

# *The Bill of Rights for Real Life*

*A program of*  
**THE BILL OF RIGHTS INSTITUTE**

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Founded in 1999, the Bill of Rights Institute pursues its mission to educate high school students and teachers about our country's Founding principles through classroom materials and programs that teach the words and ideas of the Founders; the liberties and freedoms guaranteed in our Founding documents; and how America's Founding principles affect and shape a free society. The Bill of Rights Institute is an educational nonprofit organization, classified by the Internal Revenue Service as a 501 (c)(3) organization, a public charity supported by 3,000 individual, corporate, and foundation donors.



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# Preface

*The Bill of Rights for Real Life* is designed to lead less academically-inclined students toward a stronger and more explicit engagement in civil society. This curriculum uses techniques and strategies that are most appropriate for teaching these students so they will grow into informed and engaged citizens. Specifically, we are utilizing the promising approaches outlined in *The Civic Mission of Schools*—a report published by the University of Maryland’s Center for Information and Research on Civic Learning and Engagement (CIRCLE) and the Carnegie Corporation. (A full copy of this report can be downloaded at [http://www.civicmissionofschools.org/campaign/cms\\_report.html](http://www.civicmissionofschools.org/campaign/cms_report.html)).

*The Bill of Rights for Real Life* will connect with students. It will give them a meaningful understanding of the ways our Constitution affects their daily lives and empower them with methods for civic engagement. This authentic connection is perhaps most crucial for students who are unlikely to attend college, as this will be their final academic exposure to these critical principles.

Divided into ten units with strong connections to national education standards, *The Bill of Rights for Real Life* uses researched-based teaching strategies to encourage students to explore the philosophical, historical, and legal roots of our fundamental freedoms; the rights and responsibilities of citizens; and the role that civic values, the law, and the courts play in their daily lives.

Each unit contains two lessons designed by master teachers. The first lesson in each unit explores the history and foundations of each theme, from the Founders through freedom of religion and expression, guns, criminal procedure, private property, citizen juries, personal liberty, federalism, and finally the incorporation of Bill of Rights protections to the states.

The second lesson in each unit engages students in contemporary, real-life applications of each theme. All the lessons contain solid content, active lessons, and practical applications to help students explore their roles as responsible citizens. Students participate in real life situations such as writing letters to their elected representatives, participating in a mock jury, and creating public service announcements.

The accompanying DVD set features videos that provide historical background information, news footage on landmark Supreme Court cases, and commentary from legal experts and scholars who present various perspectives of issues related to the Bill of Rights.

Following the ten units is a complete answer key for all student handouts. Next, there are DVD viewing guides as well as optional reading quizzes. You will also find a glossary of key terms, a listing of landmark Supreme Court cases, and additional educational resources.

“Liberty cannot be preserved without a general knowledge among the people,” said John Adams, one of our country’s first champions of liberty and our second President. As Americans, we cherish our freedoms, and the key to preserving and protecting those freedoms is education. As educators, our responsibilities to students include preparing them for the engaged citizenship America requires. By reintroducing the next generation to the freedoms protected in our Founding documents, we can help ensure that the general knowledge President Adams advocated endures—and with it, the liberty we all cherish.

—Victoria Hughes, President

# *The Bill of Rights*

## **First Amendment**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## **Second Amendment**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

## **Third Amendment**

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

## **Fourth Amendment**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## **Fifth Amendment**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of

a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## **Sixth Amendment**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

## **Seventh Amendment**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by a jury, shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

## **Eighth Amendment**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## **Ninth Amendment**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

## **Tenth Amendment**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

---

## **Fourteenth Amendment (1868)**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...



# *The Bill of Rights and The Founders*

Provides an introduction and overview of the Bill of Rights, including the Founders' understanding of the "rights of Englishmen," British law, and natural rights philosophy. This unit also examines the Federalist and Anti-Federalist debate about a bill of rights.





# The Bill of Rights and *The Founders*

## Unit Introduction

Today, most Americans think of the Bill of Rights as an integral part of the Constitution and political system. The delegates at the Constitutional Convention disagreed sharply about whether a bill of rights was necessary at all and, if desirable, what one should include. The Founders' debate featured references to English law and history, as well as to America's unique colonial experience. Led by James Madison, the Founders eventually crafted a bill of rights touching on nearly every aspect of civil society: religion, expression, security, property, and equitable administration of justice. Even after 200 years, the amendments they drafted influence the lives of Americans every day.

## Unit Objectives

*Students will:*

- Explain similarities between historical statements of rights and their modern applications.
- Understand the ideas of the "Rights of Englishmen" and natural rights.
- Understand the evolution of the concept of rights and its impact on the Bill of Rights.
- Analyze the debates surrounding the addition of a bill of rights to the Constitution.
- Evaluate Federalist and Anti-Federalist arguments.

## Synopsis of Lessons and DVD

### Lesson 1

Students explore important English and colonial documents that influenced the writing of the Bill of Rights, including Magna Carta, the English Declaration of Rights, and the Virginia Declaration of Rights. Students will identify their own beliefs about individual rights and how those rights impact their everyday lives.

### Lesson 2

Students explore the debate over the Bill of Rights, including Federalist and Anti-Federalist positions. The lesson also begins to explore the impact the Bill of Rights has had since 1791, laying a foundation for the future.

*"All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate which would be oppression."*

— THOMAS JEFFERSON

*"Government should be formed to secure and to enlarge the exercise of the natural rights of its members; and every government, which has not this in view, as its principal object, is not a government of the legitimate kind."*

— JAMES WILSON

## LESSON

## 1

***What Are the Origins of the Bill of Rights?*****Overview**

The Founders saw themselves as heirs to a legacy of increasing freedom stretching back to Magna Carta. Events and philosophies from British and colonial history shaped the Founders' ideas about natural rights as well as the "rights of Englishmen." These rights impact all of our daily lives in a free society.

**Standards**

- NCHS (5-12): Era III, Standards 1A, 1B, 3A, 3B
- CCE (9-12): IIA1, IID1, VB1, VD1
- NCSS: Strands 6 and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Understand the ideas of the "rights of Englishmen" and natural rights.
- Identify similarities between historical statements of their rights and their current applications.

- Consider personal responsibilities and methods to protect individual rights.
- Understand how the colonial experience affected the development of the Bill of Rights.
- Analyze how the history behind English rights and the concept of natural rights influenced the American Revolution and the notion of just government.
- Evaluate the significance of individual rights in their daily lives.

**Materials****STUDENT**

- Key Terms
- Background Essay
- Reading Quiz (optional)
- Founders DVD: Segment One and Viewing Guide
- Handout A: Rights Attitude Inventory
- Handout B: Foundations of Our Rights
- Handout C: Founding Documents and Philosophies

**TEACHER**

- Key: Handout B
- Key: Handout C

**Lesson Plan****1. Background/  
Homework**

*[10 minutes the day before]*

**A.** Have students skim the Lesson One **Background Essay, "The Colonial Experience"** and use highlighters or colored pencils to color code the components:

- Information about documents written in England: yellow
- Information about documents written in America: green
- Violations of rights in the American colonies: red

**B.** Have students write a one or two sentence reaction to the **Background Essay**: what does the essay make you wonder about the "rights of Englishmen?"

**2. Warm-Up**

*[10-15 minutes]*

**A.** Begin discussion of the Founders by talking about a "real life" news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrights.institute.org>, for daily headlines or a complete "Bill of Rights in the News" activity.

**B.** Distribute **Handout A: Rights Attitude Inventory**. Ask students to rank the rights listed from least to most important. Then, as a class, ask students to share their answers. Keep a tally on the board of which rights the class ranked as “1” or most important, as well as “10” or least important.

**C.** Go around the class, having students count off numbers one through ten. They should then write a paragraph about the right corresponding to their number on **Handout A**, explaining why that right is so important to a free society. Have students read their responses aloud, and share their reasoning for their rankings on **Handout A**.

### 3. Activity [20-30 minutes]

**A.** Divide class into pairs to fill in **Handout B: Foundations of Our Rights**.

**B.** Use a transparency of **Handout B** to provide guidance. Ask for student volunteers to come to the overhead projector and fill in the checks on the chart.

**C.** Distribute **Handout C: Founding Documents and Philosophies**. Student pairs should discuss and answer the questions on **Handout C**.

**D.** Bring the class back together and go over **Handout C** as a large group.

**E.** Show segment one of Founders DVD and have students complete Viewing Guide.

## Extension Options

### Homework

**A.** Ask students to complete question five of **Handout C**, and report their findings to the class in an oral report.

### Enrichment

**A.** Have the class discuss this quote from James Madison's *Federalist No. 51* (1788). Point out to students that the quote illustrates that the Founders themselves were very concerned about the proper balance between security and liberty. Ask them to consider: how can liberty be abused?

*“If men were angels, no government would be necessary.”*

**B.** Have the class examine this quote from Pastor Martin Niemoller, a survivor of Dachau concentration camp. Students should note that the quote illustrates the importance of all citizens being vigilant and active in the protection of rights.

*“First they came for the Communists, but I was not a Communist, so I said nothing. Then they came for the Social Democrats, but I was not a Social Democrat, so I did nothing. Then came the trade unionists, but I was not a trade unionist. And then they came for the Jews, but I was not a Jew, so I did little. Then when they came for me, there was no one left to stand up for me.”*



### Real Life Portal

Have students choose a newspaper or Internet article about suggested restrictions on liberty proposed to combat terrorism. Have them write a one-page letter to the editor explaining whether restrictions on liberty are ever justified, and why.

# The Bill of Rights and *The Founders*

## LESSONS 1 & 2 *Key Terms*

### Unlock the Key Terms

Choose a key term and write a sentence correctly using the word(s).

**Directions:** As you read each Background Essay, be on the lookout for these key terms. After reading, write out the correct definition for each term.

Magna Carta \_\_\_\_\_

\_\_\_\_\_

John Locke \_\_\_\_\_

\_\_\_\_\_

natural rights \_\_\_\_\_

\_\_\_\_\_

Federalists \_\_\_\_\_

\_\_\_\_\_

Anti-Federalists \_\_\_\_\_

\_\_\_\_\_

ratify \_\_\_\_\_

\_\_\_\_\_



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## LESSON 1 **What Are the Origins of the Bill of Rights?**

**M**any colonists felt betrayed by the British government as their rights were taken away. The colonists were forced to allow British soldiers to stay in their homes. They had their own weapons taken away and saw restrictions put on speech and the press. They were not even allowed to gather together freely. Ironically, the British government had given the colonists the idea of “essential rights.” Now it was the British government that challenged those principles.

### READING TIP:

Pay close attention to the amendment numbers in parentheses after each right.

### What Is the Magna Carta?

These rights were part of a centuries old heritage. In fact, much of American colonial law was based on the rights of Englishmen. The oldest document in the British and American heritage of rights, the Magna Carta, was written in 1215.

This heritage is alive in America today. More than half the Amendments in the Bill of Rights have roots in the Magna Carta. England’s King John agreed to preserve the freedom of the Church and to hear petitions from the barons (First Amendment). He also agreed to remove foreign armies from England (Third Amendment); not to seize land to pay for debts (Fourth Amendment); not to take life or liberty without due process or repayment (Fifth Amendment). He swore not to delay court proceedings or punish

without hearing from witnesses (Sixth Amendment), as well as to repay unjust fines and not to issue extreme punishments (Eighth Amendment).

### How Were Rights Protected and Expanded?

Through the centuries, Magna Carta freedoms found their way into English common law. Englishmen were fiercely protective of these rights when the King tried to withdraw them.

In the 17th century, King Charles I disbanded Parliament and said he was ruling England on his own. House of Commons member Sir Edward Coke presented a list of complaints. This list came to be called the Petition of Right. This established the principle that the King was not above the law.

Charles’s abuses of the law included denying Englishmen due process (Fifth Amendment); protection from unjust taking of property or imprisonment (Fourth and Fifth Amendments); the right to trial by fellow Englishmen (Sixth Amendment); and protection from unjust punishments or fines (Eighth Amendment). Although Charles first agreed to stop breaking the law, he soon went back on his word. He was beheaded in 1649.

Prince William of Orange and his wife Mary came to the throne in the 1688 Glorious Revolution. As a condition of their rule, William and Mary accepted the Declaration



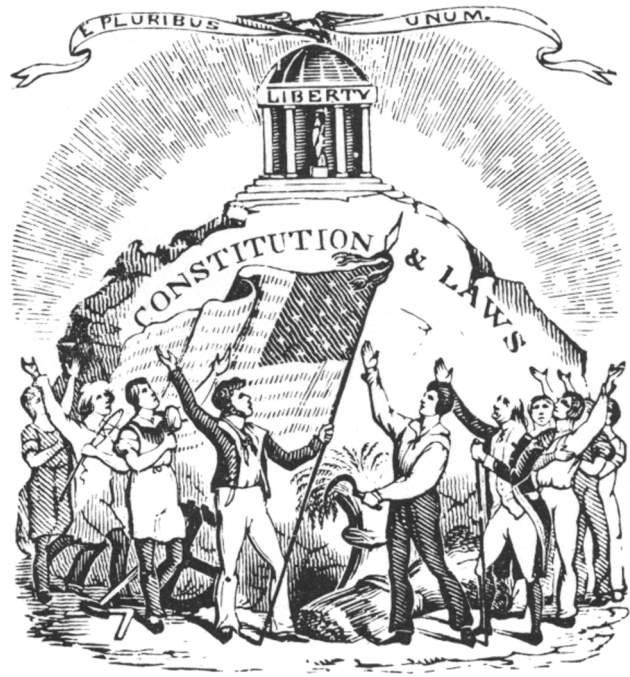
## What Are the Origins of the Bill of Rights? (continued)

of Rights and the Toleration Act in 1689. The Toleration Act expanded freedom of religion. It granted Protestants who did not attend the Church of England the right to freely exercise their faith (First Amendment). The Declaration of Rights gave Parliament total freedom of speech during debate (First Amendment). The Declaration also included: the right to assemble peacefully and to petition (First Amendment); the right to keep arms (Second Amendment); protections of property and liberty (Fourth and Fifth Amendments); rights of the accused (Sixth Amendment); and rights of criminals (Eighth Amendment).

### What Was the Purpose of Government?

Forty years after Charles's execution and just after the Declaration of Rights, John Locke wrote *Two Treatises of Government* (1690). Locke argued that men are by nature free and equal and that they own their "persons [bodies] and possessions." He said people must "unite into a community for their comfortable, safe, peaceable living" in order to defend their rights. Locke believed that a government's purpose is to protect individual natural rights such as life, liberty, and property. Therefore, people must have the right to dissolve a government that is not protecting them.

And so it was in the thirteen colonies. When the British ignored English laws in the American colonies, the colonists were armed with a tradition of demanding those laws be followed.



### What Did the Colonial Experience Teach the Founders?

The colonists brought their rights as Englishmen to the earliest American colonies. Massachusetts adopted the "Body of Liberties" in 1641. The document included protection for free speech and petition (First Amendment), just compensation for property taken for public use (Fifth Amendment), protection from double jeopardy (Fifth Amendment), right to trial by jury and counsel (Sixth Amendment), and protection from cruel punishments and excessive bail (Eighth Amendment).

As the British government began to limit freedoms between 1763 and 1776, the colonists' resolve was tested. For example, the 1765 Quartering Act demanded colonists give British troops shelter (Third Amendment). The 1774 Coercive Acts

*More than half the Amendments  
in the Bill of Rights have  
roots in the Magna Carta.*

included: restricting the right of the press, free speech, and the right of assembly (First Amendment); confiscating of colonists' weapons (Second Amendment); lifting protections of property (Fourth and Fifth Amendments); prosecuting colonial activists in English courts, or holding them without trial (Sixth Amendment). The colonists responded to these acts with protest and eventually revolution. The colonists later addressed these issues in the United States Bill of Rights.

### **How Did History Repeat Itself?**

The conflict reached a breaking point in 1776. As Locke had written, the people had the right to dissolve a government that was not protecting their rights. Americans realized they needed self-government and issued a Declaration of Independence. Locke had listed life, liberty, and property as natural rights, while Thomas Jefferson substituted "life, liberty, and the pursuit of happiness." The Declaration of Independence went on to list ways the British had violated the rights of Englishmen.

The colonists then had to begin creating their own government. They threw out the colonial charters and wrote new constitutions. Seven colonies included a Declaration of Rights. The most important of these, historians

agree, was Virginia's. The Virginia Declaration of Rights, written by George Mason, protected the press, exercise of religion, arms, property, the accused, and criminals. James Madison later used it as a model when he wrote the United States Bill of Rights.

After the Revolution, the states united under the Articles of Confederation from March 1781 to June 1788. The Articles proved to be an inadequate system of government. To replace it, the Founders drafted a new document: the Constitution of the United States of America. This document created a stronger central government.

### **Why Add a Bill of Rights?**

There were some Americans who feared the central government was too strong under the Constitution alone. They believed that a separate listing of rights was needed to protect individual and states' rights. A compromise eased the debate. The new Constitution was ratified in 1789 and two years later amended to include a bill of rights.

The Founders inherited a tradition of rights that they cherished. They created the American system of government with great care to ensure future generations would enjoy all the "blessings of liberty." In the end, it is not the governments who are sovereign, but the people.

## LESSON 1 *Rights Attitude Inventory*

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**Directions:** Number the following rights in order of importance from 1 to 10 — with 1 being most important. In other words, place a 10 next to the right you could give up most easily, and a 1 next to the right you cannot imagine living without.

- \_\_\_\_\_ 1. Freedom of speech
- \_\_\_\_\_ 2. Freedom of religion
- \_\_\_\_\_ 3. Right to a jury trial
- \_\_\_\_\_ 4. Freedom of the press
- \_\_\_\_\_ 5. Freedom from cruel and unusual punishments
- \_\_\_\_\_ 6. Right to keep and bear arms
- \_\_\_\_\_ 7. Right to control your own property
- \_\_\_\_\_ 8. Freedom of assembly
- \_\_\_\_\_ 9. Freedom from quartering troops in your home
- \_\_\_\_\_ 10. Freedom from unreasonable search and seizures



# The Bill of Rights and *The Founders*

## LESSON 1 *Foundations of Our Rights*

**Directions:** Fill in the chart, placing check marks where certain rights were guaranteed by each document. Then fill in the chart below with the purpose of each document.

	RIGHT	RIGHT	RIGHT	RIGHT	RIGHT	RIGHT	RIGHT
<b>Bill of Rights (1791)</b> Reference	<b>First:</b> religion, speech, press, assembly, petition	<b>Second:</b> keep and bear arms	<b>Third:</b> freedom from quartering troops	<b>Fourth:</b> search and seizure rights	<b>Fifth:</b> due process rights	<b>Sixth:</b> fair trial rights	<b>Eighth:</b> freedom from cruel and unusual punishment
Magna Carta (1215)							
Petition of Right (1621)							
Mass. Body of Liberties (1641)							
Declaration of Right and Toleration Acts (1689)							
Right violated in colonies?							

Document	Purpose
<i>Two Treatises of Government</i> (1690)	
The Declaration of Independence (1776)	
The United States Constitution (1789)	

## LESSON 1 *Founding Documents and Philosophies*

1. What does the Declaration of Independence have in common with Locke's *Two Treatises of Government*?

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2. How are these two documents different?

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3. How does the Constitution differ from the Articles of Confederation?

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4. Why do you think some specific rights appear more often than others in the documents?

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5. At the start of class, we discussed which rights the class believed were most important. Which right, and why, do you think is most important to your parents? Discuss this question with them and report their answers back to the class.

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## LESSON

## 2

**Why a Bill of Rights? What Impact Does it Have?****Overview**

The debate over the Bill of Rights was not an argument over whether rights exist, but about how best to protect those rights. The Founders disagreed about whether a bill of rights was necessary, and whether it could be effective. Current and future generations continue to face the challenges of safeguarding individual rights.

**Standards**

- NCHS (5-12): Era III, Standards 3A, 3B
- CCE (9-12): IIIA1
- NCSS: Strands 6 and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Explain the arguments of the Federalists and Anti-Federalists regarding the Bill of Rights.
- Identify continuing controversies regarding appropriate powers of government versus individual rights.
- Analyze the implications of Federalist and Anti-Federalist positions.
- Participate in civil discourse concerning the Bill of Rights.

**Materials**

STUDENT

- Background Essay
- Reading Quiz (optional)
- Founders DVD: Segment Two and Viewing Guide
- Handout A: Understanding Positions of Federalists and Anti-Federalists
- Handout B: Federalists and Anti-Federalists Venn Diagram
- Handout C: Classifying Quotes

TEACHER

- Primary Passage Quote Cards
- Key: Handout A
- Key: Handout B
- Key: Handout C

**Lesson Plan****1. Background/  
Homework**

*[10 minutes the day before]*

**A.** Assign the Lesson Two Background Essay, “Why a Bill of Rights? What Impact Does it Have?” for students to read prior to class time. Along with the essay, give students **Handout A: Understanding Positions of Federalists and Anti-Federalists** to fill in as they read.

**B.** Before class, print out **Primary Passage Quotes**, laminate them, and tape them up around the room.

**2. Warm-Up**

*[10-15 minutes]*

**A.** Begin discussion of the Founders by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrightsinstitute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**B.** Divide students into pairs or trios and ask them to share their homework **Handout A** chart responses and compare their answers.

**C.** Have each group identify which argument they feel is strongest for each heading—Federalists and Anti-Federalists.

### **3. Activity** [20-30 minutes]

**A.** Show segment two of Founders DVD and have students complete Viewing Guide.

Give each group a copy of **Handout B**, instructing them to complete the Venn diagram using key words to record the positions of the Federalists and Anti-Federalists.

**B.** Go over the Venn diagrams as a class, and answer any questions.

**C.** Have students walk around the room with a partner and read each of the quotes. Each pair should have **Handout C**. Each pair should discuss each quote and decide whether it represents Federalist or Anti-Federalist beliefs. They should then write “F” or “AF” beside each number on their paper as they walk around the room.

**D.** After everyone has finished, discuss each quotation as a class and reveal who the speaker in each case is.

**E.** Wrap up by asking students about a time when they either experienced their own rights being abridged, or witnessed

this happen to someone else. How did this make them feel? What was, or should be, the government’s role in protecting everyone’s rights?

## **Extension Options**

### **Homework**

**A.** Have students choose one quote from the quote cards and write a two to three paragraph essay either supporting or refuting its position.

**B.** Ask students to choose one Federalist or Anti-Federalist thinker and assume their persona. Have them compose a one-page, persuasive speech he might have given about the Constitution and whether it should be ratified as is, ratified with conditions, or not ratified.

### **Enrichment**

**A.** Ask students to write a personal narrative or one-act play based on their answer to part E of the class discussion. Were their own rights ever been abridged, or did they witness this happen to someone else? What was the outcome, and how did it change their perspective on individual rights?

**B.** Have students find newspaper clippings or on-line articles that relate to the central concepts of this lesson: How can government be structured to best protect individual rights? Create a bulletin board to display the collected clippings. Have students speculate how James Madison or George Mason would have responded to the issues raised by the articles.

## LESSON 2 *Why a Bill of Rights? What Impact Does it Have?*

All have heard the saying, “Great minds think alike.” When many great minds of the colonies gathered to create a new government, two rarely thought exactly alike. The Bill of Rights was created through the kind of debate and exchange of ideas that it protects to this day.

The Declaration of Independence states the purpose of government is to protect our basic human rights. This was one principle that all the Founders did agree on. But if they created a great system to protect rights, why did they argue about a bill of rights?

### READING TIP:

As you read, look for the main ideas of the Federalists and Anti-Federalists.

### Who Were the Federalists and Anti-Federalists?

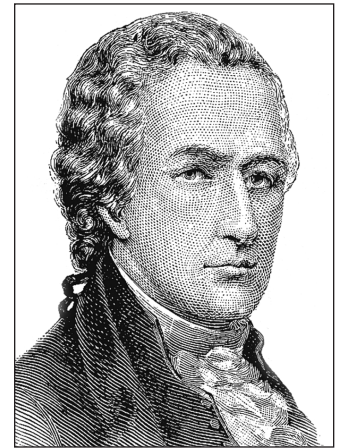
Two groups formed during the discussion over a bill of rights. **Federalists** strongly supported the Constitution as it was written and did not think a bill of rights was needed.

**Anti-Federalists** felt that a bill of rights would prevent the central government from threatening states’ authority and oppressing citizens.

Federalists included Alexander Hamilton from New York and, at first, James Madison from Virginia. They believed a bill of rights was not needed because the Constitution itself limited the government’s powers. They also feared that creating a list of rights might

lead to other dangers. It would be impossible to list every right. Federalists did not want certain rights to be ignored just because they were not listed.

Anti-Federalists included George Mason and Patrick Henry of Virginia. They thought that listing rights would help protect against the powerful central government taking away the freedoms they had fought a revolution to preserve.



ALEXANDER HAMILTON

### Why Did Madison Change His Mind?

The Constitutional Convention ended in late 1787, but the debate went on. Nine states ratified (approved) the Constitution by the summer of 1788. However, New York, Virginia, and Massachusetts submitted long lists of proposed amendments to guarantee rights. It became clear the people wanted a bill of rights.

Madison sought the advice of Thomas Jefferson, John Adams, George Mason and President George Washington. They all expressed support for a bill of rights. Mason suggested using state declarations of rights as a guide. Madison changed his mind and encouraged his fellow congressmen to support a bill of rights in 1789.



JAMES MADISON

Madison offered many proposed changes to Articles I and III of the Constitution on June 8, 1789. He originally made small word additions and changes to the original Constitution. Some Congressmen objected, arguing that Congress did not have the power to change the original form of the Constitution.

They decided the Amendments would be added as a separate list.

The House of Representatives debated through the summer. On August 24, 1789, the House sent a list of seventeen amendments to the Senate. The Senate approved twelve. Those twelve were sent to the states for ratification (approval). On December 15, 1791, Virginia's state convention became the last to ratify the ten amendments that protected rights. The Bill of Rights now joined the Constitution as the governing document of the United States.

## **What Is the Impact of the Bill of Rights?**

The Bill of Rights limited only actions taken by the federal government against people. The Founders assumed citizens would be protected by their home states' constitution. For this reason, the Bill of Rights did not strongly impact Americans' lives until the Fourteenth Amendment was passed. The Fourteenth Amendment applied the Bill of Rights to state governments. This change did not happen automatically. Gradually, one

*The Bill of Rights began with debate over its very existence.*

issue at a time, the Supreme Court has interpreted most of the provisions of the Bill of Rights to apply to the states through the due process clause of the Fourteenth Amendment.

In the twentieth century, the role of the federal government shifted. As a result of the federal government's expanded role, its size, purpose, and significance have changed. The change also affected the national view of the Bill of Rights. The document that rarely affected American's lives soon after its ratification now takes center stage in American society and politics.

