'s purse for cigarettes that the search should have ended when the cigarettes were found.

The United States Supreme Court found that a search of T.L.O.'s purse was reasonable because the vice-principal had information from a teacher that T.L.O. had violated school rules, and that this was sufficient for a search on school grounds.

Food for thought: If the Court should find that the vice-principal's search of T.L.O.'s purse was reasonable, does this open the door to school administrators randomly searching students' lockers, desks and belongings?

f. The background for **It's My Body** is from *Vernonia v. Acton*:

Vernonia, Oregon, is a small community of about 3,000 people with a student population of 690 students. In this small logging community, most of the students participated in school athletics and school athletic programs are a major focus of the community. Between 1985 and 1989, the teachers and administrators of Vernonia School District became concerned about what they observed to be a dramatic increase in the use of illegal drugs among the students, many of them student athletes. The increase in drug use corresponded with an increase in student disciplinary problems. Many student athletes openly bragged about using drugs.

Prior to 1989, administrators instituted drug education programs and used drug-sniffing dogs to combat the escalating drug problem. These measures did not work. Thus, in 1989, the administration adopted a policy that required all students who participated in interscholastic athletics to take a drug test at the beginning of the athletic season and at random times throughout the season. The urine of athletes was tested strictly for the presence of drugs. The type of test used is considered 99.94% accurate. The results were kept confidential and were strictly used by the school. Those athletes who tested positive for drugs had to participate in a drug counseling program for six weeks. They also had to agree to weekly drug testing or face being suspended from the team for the current season and all following seasons. If a student refused to be tested, the student was suspended from inner scholastic athletics for the season. After the policy went into effect, disciplinary complaints dropped by 50%. Teachers saw a drop in the use of drugs among their students and saw approval for drug use also drop.

James Acton was in seventh grade during the 1991-1992 school year and wanted to play football. However, he and his parents refused to sign the consent form for the drug testing. In accordance with the school policy, he was suspended from interscholastic athletics. The Actons brought a suit against the school in the federal district court, claiming that the school's policy violated James' Fourth Amendment right to be free from unreasonable searches and seizures. The Actons lost in district court and then appealed to the Ninth Circuit Court of Appeals. They won in the Ninth Circuit. The School district then asked the United States Supreme Court to review the case.

<u>Justice Scalia's Views (for appellant, the school):</u>

1. Collecting a student athlete's urine is a "search" and, therefore, the Fourth Amendment issue of whether the search is reasonable. Reasonableness is judged in this case by balancing the intrusion of requiring a student athlete to provide a urine sample against the school's interest in curbing illegal drug use.

2. School children require a greater degree of supervision than do adults. The requirements that school children receive physical examinations and have vaccinations indicate that they have a lesser expectation of privacy than the general population. Student athletes have an even lesser expectation of privacy because they undress in open locker rooms, are subject to preseason physical exams and rules regulating their conduct.

3. The urine is tested only for drugs and only a very limited group knows the results. The results are not released to medical personnel or the law enforcement community.

4. The importance of deterring illegal drug use by school children cannot be doubted. Moreover, the policy of drug testing athletes is directed strictly to student athletes who are more susceptible to injuring themselves or others while using illegal drugs.

<u>Justice O'Connor's Views (for the respondent, James Action):</u>

1. The Fourth Amendment generally forbids searches of whole groups. There must be suspicion of the individual to justify the search.

2. Students who are disruptive or act suspicious should be tested--this would not violate anyone's constitutional rights.

3. By focusing on individual suspicion, the whole process is kept confidential and then "any distress arising from what turns out to be a false accusation can be minimized."

4. "It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search."

