

# Academic Literacy Skills Sample (ALST)

## Sample Constructed Response Item

### Passage A

#### **Argument of Clarence Darrow in the Case of the Communist Labor Party**

*There was a great fear of Communism that swept through the United States in the years following the Russian Revolution of 1917. As a result, several states passed espionage acts that restricted political discussion, and radicals of all descriptions were rounded up in so-called Red Raids conducted by the attorney general's office. Some were convicted and imprisoned; others were deported. This is the background for this particular reading passage about a trial in Chicago that took place in August, 1920. This trial involved twenty men charged under Illinois's espionage statute with advocating the violent overthrow of the government. The charge rested on the fact that all of the defendants were members of the newly formed Communist Labor Party.*

*The accused in the case were represented by Clarence Darrow, one of the foremost defense attorneys in the country. Throughout his career, Darrow had defended the poor and the despised against exploitation and prejudice. He defended the rights of labor unions, for example, at a time when many sought to outlaw the strike, and he was resolute in defending constitutional freedoms. The following are excerpts from Darrow's summation to the jury.*

1. Members of the jury: I have for a good many years been arguing cases in court and in my own way, as a lawyer, asking jurors to forget their prejudices and their feelings and deliver a verdict according to the evidence, uninfluenced by fear or passion or heat.
2. I must say in all my experience, which now covers forty-two years, it seems to me I never saw a case where every cheap feeling has been appealed to, where every inference has been drawn, where the world has been traveled over; where false and misleading ideas of law and of fact have been stated;

where everything has been urged to swing a jury from its duty so that they might join the mob, as has been done in this case.

3. Gentlemen, from the beginning to the end there has been no attempt at fairness; there has been no effort to see that these defendants had a trial that was such a trial as should be had in an American court, or in an Indian court, or in a Cannibal court; there is no mean and sordid motive that has not been used or urged in this case against the liberty of my clients.

4. Now, gentlemen, let me be plain about this. If you want to convict these twenty men, then do it. I ask no consideration on behalf of any of them. They are no better than any other twenty men or women, they are no better than the millions down through the ages who have been prosecuted and convicted in cases like this. And if it necessary for my clients to show that America is like all the rest, if it is necessary that my clients shall go to prison to show it, then let them go. They can afford it if you members of the jury can, make no mistake about that...

5. The State says my clients "dare to criticize the Constitution." Yet this police officer (who the State is a fine, right-living person) twice violated the federal Constitution while a prosecuting attorney was standing by. They entered Mr. Owen's home without a search warrant. They overhauled his papers. They found a flag, a red one, which he had the same right to have in his house that you have to keep a green one, or a yellow one, or any other color, and the officer impudently rolled it up and put another flag on the wall, nailed it there. By what right was that done? What about this kind of patriotism that violated the Constitution? Has it come to pass in this country that officers of the law can trample on constitutional rights and then excuse it in a court of justice?

6. Most of what has been presented to this jury to stir up feeling in your souls has not the slightest bearing on proving conspiracy in this case. Take Mr. Lloyd's speech in Milwaukee. It had nothing to do with conspiracy. Whether the speech was a joke or was serious, I will not attempt to discuss. But I will say that if it was serious it was as mild as a summer's shower compared with many of the statements of those who are responsible for working conditions in this country. We have heard from people in high places that those individuals who express sympathy with labor should be stood up against a wall and shot. We have heard people of position declare that individuals who criticize the actions of those who are getting rich should be put in a cement ship with leaden sails and sent out to sea. Every violent appeal that could be conceived by the brain has been used by the powerful and the strong. I repeat, Mr. Lloyd's speech was gentle in comparison...

7. My clients are condemned because they say in their platform that, while they vote, they believe the ballot is secondary to education and organization. Counsel suggests that those who get something they did not vote for are sinners, but I suspect you the jury knows full well that my clients are right. Most of you have an eight-hour day. Did you get it by any vote you ever cast? No. It came about because workers laid down their tools and said we will no longer work until we get an eight hour day. That is how they got the twelve-hour day, the ten-hour day, and the eight-hour day—not by voting but by laying down their tools. Then when it was over and the victory won...then the politicians, in order to get the labor vote, passed legislation creating an eight-hour day. That is how things changed, victory preceded law...