The Bill of Rights began with debate over its very existence. Perhaps it is fitting that it still brings about questions and controversy today. Great minds do sometimes think alike, but the Bill of Rights protections ensure that the law cannot make them do so.

## LESSON 2 *Understanding Positions of Federalists and Anti-Federalists*

**Directions:** Fill in the chart below with positions of Federalists and Anti-Federalists. Then answer the questions below.

<b>FEDERALISTS</b> (Alexander Hamilton, James Madison)	<b>ANTI-FEDERALISTS</b> (George Mason, Patrick Henry)

1. Name two points of agreement among Federalists and Anti-Federalists.

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2. Which point do you think is each side's strongest argument?

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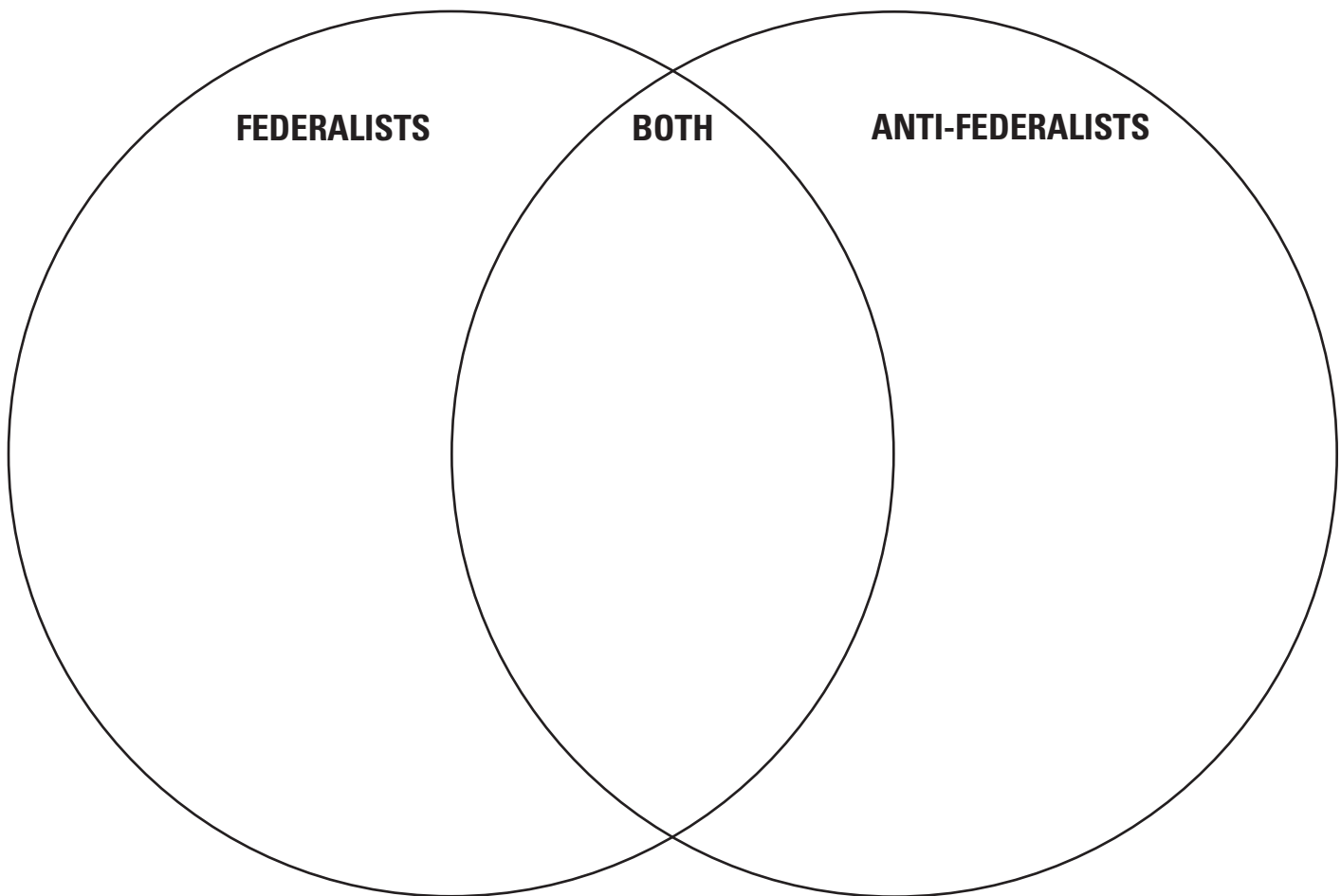
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**LESSON 2** ***Federalists & Anti-Federalists Venn Diagram***

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**Directions:** Fill in the chart with positions of Federalists, Anti-Federalists, and the points on which they agreed.





## LESSON 2 *Classifying Quotes*

**Directions:** Read each quote and decide whether it represents Federalist or Anti-Federalist views. Then circle “F” for Federalist or “A-F” for Anti-Federalist next to each quote. Then try to guess who is the speaker of each quote.

- |   |     |  |
|---|-----|--|
| F | A-F | 1. “I do not conceive we can exist long as a nation without having...a power which will pervade the whole Union....”   |
| F | A-F | 2. “The State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient.”  |
| F | A-F | 3. “The laws of the general government being paramount to the laws and constitutions of the several states, the Declaration of Rights in the separate states are no security.”     |
| F | A-F | 4. “The vigor of government is essential to the security of liberty.”  |
| F | A-F | 5. “...State Legislatures have no security for the powers now presumed to remain to them, or the People for their Rights.”   |
| F | A-F | 6. “There is no Declaration of any kind for preserving the Liberty of the Press, the Trial by Jury in civil Causes; nor against the Danger of standing Armies in time of Peace...” |
| F | A-F | 7. “Repeated violations of these parchment barriers have been committed by overbearing majorities in every State.”   |
| F | A-F | 8. “A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse or rest on inference.” |

**1.** “I do not conceive we can exist long as a nation without having lodged somewhere a power, which will pervade the whole union in as energetic a manner as the authority of the state governments extends over the several states.”

**2.** “The State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient.”

**3.** “The laws of the general government being paramount to the laws and constitutions of the several states, the Declaration of Rights in the separate states are no security.”

**4.** “The vigor of government is essential to the security of liberty.”

**5.** “State legislatures have no security for the powers now presumed to remain to them, or the people for their rights.”

**6.** “There is no declaration of any kind for preserving the liberty of the press, the trial by jury in civil causes; nor against the danger of standing armies in time of Peace...”

**7.** “Repeated violations of these parchment barriers have been committed by overbearing majorities in every state.”

**8.** “A bill of rights is what the people are entitled to against every government on Earth, general or particular, and what no just government should refuse or rest on inference.”

## ***Teacher Notes***

## *The Bill of Rights and Religion*

Explores the First Amendment's Establishment Clause and Free Exercise Clause, including in-depth studies of the Founders' understanding of both. The unit explores the Lemon and endorsement tests, as well as the relationship between the government and religious institutions. In addition, the unit investigates instances where "free exercise" and "establishment" might conflict.





# The Bill of Rights and Religion

## First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

*"The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right...because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men. It is unalienable also, because what is here a right towards men, is a duty towards the Creator."*

— JAMES MADISON

## Unit Introduction

Religion has always been a central part of life in the United States. Before independence, early colonists came to the New World fleeing religious persecution in Europe and seeking the freedom to exercise their religion as they saw fit. In the First Amendment, the Founders protected state governments and individuals from federal interference in religious matters—but just how far they meant to separate church and state, and what religious freedom means for Americans today, remain controversial legal and constitutional issues.

## Unit Objectives

*Students will:*

- Explain the Establishment Clause of the First Amendment.
- Explain the Free Exercise Clause of the First Amendment.
- Understand the historical significance of religion in the Founding of the United States.
- Identify potential conflicts involving religion in a free society.
- Analyze tests of constitutionality used by the Supreme Court.

## Synopsis of Lessons and DVD

### Lesson 1

Students examine the Founders' reasons for protecting religion in the First Amendment, as well as issues surrounding the Establishment Clause, in particular.

### Lesson 2

Students examine the Free Exercise Clause and explore how individual rights can best be protected and exercised in a religiously diverse society.

## LESSON

## 1

***The Establishment Clause—How Separate Are Church and State?*****Overview**

People from a number of religious traditions came together to form the United States. To make sure the federal government respected freedom of belief, the First Amendment prohibited the federal government from establishing a national church or interfering with the then-existing state churches. Since then, the Supreme Court has mapped out various tests to determine if government practices violate the Establishment Clause of the First Amendment.

**Standards**

- NCHS (5-12): Era III, Standard 3B, 3C; Era IX, Standards 1B, 4C
- CCE (9-12): IIA1
- NCSS: Strands 1, 2, 5, 6, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Identify the extent to which religion affects life at their school.
- Explain the Establishment Clause of the First Amendment.
- Analyze Establishment Clause questions in terms of Supreme Court tests of constitutionality.

**Materials****STUDENT**

- Key Terms
- Background Essay
- Reading Quiz (optional)
- Religion DVD and Viewing Guide
- Handout A: Religion at My School
- Handout B: Establishment Scenarios

**TEACHER**

- Key: Handout B

**Lesson Plan****1. Background/  
Homework**

*[10 minutes the day before]*

**A.** Have students read the Lesson One **Background Essay**, “**The Establishment Clause: How Separate Are Church and State?**”

**B.** Ask students to complete **Handout A: Religion at My School**. If time allows, brainstorm other examples and ask students to list them on their handout.

**2. Warm-Up**

*[10-15 minutes]*

**A.** Begin discussion of religion by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrights.institute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**B.** Make a transparency or list on the board the examples of religion in the life of a school from **Handout A: Religion at My School**.

**C.** Ask for a show of hands to count the number of students who have checked each example.

**D.** Next, list any “other” examples which students listed.

**E.** Briefly discuss the topic “Religion at My School,” using the following questions:

- Does religion affect our school a little, somewhat, a great deal?
- Do you see this [the answer to the question above] as a positive or negative?
- Is the role of religion in our school constitutional or unconstitutional?

### **3. Activity**

[20-30 minutes]

**A.** As a class, define and go over four key concepts from the essay: the Establishment Clause, the Lemon test, the endorsement test, and the coercion test.

**B.** Distribute **Handout B: Establishment Scenarios**.

Ask students to complete scenario one with a large group discussion.

**C.** Ask students to work individually on scenario two. After a few minutes, conduct a large group discussion, with students continuing to fill in the worksheet during the discussion.

**D.** Continue the same process for scenarios three and four, depending on the time remaining.

**E.** Show Religion DVD and have students complete Viewing Guide.

## **Extension Options**

### **Homework**

**A.** Have students finish **Handout B: Establishment Scenarios**.

**B.** Ask students to obtain school policies on religious observances and compare them to their understanding of the cases in the **Background Essay**.

### **Enrichment**

**A.** Have students fully investigate the role of religion in the life of their school. Does the school have any student clubs who are affected by *Board of Education of Westside Community School v. Mergens*, (1990) or *Good News Club v. Milford Central School*, (2001)?

If not, ask students if they believe that such clubs should be formed at their school.

**B.** Have the class prepare to debate an Establishment Clause issue such as the constitutionality of posting the Decalogue in courtrooms or requiring prayer in schools. To ensure all students gain an understanding of both sides of an issue, do not inform them which side they will be arguing until the day of the debate.

# The Bill of Rights and Religion

## LESSONS 1 & 2 Key Terms

### Unlock the Key Terms

Choose 2 or more key terms and write one sentence correctly using all the terms.

**Directions:** As you read each Background Essay, be on the lookout for these key terms. After reading, write out the correct definition for each term.

separation of church and state \_\_\_\_\_

\_\_\_\_\_

Establishment Clause \_\_\_\_\_

\_\_\_\_\_

Lemon test \_\_\_\_\_

\_\_\_\_\_

endorsement test \_\_\_\_\_

\_\_\_\_\_

coercion test \_\_\_\_\_

\_\_\_\_\_

voucher system \_\_\_\_\_

\_\_\_\_\_

Free Exercise Clause \_\_\_\_\_

\_\_\_\_\_



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## ***The Establishment Clause:***

### **LESSON 1**

## ***How Separate Are Church and State?***

**H**ow would you feel if all your classmates, no matter what their faith, had to begin every school day with a New Testament reading? Once you graduated, can you imagine having to sign a statement saying that you believed in God in order to vote? Even though Americans now take “freedom of religion” for granted, it was not always that way.

#### **READING TIP:**

As you read, try underlining the main idea of each paragraph.

### **What Did the Founders Intend?**

Many early colonists left England so they could practice their faith freely. But it wasn't long before religious discrimination began in many of the colonies. Some states only allowed Christians to hold public office. Other states required everyone to believe in God.

Most of the Founders practiced some form of Christianity or believed in God. They agreed, however, that the federal government and religion should be kept separate. The Founders wished to keep the federal government from interfering in state and individual religious freedom. On the other hand, states could establish official, state-sponsored and tax-supported religions. Pennsylvania, for example, established Quakerism as the state religion.

When discussing religion and government, Americans often think of a “separation of church and state.” This powerful phrase is not found in the Bill of Rights. It comes from an 1802 letter by President Thomas Jefferson to the Danbury Baptist Association in Connecticut. His letter promised the group that the federal government did not have power over their parish. He described the First Amendment as building “a wall of separation between church and state.”

### **What Does the Establishment Clause Mean?**

The beginning of the First Amendment reads: “Congress shall make no law respecting an establishment of religion...” This is referred to as the Establishment Clause. This clause served two purposes. It banned a national church and kept the federal government out of existing state churches.

The first important Supreme Court case involving the Establishment Clause did not come until 1947. The case was *Everson v. Board of Education*. A New Jersey school district was using public money to pay for Catholic school students' costs of getting to and from school. The Court voted 5-4 that the policy was constitutional. The Court noted that the New Jersey policy applied to both public and private schools. Since it did not benefit only one specific religion, the policy passed constitutional review.



## How Does the Court Find Violations?

The Court made a test to find Establishment Clause violations twenty-five years later. *Lemon v. Kurtzman* made its way to the Court in 1971. This case was about using public money to pay for religious schools' textbooks and teacher salaries. The "Lemon Test" held that a law does not violate the Establishment Clause if: (1) it has a non-religious purpose; (2) its principal effect neither aids nor hurts a religion; and (3) government and religion are not overly mixed. Paying religious schools back for education costs violated government neutrality.

Justice Sandra Day O'Connor added to the Lemon Test in *Lynch v. Donnelly* in 1984. The government cannot endorse, or even appear to endorse, any one religion. This check is called the endorsement test.

## Can There Be Religion in Student Life?

Since the government funds public schools, many Establishment Clause cases center on the question: can religion and schools mix? In most cases, the Court has answered, "Very little."

The Court ruled that all school-sponsored prayer is unlawful in *Engel v. Vitale* in 1962. A year later the Court struck down a Pennsylvania law that said each school day must begin with a Bible reading (*Abington School District v. Schempp*, 1963). In 1980, the Court turned over state laws that forced teachers to display the Ten Commandments in their classrooms (*Stone v. Graham*). Setting aside a minute for "voluntary prayer" was also struck down (*Wallace v. Jaffree*, 1985).



The Court also limited some religious actions at school events because students might feel forced to participate. The Court ruled against rabbi-led prayer at public school graduation ceremonies (*Lee v. Weisman*, 1992). This case led to another test for establishment clause violations: the coercion (or force) test. A law that forces a person to participate in a religious ceremony is unconstitutional. Because of this test, the Court struck down a Texas policy letting high school students vote on whether a prayer should be read at sporting events (*Santa Fe Independent School District v. Doe*, 2000).

The Court places fewer limits on voluntary student religious groups. Public high schools must give religious clubs the same right to use facilities as other groups (*Board of Education of Westside Community Schools v. Mergens*, 1990). In 2001, the Court held that an elementary school violated a religious club's free speech rights when it did not allow them to meet on school grounds after classes, but allowed all non-religious groups to do so (*Good News Club v. Milford Central School*).

*The Founders wished to keep the federal government from interfering in religious freedom.*

## **Can Public Money Go to Private Schools?**

Should tax money, which everyone pays, go to schools that are funded by religious and other private groups? This issue arose in the twenty-first century: public funds in private schools. In *Mitchell v. Helms* (2000), the Court allowed the government to pay for computer equipment for public, private, and religious schools.

Another complex issue in this area is voucher systems. Parents receive a fixed amount of public funds called a voucher to pay for a private or religious school of their choice. Public schools then have less money when parents spend their vouchers in private schools. In *Zelman v. Simmons-Harris* (2002) the Court upheld the voucher system in Cleveland, Ohio, in a 5-4 decision. The Court concluded that the system was designed for a non-religious purpose: the better education of children. Therefore it did not violate the establishment clause of the federal constitution. However, such voucher programs may violate parts of specific state constitutions.

## **Can the Government Use Religious Symbols?**

One more key question under the Establishment Clause is: When can the government use religious symbols? The Court has ruled that states can open lawmaking sessions with a prayer (*Marsh v. Chambers*, 1983).

In *Lynch v. Donnelly* (1984), the Court ruled that states have the right to celebrate the Christmas holiday with a “sufficiently secular” public nativity display. In contrast, the Court did not allow a nativity scene in a 1989 case. In that case, (*County v. Greater Pittsburgh ACLU*) only a display with a menorah and Christmas tree was permitted.

In 2004, the Supreme Court heard the case of *Elk Grove Unified School District v. Newdow*. The issue was whether a mandatory recitation in public schools of the Pledge of Allegiance, which contains the phrase “under God,” was an unconstitutional endorsement of religion. The Court did not rule on this specific question. (They said the plaintiff, Mr Newdow, did not have the right to bring the case to court on behalf of his daughter). It is likely a similar issue will again come to the Supreme Court.

While the Supreme Court continues to define the application of the Establishment Clause, the relationship between the government and religion continues to be a topic of great debate.

## LESSON 1 *Religion at My School*

**Directions:** Place a check mark before each example of religion in your school. Then, based on your responses, write a short paragraph explaining how religion does or does not affect the daily life of your school.

- \_\_\_\_\_ **A.** The Pledge of Allegiance is said by students.
- \_\_\_\_\_ **B.** Prayers are said, especially before athletic events or assemblies.
- \_\_\_\_\_ **C.** There is a Bible and a Koran in the school library.
- \_\_\_\_\_ **D.** Students and teachers sometimes discuss religion.
- \_\_\_\_\_ **E.** Religious leaders sometimes visit the school and/or speak to classes.
- \_\_\_\_\_ **F.** Student religious groups sometimes meet on school property.
- \_\_\_\_\_ **G.** Students wear religious symbols such as crosses or headscarves while at school.
- \_\_\_\_\_ **H.** The Ten Commandments are posted in the school.
- \_\_\_\_\_ **I.** Other: \_\_\_\_\_
- \_\_\_\_\_ **J.** Other: \_\_\_\_\_

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## LESSON 1 *Establishment Scenarios*

**“Congress shall make no law respecting an establishment of religion...”**

**Directions:** For each of the following scenarios, explain whether or not you think the Supreme Court would apply the Lemon, endorsement and coercion tests, and whether you believe each is constitutional or unconstitutional.

SCENARIO	LEMON TEST	ENDORSEMENT TEST	COERCION TEST	YOUR OPINION
<b>1.</b> Your public school district has a two-minute moment of silence at the beginning of each school day. At the beginning of the two-minute period, the teacher must read the following prepared statement: ‘We will now have our daily two minutes of silence. I encourage each of you to take advantage of this time to prepare yourself mentally for the day ahead. No noise or work is permitted.’				
<b>2.</b> The teacher adds – against the orders of the school district – ‘Since I am a Christian, I will be using this time to pray.’				
<b>3.</b> The teacher adds, “Since I am an atheist, I will not be using this time to pray.”				
<b>4.</b> A state law gives each student a \$2,000 scholarship for tuition and books, payable to a school of their choice. Less than 10% choose to attend a religious school. Several religious schools require students to take a class in that school’s religion, though they do not have to belong to that particular church or any church at all.				

LESSON 1 Establishment Scenarios (continued)

SCENARIO	LEMON TEST	ENDORSEMENT TEST	COERCION TEST	YOUR OPINION
5. Your world literature teacher assigns the class a passage from Dante’s <i>Inferno</i> , the story of a Journey through the author’s version of Hell. During class discussion, the teacher asks, “Is the story more terrifying for those who believe in God and in the existence of punishment in the next life?”				
6. Your state government provides funding for a program run out of a local Jewish temple. The temple provides meals and job counseling to unemployed persons. In return, the temple expects that participants perform basic chores around the temple (watering flowers, moving grass, raking leaves). They must also attend a short prayer at the end of each work day.				
7. Your public high school valedictorian speaks about her personal faith in Jesus Christ during her graduation speech. School officials have not approved this revision of her speech.				

STUDENT HANDOUT-B

## LESSON

## 2

***What Is the Impact of the Free Exercise Clause?*****Overview**

One of Americans' most cherished freedoms has the potential to cause the most conflict – the free exercise of religion. America is noted for its peaceful religious diversity. In a nation where people of many faiths live side-by-side, the First Amendment's free exercise clause protects individuals from government interference in the practicing of their faith. In other words, the government cannot target laws at specific religious practices or place undue burdens on its citizens' worship. But what happens when the individual's exercise of religion crosses the line into illegal activity or puts them in potential violation of the law? These are the questions courts must address when dealing with the Free Exercise Clause.

**Standards**

- NCHS (5-12): Era III, Standard 3B; Era IX, Standard 4C
- CCE (9-12): VB1
- NCSS: Strands 1, 2, 5, 6, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Explain the Free Exercise Clause of the First Amendment.
- Identify potential conflicts involving religious exercise in a diverse society.
- Analyze a court case and determine plausible outcomes.

**Materials****STUDENT**

- Background Essay
- Reading Quiz (optional)
- Handout A: Free Exercise Extended Anticipation
- Handout B: People v. Jack Woody
- Handout C: Free Exercise Issues

**TEACHER**

- Key: Handout C

**Lesson Plan****1. Background/  
Homework**

*[10 minutes the day before]*

**A.** Have students read the Lesson Two **Background Essay**, “What Is the Impact of the Free Exercise Clause?” and complete **Handout A: Free Exercise Extended Anticipation** before and after they read.

**2. Warm-Up**

*[10-15 minutes]*

**A.** Begin discussion of religion by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrightsinstitute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**B.** Have students discuss their responses on **Handout A**. Which cases surprised students and why?

**3. Activity***[20-30 minutes]*

**A.** Divide the class into pairs or trios.

**B.** Distribute **Handout B: People v. Jack Woody** and ask students to write a brief response.

**C.** Assign pairs or trios of students the role of government or defense attorney in the Woody case. Each small group should develop a short brief arguing for their side of the case. Students should refer to the Lesson Two **Background Essay** for cases to cite as precedent.

**D.** Have groups acting as government lawyers present their briefs to the class, explaining why it was proper to arrest Mr. Woody. Next, have the attorneys for Mr. Woody present their cases to the class.

**E.** Conduct a large group discussion about the issues raised by the Woody case, and how students believe the case should be decided, guided by the Free Exercise Clause of the First Amendment.

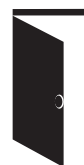
**F.** With the time left in the class period, distribute **Handout C: Free Exercise Issues**. Discuss #1 together and assign the remainder for homework.

**Extension Options****Homework**

**A.** Have students finish **Handout C: Free Exercise Issues** and bring to the next class.

**Enrichment**

**A.** Ask students to find a recent newspaper or Internet article illustrating a Free Exercise clause matter, and write a brief summary of the issue. Create a bulletin board of collected articles for students to examine.

**Real Life Portal**

Have students investigate a modern nation in which free exercise of religion is not protected. Research that society and answer the following questions: Is there only one “legal” religion? What are the consequences of non-belief? Or is no religion permitted at all? What are the consequences for the individual and society if freedom of religion is not protected? If possible, students should interview a citizen or former citizen of the nation they have chosen, and present what they have learned to the class.

## LESSON 2 *What Is Impact of the Free Exercise Clause?*

**J**esse Cantwell, his father, and brother walked through a Roman Catholic neighborhood in New Haven, Connecticut. They were Jehovah's Witnesses and carried religious pamphlets, books, and records. They also had a small record player that played an anti-Catholic message called "Enemies."

Jesse Cantwell stopped two men on the street, and the men agreed to listen to the record. The two men were Catholic and reacted angrily when they heard it. The Cantwells were later arrested for solicitation without a permit and for causing a breach of the peace. This led to the landmark decision, *Cantwell v. Connecticut*, 1940.

### READING TIP:

As you read, try to predict the outcome of each Free Exercise case.

### Why Is Cantwell an Important Case?

In *Cantwell*, the Supreme Court looked at the First Amendment. It states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." The Supreme Court recognized "the [First] Amendment embraces two concepts: freedom to believe and freedom to act."

The Court held that Cantwell could not be barred from giving out his materials because they were religious in nature. General rules for solicitation were valid. Restrictions based



on religion were not. The local ordinance allowed officials to decide what causes should be called religious. Therefore it violated the First Amendment. *Cantwell* is an important decision because the Court recognized an absolute freedom of belief. The government can't try to tell anyone which religion is true.

### What Are Most Free Exercise Cases About?

Most Free Exercise cases involve people who feel they have been treated unfairly for practicing their religion. Laws regarding work or welfare and religion have been tested since the 1940 *Cantwell* case.

Some religions do not permit work on the Sabbath day. Yet many businesses are open daily. The Court ruled that states cannot deny job loss benefits to citizens for turning down a job because it would require work on the

Sabbath (*Sherbert v. Verner*, 1963). In 1985, however, the Court decided that private employers could fire employees who refused to work on their Sabbath day (*Thornton v. Caldor, Inc.*, 1985).

In a famous case (*Employment Division v. Smith*, 1990), a person was fired for using peyote, an illegal drug. The drugs, however, were used as part of a Native American religious service. The Court ruled that even though the drug use had a spiritual purpose, the state did not have to pay unemployment benefits to the individual who lost his job. The law barring peyote was not related to its religious use. The Court reasoned that the state could turn down benefits to anyone who lost their job because of illegal activity.

*The First Amendment embraces two concepts: freedom to believe and freedom to act.*

### **When Are Laws Pertaining to Religion Unconstitutional?**

The Court must judge if a law targets a particular group or person when deciding Free Exercise cases. Laws that single out one religion or person are unconstitutional.

In *Braunfeld v. Brown* (1961), the Court approved of a Pennsylvania law that said stores must close on Sundays. Orthodox Jews claimed the law overly burdened them since their religion required them to close their stores on Saturdays as well. But the Court held the law did not target Jews specifically as a group. Therefore the law was constitutional.

On the other hand, in 1978, the Court struck down a Tennessee law that did not allow clergy members to hold public office. In that case (*McDaniel v. Paty*), the law singled out people because of their religious line of work.

