

The Flag and Freedom

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With the nation today feeling that it is under threat, political and civic leaders have called on schools to promote patriotism by rallying around the American flag. One Supreme Court justice has maintained that society "may in self-protection utilize the educational process for inculcating those almost unconscious feelings which bind men together in a comprehending loyalty." He added, "The flag is the symbol of our national unity, transcending all internal differences... National unity is the basis of national security."¹

Following the terrorist attacks of September 11, 2001, and during the wars in Afghanistan and Iraq, the flag appeared on front lawns and lapels, milk trucks and billboards, in a show of solidarity. But the Supreme Court justice's galvanizing words about the flag were not written in response to current events. Rather, they were penned nearly six decades ago as part of a landmark legal battle over the American flag and the First Amendment. As World War II raged in Europe and in the Pacific, the historic U.S. Supreme Court decision would have a profound impact on the definition of freedom. The flag-salute controversy provides a rich and relevant context in analyzing the complex and sometimes competing issues of national interest and individual liberty, patriotism, and free speech.

Recent threats to national security have rekindled patriotic sentiments with an intensity not seen since World War II and the Cold War era. The American flag and the Pledge of Allegiance in schools remain at the center of controversy. For example, one month after the September 11 attacks, the U.S. Secretary of Education requested some 100,000 principals to lead almost 52 million students in a nationwide, synchronized recitation of the Pledge of Allegiance.² Additionally, more than twenty-five states have laws requiring schools to set aside time for the pledge. At least eighteen of those laws were passed after September 11, 2001.³ Various groups and individuals have since mounted legal challenges against some of the more recent laws and local school policies which require students to stand for the pledge,⁴ notify parents if students refuse to stand, or suspend teachers for displaying students' anti-war posters.⁵

Every Congressional session since 1990 has attempted to pass bills to limit free speech pertaining to the flag, including the "Flag Protection" Amendment to the Constitution. This campaign began in response to the Supreme Court ruling in *Texas v. Johnson* (1989) regarding flag burning.⁶ The Ninth U.S. Circuit Court of Appeals has ruled in *Newdow v. U.S. Congress* (2002) that teachers can no longer lead students in reciting the Pledge of Allegiance because of the phrase "under God."⁷ In opposition to this lower-court decision, Congress, state legislatures, and attorneys general of all fifty states have asked the Supreme Court to review the case.⁸

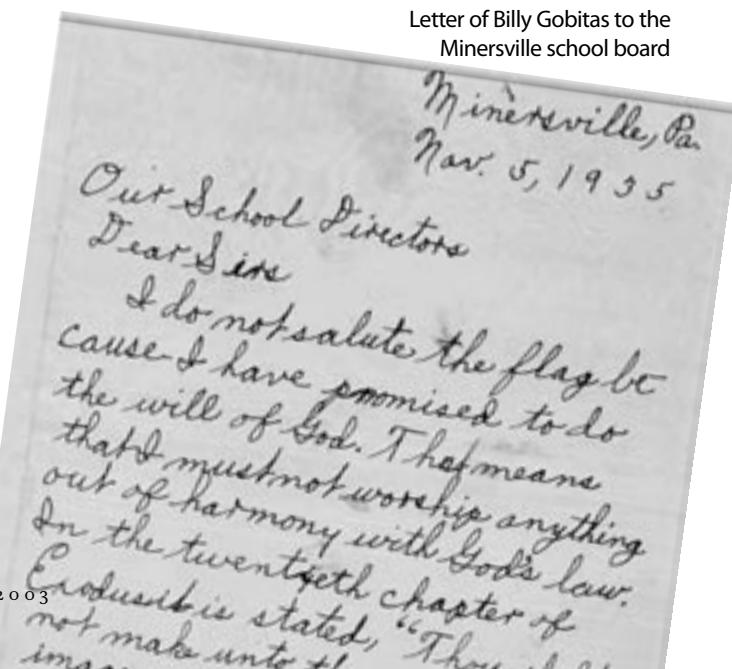
Teachers and students can explore these public debates that

impact the classroom, using one of the most influential periods in U.S. constitutional history to set the stage. Sixty years ago this past June, a case involving the flag salute came before the Supreme Court. In the tense climate of World War II, young Lillian Gobitas and her brother Billy had been expelled from school for refusing to pledge allegiance to the American flag. The Gobitas children were Jehovah's Witnesses, and their religious convictions against worshiping idols led them to disobey a law that made the flag salute mandatory in the schools of their town. The Supreme Court initially upheld their expulsion from school in the case *Minersville School District v. Gobitis*. (A federal district court clerk misspelled Gobitas.)