8. You have been told that if you acquit these defendants you will be despised because you will endorse everything they believe. But I am not here to defend my clients' opinions. I am here to defend their right to express their opinions. I ask you, then, to decide this case upon the facts as you have heard them, in light of the law as you understand it, in light of the history of our country, whose institutions you and I are bound to protect.

9. Remember you can never speak or write or think freely with detectives on your track. You can only be yourself in the open, clear light of day. There can be no free thought without free speech. Of what avail to think if I may not write or speak?

10. Gentlemen, I do not pretend to know the future that is in store for America. I know that nations like individuals are born and live their time and die. We are young. Our life should be long. While we live we should preserve all the freedom and strive for more. We should protect our constitution as our fathers gave it. Protect it not in the letter, but in the soul. I do not know what the future holds in store for America or the human race. I am willing to take my chances by leaving every man to bring his contribution to the world; by leaving every man free to express his thought; by leaving every man to throw his opinions into the great crucible that we may work it out.

11. This is freedom. It is the freedom we have believed in. It is the freedom we have worked for, and gentleman it is the freedom I urge you to protect and save. I do not urge it for myself or my clients—we are the smallest concern to me—but I do urge you for the sake of your common country, for the sake of what is even nearer and dearer than that, the liberty of men, the freedom of the human soul, which alone makes life worth the living; I ask you to say that men shall be free...I urge you to stand for the right of men to think; for the right to speak boldly and unafraid; the right to be master of their souls; the

right to live free and die free. There is no other cause that is so much worth while. There is no other sentiment or emotion that ever moved the human soul as priceless as this.

12. Gentleman, I submit this case, assuring you that my clients are my last concern; I ask you to do your part in the great cause of human freedom, for which men have ever fought and died.

*(from the archives of Clarence Darrow's closing statements)*

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1. Which best captures the meaning of the word “consideration” as used in paragraph 4.
  - A. leniency
  - B. due respect
  - C. reasoned judgment
  - D. legal Rights

**Answer:**

**Correct Response: A** While surely Darrow is a lawyer, he is clearly not directing his intentions to the legality issue here or even the logical, reasoned fairness of the jurors. He chooses his words very carefully. If we consider the context of his use of the word “consideration,” he makes it plain that his clients are not special compared to other Americans—male or female. I don’t want you to be lenient, he says, just fair.

2. At the end of paragraph 4, Darrow says “They can afford it if you members of the jury can.” We can infer that he means
  - A. no harm will come to the defendants if they are convicted in the case
  - B. the defendants are indifferent about the outcome of the trial
  - C. the verdict of the jury has financial implications for all the people involved in the trial
  - D. a verdict of guilty would be a potential threat to everyone’s rights

**Answer:**

**Correct Response: D** It should be evident that Darrow is using a psychological tool to reach his audience. Nothing in the text suggests answers A, B, or C. However, the word “affords” is a bit of a cheat because it suggests financial implications. Do not be fooled. His intent is plain: Put my clients in jail today, and it might be *you* tomorrow.

3. Paragraph 5 deals with an incident about a Mr. Owen, one of the men on trial. The text suggests that the case against Owen would have been dismissed if the judge had interpreted the constitution in which of the following ways?
- A. defendants must have their rights read to them when they are arrested
  - B. giving false testimony in court is a serious crime
  - C. evidence gained by illegal means is not admissible in court
  - D. Defendants cannot be forced to give incriminating evidence against themselves

**Answer:**

**Correct Response: C** The problem with question 3 is that all of the answers are correct. That said, answers A, B, and D, while on sound legal ground, have utterly nothing to do with the passage. The only issue specifically addressed in paragraph 5 is the illegal entry, search and seizure without a warrant making answer C clearly the correct response.

