



PROBLEM-BASED LEARNING
IN SOCIAL STUDIES OR LANGUAGE ARTS

A Final Appeal

The First Amendment
and *To Kill a Mockingbird*

Teacher Manual

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Problem Narrative:

The Storyline for *A Final Appeal*

Ideally, the direction of a Problem-Based Learning unit is decided by the students through the questions they ask. To some extent, this is made manageable by the structure of the opening scenario presented during Problem Engagement. The opening scenario is carefully designed to point students in the direction of some predictable questions. For example, it would be hard to avoid asking questions about the First Amendment, the rights of teachers, or precedent court cases. The narrative below and the lesson plans in this unit respond to these more predictable questions and address other desirable learning outcomes. They also provide a helpful guide for teachers new to PBL.

Experienced PBL teachers are encouraged to use this unit as a framework, selecting lessons that fit the students' questions (and, as above, many should fit) and adding new lessons to address other questions.

Problem Engagement

The students are in the stakeholder role of Sixth Circuit appellate court judges. They are presented with plaintiff Tara Benson's case against the (fictitious) Aurora Independent School District. Benson is a former teacher for the district who feels that she was dismissed without cause. She claims that her dismissal was the result of using classroom materials that were approved by the district. The district, represented by her principal, Dr. Charles Teague, claims that Benson's teaching skills deteriorated and that she failed to establish a good relationship with the parent community—primarily because she used controversial material despite parent protest. The controversial material in question is the novel *To Kill a Mockingbird*. Benson claims that she should not be dismissed because selecting course materials was an exercise of her First Amendment rights. This introduction to the problem leads students to ask questions that will familiarize them with the case and with their role as appellate judges.

Questions Students Should Ask

- What was the original decision? What was the basis for the decision?
- What exactly does the First Amendment say?
- What are a teacher's First Amendment rights?
- Why else might Benson have been fired?
- What evidence is available?
- How is an appeal decided?
- How does an appeals judge make a decision?

Inquiry and Investigation

Students receive an Evidentiary Packet containing Benson's evaluations, minutes from school board meetings, a list of district-approved literature, memos between Benson and Dr. Teague, and more. As students read and organize the evidence in the packet, they answer some of their initial questions. New questions also arise. Students see evidence that principal Teague insulted Benson in public, and they create a timeline demonstrating that Benson's negative evaluations began after parents started complaining about the book. They also see that Benson consistently failed to comply with direct requests to stop using the book.

Content Students Should Encounter in the Evidentiary Packet

- Benson’s evaluations began to decline shortly after parents started protesting the use of *To Kill a Mockingbird*.
- Benson writes memos defending the book and questioning her evaluations.
- In her evaluations, Benson is urged to stop using *To Kill a Mockingbird* and to establish better relationships with the community.
- In one memo from Benson to the principal, she suggests that he made a veiled threat by telling her in public that she is “on the hot seat.”
- *To Kill a Mockingbird* is on the district list of approved literature.
- A parent petition with 100 signatures is presented to the school board asking for removal of *To Kill a Mockingbird* from the classroom, which Benson does not heed.

Students should also gather information about the court system, its role in adjudicating an appeal, and general background information about the First Amendment and freedom of speech.

Questions Students Should Ask

- Is teaching “speech”? Is a book “speech”?
- What is the “chill a person of ordinary firmness” standard for free speech? Is the veiled threat enough to constitute a “chilling effect”? Legally, what is the difference between a threat and a warning?
- Who has final say over what can be said in a classroom: the teacher, the school district, or the courts?
- How does academic freedom apply in this case?
- Can a teacher’s speech be limited when he or she is teaching district-approved material?
- What type of information is important to us as judges? How do we decide what evidence is pertinent to our decision?
- Is there any way to tell if there is a link between Benson’s poor evaluations and the parent complaints?
- What information is important when deciding an appeal?

Students should also be curious about how judges form legal opinions. An aspect of this question is addressed in a lesson that introduces students to the concept of *stare decisis*. Students receive another memo from the Chief Justice of the Sixth Circuit reminding them of the importance of precedence and *stare decisis*. The memo also points students to important precedent court decisions for the current case.

Questions Students Should Ask

- What is *stare decisis*?
- What are precedents, and why are they important?
- What would cause a judge to overturn a precedent?
- What are the consequences of turning over a precedent?
- What precedents were set in *Pickering*, *Hazelwood*, and *Cockrel*?

Students listen to the reflections of two Supreme Court justices on *stare decisis* and apply what they learn to the current case. This helps orient students to the habits of mind they will need to make their decision. It also directs them to consider court cases that could be used as a basis for their reasoning.