In 1993, the Court applied the “general law” test to laws passed by four Florida cities. The cities banned animal sacrifice (*Church of the Lukumi Babalu Aye v. City of Hialeah*). The Court found these laws actually targeted the Santeria religion, which uses animal sacrifice in prayer. Since they targeted a specific religious group, the laws were unconstitutional.

### **What About Exceptions Within General Laws?**

Sometimes even general laws affect certain religions or people. The Court must then ask if a reasonable exception could be made within a general law. In a famous 1972 case (*Wisconsin v. Yoder*), the Court ruled that Amish teens could be excused from mandatory school attendance laws since their religion says they must live apart from the world and worldly influence.

During the 1980s the Court ruled that the Amish must pay Social Security taxes (*United States v. Lee*, 1982). It also said that the Air Force could ban Jewish hats called yarmulkes (*Goldman v. Weinberger*, 1986).

People of many different faiths live side by side in our free society. Free Exercise cases raise important questions about how the government can treat everyone fairly and yet respect everyone’s right to free exercise.



## LESSON 2 *Free Exercise Extended Anticipation Guide*

**Congress shall make no law respecting an establishment of religion  
or prohibiting the free exercise thereof...**

**Directions:** PART 1—Before reading the essay “What Is the Impact of the Free Exercise Clause?” read each statement in the middle of the chart. Fill in whether you think that the Supreme Court ruled the government’s action in the case constitutional or unconstitutional.

PART 2—Read the essay. If the information supports your choice in Part 1 above, mark YES, and summarize the text information. If the information does not support your choice in Part 1 above, mark NO, then summarize the text information. Next, explain whether or not you agree with the Supreme Court’s decision for each case.

Before Reading: Constitutional or Unconstitutional?	Scenario	Was your choice correct? Do you agree with the Court? Why or why not?
	<b>1.</b> Two people were arrested after they walked through a Roman Catholic neighborhood and asked two men they met on the street to listen to an anti-Catholic message on their CD player.	
	<b>2.</b> A person was fired for using peyote, an illegal drug, as part of a Native American religious service. The state refused to pay welfare benefits to the person who lost his job.	
	<b>3.</b> Several southern cities banned a religious group from using animal sacrifice as part of their prayer ritual.	
	<b>4.</b> The state fined members of the Amish religion who refused to allow their teenage children to attend public school.	

**LESSON 2** *People v. Jack Woody*

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**Congress shall make no law respecting an establishment of religion  
or prohibiting the free exercise thereof...**

LOCATION: The desert, near Needles, California, in a Navajo Hogan – 1962. On the wall of the Hogan is a framed copy of the articles of incorporation of the Native American Church of the State of California. It includes the following statement, “that we further pledge ourselves to work for unity with the sacramental use of peyote and its religious use.”

SCENE: A group of Native Americans have met to perform a religious ceremony which includes the use of peyote, an hallucinogenic extract which causes those who eat it to have “visions.”

CONFLICT: California police officers arrest the defendant, Jack Woody, and charge him (and others) with violating the California law which prohibits the “unauthorized possession of peyote.” Mr. Woody argued that his use of peyote was protected by his First Amendment right of free exercise of religion.

TASK: Based on the First Amendment and your reading of the Free Exercise Clause essay, write a brief explanation of why you agree or disagree with Mr. Woody’s claim that his rights have been violated.

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## LESSON 2 *Free Exercise Issues*

**Congress shall make no law respecting an establishment of religion  
or prohibiting the free exercise thereof...**

**Directions:** For each of the following laws, think of ways in which the law could conflict with a person's religious beliefs. Then, explain whether or not you believe that the law violates the First Amendment's Free Exercise Clause.

LAW	POSSIBLE CONFLICT	VIOLATION?
<b>1.</b> No display of personal photographs or wall hangings in personal workspaces are allowed.		
<b>2.</b> Parents who are Christian Scientists choose prayer over medicine. The law says they cannot refuse medical treatment for their seriously ill daughter.		
<b>3.</b> Public employees, as a condition of employment, must contribute to an insurance system that covers medical expenses including birth control services and first trimester abortion.		
<b>4.</b> A member of the Old Order Amish, who do not accept Social Security benefits, is required to pay social security taxes.		
<b>5.</b> A uniform regulation prohibits members of the Air Force from wearing any head covering indoors.		
<b>6.</b> All witnesses in state court—including those required to appear—are required to swear an oath on either the Bible or Constitution before testifying at the trial.		

## ***Teacher Notes***

# *The Bill of Rights and Expression*

Focuses on First Amendment protection of free speech, free press, free assembly, and petition of government. The unit also examines the evolution of the definitions of protected expression in speech, press, petition, assembly, art, demonstration, and other forms.



# The Bill of Rights and *Expression*

## First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

*"The people shall not be deprived or abridged of their right to speak, or write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable."*

– JAMES MADISON

*"The people shall not be abridged of their right to speak, to write or otherwise to publish any thing but false facts affecting injuriously the life, liberty, property, or reputation of others."*

– THOMAS JEFFERSON

## Unit Introduction

Freedom of expression plays a fundamental role in the American constitutional system. By protecting speech, press, petition, and assembly, the First Amendment sets the rules for how citizens relate to their government—and to each other—in a civil society. Since its ratification, the First Amendment has been the subject of more court decisions than any other amendment. As technology expands the ways in which we communicate, First Amendment issues will remain hotly contested as future generations struggle to answer thorny political questions, such as "What does a citizen have a right to do and say?"

## Unit Objectives

*Students will:*

- Explain how landmark Supreme Court decisions have defined and defended expression.
- Explain how political, cultural, or social interests might serve as legitimate constraints on expression.
- Understand the Founders' reasons for safeguarding freedom of expression.
- Understand how a free press contributes to a free society.

- Evaluate how freedom of expression is important to their lives, and begin to apply this knowledge to their own participation in the public forum and civil society.

## Synopsis of Lessons and DVD

### Lesson 1

Students explore the Founders' reasons for safeguarding freedom of speech, explore types of protected as well as unprotected speech, and understand the ways that freedom of expression impacts their daily lives.

### Lesson 2

Students explore the definition of expression throughout American history and analyze examples of symbolic speech.

### Lesson 3

Students investigate the role of a free press in a democratic society and evaluate issues of censorship.

## LESSON

## 1

**Why Is Free Speech Important?****Overview**

Freedom of expression is easy to support as long as everyone agrees with the opinions expressed. It is when the people disagree, sometimes strongly disagree, that the important purpose and significance of the First Amendment becomes clear. Political speech, because of its importance in our constitutional system, is referred to as “preferred speech.” The Founders and Supreme Court agree that political speech can be restricted only in extreme circumstances, such as when public safety or national security is threatened.

**Standards**

- NCHS (5-12): Era III, Standard 3C
- CCE (9-12): IIA2, IIC1
- NCSS: Strands 1, 4, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Explain the importance of tolerating the expression of different opinions.
- Identify ways free speech is important in their own lives.
- Understand the distinctions between protected speech and unprotected speech.
- Understand the political reasoning behind freedom of speech.
- Evaluate the ways that free speech contributes to a free society.

**Materials****STUDENT**

- Key Terms
- Background Essay
- Reading Quiz (optional)
- Expression DVD: segment one and Viewing Guide
- Handout A: Speech Example Cards
- Handout B: Statements About Freedom of Speech

**TEACHER**

- Key: Handout A
- Key: Handout B

**Lesson Plan****1. Background/  
Homework**

[10 minutes the day before]

**A.** Have students read the Lesson One **Background Essay**, “Why Is Free Speech Important?”

**B.** Have students answer in five sentences: Why does the First Amendment protect citizens’ rights to criticize the government? Students should provide support for their reasoning.

**2. Warm-Up**

[10-15 minutes]

**A.** Begin discussion of expression by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrightsinstitute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**B.** Divide class into five groups. Give each group a card to read from **Handout A: Speech Example Cards**. Ask each group to read their example of speech and, using the **Background Essay** as a reference, decide whether the First Amendment should protect the speech.

**C.** Going around the room, have one student from each group read their speech example aloud to the whole class. Encourage students to read their quotes with enthusiasm.

**D.** As each student reads their card, ask each group if they decided their quote is an example of protected speech. Then take a show of hands whether the class as a whole thinks the First Amendment should protect such speech.

**E.** Show segment one of Expression DVD and have students complete Viewing Guide.

### 3. Activity

[20-30 minutes]

**A.** Divide the class into eight small groups.

**B.** Give everyone in each group one copy of **Handout B: Statements About Freedom of Speech.**

**C.** Ask students to choose one quote from group A and one quote from group B to discuss and summarize what it says about free speech.

**D.** Have the students share their answers with the class.

**E.** Wrap up by asking the class to consider how free speech encourages a free society.

- Are there any times when the government should have the power to restrict speech?
- What might happen to arts such as movies or song lyrics if expression were not protected?

### Suggested Responses

*Students may say that the government should be able to restrict speech that threatens national security, or speech that is obscene. Others may say that even in these cases, protecting expression is more important than all else. Students may suggest that the number or quality of movies or song lyrics may dwindle without freedom of speech. Others may say that the government's interest in ensuring safety is compelling enough to restrict arts such as song lyrics that advocate violence.*

### Extension Options

#### Homework

**A.** Have students use a newspaper or Internet resources to find three examples of individuals or groups exercising their rights to free speech. Have them write a paragraph explaining each person or group's message and the way their exercise of free expression enables them to persuade others of their cause.

**B.** Ask students to find examples of political cartoons depicting the president or other government officials. Have them bring the examples to class along with a paragraph in response to the question: Is it okay to make fun of the president? Why or why not?

### Enrichment

**A.** Assign a research paper answering the question: Why is it a citizen's right, even a duty, to question or criticize the government? Students should consider whether Germans spoke out against Adolf Hitler, or whether Iraqis protested Saddam Hussein's rule.

**B.** Have students list examples of unpopular opinions in American history (such as abolitionism, the temperance movement, women's suffrage, civil rights, voting rights, women's rights, gay rights). Have students research the beginnings of these movements. Questions to consider: Did most Americans support these movements at the beginning? How did these groups begin to get their messages across?

# The Bill of Rights and *Expression*

## LESSONS 1, 2, & 3

## Key Terms

### Unlock the Key Terms

Choose a key term and brainstorm a list of 4-5 words that might be associated with it.

**Directions:** As you read each Background Essay, be on the lookout for these key terms. After reading, write out the correct definition for each term.

censor \_\_\_\_\_

\_\_\_\_\_

tyranny \_\_\_\_\_

\_\_\_\_\_

imminent \_\_\_\_\_

\_\_\_\_\_

incorporation \_\_\_\_\_

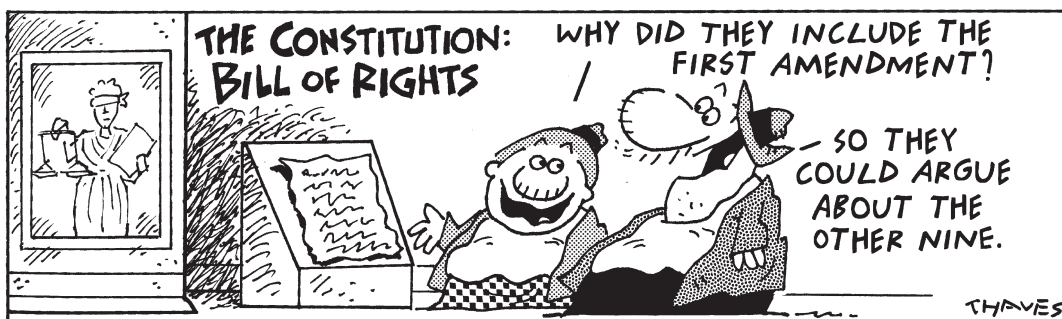
\_\_\_\_\_

clear and present danger \_\_\_\_\_

\_\_\_\_\_

symbolic speech \_\_\_\_\_

\_\_\_\_\_



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**Key Terms** *(continued)*

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censorship \_\_\_\_\_

prior restraint \_\_\_\_\_

petition \_\_\_\_\_

Magna Carta \_\_\_\_\_

expressive association \_\_\_\_\_

## LESSON 1 **Why Is Free Speech Important?**

**C**an ideas and words change the world? Maybe they are the only things that ever have.

Do you ever disagree with those in authority: your school board, the governor, or the president? If you voice your opinions peacefully, will you be hauled to jail? No, because the First Amendment protects freedom of speech.

### **READING TIP:**

Reading a passage out loud can help you understand it.

### **Why Did the Founders Protect Speech?**

The Founders included speech protections in the Bill of Rights because the British had censored political debate and speech for so long. They knew how powerful speech can be.

James Madison supported open and decent discussion of political topics while the Constitution was being debated. He hoped citizens of the new nation would talk about laws and policies. He argued that the United States should make sure that small interest groups were free to voice their own political concerns through peaceful discussion. If that right were not insured, then they might resort to violence.

### **Why Is Free Speech a Key to Peace?**

The First Amendment protects four ways for citizens to participate in the public exchange of ideas. These are the right to free speech, assembly, petition, and press. These four freedoms are key for a free and peaceful nation.

The freedom to express opinions gives groups a chance to persuade others of their position. Without this freedom, peace and freedom are at risk. Groups may turn to violence against other members of society. The worst option is tyranny: an individual or small group seizing control of government and forcing their beliefs on the people.

Free speech also ensures the government serves the people as best it can. Sharing ideas and taking part in the political process gives citizens the chance to tell officials how they



*The First Amendment protects the right to free speech, assembly, petition, and press.*

wish the government to act. Corruption may be less common since newspaper and television reporters are free to report wrongdoing.

The Founders had great resolve to encourage political debate and the sharing of ideas. We still enjoy the protection of speech today. That freedom ensures we can express our opinions and live in peace with those who think differently. It makes it possible for us to even change the world, one idea at a time.

### **Is All Speech Protected?**

The Supreme Court has worked to shed light on the meaning of freedom of speech over the past century. A significant case was *Brandenburg v. Ohio* (1969). In this case, a Ku Klux Klan leader encouraged violent political opposition to civil rights laws. The Court ruled that the First Amendment even protected speech that encouraged unlawful action unless the speaker called for “imminent lawless action.” Even speech the government finds very offensive is protected. The government can limit false speech or speech that may cause a riot. It can also outlaw child pornography. But, it cannot silence speech just because that speech is offensive or opposed to government policy.

Although the Founders understood speech as referring mainly to political discussion, the Court’s definition of “speech” has broadened into “expression.” Speech does not have to be spoken or written words. It includes many nonverbal or symbolic acts that stand for political speech or expression of ideas, such as wearing an armband or burning the flag.

**LESSON 1** *Speech Example Cards*

**1.** “There’s no fire here in this crowded room, but I could use a little fun. Here goes, ‘FIRE!’”

**2.** “Our president is running our country into the ground! He’s an idiot! His policies show how completely out of touch he is with the American people. Let’s vote him out next fall!”

**3.** “Hello, our organization is having a membership drive. Are you interested in joining? Our mission is to change the structure of American society from the ground up through education and other programs. Eventually, our goal is the overthrow of our system of government.”

**4.** “Look, see that office building? A greedy multi-national company that works its employees very hard and pays them a very low wage owns that building. Let’s show them how wrong we think their actions are—let’s set fire to their building, right now! Let’s go!”

**5.** “This war is wrong! We won’t go! Let’s burn our draft cards, right now! Here I go!”

## LESSON 1 **Statements About Freedom of Speech**

### **Group A**

The [strictest] protection of free speech would not protect a man falsely shouting fire in a theater and causing a panic. —*Schenck v. United States (1919)*

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger. —*Schenck v. United States (1919)*

### **Group B**

The First Amendment absolutely forbids Congress to outlaw membership in a political party or similar association merely because one of the philosophical tenets of the group is that the existing government should be overthrown by force at some distant time in the future when circumstances permits. —*Scales v. United States (1961)*

While democratic processes are sometimes untidy and unpredictable—as any close observer can attest—they permit the peaceful expression of diverse views, protect the rights of the individual, check the ability of the state to abuse its power, and encourage the kind of debate and compromise that leads to lasting stability. —*Vice President Dick Cheney in Shanghai, China*

The people shall not be deprived or abridged of their right to speak, or write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable. —*James Madison*

You don't have to love them. You just have to respect their rights. —*Edward Koch, former Mayor of New York*

Respect your fellow human beings, treat them fairly, disagree with them honestly, enjoy their friendship, explore your thoughts about one another candidly, work together for a common goal and help one another achieve it. No destructive lies. No ridiculous fears. No debilitating anger. —*Bill Bradley, former U.S. Senator*

## LESSON

## 2

***How Has Expression Evolved?*****Overview**

Society and technology have challenged the Founders' focus on political speech. The conflict between laws and the Supreme Court have extended First Amendment protection to a wide range of activities, and have prompted debates over whether the First Amendment has been used to protect too much. Over time, the courts have extended the principle of free speech to other forms of expression including signs, symbols and acts.

Understanding how protection of speech, press, assembly, and petition evolved into protected expression prepares citizens to discuss and predict outcomes of future conflicts.

**Standards**

- NCHS: Era III, Standard 3B; Era VII, Standard 2C
- CCE: IIB1, IIC1
- NCSS: Strands 1, 2, 8, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Explain the importance of freedom of speech in protecting liberty.
- Explain how the definition of "speech" has evolved into "expression."
- Understand how the First Amendment has been applied to landmark Supreme Court cases involving expression.
- Analyze ways the Supreme Court has applied protections to symbolic speech.
- Evaluate whether certain actions should be considered "expressive conduct."

**Materials****STUDENT**

- Background Essay
- Reading Quiz (optional)
- Expression DVD: segment two and three and Viewing Guide
- Handout A: *Tinker v. Des Moines*
- Handout B: *Texas v. Johnson*

**TEACHER**

- Key: Handout A
- Key: Handout B

**Lesson Plan****1. Background/  
Homework**

*[10 minutes the day before]*

**A.** Have students read the Lesson Two **Background Essay**, "How Has Speech Evolved?"

**B.** Ask students to write five sentences in response to the question, "Why does freedom of speech extend to other, non-verbal expressions of ideas?"

**2. Warm-Up**

*[10-15 minutes]*

**A.** Begin discussion of expression by talking about a "real life" news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrightsinstitute.org>, for daily headlines or a complete "Bill of Rights in the News" activity.

**B.** Using homework responses as a starting point, conduct a large group discussion and have the class brainstorm a list of ways they can express themselves without actually talking. Keep a list on the board of suggestions, and ask the class: Which is the more powerful means of expression: words, or other non-verbal, even symbolic acts? Why?

**3. Activity** [20-30 minutes]

**A.** Show segment two and three of Expression DVD, and have students complete Viewing Guide.

**B.** Divide students into groups of three or four. Give each group a copy of **Handouts A: *Tinker v. Des Moines* (1969)** and **B: *Texas v. Johnson* (1989)**. Have students read each case and answer the questions.

**C.** After groups have completed both cases, go over the answers to the first three questions for **Handout A**.

**D.** Ask each group to share their answers to question four, and allow class discussion.

**E.** After asking the class how they believe the Supreme Court should have decided *Tinker v. Des Moines* (1969), read the decision from the teacher key.

**F.** Continue for **Handout B**.

**G.** Bring the class together as a group for a large group comparison of the two cases.

**Extension Options****Homework**

**A.** Ask students to keep a journal for the next twenty-four hours; they should keep track of all the ways they express themselves without using words. Ask them to explain those situations and explain whether their expression was effective in communicating their message.

**B.** Have students choose an organization that frequently employs non-verbal or symbolic speech to get its message across. For example: PETA, Greenpeace, the NRA, or Right to Life groups. Ask students to evaluate the group's use of non-verbal expression. How effective are their tactics in persuading others to their points of view?

**Enrichment**

**A.** Have students research what life is like for those living in nations without expression protection. In addition to

using print and Internet materials, ask students to interview an adult from the community who has either firsthand or substantial indirect knowledge of what life is like under a totalitarian regime. Have one individual speak to the class as a group (example, a Cuban exile or Chinese immigrant; a scholar; or even someone who has spent time in a country where

citizens do not have the right to free speech).

**Real Life Portal**

Have students create a billboard or other public service announcement to educate citizens about the case of *Tinker v. Des Moines* (1969) and specifically the idea that “students do not shed their constitutional rights at the school-house gate.” The billboard should visually depict Mary Beth and John Tinker, their protest, school reaction and the court decision.



## LESSON 2 *How Has Expression Evolved?*

**T**he group of West Virginia students was silent. Their school had recently begun a unit on American values that required students to recite the Pledge of Allegiance. If they refused, they would be expelled. The students remained silent because, as Jehovah's Witnesses, saluting the flag would go against their religious beliefs. Their silence was not "speech," but it was no doubt a form of expression. A student's right not to say the Pledge of Allegiance was upheld in the 1943 cast of *West Virginia Board of Education v. Barnette*.

### READING TIP:

Look for ways that free speech has been limited as well as expanded.

### What Is the Marketplace of Ideas?

The Founders wanted to make sure citizens could have open debate with and about government. The First Amendment, however, does not specify only speech about politics. Over the years, speech has come to stand for what Supreme Court Justice Oliver Wendell Holmes called the "marketplace of ideas" in a free society.

The first major step in expanding the First Amendment came during the early 1900s. At this time, the Supreme Court made portions of the Bill of Rights apply to the states. This process is called incorporation. It means the states had to protect freedom of speech and press just like the federal government.



### Can Laws Restrict Speech?

Free speech has never been considered an unlimited right. Justice Holmes noted: "The most stringent protection of free speech does not protect a man from an injunction against uttering words that may have all the effect of force." Not all speech is protected. A person does not have the right to yell "Fire!" in a crowded movie theater and start a stampede to the door if there is no fire. Rather, the Supreme Court must weigh the government's interest with the individual's right to express himself.



*Free speech has never been considered an unlimited right.*

Freedom of speech is highly protected so a law that restricts speech must pass all the following tests to be constitutional. The law must:

- Be clearly defined
- Limit only unprotected speech
- Limit speech as little as possible
- Limit speech for reasons other than just its content

### **Is Speech an Absolute Right?**

The Court has sometimes ruled on the conditions in which the government can limit speech. During and following World War I, the Court supported a strong government interest in limiting expression. To restrict speech, the government must prove that its law or policy is more important than freedom of speech.

In *Schenck v. United States* (1919), Schenck was handing out pamphlets urging people to petition the government to repeal the World War I draft law. He was arrested and charged with conspiracy to violate the Espionage Act by attempting to cause disobedience in the military and to get in the way of recruitment.

All nine Justices agreed that the First Amendment did not protect Schenck's actions. The country's interest in fighting World War I was more important than Schenck's right to free speech. Schenck's actions, in the words of Justice Holmes, presented a "clear and present danger" to the country.

### **How Has the Definition of Speech Been Expanded?**

Since *Schenck*, the Courts have broadened the definition of speech. First Amendment protection has been applied to several forms of expression since the 1940s.

In *Miller v. California* (1973), the Court ruled that material that might be considered obscene by some people is protected if it has "serious literary, artistic, political, or scientific value." Indecent photos may be legally posted on the Internet (*Reno v. ACLU*, 1997). Computer-generated, "virtual" child pornography that does not use real people is also protected by the First Amendment (*Ashcroft v. Free Speech Coalition*, 2004).

Campaign costs are considered speech in *Buckley v. Valeo* (1976). However, in *McConnell v. FEC* (2003), the Court ruled that Congress can place some limits on money spent for political advertising and other speech.

The most controversial form of speech is symbolic speech. This refers to expressive actions, such as flag burning (*Texas v. Johnson*, 1989), and is protected by the First Amendment.

Holmes's "marketplace of ideas" is definitely thriving. The idea is that just like goods in a supermarket, good ideas will flourish and bad ones will fade away when people have a choice. As Holmes also remarked, "Many ideas grow better when transplanted into another mind than in the one where they sprung up."

## LESSON 2 *Tinker v. Des Moines*

**Directions:** Read the following description of *Tinker v. Des Moines School District* (1969) and answer questions 1–4 as a group.

Opposition to the war in Vietnam was growing steadily during 1968. The Des Moines, Iowa, school district adopted a policy forbidding the wearing of black armbands as a war protest. The school district threatened to suspend from school student violators who refused to take off their armbands.

John Tinker, age 15, and his sister Mary Beth, age 13, belonged to a pacifist family. Pacifists believe that all wars are wrong. The Tinkers and a friend deliberately wore black armbands to school knowing that they violated the school rule. They remained quiet and orderly during their protest, but they refused to remove their armbands when told to do so. The schools suspended them and two other students, a total of five of 18,000 students. Some students made hostile statements to the armband wearers, but no one threatened or committed any violence. School life went on with no disruption. The district tolerated other political symbols, including the wearing of Iron Crosses, generally considered a Nazi symbol.

The Tinker's father and some other parents sued in federal district court. They argued that the school district violated the students' First Amendment right to free expression. The court sided with the school district's argument that the policy reflected a fear that the armbands might cause trouble in the schools due to disagreements about the war in Vietnam. The U.S. Court of Appeals also agreed with the school district. Mr. Tinker appealed to the U.S. Supreme Court.

1. What was the fact situation? What happened that brought Tinker to court?
2. What Bill of Rights principle did Tinker argue applies to this case?
3. How did the school district justify its position?
4. In your opinion, which side has the stronger argument? Why? Justify your position.
5. How did the U.S. Supreme Court decide the case?

## LESSON 2 *Texas v. Johnson*

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**Directions:** Read the following description of *Texas v. Johnson* (1969) and answer questions 1–4 as a group.

**D**uring the 1984 Republican National Convention in Dallas, Texas, Gregory Lee Johnson burned an American flag to protest President Ronald Reagan’s policies. Fellow protesters chanted in support. No violence occurred and no one was injured, although some spectators were offended by Johnson’s desecration of the flag. The police arrested Johnson, and a court convicted him of breaking a Texas law that made it a felony to desecrate a venerated object. His conduct also risked a breach of the peace. The judge fined him \$2000 and sentenced him to one year in jail. The Texas Court of Criminal Appeals reversed the lower court’s sentence. It found Johnson’s flag burning was “expressive conduct,” and thus protected by the First Amendment. The state of Texas appealed to the U.S. Supreme Court.

1. What happened to bring this case to court?
2. Which Bill of Rights principle is involved?
3. What arguments did the state of Texas use to justify convicting Johnson?
4. How do you believe the U.S. Supreme Court should decide this case? Justify your opinion.
5. How did the Supreme Court decide the case?

## LESSON

## 3

***What Is the History of Freedom of the Press and Assembly?*****Overview**

A free press gives the public information essential for free people to govern themselves. Without access to even the most basic information about government policies and actions, citizens cannot meaningfully take part in the democratic process. Besides actual speech, the ability to publish opinions (freedom of the press) and to gather to discuss politics (right to assembly) gives citizens two powerful ways of participating in political discourse. Freedom of the press is not absolute, however. In particular, interests of national security can sometimes outweigh the media's right to distribute information.

