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# THREATS TO FREE SPEECH: SILENCING POLITICAL OPPONENTS

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Segment Length: 5:46 minutes

## Lesson Description:

What happens when government officials use their power to try to silence their enemies? Where does campaign finance reform begin and our free speech end? This segment looks at one attempt by political insiders to silence their opponents.

## Concepts & Key Terms:

*Colluding*—(verb) Secretly working with others to do something wrong or harmful.

*John Doe Investigation*— A government investigation into alleged criminal activity. The investigation is usually overseen by a judge and can be conducted in secret, and a gag order can be imposed on those involved.

## Objectives:

Students will be able to:

- explain John Doe investigations.
- discuss the short term and long term results of the John Doe investigations in Wisconsin.
- evaluate laws that regulate political activities, John Doe investigations, and the impact of both on free speech.

## Preview Activity Questions:

In political campaigns, candidates and their supporters and opponents express their views. To get their views known, they raise and spend money on advertisements. What limits should there be on either the money they raise or spend, or on the views they espouse?

Use Think, Pair, Share to have students answer the preview question. After a few minutes, poll the students. Ask the students to explain their answers.

## Viewing Guide:

It is recommended that teachers show the video segment twice: once to allow students to view the video and focus on the issues presented, and once to allow them time to complete the viewing guide. After they complete the viewing guide, allow students a few minutes to work in pairs sharing and verifying answers.

## Answers to Viewing Guide:

1. criminal investigation
2. campaign finance
3. scrutiny
4. innocent
5. theories
6. suppression

## Answers to Cloze Activity:

It began as a scary movie might: a pre-dawn paramilitary police raid at a typical suburban home. The police walked out with computers, cell phones, and files. The family inside was told they were under criminal investigation, but they were not permitted to contact a lawyer. They weren't allowed to discuss this with anyone. If they did, they would be jailed. This, they learned, is a John Doe investigation.

It turns out that they were being investigated for colluding—illegal communications between a political advocacy group and a political campaign. The John Doe rules are supposed to protect innocent people by keep the proceedings secret and out of the newspapers. But the people being investigated are not even allowed to seek legal advice. But one man, Eric O'Keefe, spoke out. Newspapers published his complaints and numerous writers called the investigation a political attack.

Eventually, the investigation was terminated by the Wisconsin Supreme Court, which ordered the return of all the materials take in the raids. The court ruled that the "prosecutor in the case has employed theories of law that do not exist in order to investigate citizens who were wholly innocent of any wrongdoing," and praised those who fought back for their willingness "to fight against the unlimited resources of an unjust prosecution." Eric O'Keefe said that the investigation was intended to shut people up. "It was a speech suppression play," he said.

Since then, the Wisconsin legislature voted to prohibit John Doe investigations in all cases except violent felonies and drug crimes, and even in those cases the secrecy requirement would apply only to the government—the investigators, judges, and prosecutors; suspects and witnesses would be allowed to discuss the investigations and seek legal advice.

Name \_\_\_\_\_ Date \_\_\_\_\_

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## Threats to Free Speech: Silencing Political Opponents Viewing Guide

**Directions: As you watch the video, fill in the blanks with the correct words.**

1. They opened the door before police knocked it down. The officers told them they were under \_\_\_\_\_ . Give us your computers, cell phones, files, and don't talk to anyone.
2. Colluding! To try to reduce money spent in politics, political insiders imposed \_\_\_\_\_ rules that limit what political fundraisers can say to each other.
3. Prosecutors claim the John Doe rule protects innocent people if charges are dropped, but it's really a tool that protects prosecutors from \_\_\_\_\_ .
4. This kind of John Doe prosecution was supposed to protect the \_\_\_\_\_ .
5. After years of lawsuits, Wisconsin's top court said "prosecutors employed \_\_\_\_\_ of law that do not exist."
6. This is about shutting us up. That's all it is. It is a speech \_\_\_\_\_ play.