The United States Supreme Court held that the Vernonia School could test its athletes for drugs without violating the students' Fourth Amendment Rights. The court held that requiring a student to submit to a urine test is a search within the meaning of the Fourth Amendment and that an individual's right to privacy must be balanced against the school's interest in curbing illegal during use among the student body. However, a school may exercise greater supervision over school children than the state can over adults. Although students do not leave their constitutional rights at the school door and any search or seizure must be considered reasonable, school children have a lesser expectation of privacy than adults in that they are required to have physical examinations and vaccinations in order to attend school. Student athletes have an even lesser expectation of privacy in light of the fact that they often undress in open locker rooms. As to the balancing test, the privacy interests involved with urine testing are minimal compared to the school's interest in curbing the use of illegal drugs among the students. Furthermore, student athletes have a greater potential to harm themselves and otherwise while using illegal drugs, and, in the Vernonia School District, the results of the drug test would be kept confidential and not turned over to law enforcement officials.

7. Enrichment: With high school government classes, consider discussing incorporation and the importance of the 14th Amendment in insuring the protections found in the Bill or Rights.

FIRE! FIRE!

Players: Tim and Tina

Scene: Crowded Theater

Tim: Do you see two seats together anywhere?

Tina: No. I cannot believe how many people are here tonight for (make up the name of a movie--use your imagination!)

Tim: Hey! I have a great idea for getting some space in here!

(Tim and Tina whisper together and give each other a wink and a high five.)

Tim and Tina together: **FIRE! FIRE!**

Tim and Tina do clear out the theater and do find seats together. The theater manager, however, calls the police and Tim and Tina are referred to the juvenile office for their actions. Tim and Tina say they cannot be in trouble because they "had the right" to say what they wanted in that theater.

Discussio n questions:

1. Did Tim and Tina have "the right" to yell "fire, fire" in the crowded theater?

2. Are their actions covered by the First Amendment?

3. Why not?

(Tim and Tina did not have the right under the First Amendment to use their freedom of speech to create a dangerous situation.)

AUNT FRIEDA AND CHURCH

Players: Aunt Frieda--a domineering woman. Penny and Peter--Aunt Frieda's niece and nephew who have come to live with her for reasons unknown.

Setting: Aunt Frieda's living room on Sunday morning.

AUNT FRIEDA: Penny! Peter! Come on, it is time for us to go to church. (Enter Penny and Peter.)

AUNT FRIEDA: We need to get to church early so I can enroll you officially as members of the Maple Street Methodist Church.

PENNY: Aunt Frieda, Peter and I are Presbyterians, not Methodists. We will go to the Presbyterian Church here in Somerset.

AUNT FRIEDA: While you are living with me, you will be Methodists. You have no other choice.

PETER: Hold on a minute, Aunt Frieda. Haven't you heard of The First Amendment and freedom of religion?

AUNT FRIEDA: Take me to the Supreme Court if you want. You are going to the Methodist church.

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1. Is Aunt Frieda violating Penny's and Peter's First Amendment right by forcing her religion on them?

2. Could Peter and Penny take their "case" to the United States Supreme Court? Clue: Who does the Bill of Rights protect you from?

BUDDING JOURNALISTS

PLAYERS: Joe, Jenny and Mr. Fair

Setting: School newspaper production room

Joe: Mr. Fair, Jenny and I have a great article on why the dress code in this school is unfair and unreasonable.

Jenny: We did a survey of seventy-five kids with kids from all the grade levels and with equal numbers of boys and girls.

Joe: I think when the administration and school board see this they are going to get the message about what needs to be done about the dress code.

Jenny: I have an editorial related to the article, too.

Mr. Fair: I probably better check with the principal about this article. (He leaves and comes back a short time later.)

Mr. Fair*:* Joe and Jenny, you really did a nice job on this project but the administration and school board with a student group came up with the present dress code several years ago and the principal feels it is not a good idea to open up this subject for debate again.

Joe: But this is our newspaper. The first amendment guarantees our right to print what we want.

Jenny: My mom is a lawyer. We'll take this to the Supreme Court if necessary. Thomas Jefferson and James Madison would not like what is happening here.

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Discussion questions:

1. Is a school newspaper protected by the First Amendment?

2. Is a school newspaper a place where anyone can express his or her opinion?

3. Could the students send their information to the local newspaper and be protected by the First Amendment?

4. See ***Hazelwood v. Kuhlmeier***. 484 U.S. 260 (1988) In this case, the U.S. Supreme Court held that while school newspapers are covered by the First Amendment, school authorities may take measures to protect to protect the students' privacy and ensure content is consistent with the school's policies, especially when the school newspaper is part of the curriculum.

