

**LAW DAY IN THE HIGH SCHOOLS 2006**  
**LESSON PLAN FOR VISITING ATTORNEYS AND JUDGES:**  
***SEPARATION OF POWERS***

**DESCRIPTION:** This lesson uses a case study to analyze the “separation of powers” doctrine

**CIVICS STANDARD TWO (Benchmark):** Students will understand that the functioning of the government is a dynamic process which combines the formal balance of power incorporated in the Constitution with traditions, precedents, and interpretations, which have evolved over the past 200 years.

**MATERIALS NEEDED:** A classroom set of the attached package of materials (usually 40 copies)

**TOTAL TIME:** 45 minutes

**STEPS IN THE LESSON:** **NOTE:** The answer sheet for Student Activities 2 and 3 are attached

- I. Introductions and passing out package of materials. Review opening **Introduction.** (Estimated time to complete -5 minutes)
  
- II. **Background: Student Activity Sheet #1 - United States v. Mr. S**  
(Estimated time to complete - 10 minutes)
  - A. Refer students to **Student Activity Sheet #1.** Review “Terms to Know.” Ask students to work with a partner, to read the “Background on the *United States v Mr. S*” and to answer the four questions.
  - B. Ask four different pairs to answer one of the questions.
  - C. Review Answers
  
- III. Complete **Student Activity Sheet #2** (Estimated time to complete – 10 minutes)
  - A. Have students use the Background of the case (**Student Activity Sheet #1**) to individually fill in the top chart. The Legislative Branch is filled in as an example. Ask students to place all the agencies discussed in the Background under the appropriate Branch. Give students 4-5 minutes to complete the exercise. Ask students to give you the answers.

- B. Ask if there are any actions by one branch that might under separation of powers be the responsibility of another Branch?
- IV. Ask students to look at **Student Activity Sheet #3: Argument on Each Side of the Case** (Estimated time to complete – 10 minutes)
- A. Break class into groups with 5 students each. It's easiest to have people close together to pull their seats into a group. Assign half of the groups to play the role of the Government's attorneys and half of them to play the role of Mr. S's attorneys.
  - B. Read the instructions on the top of the Activity Sheet to the students and ask if what they are going to do is clear.
  - C. Each group should present their three best arguments. Ask for a consensus from each side, if there are any differences.
- V. Refer students to **Student Activity Sheet #4: You Decide** (Estimated time to complete - 10 minutes.)
- A. Have students look at the last sheet in the Package labeled "You Decide." Ask them to write down whether they support the government's arguments or Mr. S's Argument and to explain why. Give the students a couple of minutes to write out their answers.
  - B. Ask for a show of hands as to each side. Ask students from the majority to give reasons for their position.
  - C. Explain to the students that the United States Court of Appeals, Third Circuit supported the Governments position.
  - D. Read the following quote from the Court:

***“We conclude finally that there is no violation of the separation of powers doctrine in the assignment to the U.S. Probation Office of the taking of the DNA samples “***

Ask students why they think the Court decided that the Judiciary Branch had not improperly taken on the role of the Executive Branch. (NOTE: Let students know that the case has been appealed to the U.S. Supreme Court)

*This lesson is based on United States Court of Appeals, Third Circuit, UNITED STATES of America v. Paul G. SCZUBELEK, NO. 03-2173. It was developed by the Delaware Law Related Education Center, Inc. with assistance from Chessa Huff, Fran O'Malley from the University of Delaware, and the Honorable M. Jane Brady, Judge, Superior Court of Delaware.*

## US v. Mr. S Student Activity Sheet Answers

### Student Activity Sheet #2

<u>Legislative</u> MAKE LAWS	<u>Executive</u> ENFORCE LAWS	<u>Judicial</u> INTERPRET LAWS
- Congress	- FBI - Police - Federal Prosecutor	- Probation [Office] - Federal District Court - Third Circuit Court of Appeals

### Student Activity Sheet #3 – Arguments

- Π The Act presents no danger of the Judicial Branch intruding on the power of the Executive Branch
- Π Probation officers are not involved in analyzing the samples or investigating crimes identified from the samples
- Δ The Act makes probation officers, who are under the Judicial Branch, into officers of the Executive Branch
- Π Probation officers provide information to the court, not to the prosecutors.
- Δ Collection of DNA samples does not serve the goals of probation, but instead serves the police and prosecutors
- N It is a well recognized that a criminal will take unusual steps to conceal her/his identity
- Δ The Act requires probation officers to seize samples by force, if necessary. This makes them act like police
- Π It is reasonable to make taking the DNA sample the responsibility of the probation officer since they are supervising the person.
- Π/Δ The primary goals of probation are rehabilitation and prevention of harm to others
- Δ Law enforcement is an Executive Branch function
- Π The Act=s requirement is no different than having probation officers take a urine sample to screen for drug use

## INTRODUCTION

**One of the key features of the structure of our government is that it is divided into three Branches: the Legislative, the Executive and the Judicial. Each is assigned specific roles.**

**Why are the powers of government separated in the United States?**

- § To prevent concentration of power in one branch, which the Framers of the Constitution thought would lead to tyranny.
- § To give each Branch the ability to fight off moves by the other branches to steal its power.
- § To limit extreme changes in the government.