But on Flag Day, June 14, 1943, the Supreme Court reversed itself in the landmark decision *West Virginia Board of Education v. Barnette*. In a dramatic ruling overturning its *Gobitis* decision, the court struck down compulsory flag-salute laws as unconstitutional. The ramifications of these two cases "transcended religious freedom and touched the very heart of all the First Amendment freedoms."⁹

The materials accompanying this article can deepen students' understanding of U.S. constitutional law and the judicial process. A timeline traces the development of the Supreme Court's interpretation of fundamental constitutional safeguards. An interview with Lillian Gobitas Klose provides her personal perspective on the events that propelled her to the center of an historical court case. Discussion questions connect this compelling historical account with current events, facilitating lively classroom analysis of the seemingly competing interests of civic cohesiveness vs. minority rights, government power vs. individual liberty, and national security vs. freedom of speech and worship.

Letter of Billy Gobitas to the
Minersville school board



The Flag and Freedom: A Timeline

A Minority Group Targeted During Wartime

Sept. 1898

The Pledge of Allegiance, by Francis Bellamy, is published. Its popularity in school grows after World War I. Students recite the pledge while giving a military-style, stiff-arm salute.

Sept. 1935

First Student Expelled. In Lynn, Massachusetts, third-grade student Carleton Nicholls, Jr., does not salute the flag because of his religious beliefs. He is barred from school.

Oct. 22, 1935

In Minersville, Pennsylvania, Lillian and William "Billy" Gobitas, ages 12 and 10, decide not to salute the flag. The school board holds a hearing.

Nov. 5, 1935

Billy Gobitas writes a letter to the school board explaining his religious objections to the salute; Billy and Lillian are expelled for "insubordination."

"Kingdom School" created. The school board opposes Mr. and Mrs. Gobitas's decision to home-school their children and threatens to send Lillian and Billy to a reform school. The Gobitases and other Jehovah's Witness families hire a qualified teacher and set up a "Kingdom School" for their children who have been expelled.

May 3, 1937

Judicial Process Begins. Walter Gobitas, father of Lillian and Billy, files a complaint with the U.S. Federal District Court in Philadelphia, claiming that coercing his children to salute violates their religious beliefs and denies them their "rights and privileges" granted under the Constitution. Lawyers for the school district request dismissal on the grounds that the flag salute is not a religious ceremony. Judge Albert B. Maris rules that the case involves constitutional rights and orders the trial to proceed.

Feb. 15, 1938

U.S. Federal District Court in Philadelphia hears first court case. Minersville Superintendent Charles Roudabush reasons that the Gobitases are probably sincere but misled and that the school should correct the religious conscience of "misguided persons." Judge Maris responds: "In other words, anyone who

didn't agree with your religious views and mine would be indoctrinated, or hold perverted views, because he doesn't believe with you?"¹⁰

June 18, 1938

Federal Court rules in favor of Gobitas. The opinion states that the children's refusal does not imperil public safety and that the school had denied them the due process of law guaranteed them by the Fourteenth Amendment. The school district is ordered to readmit the children.

Aug. 9, 1938

Minersville Board of Education appeals. Lillian and Billy are not allowed to return to school. Lillian attends a private business college and Billy continues his education in the Kingdom School.

Nov. 9, 1938

The Gobitas children are key witnesses in the case, describing their religious convictions as well as their desire to be good citizens.

Nov. 10, 1939

Appellate Court rules in favor of Gobitas. The court unanimously affirms the 1938 decision. The written opinion compares the compulsory salute to flag worship and quotes George Washington who said, "In my opinion, the conscientious scruples of all men should be treated with great delicacy and tenderness."¹¹ Four years have passed since their expulsion; Lillian and Billy Gobitas are too old to return to public school.

Court Rulings and Public Response as War Clouds Gather

1940

Patriotism intensifies. State courts uphold state laws making the pledge mandatory in schools.

Jan. 30, 1940

Minersville School Board appeals to the Supreme Court. A coalition called the Association of Patriotic Societies pays the legal expenses.

March 1940

Violence escalates against the Witnesses for being "un-American." Witnesses are subject to physical and verbal abuse. Expulsions of Witness students increase.