**Now, take a few moments to reflect on the video and answer the question below:**

1. What are your initial reactions to the video segment you just watched? \_\_\_\_\_

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2. After watching the video, what one question do you have that you would want answered?

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## Discussion and Analysis:

1. What were the people in the video accused of doing?
2. The colluding that people were accused of was coordinating between the governor's campaign and groups that supported him. Why should that be against the law? Were these people found guilty? Was there any evidence against them?
3. Is it hard to imagine people in government using their power to go after their political opponents? Why/ Why not?
4. You've heard of the right to remain silent in the Miranda warnings. Have you ever heard of remaining silent as a legal requirement?
5. A John Doe investigation is meant to protect innocent people. Is that how it worked in Wisconsin? Whom did the John Doe investigation protect? From what?
6. What do you think about this case?
7. If you were a political consultant working for a candidate and you suddenly became a target of a John Doe investigation, would you keep working or step aside and focus on your legal issues? Do you think that was the district attorney's goal?
8. How can a person defend himself if he isn't allowed to speak to anyone?
9. Campaign finance laws were supposedly meant to limit the influence of money in elections. Does money buy elections? Does the candidate with the most money always win?
10. Is it conceivable that campaign finance laws are meant to limit political speech, and thus help the incumbents – the people in power – who have free publicity associated with their elected office?

## Discuss These Lines from the Video:

1. We would be subject to jail time and a fine if we told anybody about the search in our home.
2. To try to reduce money spent in politics, political insiders imposed campaign finance rules that limit what political fundraisers can say to each other.
3. Prosecutors claim the John Doe rule protects innocent people if charges are dropped, but it's really a tool that protects prosecutors from scrutiny.
4. I take cold comfort in having my Constitutional rights trampled by both parties.
5. After years of lawsuits, Wisconsin's top court said, "prosecutors employed theories of law that do not exist."
6. This is about shutting us up. That's all it is. It is a speech suppression play.

## Quotes for Discussion:

*The very word "secrecy" is repugnant in a free and open society; and we are as a people inherently and historically opposed to secret societies, to secret oaths and to secret proceedings. We decided long ago that the dangers of excessive and unwarranted concealment of pertinent facts far outweighed the dangers which are cited to justify it.*

– John F. Kennedy

*What we have is two important values in conflict: freedom of speech and our desire for healthy campaigns in a healthy democracy. You can't have both.*

– Dick Gephardt

*We don't have an Official Secrets Act in the United States, as other countries do. Under the First Amendment, freedom of the press, freedom of speech, and freedom of association are more important than protecting secrets.*

– Alan Dershowitz

*Men are to be precluded from offering their sentiments on a matter which may involve the most serious and alarming consequences that can invite the consideration of mankind, reason is of no use to us; the freedom of speech may be taken away, and dumb and silent we may be led, like sheep to the slaughter.*

– George Washington

*Freedom of speech means freedom for those who you despise, and freedom to express the most despicable views. It also means that the government cannot pick and choose which expressions to authorize and which to prevent.*

– Alan Dershowitz

*Without freedom of thought, there can be no such thing as wisdom, and no such thing as public liberty without freedom of speech.*

– Benjamin Franklin

*I am thankful for all the complaining I hear about our government because it means we have freedom of speech.*

– Nancie J. Carmody

*It is a paradox that every dictator has climbed to power on the ladder of free speech. Immediately on attaining power each dictator has suppressed all free speech except his own.*

– Herbert Hoover

*Restriction of free thought and free speech is the most dangerous of all subversions. It is the one un-American act that could most easily defeat us.*

– William O. Douglas

*The reason that minorities and women don't have a better shot at getting elected to the Senate or to statewide office is because the campaign finance rules are so skewed as to make it very difficult for non-traditional candidates to raise the money necessary to get elected.*

– Carol Moseley Braun

*Actually criminal sanctions that are given could be up to five years for violating the rules and regulations under the campaign finance reform. This is like the Alien and Sedition Act...*