**Standards**

- NCHS (5-12): Era III, Standards 3B, 3C
- CCE (9-12): IIB1, IIC1
- NCSS: Strands 1, 5, 6, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Explain the role of a free press in a democratic society.
- Understand how the lack of a free press affects citizens.
- Understand how journalists can act as government “watchdogs.”
- Evaluate issues of censorship.
- Appreciate the importance of a free press.

**Materials**

STUDENT

- Background Essay
- Reading Quiz (optional)
- Expression DVD: segment three and Viewing Guide
- Current copies of newspapers or news magazines such as *Time*, *Newsweek*, *US News*, etc.
- Printouts of news and opinion sections of Internet newspaper editions
- Posterboard

**Lesson Plan*****1. Background/  
Homework***

*[10 minutes the day before]*

**A.** Have students read Expression Lesson Three Background Essay, “What Is the History of Freedom of the Press and Assembly?”

**B.** Several days in advance, ask students to watch a program on television such as “Meet the Press” or “Larry King Live” where a journalist interviews a government official. Ask them to take notes as to the types of questions asked and the way the official answers them.

***2. Warm-Up***

*[10-15 minutes]*

**A.** Begin discussion of expression by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrightsinstitute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**B.** Divide students into groups of three or four and have them compare notes about the program they watched for homework. Ask them to answer the following question in one sentence: Why should politicians have to answer questions the media asks them? Conclude the warm-up by having a member from each group write their answer on the board.

**C.** Show segment four of Expression DVD and have students complete Viewing Guide.

### **3. Activity**

[20-30 minutes]

**A.** Prior to class, gather several copies of the news and opinion sections of newspapers or newsmagazines such as *Time* or *Newsweek*. Additionally, print out a selection of articles accessible on their websites. Divide the class into four groups: two groups representing “the press” and two groups representing “the government.” Distribute the newspapers among the groups. Make sure each group has at least one news section and one opinion or editorial section.

**B.** Give each group one poster board and ask students to read through the newspapers and magazines.

**C.** The groups representing the government should cut out neatly at least five examples of articles, editorials or cartoons critical of the government. Affix them to the poster board and write “DO NOT PRINT” in big black letters across it. They should also find articles that portray government action in a positive light and affix those to the other side of the poster board.

**D.** The groups representing the press should cut out at least seven articles that in some way criticize some government action and affix them to their poster board.

**E.** When they are finished, collect the government group’s newspapers and magazine that now have holes remaining where articles used to be.

**F.** Go around the room and have the government groups present their poster boards to the class, explaining their rationale for not printing certain articles.

**G.** Have the press groups present their boards to the class, explaining why the articles they cut out should be printed.

**H.** Wrap up by asking the press groups if they would be willing to be fined and go to jail for publishing their articles. Ask the government groups how government would be seen if only the “positive” articles were allowed to be printed.

**I.** Ask the class as a large group how their ability to participate in government would be limited without a free press.

**J.** Finally, hold up the cut-up magazines and newspapers from the government groups and explain that they are literal examples of what publications look like in countries without a free press. Ask students how they would feel if their favorite magazine regularly had holes in it, or black marker blocking out certain articles.

## Extension Options

### Homework

**A.** Have students make a list of all the times they assemble with others throughout their day. Ask them to write a paragraph explaining how the freedom to gather freely affects their daily life, and how different life would be without it.

### Enrichment

**A.** Assign students to watch a variety of television news programs. At least one should be billed as “news” such as a network evening news show. At least one should be a commentary program such as “Face the Nation.” Have students take notes during the programs about content. Ask students to consider the role of reporters as opposed to the role of commentators and report their findings to the class.

**B.** Ask students to choose a very prominent government official and do research about him or her. They should report back not only with the information itself, but in terms of what kind of information is available. (e.g. voting records, biographical data, very personal information, etc). Are there kinds of information that should not be reported? Who should make that determination?



### Real Life Portal

Explain that citizens who are not journalists can participate in a free press with letters to the editor. Have students write a letter to the editor expressing their opinion on a controversial topic. Offer extra credit to students who actually mail their letter.



## LESSON 3 **What Is the History of Freedom of the Press and Assembly?**

**O**prah Winfrey, Jon Stewart, Conan O'Brien: where would these TV classics be without freedom of the press? It's hard to imagine being arrested for making a joke or sharing your opinion. Yet such types of expression are illegal in some countries. We laugh at political cartoons and read editorials in magazines that do not agree with government policies. Freedom of the press was very important to the Founders and has been vital to liberty in America.

Most of the American colonies protected freedom of the press. During the debate over the Bill of Rights in the House of Representatives, James Madison said, "The people shall not be deprived or abridged of their right to speak, or write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable."

### READING TIP:

Read actively by jotting down questions in the margins.

### Has the United States Ever Censored the Press?

Freedom of the press was included in the Bill of Rights. However, there have been times in our nation's history when the federal government has limited the free exchange of ideas. The Sedition Act of 1798 was meant to silence critics of President John Adams. The law was in effect for several years. A few newspaper editors were arrested and forced to shut down their papers.

Government control of the press—censorship—continued to be a problem in American history. A 1931 case, *Near v. Minnesota*, involved a rule that said newspapers must get official approval before publication. Publishers had to show "good motives and justifiable ends" for what they were about to print. If they could not, the paper would be censored. This type of censorship is called prior restraint.

The Court found the policy of prior restraint unconstitutional. The Court explained, "the liberty of the press and of speech is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state actions."

### How Have Americans Protected Our Free Press?

Since then, other freedoms of the press have been upheld. This has been the case even when sensitive material is at stake, such as military data or public records (*New York Times v. Sullivan*, 1964).

Celebrities and other public figures have attempted to sue publications. Tabloids like the *National Enquirer* are often targets of such lawsuits. But the Supreme Court ruled that public figures have less "privacy" than other citizens since their life is of "legitimate interest" to the public. As long as a publication believed the facts it reported to be true, it cannot be sued for damages (*Hustler v. Falwell*, 1988).

## How Do the Media Act as Watchdogs?

Freedom of the press helps prevent abuse of power. Newspapers and other media have exposed wrongdoing to a wide audience. The *Washington Post* brought this role of the press to the forefront in the 1970s. It investigated and wrote about illegal activities within the Nixon administration. The reports led President Nixon to resign. Newspapers and magazines also played a role in President Clinton's 1999 impeachment.

Unlike a “state-run” newspaper, a free press can make sure government officials are honest by writing about it when they lie. Reporters do not have to answer to the politicians they are writing about. Reporters and editors are the ones who decide the information given to the public. As access to news grows, so does the importance of a free press.

## How Can Citizens Urge Government to Act?

Of all the rights protected by the First Amendment, the rights to assemble and petition are the oldest. Under the Magna Carta (1215), barons had the right to meet to prepare to petition the king. This right was limited, though. Anyone who signed a petition with more than twenty names was guilty of “tumultuous petitioning.”

The right to petition was challenged in the U.S. during the 1830s. Abolitionists tried to petition Congress to end slavery. But Congress passed a gag rule and refused to accept the petitions from 1840 to 1844. At that time, Representative John Quincy Adams successfully moved for the gag rule on slavery petitions to be lifted.

*Freedom of the press helps prevent abuse of power.*

## Why Is the Right to Gather Freely Important?

It used to be that the right to assemble went hand-in-hand with the right to petition. Now the right to assemble often goes along with protesting. Protests raise questions about time, place, and method. Officials find it difficult to balance the rights of the protestors with the rights of those who are not a part of their group. The Court agreed that some limits could be placed upon protesters' rights to assemble in order to protect other citizens (*Madsen v. Women's Health Clinic*, 1994).

## Can Freedom Lead to Discrimination?

Other groups have also tested the right of free assembly. Can country clubs prevent women from joining? How about Jews, Latinos, or other minorities? In 1984, the Court concluded that the right to association was not absolute. Private groups have the right to associate with whom they choose and do not necessarily have to admit everyone who wants to join them.

The Court looked at this issue again in *Boy Scouts of America v. Dale* (2000). Groups have the right to “expressive association.” This means that choosing their members may be a way they express their message to society.

The Founders wanted citizens to discuss and debate ideas. The rights to speak freely in private and in the press, and the right to choose who we associate with, are key to the most basic right of expressing who we are.



# *The Bill of Rights and* *GUNS*

Explores the origins of the Second Amendment and the right to bear arms. Also explores relevant Supreme Court decisions and engages students in the current debate over gun regulation.



# The Bill of Rights and *Guns*

## **The Second Amendment**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

## **Unit Introduction**

Few issues dealing with the Bill of Rights are as contentious and continuously at the forefront of the political debate in the United States as the debate over gun control. What exactly did the Founders intend to protect with the language of the Second Amendment? What rights and whose rights does it guarantee? Every session, proposals to control the use and ownership of guns are introduced in Congress and state legislatures. Which limits or regulations are appropriate under the Second Amendment?

## **Unit Objectives**

*Students will:*

- Understand the Founders' objectives in ratifying the Second Amendment.
- Determine what rights the Second Amendment guarantees.
- Understand the ways the Supreme Court has interpreted the Second Amendment.
- Evaluate arguments both for and against government regulation of weapons.

## **Synopsis of Lessons and DVD**

### **Lesson 1**

The lesson and DVD explore the meaning of the Second Amendment. Students will read the Founders' original language about guns, analyze the Founders' concerns about guns, and assess the validity of different interpretations of the Second Amendment.

### **Lesson 2**

Students focus on *District of Columbia v. Heller* (2008) and contemporary gun control issues, and debate various questions regarding different gun control measures.

*"O sir, we should have fine times, indeed, if, to punish tyrants, it were only sufficient to assemble the people! Your arms, wherewith you could defend yourselves, are gone; and you have no longer an aristocratical, no longer a democratical spirit. Did you ever read of any revolution in a nation, brought about by the punishment of those in power, inflicted by those who had no power at all?"*

—PATRICK HENRY

## LESSON

## 1

***What Are Origins and Interpretations of the Right to Keep and Bear Arms?*****Overview**

The Founders wanted to be sure they preserved the right to keep and bear arms as they established their new sovereign government. They did not want, as some put it, to trade one tyrant for another. Americans asserted a natural right to defend themselves and their property against all threats, including tyranny of any kind, foreign or domestic. James Madison included the Second Amendment in the Bill of Rights to reflect these concerns of many citizens in a number of states.

**Standards**

- NCHS (5-12): Era III, Standard 1C
- CCE (9-12): IB1
- NCSS: Strands 2, 5, and 6

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Understand the historical roots of the right to keep and bear arms.
- Analyze the Second Amendment.
- Analyze how colonists and the British regarded control of weapons.
- Compare gun issues of 1775 to a modern gun controversy.
- Evaluate arguments about how best to provide security for one's community.

**Materials**

STUDENTS

- Key Terms
- Background Essay
- Reading Quiz (optional)
- Handout A: Group Discussion Guide
- Handout B: Town Council Discussion Guide

TEACHER

- Transparency Master A: The Second Amendment
- Template: Tickets
- Key: Handout A

**Lesson Plan****1. Background/  
Homework**

*[10 minutes the day before]*

**A.** Put up **Transparency Master A: The Second Amendment**. Discuss the wording and ask students to consider the meaning of the two clauses of the Amendment. On the day prior to the lesson, have students read the **Background Essay, “What Are Origins and Interpretations of the Right to Keep and Bear Arms?”**

**B.** Begin discussion of guns by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrightsinstitute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

## 2. Warm-Up

[10-15 minutes]

**A.** Using the Ticket Template, copy enough “tickets” before class for three approximately equal groups: British Soldiers, Concord Town Council, and Sons of Liberty.

**B.** As students enter the room, hand each one a “ticket.” Use the tickets to assemble the students into three identity groups from 1775.

**C.** Have each group meet to read and discuss the scenario on **Handout A: Group Discussion Guide**. Have them record answers on their own paper.

**D.** Choose two students from each of the groups to form a six-member Group Two. Each group two will be made up of two from the British Soldiers group, two from the “Concord Town Council and two from the Sons of Liberty group.

## 3. Activity

[20-30 minutes]

**A.** Have students jigsaw into their newly assigned Group Two configuration and give each group a copy of **Handout B: Town Council Discussion Guide**. Have each pair of students explain their response on **Handout A** to the Concord Town Council members.

**B.** Record general types of responses from each Sons of Liberty and British Soldiers group.

**C.** Ask the pair representing the Concord Town Council within each group to listen to each group and then fill out **Handout B** and explain which side (if either) the council will support in the deepening controversy.

**D.** Have the Town Council members from each Group Two report to the whole class their answers to **Handout B**.

**E.** Close by asking the class to discuss any lessons for today that they can draw from the role-playing activity. Possible discussion questions:

- Does the United States face any current challenges that might be similar to challenges faced by Concord citizens?
- How might the right to bear arms relate to the need to provide security today?
- Why might some people favor stronger/weaker gun regulation laws?

**F.** To wrap-up, show the Guns DVD and have students complete the Viewing Guide. Tell students that the Supreme Court heard an important guns case in 2008 – *District of Columbia v. Heller* – which they will explore in Lesson Two.

## Extension Options

### Homework

**A.** Present political cartoons related to the Second Amendment, gun control laws, and other pertinent current issues. Have students analyze the cartoons for what they reveal about views of the Second Amendment.

**B.** Have students draw a political cartoon presenting their point of view on a current gun issue such as allowing airline pilots to carry guns, school shootings, or gangs.

### Enrichment

**A.** Have students write a two to three paragraph response to the following question: One argument against gun-control laws is that tyrants will always try to confiscate weapons belonging to individuals. What evidence from history to the present day is available to support or refute this assertion?

**B.** Have students research individuals among the Sons of Liberty, such as Samuel Adams, John Hancock, Paul Revere, and William Dawes. Have them prepare brief biographical sketches in the form of business cards to present and share with the class.

**LESSONS 1 & 2** *Key Terms*

**Unlock the Key Terms**

Choose a key term and write 2-3 words that mean the opposite.

**Directions:** As you read each Background Essay, be on the lookout for these key terms. After reading, write out the correct definition for each term.

militia \_\_\_\_\_

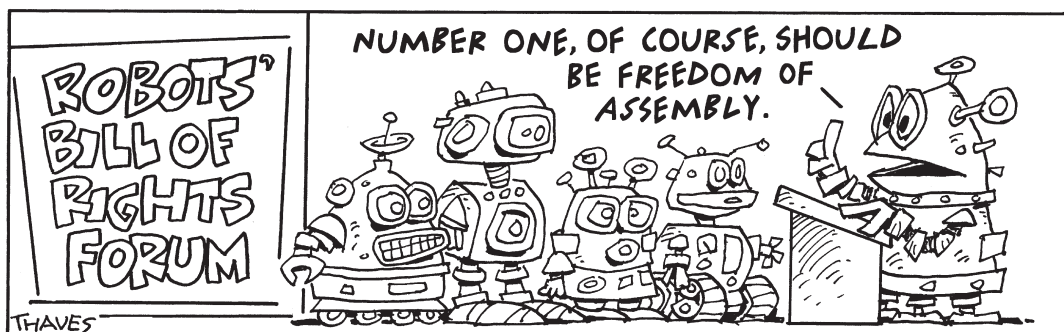
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## LESSON 1

# What Are Origins and Interpretations of the Right to Keep and Bear Arms?

**T**he church bells rang in Concord, in the pre-dawn hours of April 19, 1775. The bells signaled neighbors to grab their muskets and rush to the bridge. A group of 800 British soldiers had been ordered to seize the colonists' weapons. By sunrise, a group of 150 locals called the Minutemen had gathered in the British troops' path. The colonists believed their rights as Englishmen included keeping their weapons. The two groups faced each other across the North Bridge, and then a shot rang out in the dawn air.

It was the "shot heard around the world." The American Revolution began in defense of the right to bear arms. The Founders remembered this right twelve years later when they wrote the Second Amendment to the Constitution.

### READING TIP:

As you read, try to answer the questions in the subheadings.

## What Were English Origins?

The right to bear arms in England dates prior to 1066. The tradition of militia also existed in medieval England. English law required men who owned land to have weapons and serve in their baron's militia. But as new religious and political ideas emerged, the government began to limit the right to bear arms.

By 1328, Parliament forbade Englishmen from carrying arms in public. After that, only the nobility and gentry could own guns. The English Bill of Rights in 1689 also gave gun rights only to some people. While the English Bill of Rights said Protestant individuals could own guns, it denied that right to the Catholic minority.

## How Did the Colonists Use and Think of Guns?

Colonists learned how vital the right to bear arms was during their revolution against England. Trained militias of citizens were the first line of defense. The Sons of Liberty, a group of colonists who took the lead in resisting the British, and other individual colonists fought the British well before Congress was able to assemble, train, and equip the Continental Army. After the Revolution was over, the fresh scars of the war would remind Americans how important the right to bear arms was.

During the Revolution, most people owned guns. It is likely, however, that the Founders did not consider the right to bear arms universal or unlimited. Several colonies regulated guns. Many said women, free blacks, and Roman Catholics could not own them. States still denied free blacks the right to own and use guns well after the Revolution, fearing they would take up arms against white landowners.



*The right to bear arms in England dates prior to 1066.*

States also did not want a federal standing army. A standing army is a permanent military group maintained in peace, as well as war. The states demanded that they keep control of their own militia to protect themselves from federal tyranny. The inclusion of the Second Amendment in the Bill of Rights was a way to protect states and individuals from a central government with too much power.

### **What Are Interpretations of the Second Amendment?**

Many debate the origin of the right to bear arms. Some scholars claim the right comes from the colonial militia. The Massachusetts and Virginia Declaration of Rights mention that a well-regulated militia is the natural defense of a free government.

Other historians assert the Founders based the Second Amendment on the English Bill of Rights (1689). They point to English philosophy to support the individual's right to bear arms. Some also argue that the Founders believed groups could have "powers," but only individuals could have "rights"—the term used in the Second Amendment.

The second interpretation revolves around the definition of "militia." Some argue that the militia mentioned in the Second Amendment means state armies. Others point out that there was no organized army

or police force. "Militia" referred to a group of citizens who protected themselves and their neighbors.

In developing their arguments, both sides of the gun debate look to history. Legal examples and the intent of the Founders can make arguments more meaningful.





## LESSON 1 *Group Discussion Guide*

**Directions:** Read the following scenario and answer the questions below. Everyone should be prepared to present your group's answers and reasoning to the class.

SCENARIO: It is 1775, and tensions with King George III are high. Colonists have begun storing guns, cannons, and other weapons in Concord. The British know about the arms and have decided to send troops from Boston to Concord to confiscate them.

In your discussion with members of your identity group, address these questions:

1. To whom do the guns at Concord belong?

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2. What should your group do in order to protect the best interests of the people of Massachusetts?

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3. Who has the legal right to control the guns? Why?

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## LESSON 1 *Town Council Discussion Guide*

**Directions:** Town Council members: As you hear arguments from the Sons of Liberty and the British Soldiers, discuss and answer the questions below.

1. Which side will the Town Council support in this controversy?

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2. How will you recommend that the Town Council prepare citizens of Concord for the likely upcoming clash with the British soldiers?

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3. How does the ancient right to bear arms relate to your preparation? Why is this right so important?

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**LESSON 1** *The Second Amendment*

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A well-regulated Militia,  
being necessary to  
the security of a free State,  
the right of the people  
to keep and bear Arms,  
shall not be infringed.

**LESSON 1** *Tickets*

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Sons of Liberty

Concord Town Council

British Soldiers

## LESSON

## 2

***How Has the Second Amendment Been Interpreted?*****Overview**

For much of American history, the Supreme Court had very little to say about the Second Amendment. In only a small handful of cases was the Second Amendment addressed. Then in 2008, the Court heard arguments in the case of *District of Columbia v. Heller*. Richard Heller challenged the city's total ban on handguns on Second Amendment grounds. The Court agreed with Heller, finding the ban unconstitutional and holding that the Second Amendment protects an individual right to keep and bear arms unconnected to militia service. The impact of this decision will continue to be analyzed for many years.

**Standards**

- NCHS (5-12): Era II, Standard 1A; Era 10, Standard 2E
- CCE (9-12): VB1
- NCSS: Strands 2, 5, 6, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Examine the text and history of the Second Amendment.
- Understand the Supreme Court's ruling in *District of Columbia v. Heller* (2008).
- Evaluate arguments for and against the constitutionality of selected gun control provisions.
- Assess the constitutionality of the District of Columbia's gun law at issue in *District of Columbia v. Heller* (2008).

**Materials**

STUDENT

- Background Essay
- Reading Quiz (optional)
- Handout A: A Total Ban on Handguns?
- Handout B: *District of Columbia v. Heller* (2008)

**Lesson Plan*****1. Background/  
Homework***

*[10 minutes the day before]*

**A.** Have students read the Lesson Two **Background Essay**, “How Has the Second Amendment Been Interpreted?” After reading, students should write a one-paragraph response to the question: In light of the Second

Amendment, what kinds of limits on gun ownership are constitutional?

***2. Warm-Up***

*[10 minutes]*

**A.** Begin discussion of guns by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.BillofRightsInstitute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**B.** Distribute and put up an overhead of **Handout A: A Total Ban on Handguns?**

**C.** Have students read each statement and mark whether they believe each stated law would be constitutional or unconstitutional.

**D.** After students have worked through all the statements, go over each one as a large group. Invite students to share their reasoning, and to ground their arguments in the Second Amendment. *Note: several of the statements are based on historical examples: Virginia law permits one handgun purchase per month (3); Felons cannot own firearms in any state (4); Various states prohibit people who have been confined for*

*mental illness or subject to a domestic restraining order from buying guns (5); Under the English Bill of Rights (1689) Catholics could not own guns (6); The final statement (8) is based on the DC law overturned in District of Columbia v. Heller (2008).*

### 3. Activity

[35 minutes]

**A.** Ask students to recall what they learned in the **Background Essay** about the case of *District of Columbia v. Heller* (2008). Students should recognize that the case challenged the District of Columbia's law banning virtually all handguns, and that the law was overturned by the Supreme Court.

**B.** Cut out and distribute one card per student from **Handout B: District of Columbia v. Heller (2008)**.

**C.** Have students read the statement on their card. Then have them paraphrase it in their own words.

**D.** Ask students to stand up and mingle with their classmates and find students who have the same statement on their card. They should do this by sharing their paraphrases only. Students should end up in six groups.

**E.** Once in their groups, write the following questions on the board. Students should discuss them within their groups, and then as a large group.

1. Is this a statement for or against the constitutionality of the District of Columbia's gun law?
2. Do you agree with this statement? Why or why not?

**F.** To wrap-up, explain to students that the statements against the constitutionality of the District's gun law were from the Supreme Court's majority ruling in *District of Columbia v. Heller* (2008). The statements in favor of the law's constitutionality were from the dissenting opinion in that case. In students' opinions, was the Court's ruling correct?

**G.** Ask students how the Court's reasoning compared with their own reasoning in the Warm-Up activity.

## Extension Options

### Homework

Have students write a model firearms law that they believe would be constitutional under the Second Amendment. They may choose to make no

restrictions on guns, impose strict limits, or to find some middle ground—but they should be prepared to justify their law using constitutional arguments.

### Enrichment

**A.** Have students research the gun laws in countries such as the United States, Japan and Switzerland, as well as their homicide rates. Does the data provide for a clear policy path for gun control? Does the legality of guns appear to affect murder rates? If so, how?

**B.** Have students research gun control laws, homicide rates, and accidental shootings in various US states, and present their findings in a PowerPoint presentation. Students should conclude their presentations by explaining their own conclusions about the wisdom and effectiveness of various gun control laws.



### Real Life Portal

Have students join an organization which represents their view on gun regulation, such as the NRA or the Brady Center.

## LESSON 2 *How Has the Second Amendment Been Interpreted?*

**T**he Second Amendment is phrased unlike any other amendment in the Bill of Rights. It is unique because it contains an opening phrase, or “preamble.” The preamble of the Second Amendment says “A well-regulated militia, being necessary to the security of a free State,...

The next part of the amendment is known as the “operative clause.” This means it is the part of the sentence with force or effect. The operative clause states “...the right of the people to keep and bear arms shall not be infringed.”

### READING TIP:

Write out the Second Amendment. Underline the “preamble” and circle the “operative clause.”

When people disagree about the meaning of the Second Amendment, it is usually because they disagree about the meaning and purpose of the preamble.

### How Has the Supreme Court Ruled?

In 1886, the Court ruled in *Presser v. Illinois*. The Court held that states could not disarm citizens, because that would interfere with the federal government’s ability to raise a militia. But the Court added, “We think it clear that [laws] which...forbid bodies of men to associate together as military organizations, or to

drill or parade with arms in cities and towns unless authorized by law, do not infringe the right of the people to keep and bear arms.” The Court also interpreted the word “militia.” The militia was “all citizens capable of bearing arms.”

In 1939, the Supreme Court ruled in *United States v. Miller*. This decision held that the Second Amendment did not protect the right to possess all types of weapons. The Court upheld a federal law that regulated sawed-off shotguns.

The Court reasoned that since that type of weapon was not related to keeping up a militia, the Second Amendment did not protect the right to own it.

In other words, the Second Amendment protected a right to own weapons. The question was how far that right went.

### Why Is *District of Columbia v. Heller* (2008) Important?

*District of Columbia v. Heller* (2008) was the first time the Supreme Court interpreted the Second Amendment in terms of what it meant for an individual’s right to possess weapons for private uses such as self-defense.

The District of Columbia had one of the strictest gun laws in the country. It included a total ban on handguns. Further, long guns had to be kept



unloaded, and disassembled or trigger-locked. Heller believed the law made it impossible for him to defend himself in his home. He argued that it violated the Second Amendment.

The District of Columbia argued that the prefatory clause, which refers to militia service, secured the “right of the people” to have weapons only in connection with militia service. The city also pointed out that the law did not ban all guns, and that it was a reasonable way to prevent crime.



The Court agreed with Heller and overturned three provisions of District’s law. The Court reasoned that the prefatory clause gave one reason for the amendment, but did not limit the right.

The Court also reasoned that elsewhere in the Constitution, such as the First, Fourth, and Ninth Amendments, the phrase “the right of the people” is used only to refer to individual rights—that is, rights held by people as individuals.

*The Supreme Court ruled that the Second Amendment protects an individual right to keep suitable firearms in the home for self-defense.*

Finally, the Court reasoned that the right to own weapons for self-defense was an “inherent” (in-born) right of all people. “It has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right.”