4. In paragraph 6, where he quotes some troubling phrases uttered by others, Darrow’s defense rests mainly on convincing the jury that
- A. a double standard is being employed
  - B. the prosecution’s evidence is untrustworthy
  - C. labor unions have the right to strike
  - D. the defendants share mainstream American values

**Answer:**

**Correct Response: A** While a thoughtful reading of the text allows the reader to presume that B and C are correct, it is not explicitly stated in paragraph 6. Using our inference skills, we can presume the same for D where Darrow implied that freedom of thought and speech are revered values in America. Only answer A gets to the point, which is that people in “high places” can say whatever they want while my clients are muzzled.

5. The information given to us in paragraph 6 suggests that the prosecution treated Mr. Lloyd’s speech primarily as
- A. sarcasm to be resented
  - B. propaganda to be ridiculed
  - C. criticism to be answered
  - D. a threat to be feared

**Answer:**

**Correct Response: D** While Darrow is not averse to suggesting that the prosecution will use propagandistic speech as well as obvious criticism of his clients to make its point, he makes it plain that their words are hardly a threat. Sarcasm never really emerges as an issue, and Darrow is unwilling to even give his opponents that subtle bit of rhetorical irony. Darrow’s contrast with more inflammatory statements by others places Lloyd’s remarks in context: Is this rhetoric more fearful or more unconscionable?

6. In that same paragraph—number 6—Darrow accuses “people in high places” of
- A. conspiring to murder members of the Communist Party
  - B. encouraging violence against critics of wealthy business owners
  - C. pressuring members of the jury to convict the defendants
  - D. advocating cruel and unusual punishment for criminals

**Answer:**

**Correct Response: B** Answers A and D might be on the minds of some of the more, shall we say, intolerant jurors not concerned with facts or evidence, but nothing in paragraph 6 supports this. Everything Darrow says underlies

choice C. However, answer B is specifically addressed in the image of “cement ship with leaden sails” and “stood up against a wall and shot.”

7. The word “education” as used in paragraph 7 is clearly a reference to the need for
- A. making workers aware of their economic and political rights
  - B. teaching factory owners about the needs of laborers
  - C. creating opportunities for on-the-job training in business
  - D. helping workers to continue their schooling

**Answer:**

**Correct response: A** We simply need to examine the clear intent of this paragraph: It is about the workers. This immediately eliminates answer B. Moreover, this paragraph is about workers knowing their rights. It is not about job training or furthering and enriching their educational opportunities. It is about understanding what is right and how to get there. Thus, A is the best answer.

8. The statement made in paragraph 7, “victory preceded law,” refers to the fact that
- A. social reform took place only after labor unions organized support for their political candidates
  - B. politicians need to win the support of labor unions if they are to be elected
  - C. politicians did not initiate improved working conditions but legalized them after they were in place
  - D. politicians have shown that they are more interested in winning elections than in legislative reform

**Answer:**

**Correct response: C** While it may be easy for the reader’s cynical side to presume bad faith about politicians, one must still go directly to the text. D, unfortunately, may be true, but it is too generic a statement. Similarly we see the same in response B. While A does come close, we need to focus on the

text which says: “then when it was over and the victory won...then the politicians, in order to get the labor vote, passed legislation creating an eight-hour day.” The victory was over and *then*, in their opportunism, the politicians weighed in. Response C is the clear choice.

9. Judging from the statement made by Darrow in paragraph 8, the jury had evidently been told by the prosecution that finding the defendants innocent would be the same as
- A. denying the importance of the Constitution
  - B. giving people the right to strike
  - C. inhibiting free speech
  - D. supporting Communist doctrine

**Answer:**

**Correct Response: D** There is no doubt that C appears to be an acceptable response, because Darrow clearly states, “I am here to defend their right to express their opinions.” However, more to the point, he also says quite pointedly: “You have been told that if you acquit these defendants you will be despised because you will endorse *everything they believe* [our emphasis]. That is the key. They are being accused of being Communists. Darrow asks, do you believe in their views? In the context of paragraph 8, responses A and B are irrelevant.