– Jay Alan Sekulow

## Activities:

1. Distribute either the History Frame (page 38) or Event Map (page 39) graphic organizer and have students work in pairs to complete it.
2. Have students complete the Cloze activity (page 40) in class or for homework.
3. Research the John Doe investigation shown in the video and, in a five-paragraph persuasive essay, argue in favor of or against the use of John Doe investigations. Make sure to include your thesis statement in your introduction, and in one of your body paragraphs, explore the opposition's argument and the reasons you think they are wrong. (See links in the Resources section for help in writing persuasive essays.)
4. Research and write a biography about either Eric O'Keefe, a director of Wisconsin Club for Growth, or Milwaukee District Attorney John Chisolm. (See links in the Resources section for help in writing a biography.)

5. One important issue that arises in campaign finance laws is the distinction between issue advocacy and express advocacy. Research these terms and how regulations in your state treat each type of organization.
6. Can there be John Doe investigations in your state? Under what circumstances? What procedures must be followed? Research this and write a report about it.
7. Research the Wisconsin Supreme Court decision that ended the John Doe investigations. Summarize the court's ruling.
8. Wisconsin's campaign finance regulations were the basis of the John Doe investigations discussed in the video. How about your state? What are your state's rules about political campaigns and the activities of advocacy groups? Have there been any cases in your state in which people ran afoul of the laws while supporting or opposing a government action or candidate for office?
9. Read one of the articles in the Resources section and either write a summary of it or take Cornell Notes as you read the article. (See links in the Resources section for help in taking Cornell Notes.)
10. Some people say that campaign finance laws limit free speech. Others say that the laws keep politics from being corrupted. Have students research the arguments in groups and conduct a classroom debate. Students should be given time to research their position prior to debating. (See links in the Resources section for a guide to conducting classroom debates.)
11. Read one of the books in the Resources section and write a book report. (See link in the Resources section for help in writing a book report.)

## Resources:

For help in conducting classroom debates:

<http://712educators.about.com/cs/lessonsss/ht/htdebate.htm>

[http://www.edu.gov.mb.ca/k12/cur/socstud/frame\\_found\\_sr2/tns/tn-13.pdf](http://www.edu.gov.mb.ca/k12/cur/socstud/frame_found_sr2/tns/tn-13.pdf)

<http://busyteacher.org/7245-conducting-class-debate-essential-tips.html>

How to write a biography:

<http://www.infoplease.com/homework/wsbiography.html>

<http://homeworktips.about.com/od/biography/a/bio.htm>

How to write a book report:

<http://www.infoplease.com/homework/wsbookreporths.html>

How to write a persuasive essay:

[https://www.scribendi.com/advice/how\\_to\\_write\\_a\\_persuasive\\_essay.en.html](https://www.scribendi.com/advice/how_to_write_a_persuasive_essay.en.html)

<http://www.infoplease.com/homework/writingskills7.html>

How to produce a man-on-the-street interview:

<http://onemarketmedia.com/2009/02/16/seven-ideas-to-help-get-the-most-out-of-a-man-on-the-street-interview/>

<http://watchdogwire.com/blog/2014/08/25/man-on-the-street-interview-tipsheet/>

For a clear, simple explanation of the Cornell note-taking system:

<http://coe.jmu.edu/learningtoolbox/cornellnotes.html>

<http://www.bucks.edu/~specpop/Cornl-ex.htm>



## Articles

“Legal proceedings: What is a John Doe investigation anyway?” by Marcus J. Berghahn

<http://hbslawfirm.com/2015/legal-proceedings-what-is-a-john-doe-investigation-anyway/>

“Money Walks: Why campaign contributions aren’t as corrupting as you think” by Jeff Milyo

<http://www.reason.com/news/show/30323.html>

“The Political Economics of Campaign Finance: Lessons for Reform” by Jeffrey Milyo

[http://www.independent.org/pdf/tir/tir\\_03\\_4\\_milyo.pdf](http://www.independent.org/pdf/tir/tir_03_4_milyo.pdf)