Four of the nine Supreme Court Justices dissented. (They disagreed with the Court’s ruling.) The dissenters agreed that the Second Amendment protected an individual right. However, they argued that the scope of that individual right was limited by the amendment’s preamble. One dissenting Justice argued that the Second Amendment’s prefatory clause (or preamble) showed the Founders’ “single-minded focus” on protecting “military uses of firearms, which they viewed in the context of service in state militias.”

One thing is certain. Like all other rights in the Bill of Rights (such as freedom of speech and press), the right to keep and bear arms is not an absolute right. Working out the limits of the Second Amendment’s protection continues to challenge society.



## LESSON 2 *Total Ban on Handguns?*

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**Directions:** Read each statement and decide whether you think such a regulation would be constitutional (C) or unconstitutional (U).

1. \_\_\_\_\_ All types of firearms are available for purchase.
2. \_\_\_\_\_ Individuals can buy many kinds of firearms, but not some of the most dangerous, like AK-47s.
3. \_\_\_\_\_ Individuals can buy handguns. They can only buy one per month, though. Handguns must be registered.
4. \_\_\_\_\_ Most individuals can buy handguns. Convicted felons cannot buy them.
5. \_\_\_\_\_ Some individuals can buy handguns. Convicted felons, those accused of domestic violence, and people who have ever been diagnosed mentally ill cannot buy them.
6. \_\_\_\_\_ Some individuals can buy handguns. Protestants may buy them, while Catholics may not.
7. \_\_\_\_\_ Individuals can own handguns, but they must be kept unloaded in a person's home.
8. \_\_\_\_\_ No one may own handguns.

## LESSON 2 *District of Columbia v. Heller* (2008)

**Note:** the following quotations are taken from the majority and dissenting opinions in *District of Columbia v. Heller* (2008)

The inherent [natural] right of self-defense has been central to the Second Amendment right.

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The handgun ban amounts to a prohibition of an entire class of “arms” that is overwhelmingly chosen by American society for that lawful purpose [of self-defense].

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The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.

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We must decide whether a District of Columbia law that prohibits the possession of handguns in the home violates the Second [Amendment]... In my view, it does not.

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The Second Amendment protects militia-related, not self-defense-related, interests.

---

The protection the Amendment provides is not absolute. The amendment permits government to regulate the interests that it serves.

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# *The Bill of Rights and Private Property*

Spotlights safeguards to private property in the Bill of Rights, explores various types of property, and the concepts of takings, just compensation, and eminent domain.



# The Bill of Rights and *Private Property*

## **Third Amendment**

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner; nor in time of war, but in a manner to be prescribed by law.

## **Fourth Amendment**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## **Fifth Amendment**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

## **Seventh Amendment**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

## **Eighth Amendment**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## **Unit Introduction**

While most people think of property as land or a dwelling, the term has much more constitutional significance and touches almost every aspect of citizens' lives. The Founders, influenced by English philosopher John Locke, believed property rights in one's body and person to be the root of all rights—rights that governments are established to protect.

## **Unit Objectives**

*Students will:*

- Define the term “property” as understood by Enlightenment thinkers and modern legal minds.
- Identify provisions in the Bill of Rights that protect property rights.
- Analyze the Founders' reasons for protecting the rights to own and use property.
- Understand the Fifth Amendment's due process and just compensation clauses.
- Understand how the Supreme Court has interpreted the Takings Clause.

## **Synopsis of Lessons and DVD**

### **Lesson 1**

Students explore exactly what property is and why the Founders were so concerned with its protection.

### **Lesson 2**

Students examine the Fifth Amendment and explore the concepts of takings, eminent domain, and just compensation using landmark Supreme Court cases as examples.

*In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.*

– JAMES MADISON

## LESSON

## 1

**What Is Property? Why Protect It?****Overview**

The Founders viewed private property rights to be one basis of a free society, as well as essential to economic prosperity. Property is not only physical possessions, but also ideas, works, and even what someone should earn in future wages. For instance, the secret recipe for a popular soft drink, such as Coca-Cola, is considered property in the same manner as a beach house on Cape Cod. The lyrics to a hit song are just as much property as mansion in Beverly Hills, as is the potential to earn a living.

**Standards**

- NCHS (5-12): Era III, Standard 1B
- CCE (9-12): IB1, IB2
- NCSS: Strands 5, 6, 7, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Explain the definitions of property.
- Summarize the reasons for the protection of personal property.
- Understand how physical and intellectual property are alike, as well as how they differ.

**Materials**

STUDENT

- Key Terms
- Background Essay
- Reading Quiz (optional)
- Handout A: Understanding the Third, Fourth, Fifth, Seventh, and Eighth Amendments
- Handout B: What Is Ownership?

TEACHER

- Transparency Master A: Property or Not?
- Key: Transparency Master A
- Key: Handout A
- Key: Handout B

**Lesson Plan****1. Background/  
Homework**

*[10 minutes the day before]*

**A.** Begin discussion of private property by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrightsinstitute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**B.** Distribute **Handout A: Understanding the Third, Fourth, Fifth, Seventh, and Eighth Amendments**. Have students complete it as they read the Lesson One **Background Essay, “What Is Property? Why Protect It?”**

**2. Warm-Up***[10-15 minutes]*

**A.** Go over **Handout A** and answer any questions.

**B.** Put **Transparency Master A: Property or Not?** on the overhead and, revealing one statement at a time, ask the class for a show of hands to answer the question: Is this “property?”

**B.** Have the class, as a large group, define the term property. Write this definition on the board, and use this definition as the definition of property for the remainder of the lesson.

**3. Activity***[20-30 minutes]*

**A.** Divide students into pairs and have them complete **Handout B: What Is Ownership?**

**B.** After students have finished, have each pair share their answers.

**C.** Wrap up by asking students to consider their original definition of “property.” Would anyone like to modify it? Why?

**Extension Options****Homework**

**A.** Have students create a public service announcement educating their peers about self-ownership. Is self-ownership an absolute right? Why or why not? Students may choose to write a one-minute radio spot, design a poster, or create a magazine ad.

**B.** Ask students to report to the class about a local property-rights issue in the news. This can be either a case involving physical property (homeowners displaced for the widening of a road, for example) or an intellectual property case, (such as musicians petitioning Congress to pass laws about intellectual property on the Internet).

**Enrichment**

Have students read the diary of William Bradford (1623) in which he describes the colonists’ experiences with communal farming. What happened when communalism was replaced with private property, and each family was given their own land? What can the colonists’ experiences teach us about the importance of private property?

The diary can be found at:  
<http://www.fordham.edu/halsall/mod/1650bradford.html>



# The Bill of Rights and *Private Property*

## LESSONS 1 & 2 *Key Terms*

### Unlock the Key Terms

Choose a key term and brainstorm a list of 4-5 words that might be associated with it.

**Directions:** As you read each Background Essay, be on the lookout for these key terms. After reading, write out the correct definition for each term.

property \_\_\_\_\_

\_\_\_\_\_

right of exclusion \_\_\_\_\_

\_\_\_\_\_

self-ownership \_\_\_\_\_

\_\_\_\_\_

due process \_\_\_\_\_

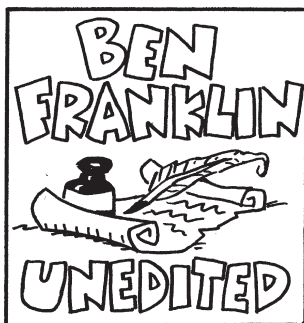
\_\_\_\_\_

just compensation \_\_\_\_\_

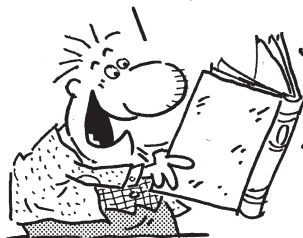
\_\_\_\_\_

fair market value \_\_\_\_\_

\_\_\_\_\_



"EARLY TO BED AND EARLY TO RISE, MAKES  
A MAN HEALTHY, WEALTHY AND WISE."



"...AND THEN  
HE CAN  
AFFORD TO  
SLEEP IN."



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**Key Terms** *(continued)*

taking \_\_\_\_\_

\_\_\_\_\_

eminent domain \_\_\_\_\_

\_\_\_\_\_

partial taking \_\_\_\_\_

\_\_\_\_\_

intellectual property \_\_\_\_\_

\_\_\_\_\_

## LESSON 1 **What Is Property? Why Protect It?**

**T**he students returned to class on Monday after enjoying a relaxing weekend. As they streamed in from the parking lot and buses, many were shocked to see the brown row of lockers that had been in the main hallway was gone. Many students used their lockers to store not only their books, but also other personal belongings like clothing, music and food. Confused, they walked to the principal's office.

"What happened to our lockers?" they demanded.

The principal informed them that the school planned to fix up the front hallway and turn it into an alumni welcome center. Their lockers had been torn down.

"What happened to all our stuff?" the students asked, becoming angry.

The principal shrugged. "Oh, we just threw all those things out."

### **READING TIP:**

Draw a sketch or cartoon to help you remember important situations in the essay.

### **What Is Property?**

One might say the Founders were not only concerned with property rights, they were passionate about them. Half of the Bill of Rights deals with property. Most people think of property as land. Property, however, includes much more than just land. It

involves houses, cars, and other material things. It also includes information, ideas, and creative works. It sometimes includes things of the future, such as future profits from the sale of an object or idea. More than just securing these things for individuals, property rights secure freedom.

### **What Are the Origins of American Property Rights?**

Eighteenth century Americans had many things in mind when they used the word "property." Rather than saying, "That horse is my property," most Americans would have said, "I have a property in that horse." That phrase meant they had a legal right to use the horse. They also had a right of exclusion, meaning they could stop others from using the horse.

Another example of property is one's own body. People usually do not refer to themselves as "property," but they clearly have a general right to do what they want with their bodies and to keep others from doing things to them. Thus, individuals have a property in their body. This concept is associated with English natural rights philosopher John Locke. It is called self-ownership, and helps explain why the Founders took many steps to protect property.

The Founders were deeply influenced by Locke as well as by English documents. Magna Carta (1215) and the Declaration of Rights (1689) restricted the power of the king or queen to take belongings or put people in jail at random. Eventually, British abuse of

property rights pushed many colonists to argue for revolution. They had had enough of forced housing of troops, searches with no warrants, and excessive fines.

## **How Did the Founders View Property?**

Thomas Jefferson used one of Locke's famous phrases dealing with property in the Declaration of Independence (1776). Locke wrote that people have natural rights to "life, liberty, and property." Jefferson changed it to "life, liberty, and the pursuit of happiness." He did not change Locke's meaning so much as expand it. Colonists would have thought of ideas as well as material things as "property." Jefferson believed the enjoyment of material things and the satisfaction of creativity were essential to happiness.

James Madison, author of the Bill of Rights (1791), believed property rights to be the key to protecting all rights. These rights are the purpose of all "just government," as he put it. His famous work, *Property*, was published one year after the Bill of Rights. In it, Madison argues that man has a property in not just his body and possessions. He also has a property (an interest) in the maintaining and exercise of opinions and religious beliefs. Madison noted that security of property plays a big role in personal growth. It allows each person "the free use of his faculties and free choice of the objects on which to employ them."

Madison strongly believed in a commercial republic. He urged Americans to protect the acquiring and owning of property through hard work. He criticized excessive taxes. Madison concluded with a warning to his fellow citizens: "If the United States mean to

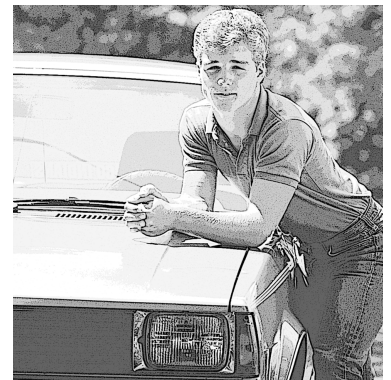
obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights."

It is no accident that half the Bill of Rights contains property protections. The Third and Fourth Amendments assure freedom and security of one's home and possessions, while the Fifth Amendment guarantees due process and just compensation when the government takes property. The Seventh Amendment addresses the right to a jury trial in common law suits involving more than twenty dollars, and the Eighth protects the freedom from excessive fines. The Founders understood that the protection of all kinds of property was key to protecting all rights.

## **How Do Property Laws Affect Modern Life?**

Questions of property law are at the center of many social concerns today. Some examples are environmental issues, conservation of endangered species, and even the legality of music-exchange websites. Individual property rights must be balanced with legitimate state concerns about natural resources, and Internet music sharers must consider whether they are "sharing" or "stealing."

The property protections in the Bill of Rights are essential to liberty. If the government can take anything from anybody at any time, no one can be free. As students and as citizens, your right to control your own property is one way you have the power to live as you wish.



**LESSON 1**

***Understanding the Third, Fourth, Fifth,  
Seventh, and Eighth Amendments***

**Directions:** Below each Amendment, explain how each provision safeguards individual property rights.

**Third Amendment**

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner; nor in time of war, but in a manner to be prescribed by law.

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**Fourth Amendment**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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**Fifth Amendment**

No person shall be...deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

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The Bill of Rights and *Private Property*

**LESSON 1**

***Understanding the Third, Fourth, Fifth,  
Seventh, and Eighth Amendments (continued)***

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**Seventh Amendment**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...

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**Eighth Amendment**

Excessive bail shall not be required, nor excessive fines imposed,...

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## LESSON 1 *What Is Ownership?*

**Directions:** Answer the following questions.

1. What does it mean to own something?

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2. What does it mean to own yourself?

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3. Can you own an idea?

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4. What do the three versions of ownership (of things, of yourself, and of ideas) have in common?

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5. Should the government protect people's right of ownership of things? Why or why not?

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6. Should the government protect people's right of self-ownership? Why or why not?

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*The Bill of Rights and* ***Private Property***

**7.** Should the government protect people's right of ownership of ideas? Why or why not?

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**8.** How can the government protect people's right of ownership?

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## LESSON 1 *Property or Not?*

	Property	Not Property
1. Yourself	_____	_____
2. Your music collection	_____	_____
3. Your iPod	_____	_____
4. The sheet music to a song you composed	_____	_____
5. The lyrics you wrote to go with your song	_____	_____
6. The guitar you play your song on	_____	_____
7. The money you earn from your record contract	_____	_____
8. The money that stations will pay you in the future to play your song on the radio	_____	_____

## LESSON

## 2

***How Does the Fifth Amendment Protect Private Property?*****Overview**

The Founders believed that property is among the inalienable, or natural, rights government exists to protect. One of the ways the Founders protected property rights is with the Fifth Amendment. The Fifth restricts the government's ability to take property, and ensures that when it does take property, it must pay for it.

**Standards**

- NCHS (9-12): Era III, Standards 3B, 3C
- CCE (9-12): IA1, IID1
- NCSS: Strands 6, 7, 8, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Explain how the Fifth Amendment protects property rights.
- Understand the concepts of just compensation and eminent domain.
- Analyze government actions to determine whether or not the actions should be considered a "taking."

**Materials**

STUDENT

- Background Essay
- Reading Quiz (optional)
- Private Property DVD and Viewing Guide
- Handout A: Property Script and Questions

TEACHER

- Key: Handout A

**Lesson Plan****1. Background/  
Homework**

*[10 minutes the day before]*

Have students read the Lesson Two **Background Essay**, "**How Does the Fifth Amendment Protect Private Property?**"

**2. Warm-Up**

*[10-15 minutes]*

**A.** Begin discussion of private property by talking about a "real life" news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrights.institute.org>, for daily headlines or a complete "Bill of Rights in the News" activity.

**B.** Distribute **Handout A: Property Script and Questions**. Ask for three volunteers from the class to act out the case study script for the class.

**C.** Have students answer the questions on **Handout A** individually, using their **Background Essays** as a reference.

**D.** Conduct a large group discussion as students share their answers to **Handout A**.

### 3. Activity

[20-30 minutes]

**A.** Show Private Property DVD and have students complete Viewing Guide.

**B.** Write on the board the question—"When does an action by the government become a taking?" Instruct students to be prepared to answer that question at the end of the DVD.

**C.** Allow students time to answer the question in writing, using examples from the DVD.

## Extension Options

### Homework

**A.** Have students learn more about the property rights case on which the Warm Up script was based, *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency* (2002), and write a 15-20 line "epilogue" to the script based on the outcome of the case. Students can begin their research at:  
[http://www.oyez.org/cases/2000-2009/2001/2001\\_00\\_1167/](http://www.oyez.org/cases/2000-2009/2001/2001_00_1167/)

**B.** Ask students to imagine they are a songwriter or filmmaker whose work is being traded on the Internet on an exchange site. Have them write a speech to present to Congress on the legality of these sites and whether they infringe on intellectual property rights.

### Enrichment

Have students research the Supreme Court case *Kelo v. New London* (2005). Have them summarize the arguments made by each side in the case, and the Court's ruling. Finally, they should evaluate the ruling and explain why they agree or disagree with the Court. Students can begin their research at:  
<http://www.constitutionbee.org/user/StudentGuide.aspx?id=726>  
 and  
[http://www.oyez.org/cases/2000-2009/2004/2004\\_04\\_108/](http://www.oyez.org/cases/2000-2009/2004/2004_04_108/)

### Real Life Portal



Have students investigate their own state's law regarding the use of eminent domain. In what cases is the government empowered to take land from citizens? Have students write a letter to their representatives in the state legislature supporting or protesting their state's law. Students should support their argument with language from the US Constitution, their state constitution, and relevant Supreme Court opinions.

## LESSON 2 ***How Does the Fifth Amendment Protect Private Property?***

The Founders knew that part of the “pursuit of happiness” was enjoying the fruits of one’s labor: obtaining and enjoying possessions. Owning a home is often thought of as part of the “American Dream.” The property protections in the Bill of Rights help ensure that when citizens buy a home (or any kind of property) it cannot be taken away from them for just any reason. If the reason is just, the citizen must be paid back for the property.

### **READING TIP:**

After reading, try writing one sentence using the words “taking,” “just compensation,” and “eminent domain.”

### **What Is a “Taking?”**

Although the Founders believed a free society could not exist without private property rights, they knew that government did sometimes need to take land in order to serve its purposes. This power of government to take land is called eminent domain. A “taking” occurs when the government exercises eminent domain and takes someone’s land to put it to “public use.” Historically, eminent domain has been used to take land for railroads, interstate highways, schools, post offices, or military bases.

A “taking” can also happen if a law lowers the value of property. In these cases, government must pay back owners for the lost value of their property.

### **What Does the Constitution Say?**

The Fifth Amendment says in part, “Nor shall private property be taken for public use, without just compensation.” This means two things. First, the government cannot take property from people unless the property is “for public use.” Second, the government has to pay “just compensation” for the land it takes. This means government must pay people the fair market value of their property.

### **How Has the Supreme Court Interpreted the Fifth Amendment?**

Sometimes, people who have had their property taken sue the government. Some citizens believe they deserve more money for their land than the government is offering. Other times they sue because the government did not offer any compensation at all.

One important case is *Lucas v. South Carolina Coastal Commission* (1992). Mr. Lucas bought beachfront land in order to build homes on it. After he bought the land, South Carolina passed a law banning new construction on the beach. Lucas sued the government because, due to the law, the value of his land was gone. South Carolina argued that Lucas still owned his land, so he was not owed any money. The Supreme Court agreed with Lucas. South Carolina had to pay Lucas just compensation.

### What Does “For Public Use” Mean?

Historically, the phrase “public use” has mean roads, libraries, schools, or other facilities used by the public.

In 2005, a case came before the Supreme Court called *Kelo v. New London* (2005). The city government had taken people’s homes in order to demolish them and turn the land over to a private developer. Susette Kelo and other homeowners argued that the planned office buildings and condos were not for “public use” as the Fifth Amendment requires. In a controversial ruling, the Supreme Court agreed with the city. The Court said it was constitutional for New London to take peoples’ land in order to turn it over to a private developer. The Court reasoned that the higher tax revenue brought in by the new development would be for “public benefit.” Following the *Kelo* decision, many states passed laws forbidding eminent domain for private development.

### Are Ideas Property?

Property is not always touchable or concrete. Authors, researchers, inventors and artists

*In cases of eminent domain, the government must provide just compensation.*

have the right to the products of their minds. These ideas or creations are called intellectual property. Books, inventions, and artwork are property, just like land, houses or cars are property.

The same ways of protecting physical property cannot be used to protect intellectual property. You cannot build a fence around intellectual property or install an alarm on it. The Constitution says Congress can “promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” Patents and copyrights allow citizens to enjoy the fruits of their intellectual labor.

The Internet is an unmatched way of getting information out. It has also made it easier to steal intellectual property. Music, video, and literary exchange sites have made it possible to get songs, movies, TV shows, and books without paying for them. This means that many people—such as musicians, writers, actors, producers, and authors—are not being paid for their work.

The Founders knew that protecting private property was key to prosperity. Farmers, manufacturers, writers, artists, and entrepreneurs produce things that improve peoples’ lives. Producers and consumers benefit as individuals, and society is happier as a whole.





## LESSON 2 *Property Script and Questions*

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**Directions:** Read the script and then answer the questions below.

*Thirty years ago, Ted and Lisa Smith purchased land in Wellington so they could build a retirement home. This land is on the waterfront and borders a small marsh. They have not been able to afford the cost of building a house and have been saving for the last three decades. Now that they have saved enough money, they are ready to build their new home.*

**Lisa:** Ted, isn't this wonderful? We're so close now. Isn't our land beautiful?

**Ted:** It sure is. I just wonder about all these new houses that have been built here over the last few years.

**Lisa:** What do you mean?

**Ted:** Well, remember when we bought this land thirty years ago? The marsh was completely undisturbed. Now there are all these houses everywhere.

**Lisa:** Is that the doorbell?

**Contractor:** Good morning, Mr. and Mrs. Smith.

**Ted:** Good morning! How's everything going? Did you receive our deposit check so we can go ahead and start building our home?

**Lisa:** You know how excited we are, after dreaming about our perfect home for thirty years now.

**Contractor:** Well, Mr. and Mrs. Smith, I have some bad news. Wellington has just passed a law that said that there cannot be any new building within 100 feet of the marsh. It seems that the construction that has been going on over the past few years has destroyed the habitat for a bird that only lives in that area of the world. Since the bird's habitat is in danger of being wiped out, so is the bird. The town has halted all construction near the marsh.

**Ted:** Oh no!! So now we can't build?

**Lisa:** The town allowed all those other houses to be built and those owners were able to build on and enjoy their property. It's not fair!



## LESSON 2 *Property Script and Questions (continued)*

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**Ted:** Well, what can we do now except sell the land?

**Lisa:** No one is going to buy land they can't use! Let's call a lawyer.

**1.** What is the Smith's constitutional argument?

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**2.** Is this a taking? Why or why not?

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**3.** What can the Smiths do? What precedents has the Supreme Court set?

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# *The Bill of Rights and Criminal Procedure*

Covers search and seizure, rights of the accused, due process of law, and protection from cruel and unusual punishment guaranteed in the Fourth, Fifth, Sixth, and Eighth Amendments.



# The Bill of Rights and *Criminal Procedure*

## **Fourth Amendment**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## **Fifth Amendment**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

## **Sixth Amendment**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining

witnesses in his favor; and to have the Assistance of Counsel for his defence.

## **Eighth Amendment**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## **Unit Introduction**

In the years leading up to the Revolutionary War, inhabitants of most of the British colonies in North America did not enjoy the full rights of Englishmen. Homeowners could have their home invaded by government soldiers and their property taken without reason. Those accused of crimes could be tried without a jury and without a lawyer, or held without trial altogether.

In drafting a new Constitution, the Founders reasoned that when a government suspected or accused an individual of wrongdoing, the government's actions must be subject to a high level of scrutiny. Throughout the subsequently ratified Bill of Rights, the Founders sought to make sure that when the government accused someone of committing a crime, it would follow certain rules to protect citizens from being abused, coerced, and wrongfully penalized.

## **Unit Objectives**

*Students will:*

- Identify protections found in the Fourth, Fifth, Sixth, and Eighth Amendments.
- Explain why these protections were included in the Bill of Rights.
- Analyze provisions of the Bill of Rights regarding criminal procedure and rights of the accused.
- Understand how each protection is valuable for maintaining a free society.
- Evaluate arguments for and against the constitutionality of government actions.

## **Synopsis of Lessons and DVD**

### **Lesson 1**

Students explore various criminal procedure protections the Founders were concerned about, and how the Fourth, Fifth, Sixth, and Eighth Amendments embody many of these protections. Students will learn how these rights of the accused are currently recognized and interpreted.

### **Lesson 2**

The lesson and its accompanying DVD explore the Fourth Amendment's search warrant requirement, as well as the exclusionary rule. Students will explore several cases and determine constitutionality of police action.

## LESSON

## 1

***What Are the Rights of the Accused?*****Overview**

The Founders paid particular attention to the rights of the accused because they realized that this was one group of people who particularly needed protection from government. After experiencing British abuse of the legal system in the colonies, the Founders put in safeguards to prevent such tyranny from happening again. Indeed, four of the ten Amendments in the Bill of Rights involve some aspect of criminal procedure.

**Standards**

- NCHS (5-12): Era IX, Standard 4C
- CCE (9-12): IID1, IIID1, VB1, VC1, VD1
- NCSS: Strands 2, 5, 6, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Understand the protections found in the Fourth, Fifth, Sixth, and Eighth Amendments.
- Explain why those protections came to be included in the Bill of Rights.
- Understand real world applications of criminal procedure protections.

**Materials**

STUDENT

- Key Terms
- Background Essay
- Reading Quiz (optional)
- Copy of the Bill of Rights
- Handout A: Criminal Procedure Protections
- Handout B: Criminal Procedure Review

TEACHER

- Key: Handout A
- Key: Handout B

**Lesson Plan*****1. Background/ Homework***

*[10 minutes the day before]*

**A.** Distribute the Bill of Rights. Divide the class into four groups and assign students in each group to read either the Fourth, Fifth, Sixth, or Eighth Amendment. As they read, they should underline ways in which citizens are protected by their amendment.

**B.** Distribute **Handout A: Criminal Procedure Protections** and ask students to fill in the appropriate section and return it to the next class.

***2. Warm-Up***

*[10-15 minutes]*

**A.** Begin discussion of criminal procedure by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrights.institute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**B.** Distribute the Lesson One **Background Essay, “What Are the Rights of the Accused?”** Ask students to read silently or read it aloud to them. During the reading, students should underline examples of British violations of criminal procedure rights that colonists had come to expect.

**C.** Ask the question, “How did the colonists’ experience under British rule, especially as the American Revolution came near, help lead to specific protections in our Bill of Rights?”

#### ***Suggested Responses***

*Assigning excessive bail, using general warrants which did not name a specific person or place to be searched, taking colonists to England for trial in admiralty courts.*

### **3. Activity**

*[20-30 minutes]*

**A.** Ask students to move into groups based on which amendment they were to read and write about for homework. Ask them to compare their answers to **Handout A** and arrive at agreed upon interpretations of each clause.