Another lesson encourages students to understand the concept of continuity and the role that continuity plays in establishing social order. Using a paperclip chain as a symbolic reference, students discuss how

court cases form continuity, which creates stability but which also occasionally restricts a society from growing and changing. This restriction is the motivation for overturning a precedent.

Content Students Should Encounter

- Judges tend to value continuity in legal decisions. This allows society to have a fairly predictable set of expectations from which to operate.
- *Stare decisis* is the legal principle that compels judges to make decisions that are consistent with decisions in related cases.
- Precedents establish an important form of continuity in the law.
- Each legal decision adds a link to a chain of logical reasoning; the chain creates continuity. The chain can provide security (like a moored boat), or it can constrain (like a prisoner’s shackles).
- Continuity allows for the law to be predictable and reliable, but occasionally continuity causes the law to be out of sync with social needs. The transition from *Plessy v. Ferguson* to *Brown v. Board of Education* is presented as an example of how the law had to “catch up” with social needs.

Kicker

An optional kicker can be presented to students at any point during Inquiry and Investigation. The kicker takes the form of a petition. Students see that more than 100 parents have signed a petition asking that *To Kill a Mockingbird* be banned because its “obscene content and racial slurs” constitute “fighting words.” At the same time, students are introduced to essays by eminent authors praising the merits of the book, especially its message of understanding and tolerance. Students likely will want to take a look at the book to see for themselves whether the complaints are legitimate and whether the content of *To Kill a Mockingbird* presents “fighting words” or “matters of public concern.”

Questions Students Should Ask

- Does the language in *To Kill a Mockingbird* meet the criteria for “fighting words”?
- Does *To Kill a Mockingbird* present themes that are “matters of public concern”?
- What bearing do the answers to these questions have on our decision?

Content Students Should Encounter

- The “n-word” is used frequently in *To Kill a Mockingbird*, but generally only by black characters speaking among themselves or by prejudiced white characters. Atticus never uses the word, and Scout is reprimanded when she uses it in front of him.
- The trial in *To Kill a Mockingbird* involves an accusation of rape of a white woman by a black man, but it is clear that he did not commit the crime. The trial has more to do with racial injustice and class distinctions than rape.
- *To Kill a Mockingbird* won the Pulitzer Prize but has fans and detractors among literary analysts.
- *To Kill a Mockingbird* discusses themes of tolerance, respect, and understanding.

Problem Definition

After analyzing the Evidentiary Packet, reading articles about the court, and learning about *stare decisis*, students will develop a specific, precise definition of the problem. The definition will set the conditions that the novice judges must meet in order to reach a sound decision, including respect for precedents, attention to facts, and the desire to uphold justice. The problem takes the form:

How can we (issue) in a way that (constraints)?

Example:

How can we make a just decision in this case in a way that is consistent with precedent cases and appropriate for the specifics of the current situation?

Problem Resolution

The lessons on *stare decisis* and problem definition make it clear to students that they need to understand the precedents related to this case. Students can research precedent cases on their own, or they can be introduced to seminal cases through summaries provided in the unit. Regardless, students learn about several important precedent cases, including *Connick v. Myers*, *Cockrel v. Shelby County School District*, *Pickering v. Board of Education*, and *Garcetti v. Ceballos*. When they are finished with their research, students are provided with graphic organizers to use to organize their thinking about the case.

Content Students Should Encounter

- Many court cases already have determined different aspects of free speech in the classroom.
- Speech at work (job speech) is different from speech outside of work (citizen speech).
- Teachers have the right to express their opinion outside of school, even when criticizing their school.
- Public sector employees do not have the right to say anything they wish while at work.
- Teachers do not have the right to say whatever they want in the classroom.
- Court decisions have trended toward a school district’s right to select content for the classroom.

Students deliberate and make their ruling based on the criteria they established during Problem Definition. Included in the criteria will be whether or not Benson’s speech meets the criteria for protection, including: (1) whether her speech included matters of public concern, (2) whether, in balance, the importance of her speech outweighed the concerns raised by the district and parents, and (3) whether the speech was job speech or citizen speech. Tangential issues include whether Dr. Teague had a “chilling effect” on her free speech and whether Benson’s exercise of free speech was a motivating force in her dismissal.

The next task the student justices face is writing their opinion. Students may all concur in their decision, in which case they divide responsibility for writing different sections of the opinion. If there are justices who disagree, they may write dissenting opinions to include in the final product. Regardless, they work with a template that results in a realistic court opinion. To conclude the unit, students can hand in their written decision, make an oral presentation to the “Chief Judge,” or even respond to the press corps.