“Scott Walker Signs Bill Ending John Doe Political Investigations” by Scott Bauer

[http://www.huffingtonpost.com/entry/scott-walker-john-doe\\_us\\_562acb15e4b0aac0b8fd0f13](http://www.huffingtonpost.com/entry/scott-walker-john-doe_us_562acb15e4b0aac0b8fd0f13)

“Wisconsin Activists Raided By Political Enemies Win In Court” by Gabriel Malor

<http://thefederalist.com/2015/07/17/wisconsin-activists-raided-by-political-enemies-win-in-court/>

“Wisconsin prosecutors abuse the law for partisan ends” by George F. Will

[https://www.washingtonpost.com/opinions/george-will-wisconsin-prosecutors-abuse-the-law-for-partisan-ends/2014/05/09/1d8ed3d6-d6cf-11e3-8a78-8fe50322a72c\\_story.html](https://www.washingtonpost.com/opinions/george-will-wisconsin-prosecutors-abuse-the-law-for-partisan-ends/2014/05/09/1d8ed3d6-d6cf-11e3-8a78-8fe50322a72c_story.html)

“Wisconsin’s Shame: ‘I Thought It Was a Home Invasion’” by David French

<http://www.nationalreview.com/article/417155/wisconsin-shame-i-thought-it-was-home-invasion-david-french>

“Wisconsin’s Shame: The ‘John Doe’ Investigations” by David French

<http://www.nationalreview.com/article/425178/wisconsin-shame-john-doe-investigations-david-french>

“Wisconsin Supreme Court shuts down John Doe investigation, affirms First Amendment”  
by Eric Boehm

<http://watchdog.org/229588/john-doe-shut-down/>

## Books:

*Unfree Speech: The Folly of Campaign Finance Reform* by Bradley A. Smith

*Campaign Finance Red Tape: Strangling Free Speech & Political Debate* (Kindle Edition)  
by Jeffrey Milyo

*Campaign Finance: An Illustrated Guide* by Norman J. Ornstein, with Jeremy C. Pope  
(downloadable)

[https://www.aei.org/wp-content/uploads/2011/10/20040217\\_book23.pdf](https://www.aei.org/wp-content/uploads/2011/10/20040217_book23.pdf)

*The Fallacy of Campaign Finance Reform* by John Samples

## Informational Websites

Ballotpedia

[https://ballotpedia.org/John\\_Doe\\_investigations\\_related\\_to\\_Scott\\_Walker](https://ballotpedia.org/John_Doe_investigations_related_to_Scott_Walker)

## Organizations

Wisconsin Club for Growth

<http://wicfg.com/>

Name \_\_\_\_\_ Date \_\_\_\_\_

Class \_\_\_\_\_ Period \_\_\_\_\_ Teacher \_\_\_\_\_

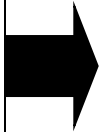
## **Threats to Free Speech: Prosecuting to Silence Opponents History Frame**