**B.** Put a transparency of **Handout A** on the overhead.

**C.** Have the group(s) who read the Fourth Amendment go first, explaining their agreed upon meaning. Go through the amendments in order, in each case making sure that each element of the amendment is identified and its meaning clarified.

**D.** Distribute **Handout B: Criminal Procedure Review Fill-In** and ask students to complete it individually, then go over answers as a class.

## **Extension Options**

### ***Homework***

**A.** Ask students to write one paragraph suggesting and justifying another criminal procedure protection which citizens should have that is not in the Bill of Rights.

### ***Enrichment***

**A.** Ask students to view two to three television police dramas and/or ‘real-life’ police shows. Students should describe situations where criminal procedure protections were evident. Based on their understanding of the protections in the Fourth, Fifth, Sixth, and Eighth Amendments, they should explain where they feel correct and incorrect procedures were followed.



### ***Real Life Portal***

Ask students to develop a list of questions to ask a judge, attorney, police officer, or probation officer about various aspects of criminal procedure. Students should then conduct an interview. Report on the interview in writing or in a brief oral report to the class.

# The Bill of Rights and *Criminal Procedure*

## LESSONS 1 & 2 *Key Terms*

### Unlock the Key Terms

Choose a key term that you've heard on TV and write a 2-3 sentence explanation of when you heard the term.

**Directions:** As you read each Background Essay, be on the lookout for these key terms. After reading, write out the correct definition for each term.

general warrant \_\_\_\_\_

\_\_\_\_\_

probable cause \_\_\_\_\_

\_\_\_\_\_

self-incrimination \_\_\_\_\_

\_\_\_\_\_

double jeopardy \_\_\_\_\_

\_\_\_\_\_

bail \_\_\_\_\_

\_\_\_\_\_

cruel and unusual punishment \_\_\_\_\_

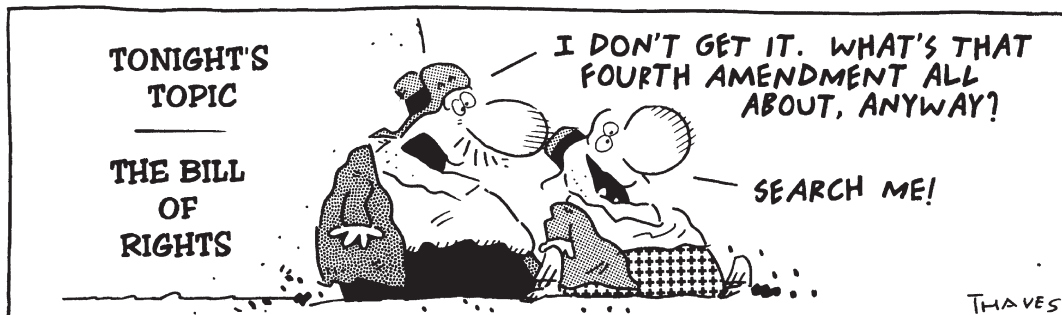
\_\_\_\_\_

exclusionary rule \_\_\_\_\_

\_\_\_\_\_

inevitable discovery \_\_\_\_\_

\_\_\_\_\_



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## LESSON 1 **What Are the Rights of the Accused?**

**T**here is a knock at the door. Mrs. Proctor opens it and peers at the five officers staring back at her.

“Let us in,” they say.

“What are you doing here?” she asks.

They push past her, despite her protests. The officers begin going through her closets, her husband’s files, and her children’s drawers.

“What are you looking for?” She begs for them to answer.

They do not answer her. They find something that indicates she might have broken a law, and they take her to jail. Her bail is set at three times what she makes in a year. Her trial date is a mystery, since she has no right to a speedy trial. Several months later, Mrs. Proctor learns that she has been accused of stealing some flour. She is fined \$250,000.

### **READING TIP:**

Try underlining the specific purposes of the Fourth, Fifth, Sixth, and Eighth Amendments as you read.

### **How Important Was Criminal Procedure to the Founders?**

The Founders put safeguards into the Bill of Rights to stop scenarios like the one above. Four amendments in the Bill of Rights—the Fourth, Fifth, Sixth, and Eighth—concern some aspect of criminal procedure.

### **What Are Fourth Amendment Protections?**

The British often issued “general” search warrants to oppress the colonists. These warrants did not list a particular person or place to be searched. An official who held a general warrant could search for anything on anyone’s property. The Founders saw this as tyranny and addressed it in the Bill of Rights. The Fourth Amendment says that warrants can be issued only with probable cause and must state a particular person or place to be searched. Further, the warrant must specifically list the items for which officials are looking. This rule prompts officials to be certain of their suspicion.

### **What Does the Fifth Amendment Protect?**

The Fifth Amendment safeguards many rights including protection against self-incrimination. This means that no one must testify under oath at his own trial. The Founders carried over this principle from English tradition. By letting people not answer questions that might make them seem guilty, the Fifth Amendment resolves the conflict between defending oneself and telling the truth.

Once a case gets to trial, the Fifth Amendment protects against double jeopardy. Double jeopardy is having to stand trial more than once for the same crime. Without this protection, the government could retry a suspect over and over. It could use state money to crush a suspect financially or pres-

sure jurors to return a guilty verdict. The Fifth Amendment makes sure prosecutors only have one chance to prove their case. Like the Fourth, the Fifth Amendment is a way of motivating the government to be confident of its case before proceeding.

*Four amendments in the Bill of Rights concern some aspect of criminal procedure.*

### **What Are Sixth Amendment Protections?**

The Founders witnessed British abuse of bail and trial dates. To keep the accused in prison while waiting for trial, colonial courts would set bail impossibly high. Since there was no guarantee of a speedy trial, a defendant could stay locked up indefinitely. At one point, the British government even suspended jury trials.

The Founders included the right to a jury trial in the body of the Constitution as well in the Sixth Amendment in strong response to what the British had done. The Sixth Amendment also guarantees the right to a speedy trial in the place where the alleged crime occurred, the right to know the specific crime, the right to confront and call witnesses, and the right to have the help of an attorney.

### **The Eighth Amendment: What Is “Cruel and Unusual?”**

The Founders made sure that even those found guilty still have rights with the Eighth Amendment. The British and colonial courts had used whipping, branding, public humili-



ation, or extremely long prison sentences for minor offenses. The Eighth Amendment forbids “cruel and unusual” punishment. The definition of “cruel and unusual” continues to evolve as society changes.

The Eighth Amendment also requires that bails, fines, and other penalties fit the crime and not be excessive. The courts have struggled with how to define an excessive fine. In *United States v. Bajakajian* (1998), the Supreme Court found that an excessive fine is one that is extremely out of balance with the offense committed.

While having a great respect for the will of the majority, James Madison, writer of the Bill of Rights, saw a potential for the majority to limit minorities’ rights. The accused as well as convicted criminals are minority groups that particularly need the Bill of Rights’ protection, because public opinion is often against them. The fact that almost half of the amendments in the Bill of Rights concern some aspect of criminal procedure demonstrates its importance to the Founders.

## LESSON 1 *Criminal Procedure Protections*

**Directions:** Identify phrases in each amendment that refer to specific protections and then write your interpretation of the meaning of those phrases. One or two for each amendment have been completed for you.

PROTECTION	INTERPRETATION
FOURTH AMENDMENT	
1. "the right of the people to be secure . . against unreasonable searches and seizures, Shall not be violated . . ."	Neither people's homes nor individuals themselves may be searched without reason.
2. _____ _____ _____	_____ _____ _____
3. _____ _____ _____	_____ _____ _____
FIFTH AMENDMENT	
1. "No person shall be held to answer for a capital...crime unless on a presentment or indictment of by a Grand Jury".	People held for [charged with] a serious crime must be indicted [formally accused] by a Grand Jury.
2. "nor shall any person be subject for the same offense to be twice put in jeopardy of life and limb,"	_____ _____ _____
3. _____ _____ _____	_____ _____ _____
4. _____ _____ _____	_____ _____ _____

## FIFTH AMENDMENT (continued)

5. “nor shall private property be taken for public use, without just compensation.”

**If the town or state needs your land, they may take it, but must pay a fair price.**

## SIXTH AMENDMENT

1. “. . . the accused shall enjoy the right to a speedy and public trial, by an impartial jury.”

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2. “[the accused shall] be informed of the nature and and cause of the accusation.”

**People must be told what criminal act they are accused of committing.**

3. \_\_\_\_\_

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4. \_\_\_\_\_

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5. \_\_\_\_\_

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## EIGHTH AMENDMENT

1. “Excessive bail shall not be imposed . . . “

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2. \_\_\_\_\_

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3. \_\_\_\_\_

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## LESSON 1 *Criminal Procedure Review*

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**Directions:** After reading the Lesson One Background Essay, complete the following sentences based on real-life applications of these protections.

1. A \_\_\_\_\_ jury decides only if a person should be accused of a crime or not.
2. Anyone with information about a crime may be asked to be present at the \_\_\_\_\_.
3. If the accused person has no money, the government must provide an \_\_\_\_\_ for him or her.
4. An accused person must be told what crime he or she has been \_\_\_\_\_ of committing.
5. A person may not be tried \_\_\_\_\_ for the same crime.
6. \_\_\_\_\_ is the money an accused person gives the court until the trial. When he or she comes to the trial, the money is returned.
7. A search warrant must list the \_\_\_\_\_ or \_\_\_\_\_ to be searched.
8. People are not required to give \_\_\_\_\_ that might make them seem guilty.
9. In a trial for a serious crime, a \_\_\_\_\_ decides if the defendant is guilty or not proven guilty.
10. If the government needs a person's property for the good of the community [for example, to build a school,] the owner is entitled to \_\_\_\_\_.

## LESSON

## 2

***How Are Fourth Amendment Protections Enforced?*****Overview**

The Fourth Amendment balances the rights of suspects with public safety. Often, the protections it guarantees are controversial because they result in suspected criminals going free. But the Founders saw the need to check government power over the accused. The judicial branch must agree before the police—agents of the executive branch—can conduct a search.

**Standards**

- NCHS (5-12): Era III, Standard 3B; Era IX, Standard 4C; Era X, Standard 2E
- CCE (9-12): IIB, VB
- NCSS: Strands 2, 6, 8, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Explain how the Fourth Amendment balances the rights of suspects with public safety.
- Understand exceptions to search warrant requirements.
- Understand real life applications of Fourth Amendment protections.
- Analyze arguments for and against the constitutionality of certain state actions.

**Materials**

STUDENT

- Background Essay
- Reading Quiz (optional)
- Criminal Procedure DVD and Viewing Guide
- Handout A: Selected Fourth Amendment Decisions of the Supreme Court
- Handout B1: Case Study—*United States v. Banks* (2003)
- Handout B2: Case Study—*Maryland v. Pringle* (2003)
- Handout B3: Case Study—*Illinois v. McArthur* (2001)
- Handout C: Search Warrant Application
- Handout D: Exceptions to Search Warrant Requirements

TEACHER

- Key: Handout A
- Key: Handout B1
- Key: Handout B2
- Key: Handout B3
- Key: Handout D

**Lesson Plan****1. Background/  
Homework**

*[10 minutes the day before]*

Ask students to read the Lesson Two **Background Essay**, “**How Are Fourth Amendment Protections Enforced?**” and have them complete **Handout A: Selected Fourth Amendment Supreme Court Decisions** as they read.

**2. Warm-Up**

*[10-15 minutes]*

**A.** Begin discussion of criminal procedure by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrightsinstitute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**B.** Review **Handout A** as a class. Then pose the question ask “Which cases gave the government more power over citizens, including suspects, in a criminal case?” Discuss briefly



and then ask “Which cases gave the government less power over citizens including suspects in a criminal case?”

*Hiibel v. Sixth Judicial District of Nevada (2004), Vernonia School District v. Acton (1995), and Board of Education of Pottawatomie County v. Earls (2002) resulted in greater government power over citizens. The other cases, Groh v. Ramirez (2004), Griswold v. Connecticut (1965), United States v. Katz (1967), and Kyllo v. United States (2001) limited the actions of government over citizens.*

### **3. Activity** [20-30 minutes]

**A.** Show Criminal Procedure DVD and have students complete Viewing Guide.

**B.** Distribute **Handout B1: Case Study: United States v. Banks**. Ask for a volunteer to read aloud, or read the case to the class.

**C.** Discuss arguments and reasons for and against the question.

**D.** After a few minutes of discussion, ask students to write a brief ‘opinion’ on the case, answering the question above. At the end, each student should also briefly explain the argument/reason opposite their own that they thought was the best.

**E.** Finally, reveal the Court’s decision in the case, and discuss briefly.

**F.** Continue with other cases in **Handout B2** and **Handout B3**.

**G.** Distribute **Handout C: Search Warrant Application** and have students fill it in for a case of their choice from **Handouts B1-B3**. Students must obtain the signature of a classmate acting as the judicial officer. The judge must review the warrant before signing.

**H.** Ask the class as a large group: Is the search warrant application an effective way of protecting the rights of suspects? Why or why not?

**I.** Distribute **Handout D: Exceptions to Search Warrant Requirements**, and have students answer the questions for each exception individually.

### **Extension Options**

#### **Homework**

**A.** Explain to students that customs agents at the national border may search a person or their property without a warrant, as may personnel at an airport when someone wants to board a flight. How have fears of terrorism affected the way people view this practice?

What other criminal procedures protections, if any, would it be acceptable to relax in light of the war on terror?

### **Enrichment**

**A.** Have students create a PowerPoint presentation reporting on the ways in which technology (the Internet, technological advances in surveillance, digital recording, etc) is changing the definition of “search” and “privacy.” The presentation should also answer the question: how can lawmakers best design policies that protect citizens from unreasonable searches and seizures while taking into account advances in technology?

**B.** Ask students to suggest other exceptions to warrant requirements where they believe that the security of all citizens should be more important than the protection of privacy. Students should support their suggestion by researching times in American history when criminal procedure protections were relaxed, including the present day.



## LESSON 2 **How Are Fourth Amendment Protections Enforced?**

**T**he Founders formed the American system of government to protect the rights of all persons, including those suspected of crimes. The warrant requirement is an example of this system. If the police wish to search someone, they must first get a warrant. The police, agents of the Executive branch, must first get the warrant from the courts—the Judicial branch. If they agree that probable cause exists, the courts give the police the okay to act. One branch of government checks (or prevents) the other branch from violating peoples' rights.

### READING TIP:

As you read, use Student Handout A to keep track of important cases.

### What Is the Exclusionary Rule?

Sometimes a news report will say that a suspected criminal was released “on a technicality.” Often, this means that the state seized evidence without a legal warrant. Therefore, it could not use that evidence to prove its case. This is called the exclusionary rule. In the 1961 case of *Mapp v. Ohio*, the Supreme Court said states cannot use evidence that was obtained illegally at trial.

Police must be certain their warrant is correct and complete. In *Groh v. Ramirez* (2004), the Court held that an incorrectly written search warrant could result in any evidence obtained being excluded from trial. The exclusionary rule is an important tool in defending a citizen's Fourth Amendment rights.

In theory, the result is that police are encouraged to follow procedure and respect citizens' rights. By refusing to let the jury hear of illegally obtained evidence, the exclusionary rule works as a key check on police power. Supreme Court Justice Tom Clark observed in 1961, “The criminal goes free, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its laws.”

The Supreme Court has allowed some leeway in using illegally seized evidence at trial. If the police prove the evidence would surely have been found through legal means, it may be presented at trial. This is called the inevitable discovery principle.

Many debate whether the exclusionary rule is just. Critics claim that the rule punishes the public for a police officer's mistakes by letting criminals go free. Other critics have claimed the rule does not stop officers from searching illegally because they face no personal punishment.

### How Does Technology Affect Privacy?

Meanings of words evolve over time. “Search” has taken on new meanings since the Founders wrote the Constitution. Some have pointed out that new inventions now make a “search” possible without physical entrance. Others have asked whether it should include drug testing of employees and students.

Neither the Constitution nor the Bill of Rights specifically says there is a “right to privacy.”



The Supreme Court, however, has found one by virtue of the First, Fourth, and Ninth Amendments in *Griswold v. Connecticut* (1965). In *United States v. Katz* (1967), the Court said more about this right to privacy. It ruled that monitoring and recording of a conversation without permission might infringe one's "reasonable expectation of privacy." Future changes in technology may change reasonable expectations.

The case of *Kyllo v. United States* (2001) also concerned issues of technology and privacy. Police believed Danny Kyllo was growing marijuana in his home. They used a heat-sensing device to look for evidence of heat lamps used to grow the illegal plants. The Court found that the police actions were an illegal search, saying when the government "uses a device that is not in general public use, to explore details of the home...the surveillance is a 'search' and is...unreasonable without a warrant."

Private information, however, must sometimes be given to government agencies. In *Hiibel v. Sixth Judicial District of Nevada* (2004), the Court ruled that people must give

their names to police officers investigating a crime. The Court said that since officers must have reasonable suspicion that a person has been involved a crime, the requirement to give one's name balances individual rights with the government's interest in public safety.

### **Are Drug Tests "Searches?"**

Drug tests can be a kind of search. The court has allowed them in cases where the government's interest in safety is great. For example, the Court agreed that a railroad company could give drug tests to railroad workers who had been in an accident.

The Court also ruled on drug testing in schools. In the 1995 case of *Vernonia School District v. Acton*, the Court ruled that schools may force athletes to take random drug tests. In *Board of Education of Pottawatomie County v. Earls* (2002), students fought a school rule that required drug testing for all extra-curricular activities, not just sports. The drug test was even a condition to take courses linked to activities such as band or choir. The Court upheld the policy because it "reasonably serves the School District's important interest in detecting and preventing drug use among its students."

As anger at rising crime rates and fears of terrorism climb, some call to relax the protections guaranteed by the Fourth Amendment. Those protections, they say, sometimes make it harder to catch and convict criminals. It is important to understand the reasons the Founders included those protections and the consequences of setting them aside. This way, Americans can balance the need for safety with prevention of government oppression.

## LESSON 2 ***Selected Fourth Amendment Supreme Court Decisions***

**Directions:** Read the essay, “How Are Fourth Amendment Protections Enforced?” and note the several Supreme Court decisions that are described. For each case, briefly summarize what the Court ruled about search and seizure situations. The first case has been completed for you.

**1. *Mapp v. Ohio* (1961)**

**When the police find evidence illegally, that evidence may not be used against the defendant in court.**

**2. *Groh v. Ramirez* (2004)**

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**3. *Griswold v. Connecticut* (1965)**

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**4. *United States v. Katz* (1967)**

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**5. *Kyllo v. United States* (2001)**

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**6. *Hiibel v. Sixth Judicial District of Nevada* (2004)**

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**7. *Vernonia School District v. Acton* (1995)**

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**8. *Board of Education of Pottawatomie County v. Earls* (2002)**

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## LESSON 2 **Case Study: United States v. Banks (2003)**

**Directions:** Read the following case summary and answer the questions below.

**CASE SUMMARY:** In 1998, heavily armed police officers went to LaShawn Bank's Las Vegas apartment at 2 pm. The police and FBI had a warrant to search for cocaine in his two-bedroom apartment. The officers called out, "Police search warrant," and rapped hard on the front door. Officers at the back door testified that they heard the request to enter. After 15-20 seconds with no answer, the front door was broken down. Banks had been in the shower and said he heard nothing until the crash of the door, which brought him, soapy and dripping wet, to see police in his living room.

The police then searched the apartment and found crack cocaine, weapons, and other evidence of drug dealing. Banks was then arrested. After the District court denied Banks' motion to suppress [not use] the evidence seized, Banks pleaded guilty but said he would challenge the seizure in his appeal.

**Did the police violate Banks' constitutional rights against unreasonable search and seizure by waiting only 20 seconds to enter his apartment?**

**1. Constitutional arguments supporting the police actions:** \_\_\_\_\_

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**2. Constitutional arguments against the police actions:** \_\_\_\_\_

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**3. In your opinion, was the police action constitutional or unconstitutional? Why?**

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**4. Best opposite argument:** \_\_\_\_\_

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## LESSON 2 **Case Study: Maryland v. Pringle (2003)**

**Directions:** Read the following case summary and answer the questions below.

**CASE SUMMARY:** In 1999, a Baltimore County, Maryland, police officer pulled over a Nissan Maxima for speeding at 3:16 am. The arresting officer saw a large roll of bills in the glove compartment, then searched the car with the owner's permission. Five bags containing small amounts of crack cocaine were found behind the backseat armrest. The officer then threatened to arrest all three occupants of the car unless someone admitted to ownership of the drugs and money. After each refused to confess, the officer arrested all three men. Two hours after they arrived at the police station, the front-seat passenger, Joseph Pringle, admitted the drugs and money were his. The officer released the driver and other passenger.

Pringle was tried, convicted, and sentenced to ten years in prison for possession of cocaine with intent to distribute. The Maryland Court of Appeals overturned his conviction and the State of Maryland brought the case to the U.S. Supreme Court.

**Did the police violate Pringle's constitutional rights against unreasonable search and seizure by arresting him just because he was in a car which contained illegal drugs?**

**1. Constitutional arguments supporting the police actions:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**2. Constitutional arguments against the police actions:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**3. In your opinion, was the police action constitutional or unconstitutional? Why?**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4. Best opposite argument:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## LESSON 2 **Case Study: Illinois v. McArthur (2001)**

**Directions:** Read the following case summary and answer the questions below.

**CASE SUMMARY:** Around 3 pm on an April day in 1997, Tera McArthur went with two police officers to the trailer home she shared with her husband, Charles. The officers were there to make sure there were no problems while Ms McArthur removed her belongings from the home. When she came out of the trailer, she told one of the officers that “Chuck slid some dope underneath the couch.” When Asst. Chief Love told Charles what Tera had said and asked if he could search the trailer, Charles refused. Asst. Chief Love then sent the other officer and Tera to obtain a search warrant.

Charles, now out on the porch, was then told by Asst. Chief Love that he could not reenter the trailer without an officer with him. Charles did go back in two or three times, while Love stood in the doorway to observe. When the other officer returned about 5 pm with a warrant, the trailer was searched. Charles was arrested when smoking paraphernalia and a small amount of marijuana were found.

At trial, Charles McArthur said that the evidence should be suppressed [not used] because the police had unlawfully not allowed him to reenter the trailer alone. He admitted that if he had had the chance, he would “have destroyed the marijuana.” The trial court and the Illinois Supreme Court both agreed with McArthur, and the State of Illinois appealed to the US Supreme Court.

**Did the police violate McArthur’s constitutional rights against unreasonable search and seizure by refusing to allow him to reenter his trailer alone?**

**1. Constitutional arguments supporting the police actions:** \_\_\_\_\_

\_\_\_\_\_

**2. Constitutional arguments against the police actions:** \_\_\_\_\_

\_\_\_\_\_

**3. In your opinion, was the police action constitutional or unconstitutional? Why?**

\_\_\_\_\_

\_\_\_\_\_

**4. Best opposite argument:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## LESSON 2 *Search Warrant Application*

### *United States District Court*

DISTRICT OF \_\_\_\_\_

#### **In the Matter of the Search of:**

(name, address or brief description of person, property or premises to be searched)

#### **CASE NUMBER:**

I \_\_\_\_\_, being duly sworn, depose and say;

I am a(n) \_\_\_\_\_ and have reason to believe that  
OFFICIAL TITLE

☐ on the person of or ☐ on the property or premises known as (name, description and/or location)

in the \_\_\_\_\_ District of \_\_\_\_\_

there is now concealed a certain person or property, namely (describe the person or property to be seized)

The facts to support a finding of Probable Cause are as follows:

Continued on the attached sheet and made a part hereof.

☐ Yes ☐ No

\_\_\_\_\_  
SIGNATURE OF AFFIANT

Sworn to before me, and subscribed in my presence

\_\_\_\_\_  
DATE

at

\_\_\_\_\_  
CITY AND STATE

\_\_\_\_\_  
NAME AND TITLE OF JUDICIAL OFFICER

\_\_\_\_\_  
SIGNATURE OF JUDICIAL OFFICER



## LESSON 2 ***Exceptions to Search Warrant Requirements***

**Directions:** Described below are five situations which the courts have ruled as reasonable searches and therefore no warrant was required. Do you agree? Why or why not?

1. When a person is lawfully arrested, the police may search the person and the area close to him for such things as weapons, evidence that could be destroyed, and any other items that could be a danger to the police or others.

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2. When a police officer is in a place where she is allowed to be (for example, walking down the sidewalk,) and sees an illegal item in plain sight, the item may be seized.

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3. If a police officer sees a person who is behaving suspiciously and who could be armed, the officer may stop the person and 'frisk' that person (search his body).

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4. When a person agrees to be searched, the police do not need a warrant.

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5. The police are chasing a suspect down the street and see her enter a building. They may go in after her and seize evidence they find while in such 'hot pursuit' of the fleeing suspect.

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## ***Teacher Notes***

# *The Bill of Rights and Citizen Juries*

Explores the history of citizen juries,  
constitutional protections of jury trials,  
the *voir dire* process of jury selection,  
and the jury power of nullification.



# The Bill of Rights and *Citizen Juries*

## **Fifth Amendment**

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## **Sixth Amendment**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

## **Seventh Amendment**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

## **Unit Introduction**

While most citizens will never become a judge or hold elected office, one position vital to self-government in the United States that most people can expect to hold is that of juror. Most citizens have had or will receive a call to serve as a juror, rendering judgment of a fellow citizen. By trusting ordinary men and women to sit in judgment under the law, citizen juries embody government of, by, and for the people.

## **Unit Objectives**

*Students will:*

- Explain how participation in civic affairs works to secure personal liberty.
- Explain why the Founders thought juries were vital to maintaining individual rights.
- Understand the powers of *petit* jurors and juries.
- Analyze the process of jury nullification and explain how it can be used to defend citizens' rights.

## **Synopsis of Lessons and DVD**

### **Lesson 1**

Students explore why the jury trial was important to the Founders and why it was included in the Bill of Rights. Students will learn why the jury system is a vital safeguard of liberty. They will serve on a mock jury and deliberate the fate of a defendant.

### **Lesson 2**

The lesson explores the function of the jury and its role in constitutional government. Students will participate in a mock *voir dire* and understand the evolution of jury selection processes.

*"The juries are our judges of all fact, and of law when they choose it."*

—THOMAS JEFFERSON

## LESSON

## 1

***What Is the Tradition of Citizen Juries?*****Overview**

The tradition of citizen juries goes back centuries—as does the abuse of juries by rulers. The Founders, having endured the British practice of sending colonists to admiralty courts to be tried by a judge rather than a jury, secured the right to a jury trial in three of the first ten amendments to the Constitution. Centuries later, many citizens are not aware of a jury's full powers and responsibilities. One of these powers, nullification, is important yet controversial.