Problem Debriefing

Students review material covered in the unit, discuss the role of continuity and change in the law, and reflect on the PBL process. The actual events in *Evans-Marshall v. Board of Education* are available to include during debriefing, as well as a summary of a critique of the Sixth Circuit Court decision published in the *Harvard Law Review*.

Problem Engagement

Tara Benson's Case

Goals:

- Read and interpret introductory information about the case.
- Discriminate between relevant and irrelevant information.
- Ask relevant, researchable questions about the case.
- Prioritize learning issues in preparation for research.

Grouping: Individual, small groups, and whole group

Generalization: The Constitution and American system of justice are designed to support a predictable, equitable social landscape.

 Materials	 Problem Log	 Teacher Reference
<p>Included in Unit</p> <ul style="list-style-type: none"> • Memo from the Chief Justice • Case Brief • Case Notes • Learning Issues Board • Reflective Moment <p>Additional Materials</p> <ul style="list-style-type: none"> • Props to enhance the feeling of a courtroom: gavel, robes, legal pads, etc. 	<ul style="list-style-type: none"> • Case Notes • Learning Issues Board • Reflective Moment 	<ul style="list-style-type: none"> • Sample Learning Issues Board

Summary:

Students receive the opening scenario that introduces the problem. An appeals panel memo arrives from the Chief Justice of the U.S. Court of Appeals for the Sixth Circuit identifying them as appellate court judges. Attached to the memo is an appeals brief for the case of *Benson v. Aurora Independent School District*. Students read the background brief for the case and complete the Learning Issues Board.

Notes: The memo from the Chief Justice suggests many, but not all, of the criteria students may want to consider as they review the case. For instance, the memo does not mention “motivating force” as a possible criterion. A few criteria are suggested in the memo in order to give students a starting point for their research, not to suggest that they are the only criteria for students to use.

If desired, the problem could begin with summary presentations from two lawyers (adults who have been briefed on the different sides of the case). This would give students an opportunity to develop listening and questioning skills. If this approach is used, students should still have access to all written materials included with the opening scenario. The lawyers’ presentations would simply provide added authenticity and engagement.

Things to Do Before Class:

1. If possible, prepare the classroom to resemble a meeting room for court officials.
2. Prepare a Learning Issues Board on a whiteboard, smartboard, or LCD projector for whole-class discussion.
3. Download, print, and make copies of the memo from the Chief Justice and the case brief to distribute to students.
4. Prepare some background information so students can research at the end of class, time permitting.

Things to Do During Class:

1. Pass out the memo from the Chief Justice and the case brief to students, and give them time to read them. Have them make a list of facts that seem particularly important on the Case Notes page of their Problem Logs. Also have students write down questions that arise as they read.
2. Give students 10-15 minutes to work individually, in pairs, or in small groups to read and identify facts and questions.
3. Bring the class together, and complete a class Learning Issues Board. As the conversation progresses, ask students probing questions to ensure that: (1) the facts listed under What We Know are relevant, and (2) the questions under Learning Issues are specific and researchable (see Key Questions below and the Sample Learning Issues Board). Encourage students to ask questions about what they need to know about the court system and the role of appellate court justices in order to fulfill their duties in this case.
4. Help students prioritize the questions listed under Learning Issues by selecting the three they think should be answered first. Discuss the priorities as a class, expanding the list to five high-priority questions.
5. Create a Plan of Action to find answers to the high-priority questions. If necessary, let the class know that you can help them with questions about how judges make rulings. This will open the door to the lesson on *stare decisis* during Inquiry and Investigation.

Key Questions:

- *What seems to be our job?*
- *What role are we playing in this problem?*
- *What do you suppose our responsibilities are?*
- *What about the memo makes you curious?*
- *What do you need to know about the case to proceed?*
- *What do you need to know to test your hunches?*
- *What would you like to know about being an appellate justice?*
- *What three questions have to be answered first so that we can make good progress?*
- *How should we go about finding answers to these questions?*

6. Ask students what they would like first, the Evidentiary Packet or information about being a judge.
7. Ask students to complete the Reflective Moment in their Problem Logs as homework.

Note: Students may ask about why parents found To Kill a Mockingbird offensive. It is fine—even desirable—to have students pursue this line of research. However, they will discover that judges rarely rule on the appropriateness of classroom materials. The connection between the content of the novel and the court case has more to do with establishing whether Benson’s speech was a “matter of public concern.” If the themes in To Kill a Mockingbird are matters of public concern, then Benson meets one of the three requirements for protected speech. This should also shift students’ focus from looking for offensive material in To Kill a Mockingbird to looking for themes of enduring value.