April 25, 1940

Supreme Court hears oral arguments in *Minersville School District v. Gobitis* (310 U.S. 586 [1940]). During deliberations, Chief Justice Charles Evans Hughes expresses agreement with the school board. Justice Felix Frankfurter, who immigrated to the U.S. as a child, maintains that public schools are instrumental in instilling love of country in children of immigrants.¹²

June 3, 1940

Eight-to-one ruling against Gobitas. The Supreme Court reverses two lower-court decisions. "National unity is the basis of national security," writes Justice Frankfurter. Society may "utilize the educational process for inculcating those almost unconscious feelings which bind men together in a comprehending loyalty." Although questioning the "folly" of a required salute, he states that religious conviction "does not relieve the citizen from the discharge of political responsibilities." Justice Harlan Fiske Stone presents a surprise dissenting opinion, arguing that constitutional guarantees "withhold from the state any authority to compel belief or the expression of it where that expression violates religious convictions." His single dissent would strengthen the right of free speech three years later, when he was to serve as the Chief Justice of the Supreme Court.

Summer 1940

Mobs attack Witnesses. Following the Supreme Court decision, Jehovah's Witnesses are beaten, tarred and feathered, jailed, and fired from jobs. Their places of worship and personal property are vandalized and burned. The U.S. Department of Justice would later tally hundreds of incidents of violence against Jehovah's Witnesses throughout the country.

Newspaper editorials criticize the court decision. Some 170 newspaper editorials and many in the legal community condemn the *Gobitis* decision, blaming it for the violence.¹³ "Legally enforced saluting hits only those whose religious ideas may seem silly to us but are sacred to them. No legal triumph over any such people in the courts or anywhere else will serve either the security or the patriotism of this land." ("Patriotism By Force," *Raleigh News and Observer*, June 6, 1940.)

June 20, 1940

Eleanor Roosevelt calls for calm. In her column "My Day," the First Lady writes: "Are we going to be swept away from our traditional attitude toward civil liberties by hysteria...? Must we drag people out of their homes to force them to do something which is in opposition to their religion?"¹⁴

Dec. 8, 1941

United States declares war on Japan. Three days later, U.S. enters war against Germany and Italy.

Freedom of Speech and Religion Affirmed at the Height of World War II

1942

Lower courts favor Witnesses despite *Gobitis* ruling.¹⁵ Some are uneasy about appearing to emulate Fascist and Nazi tactics.

United States changes its flag salute. The traditional stiff-arm salute, uncomfortably similar to the Nazi and Fascist salutes, is replaced by the hand-over-heart salute.

June 8, 1942

An unprecedented admission. In the case *Jones v. City of Opelika* (316 U.S. 584 [1942]) Witnesses are denied the right to distribute religious tracts without a license.¹⁶ The four dissenting justices in the narrow five-to-four ruling are Harlan Fiske Stone, the lone dissenter in the *Gobitis* case, and three justices who had voted against the Witnesses in the *Gobitis* case. They write of *Gobitis*: "We now believe that it was also wrongly decided."¹⁷ This admission is "probably without precedent in the annals of American courts."¹⁸

March 11, 1943

Back to the Supreme Court. The Supreme Court hears arguments in *West Virginia State Board of Education v. Barnette* (319 US 624 [1943]), which closely resembles *Gobitis*. A federal district court had ordered three expelled Witnesses readmitted to

school. The school board appealed the decision to the Supreme Court.

May 3, 1943

Supreme Court reversal favors the Witnesses. The Supreme Court annuls the *Opelika* decision.¹⁹ A *New York Times* editorial states, "We think the rights of all Americans are a little safer because Jehovah's Witnesses have had their second day in court."²⁰

June 14, 1943

A Flag Day victory. Voting six to three in the *Barnette* case, the court reverses its *Gobitis* decision.²¹ In the majority opinion, Justice Robert H. Jackson writes that officials do not have the right to compel individuals to violate their personal convictions. The *Barnette* opinion is among the most oft-quoted language regarding First Amendment rights ever written:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

June 1943

Violence wanes, the press celebrates. Analysts praise the high court and its decision as profoundly significant:

Freedom won a decisive victory in the United States this week. A small and often unpopular, even despised, religious sect—the Jehovah's Witnesses—won from the Supreme Court of the United States a six-to-three ruling that their children must not be required to salute the American flag or pledge allegiance to it as a prerequisite for attending public schools. ("Civil Liberties Gain by the Flag Decision," *The New York Times*)²²

Eight years after the Gobitis children were expelled from school for an act of conscience, the United States Supreme Court affirmed their rights as granted by the First Amendment of the Constitution. Their case was one of dozens involving Jehovah's Witnesses that were brought before the Supreme Court, many of which contributed to the strengthening of freedoms for all Americans.