**Standards**

- NCHS (5-12): Era III, Standard 3B; Era V, Standard 1A
- CCE (9-12): IID1, VB1, VC1, VD2, VE2
- NCSS: Strands 2, 5, 6, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Explain the role of juries in a free society.
- Understand how the Fifth, Sixth, and Seventh Amendments protect the right to jury trials.
- Understand the origin of the tradition of citizen juries.
- Understand the history of jury abuse by rulers.
- Deliberate facts of a case in a simulated jury trial.
- Evaluate the ramifications of jury nullification.

**Materials**

STUDENT

- Key Terms
- Background Essay
- Reading Quiz (optional)
- Citizen Juries DVD and Viewing Guide
- Handout A: The History of Juries
- Handout B: A Jury Trial
- Handout C: Analyzing Jury Powers
- Handout D: The Fifth, Sixth, and Seventh Amendments

TEACHER

- Key: Handout A
- Key: Handout C
- Key: Handout D

**Lesson Plan****1. Background/  
Homework**

*[10 minutes the day before]*

Have students read the Lesson One **Background Essay**, “**What Is the Tradition of Citizen Juries?**” and fill out the chart on **Handout A: The History of Juries** as they read.

**2. Warm-Up**

*[10-15 minutes]*

**A.** Begin discussion of citizen juries by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrights.institute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**B.** Divide class into groups of five (or another odd number). Tell the class that each group is now a jury, and their first task is to elect a foreperson.

**C.** Explain that the year is 1851 and the law of the land is the Fugitive Slave Act, which makes it a crime to harbor or assist escaped slaves. Distribute **Handout B: A Jury Trial**. Students should read the scenario, deliberate, and vote on Harriet's guilt or innocence. A unanimous vote is required for conviction.

**D.** After each group has had time to deliberate, have each foreperson report their verdict to the class. Each foreperson should say “We the jury find the defendant, Harriet, [guilty or not guilty].”

**E.** Allow class discussion about the case and the verdicts. Did any juries nullify? Why or why not?

### **3. Activity**

*[20-30 minutes]*

**A.** Keep students in their groups and distribute **Handout C: Analyzing Jury Powers** to each student.

**B.** Read the four quotes together as a class and then ask each group to discuss the quotes and the concept of jury nullification. Possible questions might include: Do you believe most citizens today are aware of this jury power? Why or why not? What are the possible consequences to society of jury nullification?

**C.** Have each student answer questions one and two on **Handout C** individually.

**D.** Show Bill of Rights Institute Juries DVD and have students complete Viewing Guide.

**E.** Wrap up by distributing **Handout D: The Fifth, Sixth and Seventh Amendments** and having students test their knowledge.

## **Extension Options**

### **Homework**

**A.** Have students brainstorm a list of questions to ask an adult who has served on a jury. They should then interview at least one adult who has done so. Students should write a synopsis of what they learned about serving on a jury from the interview.

**B.** Ask students to consider what the Sixth Amendment means when it says a jury must be “impartial.” What makes a potential juror impartial? Have students list at least five qualities or traits needed for impartiality, and explain their choices.

## **Enrichment**

Ask students to research a famous case of jury nullification. Possible topics include the Zenger libel trial, the case of William Penn, or current trials where juries have refused to convict doctors who assist with suicide or medical marijuana users. What were the facts of the case? What laws did the juries nullify? Was this a legitimate exercise of their power, or are juries who nullify promoting lawlessness?



### **Real Life Portal**

Have students interview an attorney or other legal professional about the jury selection process. If possible, invite such an individual to speak in class. Then have the class write a script for a mock trial about a timely topic. Have individual students take turns “acting” as lawyers for the defense and prosecution and empanel a jury of their classmates to hear the case.



# The Bill of Rights and *Citizen Juries*

## LESSONS 1 & 2 *Key Terms*

### Unlock the Key Terms

Choose a key term and 2–3 words that mean the same.

**Directions:** As you read each Background Essay, be on the lookout for these key terms. After reading, write out the correct definition for each term.

alleged \_\_\_\_\_

\_\_\_\_\_

grand jury \_\_\_\_\_

\_\_\_\_\_

impartial \_\_\_\_\_

\_\_\_\_\_

jury nullification \_\_\_\_\_

\_\_\_\_\_

abolitionists \_\_\_\_\_

\_\_\_\_\_

jury pool \_\_\_\_\_

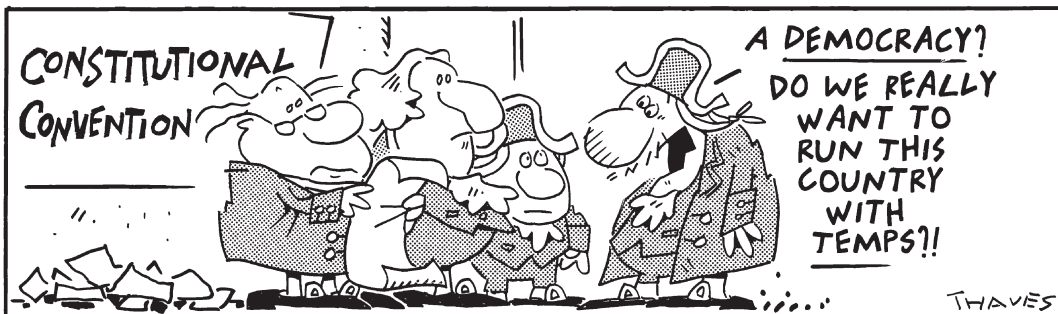
\_\_\_\_\_

unbiased \_\_\_\_\_

\_\_\_\_\_

sequestered \_\_\_\_\_

\_\_\_\_\_



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## LESSON 1 **What Is the Tradition of Citizen Juries?**

**W**hether it is *Judge Judy* during the day, *Law and Order* in prime time, or *Court TV* around the clock, Americans are fascinated by the justice system. As interesting as it is to watch courtroom dramas, taking part in them is even more meaningful. Juries bring the voice of the people to the justice system. Twelve private citizens sit in judgment of their neighbors with the power to apply the law. The police search, the lawyers debate, and the judge oversees the trial, but it is the jurors who make the final decision.

### READING TIP:

Try reading the first sentence of each paragraph, and then going back and reading the whole essay.

### How Did Citizen Juries Emerge?

The role of citizen juries in a free society began in 1215 with the Magna Carta. King John of England declared: “No freeman shall be taken, imprisoned...or in any other way destroyed...except by the lawful judgment of his peers.” Despite this policy, King John and later rulers were still hostile to juries. They sometimes ignored them or even punished jurors for their verdicts.

### Can Jurors Be Punished for Their Verdicts?

In 1670 England, William Penn was arrested for preaching at a Quaker religious meeting. He had openly broken the law that made the Church of England the kingdom’s only legal church. Penn was clearly “guilty” under the

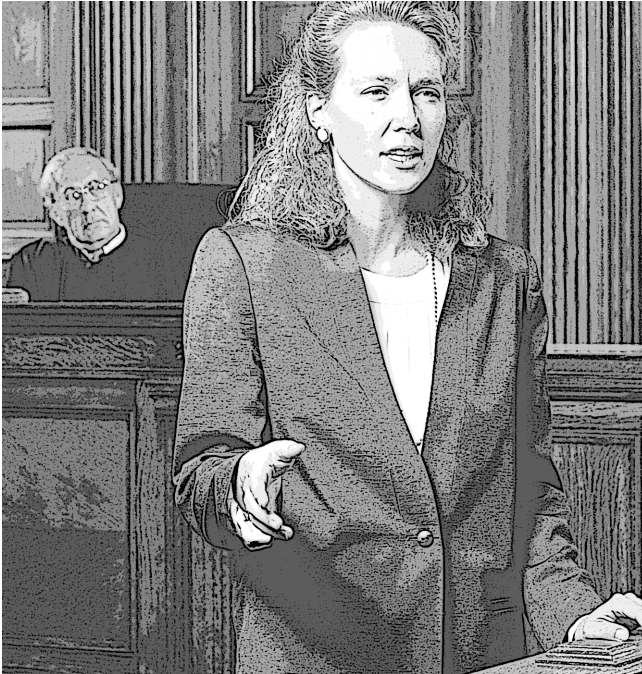
law. But four jurors would not convict. The four holdouts said it was an “unjust law.”

The four Penn jurors were sentenced to nine weeks of torture in prison. King Charles II freed the jurors after a few days, but fined each a lot of money. The four refused to pay and remained in jail until the court removed the fines. The Penn case demonstrates the principle that juries now cannot be punished for their verdicts.

### How Do the Constitution and the Bill of Rights Protect Juries?

Before the American Revolution, the British often did not honor the right to a jury trial. This action fueled the colonists’ desire for independence. The colonists particularly hated the British practice of taking colonists away to England to be tried in admiralty courts. In these courts, a single military judge determined guilt. In the Constitution, the Founders made sure that “the Trial of all Crimes... shall be by Jury” in the state where the alleged crime was committed. The tradition of citizens finding guilt was upheld.

The Bill of Rights affirms in three places the right to a trial by jury. The Fifth Amendment states that the federal government must provide a grand jury for “a capital or otherwise infamous crime.” Grand juries have between sixteen and twenty-three members. To carry out this rule, a federal prosecutor must convince twelve jurors that there is enough evidence to go to trial. The grand jury system makes sure that citizens decide if the government may charge someone with a very serious crime.



*The Bill of Rights affirms  
in three places the right  
to a trial by jury.*

### **Is Jury Nullification Right or Wrong?**

The reason jurors choose to set aside the law determines whether jury nullification contributes to or obstructs justice. In the early Nineteenth century, fugitive slave laws made it illegal to harbor or assist escaped slaves, but many jurors believed slavery to be an immoral and unjust institution. Many juries refused to convict abolitionists for breaking the law. Cases of jury nullification allowed abolitionists to remain free and led to the continuance of the abolitionist movement.

However, in the twentieth century, juries in the American south sometimes refused to convict Ku Klux Klan members and others who lynched and murdered African-Americans or white civil rights workers. These were not cases of jurors refusing to apply an unjust law, but rather of racist jurors sympathizing with racist defendants. Jury nullification remains a controversial issue.

Average citizens on juries have held tremendous power for hundreds of years in America. They continue to do their civic duty to administer justice and sometimes even change the course of history. One day you will no doubt be called for jury duty. It will be your chance to play a part in justice being done.

The Sixth Amendment requires that a jury be impartial. The trial must also be held in the state where the alleged crime took place.

The Seventh Amendment protects the right to a jury trial in most federal civil lawsuits. These lawsuits usually are brought in federal court because the parties live in different states.

### **What Power Do Juries Have?**

Juries have powerful abilities. They determine the facts of a case. They decide who is truthful and who is lying. They apply the laws in the courtroom. They choose which citizens will be allowed to remain free and which ones will be removed from society. They have the power to find guilt or innocence.

Jurors often don't know about one of their most powerful rights. If a jury believes a law to be unjust, they can refuse to convict someone who has broken it. This is called jury nullification. This was the case in the trial of William Penn.

**LESSON 1**    ***The History of Juries***

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**Directions:** As you read the Lesson One Background Essay, “What Is the Tradition of Citizen Juries?,” fill in the chart describing how King John, King Charles II, and the British before the American Revolution treated jurors and their verdicts.

	TREATMENT OF JURORS AND VERDICTS
Magna Carta and King John (1215)	
King Charles II (1670)	
British treatment of colonists before the American Revolution	

## LESSON 1 *A Jury Trial*

**Directions:** Read the following scenario and then deliberate with your fellow jury members whether to find Harriet guilty or not guilty. A unanimous vote is required for conviction.

**SCENARIO:** The year is 1851 and you've been called for jury duty. The prosecutor, defense attorney, and judge have presented you with the following facts. After electing a foreperson, decide with your fellow jury members whether you will find the defendant guilty or not guilty. Your foreperson will report your verdict to the class, but all jury members should be prepared to explain their reasoning.

- Harriet, a white Maryland housewife, was arrested last month for allowing an escaped slave to stay in her home.
- After leaving Harriet's home, the slave continued north and was caught attempting to enter Canada. He was returned to his master in North Carolina.
- Found among the slave's very meager possessions was a sapphire necklace belonging to Harriet.
- Harriet took the stand in her own defense. She did not deny helping the slave and explained that she gave him the necklace to sell for whatever money he could get to help him in his trip North.
- The Fugitive Slave Act, passed in 1850, clearly makes it illegal to harbor or assist escaped slaves.

**“We the jury find the defendant, Harriet, \_\_\_\_\_”**

## LESSON 1 **Analyzing Jury Powers**

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**Directions:** Read and think about the following ideas about jury powers and responsibilities. Then answer the questions at the end.

"It is not only the juror's right, but his duty... to find the verdict according to his own best understanding, judgment, and conscience, though in direct opposition to the directions of the court."

**- John Adams**

"I consider trial by jury as the only anchor yet imagined by man by which a government can be held to the principles of its constitution."

**-Thomas Jefferson**

"The jury has a right to judge both the law as well as the fact in controversy."

**-John Jay, first Chief Justice of the Supreme Court**

"Jurors should acquit, even against the judge's instruction...if exercising their judgment with discretion and honesty they have a clear conviction that the charge of the court is wrong."

**- Alexander Hamilton**

- 1.** Thomas Jefferson believed jury duty to be more important than voting as a civic duty. Why do you think the Founders believed serving on a jury was so important?

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- 2.** Do you believe that jury nullification is an appropriate exercise of a jury's power, or do you think it is an irresponsible thing for them to do? Explain.

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## LESSON 1 *The Fifth, Six, and Seventh Amendments*

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**Directions:** Fill in each blank with the correct word.

1. The \_\_\_\_\_ Amendment requires that the federal government provide a grand jury for “a capital or otherwise infamous crime.”
2. The Sixth Amendment requires that a jury be \_\_\_\_\_.
3. A trial must also be held in \_\_\_\_\_.
4. The Seventh Amendment protects the right to a jury trial in \_\_\_\_\_.
5. Grand juries are made up of \_\_\_\_\_ members, and a prosecutor must convince \_\_\_\_\_ of them that there is enough evidence to go to trial.
6. \_\_\_\_\_ out of ten amendments in the Bill of Rights protect the right to a jury trial.



## LESSON

## 2

**What Is Role of Jurors?****Overview**

Many of the Founders believed that serving on a jury was more important than voting as a civic duty. Ironically, many today have come to see jury duty as an inconvenience or even a burden. But serving on a jury is an honor as well as a responsibility. The *voir dire* process of jury selection is one way our justice system attempts to empanel impartial jurors. It is an integral way for citizens to be involved in the justice system. Indeed, citizens are the cornerstones of it.

**Standards**

- NCHS (5-12): Era III: 3A, 3B
- CCE (9-12): IIA1, IIC1, IID1; VA1, VC2, VD2
- NCSS: Strands 2, 5, 6, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Understand the various responsibilities of jurors.
- Understand the *voir dire* process of jury selection.
- Compare historical methods of jury selection.

**Materials****STUDENT**

- Background Essay
- Reading Quiz (optional)
- Handout A: Jury Pool Description
- Handout B: Jury Pool Selection Sheet

**TEACHER**

- Key: Handout B

**Lesson Plan****1. Background/  
Homework**

[10 minutes the day before]

**A.** On the day prior to class, have students read Lesson Two Background Essay, “What Is the Role of Jurors?”

**2. Warm-Up**

[10-15 minutes]

**A.** Begin discussion of citizen jurors by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrights.institute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**B.** Divide class into groups of three or four, and have each group brainstorm things they know—both from reading the essay as well as their prior knowledge—about juries and their job during a trial. They may include examples from famous cases in the news, television programs, etc. Have each group share their answers and discuss as a class whether most people view jury duty as an honor or an inconvenience.

**3. Activity**

[20-30 minutes]

**A.** Explain to class that when a court selects jurors, it summons more citizens than it actually needs. All these people are randomly selected from the community of the court’s jurisdiction. They make up the jury pool, which should represent a “fair cross section” of the community.

**B.** Explain that the jury selection process is called *voir dire*, a French term meaning “To speak the truth.”

**C.** Distribute **Handout A: Jury Pool Description**. Tell the students they will be determining the fitness of each of these particular people to serve as a juror in this case. Give students time to read the case overview and descriptions.

**D.** Divide the students into groups of two to five and distribute **Handout B: Jury Pool Selection Sheet**. They should follow the directions for round one through round four.

**E.** For round five, have individual students play the roles of each potential juror, explaining their “excuses” to get out of jury duty. These reasons should be based not on potential bias, but on “modern excuses” such as inconvenience, other commitments and so on. The rest of the class should note on their handouts whether each juror should be excused.

**F.** Wrap up by asking the class:

- Which system of jury selection do you believe will produce the most just outcome?
- How important is jury selection to the fate of the defendant?
- What happens when people choose not to participate?

## Extension Options

### Homework

**A.** Ask students to return to round three on **Handout B**, and write a sentence explaining whether each juror would be more likely to be challenged by the prosecution or the defense in Frank’s manslaughter trial. Sentences should explain what potential bias exists and why either side might object to the juror.

**B.** Ask students to reflect on the following quote and write a one-page personal narrative detailing how it applies to their own lives. How does it apply to jury duty? To whom do jurors have a duty? To whom is their obligation? The defendant? The court? All of society? Explain.

*“I believe that every right implies a responsibility; every opportunity an obligation...”*

– John D. Rockefeller  
American philanthropist

### Enrichment

**A.** Have students create a public service announcement in the form of a sixty-second radio or television commercial or a one-page magazine ad, describing and promoting the importance of serving on a jury.

**B.** Have students research *Strauder v. West Virginia* (1880), *Taylor v. Louisiana* (1975), or *Hernandez v. Texas* (1954). How did each case impact the ability of citizens to serve on juries?

## LESSON 2 *What Is the Role of Jurors?*

**T**he judge's voice breaks the silence of the courtroom. "Has the jury reached a verdict?" For the last two days the jury has been presented evidence and has now finished deliberating. All eyes are on the jury foreperson, including the defendant's. The victim's family, seated in the courtroom, also stares in anticipation. Members of the press sit with their pencils poised.

"Yes, your honor, we have," the foreperson replies.

"What say you?"

Now the tension is even greater, as everyone in the courtroom waits to hear whether the defendant will be found guilty or not guilty. People on juries possess more power than many of them know.

The Founders placed much power in the jury's hands. Thomas Jefferson, for example, believed serving on a jury was more important for ordinary citizens than voting. Today, even as juries remain important guards of individual rights, most jurors do not realize their full powers and responsibilities.

### READING TIP:

As you read, think of situations you've seen on television about juries. Does it seem familiar?

### How Is a Jury Assembled?

As a first step in selecting jurors, courts call more citizens than they actually need. The jury pool is made up of the people who live



in the court's jurisdiction. These persons are selected at random to ensure a fair cross-section of the community.

Next, the judge and attorneys interview the prospective jurors. They ask questions to see if each prospective juror can be unbiased. Attorneys may remove or strike prospective jurors based on their interviews. For example, if a person has strong personal or political biases, he or she may not be able to set them aside and be fair.

Serving on juries has not always been an option for all Americans. African Americans and women fought long legal battles to win the right to serve on juries. The Supreme Court ruled on these issues in *Strauder v. West Virginia* (1880), *Taylor v. Louisiana* (1975), and *Hernandez v. Texas* (1954). Today, most jury lists are drawn from voter registration and driver's license lists. This way they are more likely to reflect the gender, racial, and ethnic makeup of the community.

## **What Are the Responsibilities of Jurors?**

Jurors must listen objectively to the evidence and be prepared to consider the facts of the case. Jurors must also keep an open mind until the attorneys finish presenting evidence. They may not discuss the trial with anyone or view news accounts of it. In some cases where great media coverage is likely, jurors may be sequestered by the judge. This means they will live apart from their families, usually in a hotel. They can have no access to media sources for the length of the trial in order to be shielded from outside influence.

When the prosecution and defense are through with their cases, the judge instructs the jurors about the application of the law. The jury then withdraws to discuss. This can take hours or days. Once they reach their verdict, the foreperson reads it to the court.

## **Why Is Jury Nullification Controversial?**

Surprisingly, a jury may refuse to convict someone even if they think they are guilty as charged. If they find the law to be unjust, they can return a verdict of not guilty. In such cases, the jury is said to have nullified the law.

In the last forty years, juries have refused to convict pacifists who avoided the draft during the Vietnam War; marijuana-users accused of nonviolent offenses; and people who have assisted with euthanasia (physician-assisted suicide.) Men and women on juries have the power to send strong mes-

*Most jurors do not realize their full powers and responsibilities.*

sages to policy-makers with verdicts such as these. When they nullify, they are telling the government that they believe that certain laws are not just.

Nullification itself is controversial. Supporters argue that it is simply one way in which a jury might fulfill its duty. But critics assert that justice requires strict enforcement of the laws. They point to cases like those in the American south where white jurors refused to convict Ku Klux Klan members for murdering African Americans. Even in cases of truly unjust laws, they argue, the way to bring justice is to change the laws, not to ignore the existing ones.

In 1789, Thomas Jefferson wrote, “I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.” Citizens depend on the rule of law, the legal system, and their own education to be aware of their rights and responsibilities as jurors. Recognizing the powers of juries is an important way citizens can understand and take part in a democratic society.

It may be you one day who breaks the silence in the courtroom with the words “We the jury find the defendant guilty” or “not guilty.” The careful duty you will do as a juror affects not only the defendant and the other parties at the trial, but all of society as well.

## LESSON 2 *Jury Pool Description*

**Directions:** Read the case overview and the descriptions of individual jurors. Then follow the directions on Handout B: Jury Pool Selection Sheet.

**CASE OVERVIEW:** Jonathan Frank, 21, has been charged with manslaughter in the death of Jolie Emmanuel, 17, in a fatal alcohol-related crash last year. On a date with Emmanuel, Frank bought a pack of wine coolers for the young woman and watched her consume two bottles over the course of the evening. At the end of the date, Frank took Emmanuel back to her car. On the drive home, Emmanuel lost control of the vehicle and slammed into a cement barrier. She was killed instantly. The police report indicated alcohol levels below the legal limit and that Emmanuel had been speeding on rain-slicked roads at the time of the accident.

### **Juror 1—Ekaterina Brustein**

Middle-aged woman with two teenaged sons. She has served on a jury before, but the trial ended with a hung jury. She lives in the neighborhood where both Frank and Emmanuel grew up, but does not know them personally. One of her sons knows Frank, and the two of them have talked about the accident and the charges of manslaughter.

### **Juror 2—Jason Sweet**

Young male college student majoring in political science and pre-law. He works part time as an intern in the local district attorney's office and is a member of the debate team at the university. What little free time he has is spent studying and hanging out with the guys from his fraternity house.

### **Juror 3—Charles Davis**

Young man who works at a local auto repair shop. He went to the rival high school and completed a vocational tech program. He knew Emmanuel through his girlfriend, but was not close to her. He attends church near where the accident happened and passes the memorial to Emmanuel every weekend.

### **Juror 4—Veronica Rivera**

Elderly retired secretary for the police department. She is a widow. Her husband was a retired police officer before he passed away two years ago due to complications from diabetes. She participates in the League of Women Voters and tutors adult English as a Second Language students at the community center in Frank's neighborhood. She heard about the accident when it happened.

### **Juror 5—Eric O'Brien**

Retired 65-year-old business man with a strong New York accent who sold his local copy shop to a larger corporation three years ago. He has a daughter about Emmanuel's age, but to his knowledge, his daughter did not know Emmanuel personally.



## LESSON 2 *Jury Pool Description (continued)*

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### **Juror 6—Melanie Nguyen**

An emergency room doctor in her mid-thirties who works at the local hospital. She specializes in facial reconstructive surgery. She moved to the area six months ago from Washington, D.C.

### **Juror 7—Elias Kinshak**

Middle-aged school librarian who works at the local high school, volunteers for the American Library Association annual book drive, and trains for marathons in his free time. He recently ranked third in his age group at the New York Marathon.

### **Juror 8—Miroslava Miller**

Eighteen-year-old college freshman who used to live five streets over from the Frank family. She still keeps in touch with them. She doesn't know Frank personally. She graduated at the top of her class at the magnet school in the city and plans to become a broadcast news anchorwoman.

### **Juror 9—Kyle Sowell**

Middle-aged local banker and town councilman. He is married, has three children in a local Catholic school, and enjoys reading true crime stories in his spare time. He hopes to be elected mayor one day.

### **Juror 10—Kim Klein**

Single mother and child care worker in a chain daycare center in the heart of town. She dropped out of high school and received her GED. She has served on a jury once before in a civil trial. She commutes from outside the city and has no connection to either party in the Frank trial.

### **Juror 11—Vittoria Kantakoros**

Immigrant to the United States who works full time at a local computer software company. She holds two Ph.D.'s: one in physics and one in computer science. She also works as a professor at a local university and as a result works sixty to eighty hour weeks. She knows the Emmanuel family and her new house is in the same development as the Emmanuel family's.

### **Juror 12—Claire Tremont**

Middle-aged former horse trainer who lives with her husband on a large ranch located in the peaceful countryside. Five years ago, she was involved in an auto accident that left her unable to participate in riding competitions. Her truck and trailer were hit head-on by a drunk driver in a red sports car on the two-lane road that leads to her property.

## LESSON 2 Jury Pool Selection Sheet

**Directions:** You are the judge in this case and you are trying to create as fair a jury as possible, according to the requirements listed below. Read carefully the descriptions on Handout A and go through the jury selection process for rounds one through four. For each round, mark K for “keep” or “E” for eliminate for each juror. For round five, you will hear the excuses of each juror and decide whether or not to keep them.

	<b>Round One</b> Only people who live in the area and are familiar with the case are allowed to serve. <i>(As in old English Common Law)</i>	<b>Round Two</b> Only people who do not live in the area and are not familiar with the case are allowed to serve. <i>(Known as striking for cause in modern America)</i>	<b>Round Three</b> Anyone can be eliminated because of potential bias. <i>(Known as a preemptory challenge in modern America)</i>	<b>Round Four</b> No jury but a judge instead. <i>(Which defendants have the right to request)</i>	<b>Round Five</b> Juror excuses
1. Ekaterina					
2. Jason					
3. Charles					
4. Veronica					
5. Eric					
6. Melanie					
7. Elias					
8. Miroslava					
9. Kyle					
10. Kim					
11. Vittoria					
12. Claire					



## ***Teacher Notes***

# *The Bill of Rights and Personal Liberty*

Explores the unenumerated rights reserved to the people with reference to the Ninth and Fourteenth Amendments, with a focus on rights including travel, political affiliation, and privacy. Probes the ways the Ninth and Fourteenth Amendments have been used to claim rights to personal liberty.