U.S. Court of Appeals for the Sixth Circuit
1307 East Fifth Street, Floor 10
Cincinnati, OH 45202

To: Appellate Court Judges
From: Honorable Shari Madack, Chief Justice
Subject: *Benson v. Aurora Independent School District*

Today you begin consideration of an appeal submitted by the plaintiff in the case of *Benson v. Aurora Independent School District*. The plaintiff claims that she was unlawfully dismissed from her position because she was engaged in constitutionally protected free speech. The defendants claim that she was not competent in her duties.

A brief describing the case is attached; an Evidentiary Packet is available upon request. There has already been a court trial and one appeal. Therefore, this will remain a paper review.

Please remember that the standards for deciding this case lay not with our personal beliefs about what is right or wrong, but rather with the quality of the legal argument, including the continuity established between this case and previous court decisions. Issues you should consider include but are not limited to: (1) whether the plaintiff's speech presented matters of public concern to her students, (2) whether the defendant's statements prior to dismissing her would "chill a person of ordinary firmness" and stop her from exercising her free speech, and (3) whether, in balance, the issues the plaintiff raised in her classroom outweighed the community discomfort over the materials she used.

Due process requires that we move with all deliberate speed in this matter. Therefore, your decision is due on my desk in two weeks.

United States Court of Appeals for the Sixth Circuit

Tara Benson,
Plaintiff-Appellee,

v.

Board of Trustees of
Aurora Independent School District,
Defendants-Appellants.



No. 08-3942

Appeal from the United States District Court
for the Michigan Southern District Court.
No. 03-00091—Jason Carter, District Judge.

Factual Allegations and Background

According to the Plaintiff, Tara Benson is a highly qualified language arts teacher and a former employee of the Board of Trustees of the Aurora Independent School District (the “Board”) in Aurora, Michigan. Benson was hired to teach ninth- and tenth-grade language arts to students at Aurora High School. Benson’s immediate supervisor was the principal of Aurora High School, Dr. Charles Teague.

2006-2007. Ms. Benson received two formal written evaluations from Dr. Teague during the 2006-2007 school year. The evaluation form divides performance into three categories: Does Not Meet Expectations, Meets Expectations, and Exceeds Expectations. On January 4, 2007, her evaluation included 0 Does Not Meet ratings, 16 Meets ratings, and 6 Exceeds ratings. On April 21, 2007, her evaluation had 0 Does Not Meet ratings, 17 Meets, and 5 Exceeds. Written comments suggest that she had a good rapport with students. At the end of the school year, Benson received a one-year renewal contract, good for the 2007-2008 school year.

2007-2008. The beginning of the 2007-2008 school year was uneventful. Benson reports that she made no changes to her syllabi and felt more comfortable beginning her second year. At the beginning of the fall semester, Benson assigned Harper Lee’s *To Kill a Mockingbird* to her ninth-grade students. She mentioned that the book was frequently banned, and she posted articles about book banning on her bulletin board.

At a meeting of the Board of Trustees of the Aurora Independent School District held on October 18, 2007, Ms. Jocelyn Thompson, president of the Aurora High School Parent Association, made a presentation on behalf of approximately 25 parents. In her presentation, Ms. Thompson said that she and the other parents wished to “express concerns about the appropriateness and merit of curricular choices, particularly the required novel *To Kill a Mockingbird*.” In the faculty lounge the next day, Dr. Teague told Ms. Benson, that she should “carefully consider” her instructional choices as a result of the parents’ complaints at the board meeting because she was “on the hot seat.” Shortly thereafter, Benson was evaluated for the first time for the 2007-2008 school year and received no negative comments. At the next board meeting, held on November 15, 2007, public criticism of Benson’s curriculum choices increased. According to the Plaintiff, “approximately 100 parents attended the meeting to protest the use of ‘obscene’ novels like *To Kill a Mockingbird* in classes.” A petition with more than 100 signatures was also presented to the Board, calling for “quality literature.” The superintendent explained that the district purchased many curriculum materials, including *To Kill a Mockingbird*. This did not mollify the parents.