**Is this Separation of Powers absolute and complete?**

- Over time, the Government has developed ways to share certain powers that do not threaten the independence of each Branch. This is one way the government responds to changes in society. It also helps the government to be efficient.
- However, it's possible for one branch go too far in threatening the power of another branch. In this case, the Court could decide that the action is unconstitutional.

**In this lesson, we will look at a case about Separation of Powers and determine whether one Branch of Government improperly took on the role of another Branch. While studying the case, you should remember that:**

- The drafting of laws is a Legislative function
- Investigation of a crime is an Executive function
- Probation and supervised release are Judicial functions

## **STUDENT ACTIVITY SHEET #1: *Background on the United States v. Mr. S***

### **Terms to know:**

- **File an appeal:** A request to have a case examined by an appropriate higher court to see if a lower court's decision was made correctly according to law
- **Probation or Supervised Release:** A sentence from a court that allows a criminal to serve some or all of his/her sentence in the community while being supervised by a probation officer. Goals of Probation are to enforce the court's conditions for release, deter future crime and arrange for appropriate treatment programs.

The Violent Crime Control and Law Enforcement Act of 1994 directed the FBI (an agency in the Department of Justice) to create an index of DNA samples (CODIS) from criminals and from crime scenes. This information was to be used to solve new crimes and to prevent future crimes. Use of the DNA test results was limited to “criminal justice agencies for law enforcement identification purposes,” for use “in judicial proceedings,” and “for criminal defense purposes”.

Congress passed the DNA Act of 2000, which requires people in prison, on supervised release, or probation, and who were guilty of certain crimes, to give a DNA sample to be included in CODIS. Bank robbery is one of the crimes listed under the DNA Act. The DNA Act requires probation officers, who work for the court, to collect DNA of individuals under their supervision. The probation officers may, if necessary, use force or detain an individual to obtain a DNA sample. If a probationer or a person on supervised release refuses to submit a sample the probation officer's must report the refusal to the Court and the probationer will either be made to submit a sample or could be sent to prison.

In 1994, Mr. S. was arrested by the Wilmington Police Department and charged by the Federal Prosecutor with three counts of bank robbery. He was found guilty and sent to prison. He served six years in prison and spent two months on house arrest before beginning a three-year term of supervised release in 2000. One year into Mr. S's supervised release, a probation officer requested he give a DNA sample and Mr. S. refused. He believed that the government's taking his DNA violated his constitutional rights and that requiring probation officers to obtain DNA samples violated the Separation of Powers Doctrine. Mr. S. was ordered by the Court to provide the sample.

Mr. S. filed an appeal with the Federal District Court. The court held that the DNA Act does not violate the doctrine of separation of powers and, again, ordered him to give a DNA sample. Mr. S. then filed an appeal with the Third Circuit Court of Appeal.

### **Select a partner and answer the following questions:**

- Who are the two parties in the case?
- What happened in this case?
- What facts are important?
- What is the Constitutional issue?

**Student Activity Sheet #2 – Roles and Responsibilities**

- **How are the Branches of Government involved in the case?**
  - Use the case Background (**Student Activity Sheet #1**) to help you fill in the blanks below. Place all the agencies discussed in the background under the appropriate Branch

<b><u>Legislative</u></b> MAKE LAWS	<b><u>Executive</u></b> ENFORCE LAWS	<b><u>Judicial</u></b> INTERPRET LAWS
- Congress	- _____ _____ _____ - _____ _____ _____ - _____ _____ _____	- _____ _____ _____ - _____ _____ _____ - _____ _____ _____

- **Do there appear to be any actions by one Branch that might traditionally be the responsibilities of another Branch? If so, what are they?**

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### Student Activity Sheet #3 - Arguments on Each Side of the Case

Instructions: Break into groups of five (5). Each group will represent either the Government or Mr. S. Choose a person in the group to present the group's findings.

1. Within each group, discuss and decide which arguments below best support your side. If you represent the Government place a  $\Pi$  ("Pi" sign) and if you represent Mr. S, place a  $\Delta$  ("Delta" sign) beside the arguments you believe your side would give before the court. There is one argument that does not support either side, there is also one answer that may support either side..
2. Choose your three (3) strongest arguments and circle those three arguments
3. Present the class your arguments and why your group believes they are the strongest.

#### ARGUMENTS:

\_\_\_\_\_ The Act presents no danger of the Judicial Branch intruding on the power of the Executive Branch

\_\_\_\_\_ Probation officers are not involved in analyzing the samples or investigating crimes identified from the samples

\_\_\_\_\_ The Act makes probation officers, who are under the Judicial Branch, into officers of the Executive Branch

\_\_\_\_\_ Probation officers provide information to the court, not to the prosecutors.

\_\_\_\_\_ Collection of DNA samples does not serve the goals of probation, but instead serves the police and prosecutors

\_\_\_\_\_ It is a well recognized that a criminal will take unusual steps to conceal her/his identity

\_\_\_\_\_ The Act requires probation officers to seize samples by force, if necessary. This makes them act like police

\_\_\_\_\_ It is reasonable to make taking the DNA sample the responsibility of the probation officer since they are supervising the person.

\_\_\_\_\_ The primary goals of probation are rehabilitation and prevention of harm to others

\_\_\_\_\_ Law enforcement is an Executive Branch function

\_\_\_\_\_ The Act's requirement is no different than having probation officers take a urine sample to screen for drug use