GRADUATION PRAYER

Players: Mr. or Ms. Jones--Principal of Central High School
Mr. and Mrs. Smith--parents of a senior at Central High School

Setting: The principal's office, one month prior to graduation

THE PRINCIPAL: I am so glad you came in today, Mr. and Mrs. Smith. I understand you have some concerns about our graduation ceremony that is coming up next month.

MRS. SMITH: Yes, we do. It is our understanding that the minister from the Methodist church has been asked to say a prayer at the graduation exercises. Is that correct?

THE PRINCIPAL: Yes, it has been a long-standing tradition here at Central to have a minister from one of the community's churches say a prayer. We rotate the honor among the various denominations. Last year it was Father Murphy from St. Mary's and the year before that it was Rabbi Jaffe from the Hillel Center.

MR. SMITH: Since this is a public school, we feel very strongly that it is unconstitutional for the school to have any kind of prayer at a school function. While we believe in God, we belong to a non-traditional church and prefer that our children not be forced to be part of a prayer experience that is contrary to our religious practice.

THE PRINCIPAL: This issue has arisen before. We have asked the students how they feel and the majority of students want the prayer.

MRS. SMITH: The majority? So there have been students who have voiced objections?

THE PRINCIPAL: Well, yes, but we remind the students that this is a democracy and the majority rules.

MR. SMITH: Our child will not be a part of any ceremony where there is a prayer offered. What you are doing is unconstitutional and we will take this to the Supreme Court if we have to!
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1. Is it constitutional for the school to have a prayer at graduation?

2. Could a teacher offer a prayer at the beginning of her class at Central High School? What about at St. John's Lutheran High School where it is not a requirement that one be a Lutheran to attend and, indeed, most classes have students who have various religious beliefs?

IT 'S MY LOCKER!

PLAYERS: Ms. Jones, the principal, and two students, Patty and Peter

Setting: School hallway in front of Peter's and Patty's lockers.

Ms. Jones: Peter and Patty, please open your lockers. It has been reported to the office that you brought pagers to school. You know it is against the rules to have a pager at school.

Peter: I do not have a pager in my locker. I will not open this locker without you getting a search warrant.

Patty: I also do not have pagers in my locker. Unless you have a search warrant, you have no right to search my locker.

Ms. Jones: I have here the combinations to both of your lockers. If you will not open the lockers for me, I will open them on my own.

Peter: If you find anything, you cannot use it against me to punish me.

Patty: Don't you know anything about the Fourth Amendment? You can't just search anywhere that you want. This is my private locker.

1. Who is right? Patty and Peter? The principal?

2. If the principal does not find anything, does this mean she violated Patty's and Peter's Fourth Amendment rights?

3. Did the principal need a reason to search their lockers?

4. ***See T.L.O. v. New Jersey***. 469 U.S. 325 (1985) (In this case, the U.S. Supreme Court held that if the school had probable cause to believe that a school rule had been broken, a search could be made.)

IT'S MY BODY!

Setting: High School classroom during a meeting for winter sports

Players: Girls' basketball coach--Coach Champ, Boys' basketball coach--Coach Winner, Players--Jack and Jill

Coach Champ: All of you players need to know that at any time we can require you to give us a urine sample.

Jack: No way! That is an invasion of our privacy.

Coach Winner: The United States Supreme Court says we can do it and we will.

Jill: Why are you doing this?

Coach Champ: To test for drug use among the athletes.

Jack: I didn't think we had a drug problem in this school

Coach Winner: We don't, but we are going to test so we can keep drugs out.

Jill: I don't think the United States Supreme Court allows you to do that.

Coach Champ: The school lawyers, Joanie Cochran and Mark Clark, say we can legally do this.

Jack: Those two got their law degrees by correspondence courses.

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1. Who's right, the coaches or the students? See ***Vernonia v. Acton***.
2. Additional activity: Have the students read the ***Vernonia*** decision and list the necessary criteria for allowing the urine testing.