**Event:**

**Participants/Key Players:**

**Location of Event:**

**Problem:**



**Resolution:**



**Key Events:**

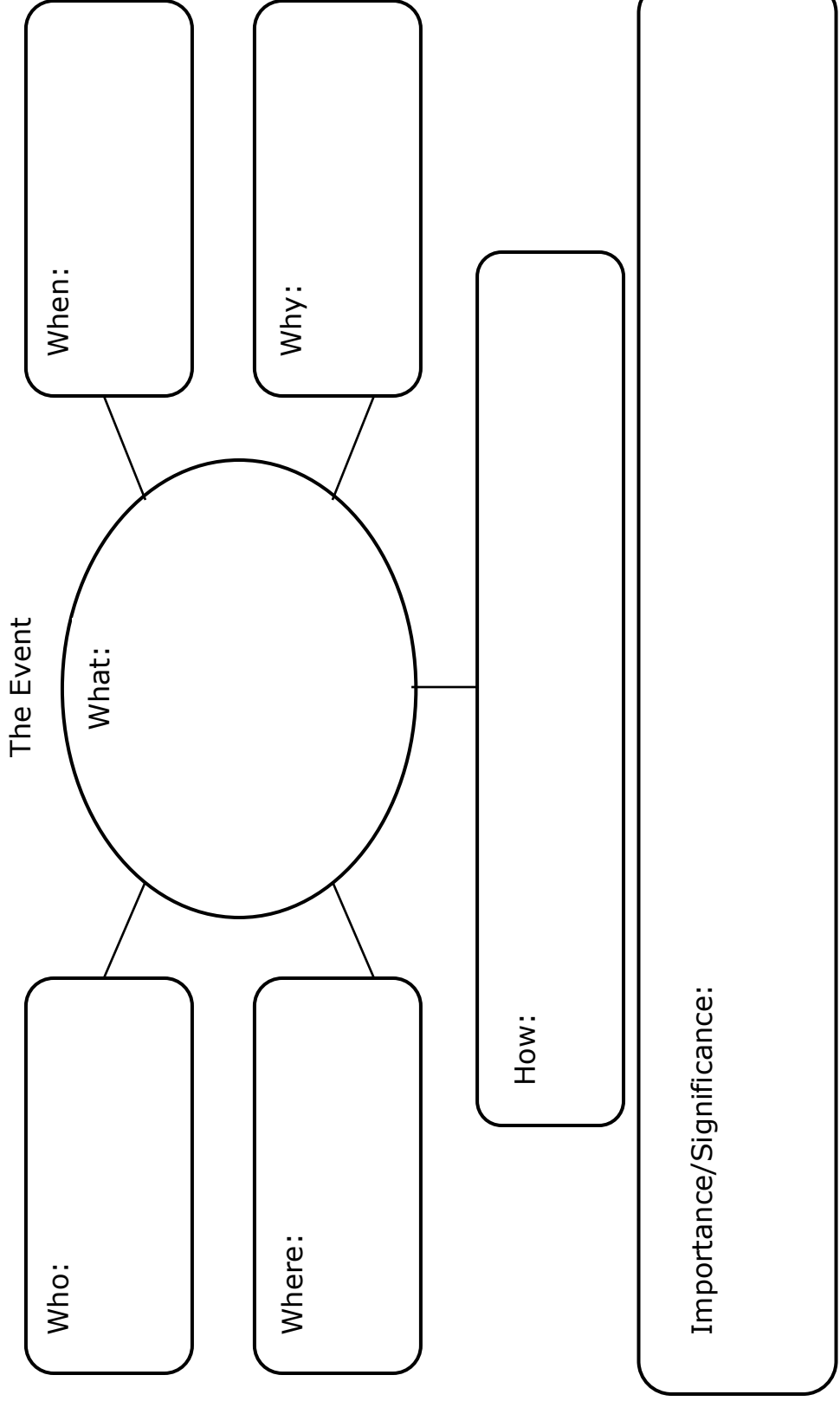
**Lessons:**



Name \_\_\_\_\_ Date \_\_\_\_\_

Class \_\_\_\_\_ Period \_\_\_\_\_ Teacher \_\_\_\_\_

## Threats to Free Speech: Silencing Political Opponents Event Mapping



Name \_\_\_\_\_ Date \_\_\_\_\_

Class \_\_\_\_\_ Period \_\_\_\_\_ Teacher \_\_\_\_\_

## **Threats to Free Speech: Silencing Political Opponents** **Cloze Activity**

**Directions:** Read the entire passage first. Then fill in the blanks with words from the box.

colluding	employed	protect	intended
terminated	permitted	political	police
legal	voted	jailed	secrecy

It began as a scary movie might: a pre-dawn paramilitary \_\_\_\_\_ raid at a typical suburban home. The police walked out with computers, cell phones, and files. The family inside was told they were under criminal investigation, but they were not \_\_\_\_\_ to contact a lawyer. They weren't allowed to discuss this with anyone. If they did, they would be \_\_\_\_\_. This, they learned, is a John Doe investigation.

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