Early in December, Dr. Teague conducted an observation of Ms. Benson’s classroom. Following the observation, Teague gave Benson the first negative comments in her tenure at Aurora High School. He also cautioned her that “Until further notice, you will be required to obtain approval of any material containing graphic violence, sexual themes, profanity, suicide, drugs, and alcohol with your department chairs before using them in class.” Benson responded to the evaluation in writing. She noted that *To Kill a Mockingbird* had no inappropriate themes and that the book was purchased and approved by the Board. Benson also provided a set of essays written by noted authors that praised *To Kill a Mockingbird* as an American classic filled with important themes regarding race, class, tolerance, etc.

Benson’s next written evaluation on January 10, 2008, was significantly more critical than previous evaluations. Teague rated Benson Does Not Meet on 5 criteria, Meets on 16 criteria, and Exceeds on 1 criterion. In his narrative comments, Teague wrote: “Your use of material that pushes the limits of community standards on obscenity has created a negative image among the parents in our community. It is a mystery to me why you have continued to use questionable material after being told to have such material reviewed by your supervisors.”

On February 11, 2008, Benson showed the film version of *To Kill a Mockingbird*, a movie adaptation of the novel, to her class. Teague observed the class again and asked Benson about the rating of the movie.

Benson informed him that the movie had an NR rating. According to the Plaintiff, district policy states that prior approval is not required to show movies rated NR if they were made before 1970.

On February 25, 2008, Benson received her second written evaluation since the November 15 Board of Trustees meeting; it was very critical. Benson received 7 Does Not Meet, 14 Meets, and 1 Exceeds ratings. Teague made the following comment in writing: “The evaluation from January presented several performance concerns that arose this year, along with suggestions on how to improve. There have been minor improvements, but overall the changes are not adequate and do not warrant a renewed contract for the 2008-2009 school year.”

Superintendent Bonnie Lange recommended the non-renewal of Benson’s contract at the Board’s meeting on April 22, 2008, saying that Benson “failed to meet even minimal standards for collegiality, community-mindedness, and teamwork.” In accordance with Lange’s recommendation, the Board unanimously passed a motion not to renew Benson’s contract and hired a new teacher. Benson made several attempts to challenge the dismissal directly with the Board, none successful.

Ms. Benson brought suit in federal court under 42 U.S.C. § 1983, seeking injunctive relief and damages. She claims that the Board of Trustees, in recommending the non-renewal of her teaching contract, used its authority to retaliate against her for exercising her rights under the First Amendment. Benson seeks recovery against the Board. The Defendants-Appellants moved to dismiss the Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The district court denied the motion, leading to the current deliberation.

Case Notes

Directions: Use this space to list up to 10 facts that seem important to this case. Also make note of questions that come to mind as you read, especially information that seems to be missing from this account that would help you understand the case better.

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

Learning Issues Board

Hunches:

What We Know	Learning Issues	Plan of Action

Sample Learning Issues Board

Hunches: Parents were being unreasonable. Benson was unjustly fired; her speech is protected. Something else was going on. The school has a right to fire anyone.

What We Know	Learning Issues	Plan of Action
<ul style="list-style-type: none"> We are reviewing an appeal of <i>Benson v. Board of Trustees of the Aurora ISD</i>. A decision is due in two weeks. Tara Benson is a highly qualified language arts teacher at Aurora High School. Benson’s evaluations for the 2006-2007 school year were positive. Benson did not change her syllabi for the 2007-2008 school year. In October, 25 parents complained to the board about Benson’s use of <i>To Kill a Mockingbird</i> as required reading. Dr. Teague, Benson’s supervisor, cautioned her on her choice of instructional materials. Community concern about the novel increased at the next board meeting. Benson’s first full observation contained negative comments; Dr. Teague told her to get all potentially objectionable material approved by her department chair. Benson received more bad evaluations and observations for the rest of the year. Her contract was not renewed. Benson filed a lawsuit against the district; she claimed that the Board was retaliating against her for exercising her First Amendment rights. 	<ul style="list-style-type: none"> What is an appellate court? What are the differences between appellate courts and trial courts? What are the rules for changing the decision of a lower court? What are the objections to <i>To Kill a Mockingbird</i>? What does <i>To Kill a Mockingbird</i> actually say? What does “chill a person of ordinary firmness” from continuing in that activity mean? What does “highly qualified” mean? What does the First Amendment say? Is all speech covered under the First Amendment? Are there any exceptions? Were there any other problems with Benson as an employee? 	<ul style="list-style-type: none"> Read the First Amendment. Find information on the internet about how the court works out how and why decisions are overturned. Hold a lesson on how the court operates. Read the information in the Evidentiary Packet. Ask a lawyer about the kinds of speech protected under the First Amendment.

Bold items represent students’ top priorities for research.