10. In order for Darrow to win the case, it would be most crucial that the jurors possess
- A. a thorough understanding of legal procedures and terminology
  - B. a thorough understanding of the principles and beliefs of the Communist Labor party
  - C. the ability to separate the views of the defendants from the rights of the defendants
  - D. the courage to act in the best interests of the nation’s economy

**Answer:**

**Correct response: C** Answers A and B should be seen by the critical reader as manifestly immaterial. We do not expect our jurors to have expertise on



Constitutional law or the specifics of political ideology. We must reject responses A and B immediately. Choice D is trickier, because the labor and union movements were new and guided, to some extent, by this Communist sensibility. That said, the reader needs a close reading of the text. Darrow asks, do you hate Communists? That's fine; no problem. However, do you hate our revered, Constitutional rights? If not, vote for my clients. Separate your personal feelings from our laws and freedoms. Best choice? Response C.

**Assignment 1: Use Passage A to respond to the following assignment.**

In a response of approximately 100-200 words, present a compelling argument to the following prompt. Your response must:

- Outline and specifically draw upon claims made in the passage
- Evaluate the validity, relevance, and sufficiency of evidence used to the support the primary claim
- Include specific examples and references from the text to support your point of view and evaluation

Your response should be written for an audience of educated adults. With the exception of appropriately identified quotations and paraphrases from the source provided, your writing must be your own. The final version of your response should conform to the conventions of edited, standard American English.

**Prompt:**

In this particular case, *The People vs. Lloyd*, one of Clarence Darrow's many cases argued in the State of Illinois, Mr. Darrow loses the case and the appeal. The jury voted against his clients and the decision was upheld in appeal. You are a juror in this case, and you have heard Mr. Darrow's summation to the members of the jury. Since you, and your fellow jurors, found his clients guilty it is evident that you were not impressed with his arguments, however fervent they were rendered. You are emphatic: His clients are guilty.

Write a response to Mr. Darrow's summation explaining why you believe his defense and support of his clients were insufficient to convince you and your fellow jurors about their innocence. Be thoughtful in your response, and be certain to include concrete and specific references from the original text.

### Sample response to Assignment 1: (250 words)

There is absolutely no question that Mr. Darrow possesses many gifts as a lawyer, an orator and a charmer. He uses language skillfully, and he is able to shape and deliver his arguments with consummate dexterity and even a bit of cunning. However, for this listener—and I admit that I was often mesmerized by Mr. Darrow’s adroit eloquence—his entire summation said more about his rhetorical shrewdness than the essence of this case.

Mr. Darrow likes to redirect your attention with flowery words and vivid imagery. For example, he says as a self-righteous assertion: “I am not here to defend my clients’ opinion. I am here to defend their right to express their opinion.” I am very sorry, Mr. Darrow, but there is a law on the books in Illinois, a very clear statute, that makes it unlawful for anyone to advocate the violent overthrow of our government. It is one thing to have an opinion—we all have them—it is quite another to have an opinion that is subversive and treasonous. He also very cavalierly says, “a red flag is found in Mr. Owen’s home.” Mr. Darrow seizes that notion and trivializes it, maintaining that Mr. Owen “had the same right to have in his house ...a green one, or a yellow one.” He clearly misses the point here. The Communist philosophy that these men espouse calls for the destruction of our way of life in America. A red flag is a visible and ugly symbol of that belief system. It is not merely some casual color choice in flags, like selecting a certain color tie to go with a shirt. It is a manifestly grotesque image that shows a lack of patriotism and respect for our very special nation and way of life.

Finally, Mr. Darrow likes to repeatedly bring up the Constitution—our precious founding document—as if to suggest that the Constitution allows *everything*. That is a lawyer’s trick. It does **not** allow everything. It allows certain very special things that make America the kind of nation that it is. It does not allow for individuals or groups to defame our way of life and to destroy our country and values. These men deserve to serve time, and their incarceration should be a signal and a message to those who would undermine and attack our way of life and value system. May it be fine for the Russians—but not for us!