Walter Gobitas (center) and his two children William and Lillian, at the Federal Courthouse in Philadelphia, PA, 1938.

The Flag and Freedom

A Conversation with Lillian Gobitas Klose

Jolene Chu (co-author of this article) interviewed Lillian Gobitas Klose about her refusal to salute the flag and the ensuing public reaction.

CHU: *What kind of place was Minersville, and what was it like growing up there?*

GOBITAS KLOSE: It was a coal-mining town, just like the name says. My father worked in the mine, but one day a falling rock nearly killed him. My grandmother said, "That's it!" and she set him up with a store, which we called Economy Grocery. People in town really liked Dad. During those hard Depression years, he let people buy on credit, knowing that many could never pay him back.

CHU: *When your parents became Jehovah's Witnesses, how did people in town react?*

GOBITAS KLOSE: Many people in town were Catholic, like my dad. When he and Mom decided to become Witnesses, it surprised our neighbors. The Witnesses in those days had pretty strong things to say about the way the Vatican meddled in politics and war. But most people in Minersville really didn't change the way they treated us.

CHU: *Then you and your brother stopped saluting the flag. Tell us about your decision.*

GOBITAS KLOSE: We had heard a Bible talk explaining that saluting an earthly emblem was like ascribing salvation to it. My brother Bill and I went to our parents and talked things over. ... Mom and Dad made it clear that we had to make our own decision. They never pressured us one way or the other. When school started that September, we knew what we ought to do. But frankly, I was scared that my friends would drop me if I got caught. When the teacher looked my way, I would raise my arm and move my lips. Then we heard the news about a Witness boy in Massachusetts who had been expelled for refusing to salute the flag. That really made us think. On October 22, Billy came home and proudly announced to us that he had stopped saluting the flag. The next morning I told my teacher that I wouldn't salute anymore. My heart was pounding! But she just hugged me and said how nice it was that I had courage like that.

We wanted to continue our education, so we took our books home and set up a classroom in our attic. But the school board wrote and said we either had to find a qualified teacher or we would be sent to a reform school. Some Witnesses set up a school at their farm and hired a teacher. We were among forty Witness kids there.

CHU: *You were involved in several trials. Can you describe the results?*

GOBITAS KLOSE: We won our case before the federal district court, but the school board said we still couldn't return to school. They would appeal the decision. When they lost again, we were off to the Supreme Court. By then I was in business school, so I knew I wouldn't be going back to the Minersville school. But we felt confident that we would win in the Supreme Court, just as we had in the other two cases.

When the decision came down eight to one against us, we couldn't believe it! The mob violence really heated up—it was open season on Jehovah's Witnesses. In Minersville, a church called

on the people to boycott our store. Things got really difficult for a while, but in time our customers returned.

CHU: *How do you feel when you look back on MINERSVILLE SCHOOL DISTRICT v. GOBITIS?*

GOBITAS KLOSE: The experts say that *Gobitis* and *Barnette* advanced the cause of freedom for all Americans, so I'm glad about the way things turned out. I have no hard feelings toward those who did what they thought was right for themselves and for the country. I think that much trouble and strife in the world could be avoided if people would take the time to understand the choices others make in life. Maybe we wouldn't make the same choice ourselves, but it would certainly help people to get along and perhaps take away some of the fear and suspicion of those who may be different than we are.

Discussion Questions

1. Between 1935 and 1945, what were the main legal arguments from those advocating or opposing mandatory flag salute?
2. Based on this historical account, what would you say are the strengths and weaknesses of the judicial system in the United States?
3. Wartime sentiments breed hostilities and restrictions of individual rights. How do the events in the United States around 1940 compare with current fears and actions?
4. This historical account gives examples of people, including students and judges, who held to unpopular positions that they believed to be right. Describe one of your beliefs or ethical views, which others may not share. What benefit do you think you derive from standing by your convictions?
5. In the 1940 *Gobitis* and 1943 *Barnette* cases, Jehovah's Witnesses argued for their right to abstain from saluting the flag based on religious principles. Compare this with the 1989 *Texas v. Johnson* case regarding flag burning and the 2002 *Newdow v. Congress* case forbidding recitation of the pledge.

Viewpoint Questions

- What role, if any, do you believe mandated patriotic rituals have in promoting democratic values?
- What do you think would happen if fundamental freedoms granted by the Bill of Rights were subject to change by majority vote?
- Can someone who does not participate in patriotic rituals still be a good citizen? How? ☰

Notes

1. *Minersville School Dist. v. Gobitis*, 310 U.S. 586 (1940).
2. Rod Paige, U.S. Secretary of Education, letter to principals, October 9, 2001, (www.ed.gov/PressReleases/10-2001/10092001a.html), accessed June 16, 2003.
3. Education Commission of the States, *2002 Highlights and 2003 Predictions*, December 1, 2002. (www.ecs.org/clearinghouse/29/96/2996.htm), accessed June 16, 2003.
4. *State v. Lundquist*, 278 A. 2d 263 (1971) and *Goetz v. Ansell*, 477 F.2d 636 (2d. Cir. 1973) ruled that states could not require students to stand.
5. Charles Hayes, "Let's not teach that patriotism, dissent are mutually exclusive," *First Amendment Center*, April 13, 2003, (www.firstamendmentcenter.org/commentary.aspx?i_d=11327), accessed June 16, 2003.
6. John Luckey, "Flag Protection: A Brief History and Summary of Recent Supreme Court Decisions and Proposed Constitutional Amendment," Report for Congress, Congressional Research Service, January 27, 2003.
7. *Michael A. Newdow v. U.S. Congress*, 00-16423 9d CV-00-00495 (2002).
8. National Association of Attorneys General, "State Attorneys General Unanimously Seek Supreme Court Review of Pledge of Allegiance Case," News Release, June 10, 2003.
9. Milton R. Konvitz, *Fundamental Liberties of a Free People* (Ithaca, NY: Cornell University Press, 1957), 109.
10. David R. Manwaring, *Render Unto Caesar: The Flag-Salute Controversy* (Chicago: University of Chicago Press, 1962), 97-99.
11. Leonard A. Stevens, *Salute! The Case of The Bible vs. The Flag* (New York: McCann & Geoghegan, Inc., 1973), 71.
12. *Minersville School District v. Gobitis*, 310 U.S. 586 (1940).
13. Elder Witt, *The Supreme Court and Individual Rights*, Second Edition, (Washington, D.C.: Congressional Quarterly, 1988), 88.
14. Syndicated column carried in newspapers across the country on June 21, 1940.
15. Stevens, 122.
16. *Jones v. City of Opelika*, 316 U.S. 584 (1942).
17. Quoted in Anson Phelps Stokes, *Church and State in the United States* (New York: Harper & Brothers, 1950), three volumes, vol. III, 223. History recounts an exchange between Justices Douglas and Frankfurter during which the latter asks if Justice Black's change of heart took place because he had been reading the Constitution. "No, but he has read the papers," Douglas is said to have replied. Peter Irons, *Courage of Their Convictions*, (New York: The Free Press, 1988), 23.
18. Stokes, 223.
19. *Murdock v. Pennsylvania*, 319 U.S. 105 (1943). See also *Jones v. City of Opelika* II, 319 U.S. 103 (1943).
20. *The New York Times* (May 4, 1943).
21. *West Virginia State Board Of Education v. Barnette*, 319 U.S. 624 (1943).
22. *The New York Times* (June 20, 1943), 10.

Websites and Organizations

SUMMARY OF *GOBITIS* DECISION

caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=310&invol=586

SUMMARY OF *BARNETTE* DECISION

caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=319&invol=624

INTRODUCTION TO *BARNETTE* CASE

usinfo.state.gov/usa/infousa/facts/democrac/46.htm

AMERICAN TREASURES OF THE LIBRARY OF CONGRESS

www.loc.gov/exhibits/treasures/trr006.html "A Matter of Conscience (Reason)" Letter of Billy Gobitas

Print Resources

Irons, Peter. *The Courage of Their Convictions*. New York: Penguin Books, 1990. The stories of sixteen individuals involved in important U.S. Supreme Court issues.

Kaplan, William. *State and Salvation—The Jehovah's Witnesses and Their Fight for Civil Rights*. Toronto: University of Toronto Press, 1989. A discussion of the court battles of Jehovah's Witnesses in Canada.

Liebster, Simone Arnold. *Facing the Lion: Memoirs of a Young Girl in Nazi Europe*. New Orleans: Grammaton Press, 2000. True story of a young Witness who was persecuted for not saluting the Nazi flag.

Peters, Shawn F. *Judging Jehovah's Witnesses: Religious Persecution and the Dawn of the Rights Revolution*. Kansas City: University of Kansas Press, 2000. A detailed account of several Supreme Court cases involving the Witnesses.

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