# The Bill of Rights and *Personal Liberty*

## **Fifth Amendment**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

## **Ninth Amendment**

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

## **Fourteenth Amendment, Section 1**

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## **Unit Introduction**

Personal liberties, guaranteed and protected by constitutional provisions, include both freedom from unauthorized physical restraint, and the freedom to act. Two key amendments, the Ninth and Fourteenth, are relevant to personal liberty issues. How the Supreme Court interprets the Ninth and Fourteenth Amendments influences its rulings on some very controversial issues.

### **Note to Teacher**

This unit contains references to some controversial topics such as birth control, abortion, and gay marriage. Please see the "Suggested Letter to Parents" on page 290 which you may wish to distribute in advance of beginning the unit.

## **Unit Objectives**

*Students will:*

- Identify current personal liberty and privacy rights recognized by the Supreme Court.
- Identify their own expectations of privacy in everyday life.
- Understand why the Founders included the Ninth Amendment in the Bill of Rights.
- Understand enumerated and unenumerated rights.
- Evaluate opinions regarding which behaviors should and should not be recognized as rights.

## **Synopsis of Lessons and DVD**

### **Lesson 1**

Students focus on the differences in the types of rights—enumerated and unenumerated—recognized in the Bill of Rights, including the right to privacy.

### **Lesson 2**

Students examine how the courts and others view various rights. Students will focus on four Supreme Court cases which have involved the right to privacy and the Ninth and Fourteenth Amendments.

## LESSON

## 1

***How Does the Constitution Protect Personal Liberty?*****Overview**

The Founders listed several rights guaranteed to the people in the first eight amendments of the Bill of Rights. They did not believe that this list was all encompassing, so they included the Ninth Amendment as a way to protect the rights of the people that were not listed in the first eight. What are these rights that Americans felt have been worth protecting under the Ninth? Is it appropriate for judges to make the decision about the nature and content of these rights, or should be it up to the people through their elected representatives?

**Standards**

- NCHS (5-12): Era III, Standards 1B, 3A, 3B
- CCE (9-12): IIB1, VB1
- NCSS: Strands 2, 4, 5, 6, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Identify enumerated and implied rights.
- Summarize why the Founders included the Ninth Amendment in the Bill of Rights.
- Understand the impact of the Fifth and Fourteenth Amendments on personal liberty.
- Analyze how an invasion of privacy affects an individual.
- Evaluate personal liberty cases in the courts.
- Evaluate the balancing of the right of personal liberty with public policy.

**Materials**

STUDENT

- Key Terms
- Reading Quiz (optional)
- Background Essay
- Handout A: Memo from School Board
- Handout B: Legal Brief from School Board
- Handout C: Legal Brief from a Student Group
- Handout D: Court Decision Guideline
- Handout E: Newspaper Story Guideline

TEACHER

- Key: Handout D

**Lesson Plan****1. Background/  
Homework**

*[10 minutes the day before]*

**A.** Ask students to make a list of the ways they think their privacy is protected. Then, make a list of the ways they think their privacy is violated.

**B.** Have students read Lesson One **Background Essay, “How Does The Constitution Protect Personal Liberty?”** and write one paragraph in response to the questions: Does the government have a responsibility to protect your right to privacy? Are there times when your right to privacy can be overruled by others’ rights or concerns? Provide examples.

**2. Warm-Up***[10-15 minutes]*

**A.** Begin discussion of personal liberty by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrightsinstitute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**B.** Distribute **Handout A: Memo from School Board** detailing the proposed plan to mount video cameras in every classroom and each hallway. Have a student read the memo aloud to the class.

**C.** Begin large group class discussion by asking:

- What is the purpose of the policy? Is it a valid purpose?
- Do you agree with this policy? Why or why not? What one specific aspect of this policy do you most strongly agree or disagree with?

**3. Activity***[20-30 minutes]*

**A.** Put a copy of the Bill of Rights on the overhead and briefly review the first eight amendments. (See page v)

**B.** Divide students into nine groups. Explain that each group now represents one Supreme Court Justice. Within each group, assign the roles of spokesperson and recorder. Give each group one copy of **Handout B: Legal Brief from School Board** and **Handout C: Legal Brief from a Student Group**.

**C.** Write on the board: *“Does the Ninth Amendment protect the students’ right to privacy while inside a public school?”* Give the groups time to decide whether the school board’s policy is constitutional or unconstitutional under the Ninth Amendment and/or other amendments in the Bill of Rights.

**D.** Have each group record their decision and the reasons for it on **Handout D: Court Decision Guideline**. Have each spokesperson in each group cast their vote for constitutional or unconstitutional. Keep a tally and announce the “Supreme Court” decision.

**E.** Have students begin individual work on **Handout E: Newspaper Story Guideline**. Have students complete **Handout E** for homework if not enough class time remains.

## LESSON

## 1

***How Does the Constitution Protect Personal Liberty? (continued)*****Extension Options****Homework**

**A.** Have students draw a political cartoon about security cameras in the public schools and submit them to a local newspaper for publication. Make sure that the cartoon addresses the issues that have been discussed (privacy, security and the balance of the two).

**Enrichment**

**A.** In 1944, President Franklin Roosevelt outlined a “Second Bill of Rights.” Have students compare the rights in the Bill of Rights, which do not require actions on the part of others, and compare them with Roosevelt’s ideas of rights such as healthcare, education, work and others. Have students write a response paper explaining whether they would support adding these rights to the Constitution.

The text of Roosevelt’s speech can be found at: <http://teachingamericanhistory.org/library/index.asp?document=463>

**Real Life Portal**

Students should design a security policy for their school that protects the public property, students’ safety, and also protects the rights of the population of the school. What problems do they encounter while writing the policy? What sacrifices did they make about security or rights in the final policy? Have them submit their final policies to the school board for consideration.



# The Bill of Rights and *Personal Liberty*

## LESSON 1 & 2 *Key Terms*

### Unlock the Key Terms

Choose a key term and find an Internet site which uses that term in a sentence.

**Directions:** As you read each Background Essay, be on the lookout for these key terms. After reading, write out the correct definition for each term.

unenumerated rights \_\_\_\_\_

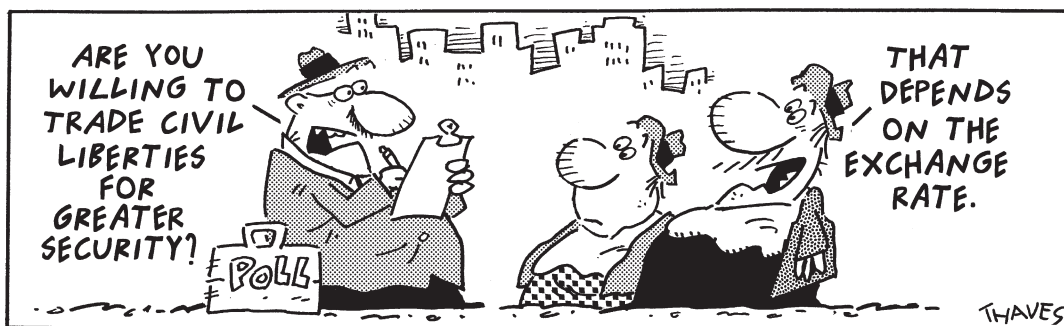
\_\_\_\_\_

due process \_\_\_\_\_

\_\_\_\_\_

right to privacy \_\_\_\_\_

\_\_\_\_\_



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## LESSON 1 *How Does the Constitution Protect Personal Liberty?*

**P**ersonal liberty is at the heart of freedom. Americans cherish their independence to make choices every day that affect their lives. The diverse and colorful society we enjoy is possible because each of us has personal liberty. Personal liberty is the freedom to act and to do the legal things you want to do: get a certain job, listen to music you enjoy or travel to places you want to see. In the end, personal liberty is the right to control your own destiny.

At the same time, personal liberty must be balanced against the rights of others. For instance, you do not have the personal liberty to blast music in a public library, wear revealing clothing that disturbs school, or drink beer before you reach the legal age.

### READING TIP:

As you read, try to think of ways the Ninth Amendment affects your own life.

### What Kinds of Rights Are There?

Most of the Founders believed that rights came from nature or from God. Most rights do not require others to take any action. For example, Americans may speak any language they want to, or they may grow their hair to any length. These actions do not call for any action on the part of others.

### Do You Have a Right to Force Others to Act?

You have a right to free speech. You do not, however, have the right to make anyone lis-

ten to you. The right to speak does not include the right to be heard. Along these same lines, you have the right to write songs and make your own CD. No one can stop you from making your own CD. You do not, however, have the right to get a record contract. You don't have a right to have your CD produced and distributed. There is no right to force a record label to do these things for you.

This principle demonstrates how personal liberty goes hand in hand with personal responsibility. There are no rights in the Bill of Rights that require others to act on your behalf. There are numerous rights, though, which guarantee persons are free to go after their own dreams and goals. This fulfills the Declaration of Independence and the right to pursue happiness.

### What Rights Does the Ninth Amendment Protect?

The Bill of Rights was added to make sure the government did not intrude too much into peoples' lives. But adding the amendments was controversial. It would be impossible to list every right. The Federalists worried that listing some rights might mean that others would be thought of as less important. To make sure this did not happen, the Ninth Amendment was included in the Bill of Rights.

The Ninth Amendment secures the people's unenumerated rights, or rights not listed in the first eight amendments. Of course, this often leaves open as many questions as it answers. Among the rights listed in the first

## How Does the Constitution Protect Personal Liberty? (continued)

eight are speech, religion, property and others. What rights does the Ninth cover? It does not say. Because of its broad scope, the Ninth Amendment is one key to the defense of personal liberty.

Another consequence of its broad scope is that many believe that where the Constitution does not specifically recognize a particular right, it should be left to the people and their elected officials to determine whether a right exists. This raises the issue of balancing personal liberty with democracy.

*There are no rights in the Bill of Rights that require others to act on your behalf.*

### How Do the First Eight Amendments Protect Personal Liberty?

Sometimes the Supreme Court decides that the listed rights imply the existence of a right that is not specifically mentioned. A famous example of this is the right to privacy. The First Amendment guarantees that you can associate with whomever you like. The Third and Fourth Amendments promise that the government cannot intrude into your home. The Fifth Amendment assures that you can keep silent if accused of a crime. The Supreme Court first identified this right to privacy in the 1965 case of *Griswold v. Connecticut*. The right to privacy is key to many issues of personal liberty including abortion, gay rights, and drug testing for students, athletes, and workers.



### What Does Due Process Mean?

The Ninth Amendment alone has rarely been expressly used to claim unenumerated rights. The Fifth and Fourteenth Amendments are crucial in protecting personal liberty. The Fifth and Fourteenth Amendments protect the individual's right to due process. Due process entitles all citizens to fair treatment by the government. The government cannot, for instance, skip part of a trial, because that would be unfair.

Due process also means that the law itself must be constitutional. Due process rights protect personal liberty in that they check government power. Lawmakers must write legislation that respects individual rights, and those laws must be enforced fairly.

One thing is certain: personal liberties are among the most hotly debated issues today. What level of government involvement in peoples' lives is appropriate? The question raises issues that are fundamental to liberty.

## LESSON 1 *Memo from School Board*

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### MEMO

**To:** Parents, Students, and Teachers

**From:** School Board

**Re:** Security Plan A

As discussed at the public meeting of the School Board last week, the board voted to begin “Security Plan A” in order to provide better security in the public schools. The cameras will be installed in all classrooms and hallways in the schools. These cameras will record a twenty-four hour digital video each day; after which, the video will be replaced by the next twenty-four hour recording. This system will ensure that the previous twenty-four hour period will be available at all times.

The plan is to provide security for our students and staff, both during the school day and after hours. The cameras will help us guard against unauthorized visitors, concealed weapons, drug use, and other concerns. In addition to offering security against any illegal activity, the cameras will aid the schools’ administrations with student discipline.

Recordings that are being used in a disciplinary or criminal action will be transferred to a digital video disk for the duration of the disciplinary or criminal proceedings. After the proceedings end, all video used in school proceedings will be destroyed. Any video used in legal proceedings will be under the jurisdiction of the courts and the state’s rules of evidence. Videos will be kept confidential unless they are needed in a disciplinary or criminal case.

The cameras will be installed within the next week, during the evening hours. Cameras will be set so that every room will have one camera with a rotating view, and each hallway will have a fixed view at either end.

## LESSON 1 *Legal Brief from School Board*

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### **BRIEF:** *School Board's Legal Argument in Favor of Security Policy*

The government has a responsibility to protect the citizens of this town. Both the taxpayers and the students attending the school have an interest in maintaining a safe and secure school building.

The security cameras will protect students because the video cameras will prevent violence, theft, and other destructive activities. In addition, academics will improve because the cameras will discourage cheating and other forms of academic dishonesty.

Additionally, the taxpayers have paid for the buildings and continue to pay for the maintenance of those buildings. The town has the right to protect the taxpayers' property by preventing the vandalism and petty crime that is causing the town to spend tax dollars investigating these incidents.

Finally, students do not have an expectation of privacy in the public schools. The students are supervised in every aspect of the school day, from homeroom to lunch to dismissal. The security cameras will only enhance the supervision that already exists in the school, and therefore provide better security for students. Further, the videos will be kept confidential unless they are needed in disciplinary action.

## LESSON 1 *Legal Brief from a Student Group*

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### **BRIEF:** *Student's Legal Argument Against the School Boards Proposed Security Policy*

The security cameras proposed for the public schools are a threat to the students' right to privacy. The cameras are looking for infractions of the rules that go unnoticed by the teachers on the assumption that the students are acting in a manner that is either illegal or against the school rules, but are not being caught. This is instead of the assumption that the majority of students are following the laws of our community and the rules of the school.

The students of the public schools have a right to privacy in their daily lives, guaranteed by the Ninth Amendment. The same way that students in a public school do not lose freedom of speech when they walk in to the school building, they do not lose their right to privacy because they attend school.

The right to privacy is one of the most basic of all human rights and has been protected by the Constitution all through the history of the United States. The basic accepted principles of free speech and freedom of religion have, at the core, the right to have private thoughts and beliefs. Protection from random searches has, at its core, the right of people to have privacy. The installation of cameras infringes on this basic right of privacy for the students in the schools.

## LESSON 1 *Court Decision Guideline*

**Directions:** After reading the briefs from the School Board and the student group, fill in the boxes below and answer the questions below.

### 1. Public Policy Reasons for the Action of the School Board

### 2. Constitutional Argument for the Action of the School Board

### 3. Constitutional Argument Against the Action of the School Board

4. Does the Ninth Amendment guarantee students' right to privacy in schools? Why or why not?

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5. Is the School Board's camera policy constitutional or unconstitutional? Explain.

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## LESSON 1 **Newspaper Story Guideline**

**Directions:** You are a reporter for the award winning newspaper *The Daily American*. As the Supreme Court hears the case of the school security cameras, you have been assigned to write a story about the Ninth Amendment because most of the readers don't know that much about it. The story should answer the question, "What does the Ninth Amendment mean?"

INCLUDE:

- an attention grabbing headline and introduction.
- the reasons that the Founders included the Ninth Amendment in the Bill of Rights.
- what rights the Ninth Amendment includes.
- the definition of implied and enumerated rights.
- one specific example of the Ninth Amendment or personal liberty.
- any future use of the Ninth Amendment for society.

**Headline**

**Paragraph 1/Grabber**—Reasons the Founders chose to include the Ninth Amendment

**Body**—Rights the Ninth Amendment includes, definitions, and an example

**Conclusion**—The Ninth Amendment in the future

## LESSON

## 2

***What Is the Scope of the Bill of Rights?*****Overview**

The Supreme Court has protected many rights not listed in the Bill of Rights, such as the freedom to travel without restriction, although it has not used the Ninth Amendment to do so very often. Other activities have not been protected, such as assisted suicide. How do the courts, and all citizens, know which rights are protected by the Constitution and which are not? Who should make the decision?

**Standards**

- NCHS (5-12): Era III, Standards 1B, 3A, 3B
- CCE (9-12): VB1, VB5
- NCSS: Strands 2, 4, 6, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Identify rights people have claimed under the Ninth Amendment.
- Understand the ways the Supreme Court has applied the Ninth Amendment to privacy cases.
- Analyze various perspectives of personal liberty issues.
- Evaluate whether the Ninth and Fourteenth Amendments apply to personal liberty cases.

**Materials****STUDENT**

- Background Essay
- Reading Quiz (optional)
- Personal Liberty DVD and Viewing Guide
- Handouts A1–A2: Supreme Court Personal Liberty Decisions

**TEACHER**

- Key: Handouts A1–A2

**Lesson Plan****1. Background/  
Homework**

*[10 minutes the day before]*

**A.** Have students read the Lesson Two **Background Essay**, “What Is the Scope of the Bill of Rights?”

**B.** Begin discussion of personal liberty by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrightsinstitute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**2. Warm up**

*[10-15 minutes]*

**A.** Have up on the board the following quote:

*“We hold these truths to be self evident: that all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness...”*

Discuss how the Declaration of Independence explained the Founders’ view that everyone has the right to life, liberty, and the pursuit of happiness.

**B.** Write on the board part of the first clause of the Fourteenth Amendment:

*“nor shall any state deprive any person of life, liberty, or property, without due process of law.”*

Point out to the class that this language echoes the Fifth Amendment's due process clause.

**C.** Ask the class what kinds of abilities must one have in order to have liberty?

**D.** Write student answers on the board. Ask students to come to the board and circle any that are mentioned in the **Background Essay**. For example: choosing your spouse, terminating pregnancy, driving, taking medicines, etc.

### 3. Activity

[15-20 minutes]

**A.** Show Personal Liberty DVD and have students complete Viewing Guide.

**B.** Divide students into pairs and have them complete **Handout A: Supreme Court Personal Liberty Decisions**. Students should refer to the Lesson Two **Background Essay** to complete only the issue and court opinion sections. Explain to students that the majority opinion represents how the Court ruled, while the justices who did not vote with the majority write the dissenting opinion.

**C.** Put up an overhead of **Handout A** and go over the first three columns (A–C) of the chart with the class as a large group.

**D.** For each case, ask students to summarize the Court's opinion and the dissent in their own words.

**E.** After clarifying any of the Supreme Court opinions or dissents, have students complete column D of **Handout A** individually, filling in their own opinion of how the court decided the case.

## Extension Options

### Homework

**A.** Have students re-write the Ninth Amendment to include any rights they believe should be protected. Then have them design a publicity poster or a billboard to convince people that the Ninth Amendment should protect that action.

**B.** Have students write a three paragraph essay in response to the following question. Who should decide what are “inalienable rights?” What are the risks and benefits to society if the courts decide? What are the risks and benefits to society if the voters decide?

### Enrichment

**A.** Turn students again to the Declaration of Independence and have them write a one-page essay in response to the question: “Why do we have the right to life, liberty, and *the pursuit* of happiness? Is there a right to happiness?” Why or why not?

## LESSON 2 **What Is the Scope of the Bill of Rights?**

**T**he Ninth Amendment does not list specific rights, but one thing it does guarantee is a good debate. Many of the issues of personal liberty are the ones that divide Americans the most.

### READING TIP:

Look for specific ways that the Bill of Rights has been interpreted to protect privacy.

### What Is the Ninth Amendment's Purpose?

James Madison felt very strongly that the Ninth Amendment was needed. It ensures that the rights actually listed in the Bill of Rights are not assumed to be more important than rights not listed. The Ninth Amendment does not list any specific rights, but it raises many possibilities. It has been read to protect all natural rights not specifically listed in the First through Eighth Amendments.

There are questions as to whether some personal liberty rights are truly natural rights. Further, many ask who should be the ones to decide whether a right exists. If the Constitution does not specifically list a right, should judges be the ones to say if it exists or not? Or, particularly with respect to moral issues, should it be up to the people and their elected representatives?

There is no right to drive a car listed in the Bill of Rights. Some people claim, though, that the Ninth Amendment protects a citizens' right to drive. They believe the government should not issue licenses. They argue

that work is a means of pursuing happiness and property. Since driving is a means of getting to work, driving should be a right. Others, however, want the government to regulate driving in order to protect them from reckless drivers.

The Supreme Court has been hesitant to use Ninth Amendment claims alone when deciding cases. They have looked for other support of rights in the Bill of Rights and Constitution.

### Is There a Right to Privacy?

People often talk about a right to privacy. This is not among the rights in the Bill of Rights, nor is it written anywhere in the Constitution. But most people feel that privacy and the right to make personal choices are part of being free. The Supreme Court has indeed found some kinds of privacy to be a right that the Ninth Amendment protects.

In 1965, the Supreme Court cited the Ninth Amendment when it struck down a state law banning the use of birth control. The ban applied to married couples as well as singles. In *Griswold v. Connecticut*, the Court determined that the Ninth Amendment protects privacy within marriage. The Court said, "We deal with a right of privacy older than the Bill of Rights...To hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments...is to ignore the Ninth Amendment and to give it no effect whatsoever."

Like most cases about the Ninth Amendment, the Court found further constitutional basis for its decision. In *Griswold*, the Court cited the First, Third, Fourth, and Fifth Amendments as creating a “zone of privacy.”

## What Are Reproductive Rights?

In 1973, the Supreme Court built on *Griswold* and the zone of privacy. It used the Ninth and Fourteenth Amendments in the reasoning of *Roe v. Wade*. It reaffirmed a right to privacy when it recognized a woman’s right to an abortion. “This right of privacy, whether it be founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment’s reservation of rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”

Some argue that the Court decided *Roe v. Wade* incorrectly. They maintain that the Constitution is silent on the issue of abortion. They believe therefore it is up to state legislatures to decide the matter. Others believe life begins at conception and therefore the embryo or fetus has inalienable rights.

## Do You Have a Right to Die? To Take Drugs?

Other issues of personal liberty continue to be debated. As was the case in *Griswold* and *Roe*, many personal liberty cases hinge on privacy. For that reason, they are often about actions that are personal and intimate. For example, the Court said states could outlaw homosexual activity in *Bowers v. Hardwick* (1986), but reversed this decision in *Lawrence v. Texas* (2003).

Few things are as personal as death. Should terminally ill people be able to ask their doctor to help them die? The Court rejected a doctor’s argument that a person had a right to physician-assisted suicide. States could allow assisted suicide, the Court said, but the Constitution granted no such right.

Some people demand that they have a right to take whatever medicine they wish, even ones that have not yet been approved by the United States Food and Drug Administration. Opponents argue that the federal government has a duty to make sure all of the country’s medicine is safe and effective.

The debate surrounding Ninth Amendment issues continues today. How should the Court decide whether certain individual rights exist? Should natural law, the Founders’ intent, or the Constitution guide the Supreme Court? Or should these issues be left to local communities and legislatures?

James Madison said, “In Republics, the great danger is, that the majority may not sufficiently respect the rights of the minority.” The questions raised by the Ninth Amendment—what these rights truly are—are some that will continue to challenge Americans.



## LESSON 2 *Supreme Court Personal Liberty Decisions*

**Directions:** Using the information in the Lesson Two Background Essay, complete the Court's Opinion section for numbers one and two. After summarizing the opinion and dissent excerpts for all cases as a class, fill in the chart explaining whether you agree or disagree with the Court's decision.

Case	A. Issue	B. Excerpt from Court's Opinion (see Background Essay)	C. Summary of Court's Opinion in Your Own Words
1. <i>Griswold v. Connecticut</i> (1965)			
2. <i>Roe v. Wade</i> (1973)			
3. <i>Bowers v. Hardwick</i> (1986)		[The] respondent would have us announce, [that there is] a fundamental right to engage in homosexual sodomy. This we are quite unwilling to do.	
4. <i>Lawrence v. Texas</i> (2003)		Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct. <i>Bowers v. Hardwick</i> was not correct when it was decided, and it is not correct today...	



**LESSON 2** *Supreme Court Personal Liberty Decisions (continued)*

Case	D. Excerpt from Dissenting (minority) Opinion	E. Summary of Dissenting Opinion in Your Own Words	F. Do you agree with the Supreme Court's decision? Explain.
1. <i>Griswold v. Connecticut</i> (1965)	...The Court talks about a constitutional "right of privacy" as though there is some constitutional provision... forbidding any law ever to be passed which might abridge the "privacy" of individuals. But there is not.		
2. <i>Roe v. Wade</i> (1973)	...I have difficulty in concluding, as the Court does, that the right of "privacy" is involved in this case.		
3. <i>Bowers v. Hardwick</i> (1986)	...The mere knowledge that others...do not adhere to one's value system cannot be...an interest that can justify invading the houses, hearts, and minds of citizens who choose to live their lives differently.		
4. <i>Lawrence v. Texas</i> (2003)	The Texas [law]...imposes constraints on liberty. So do laws prohibiting prostitution... heroin, and... working more than 60 hours per week...But there is no right to "liberty" under the Due Process Clause. States [may] deprive their citizens of "liberty," so long as "due process of law" is provided.		



# *The Bill of Rights and Federalism*

Explores the powers reserved to the states as provided by the Tenth Amendment. Explains the Founders' understanding of a federalist system and the expansion and later contraction of federal government power.



# The Bill of Rights and *Federalism*

## **Tenth Amendment**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

## **Commerce Clause, United States Constitution Article 1, Section 8, Clause 3**

The Congress shall have the power...To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

## **Elastic Clause, United States Constitution Article 1, Section 8, Clause 18**

The Congress shall have the power...To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States or in any Department or officer thereof.

*"This question of the relationship of the States to federal government is the cardinal question of our constitutional system. At every turn of our national development we have been brought face to face with it, and no definition either of statesmen or of judges has ever quieted or decided it."*

— WOODROW WILSON

## **Unit Introduction**

Before and since the states ratified the Constitution, people debated what powers the federal government should have. The relationship between the states and the federal government, and the relation of the people to both of these entities, stood as the central issues of the Constitutional Convention. In the new system of government the Founders envisioned, the federal government was sovereign, though the states maintained most of their powers. This power-sharing—or federal—system divides the powers and functions of government between the states and the federal government.

## **Unit Objectives**

*Students will:*

- Recognize how the Supreme Court has found government action constitutional or unconstitutional based on the Commerce Clause.
- Understand the purposes of a federal system.
- Understand criticisms of a strong central government, as well as objections to state sovereignty.
- Understand the Federalist and Anti-Federalist visions of the proper relationship between state and federal power.

- Analyze what specific issues, and what types of issues, are best dealt with at which level of government (or by the private sector, or on a personal level).

## **Synopsis of Lessons and DVD**

### **Lesson 1**

Students explore different options available to the Founders in the organization of the government and the choices they made. Students will generate their own ideas for systems for organizing government power and decide which one they think is best.

### **Lesson 2**

The lesson and DVD examine Supreme Court decisionmaking in federal versus state power struggles. Students will discuss where authority for governmental power exists and where that power is most effective.

## LESSON

## 1

***What Is a Federal Republic?*****Overview**

After the failure of the Articles of Confederation, many people realized the need for a stronger central government. The delegates to the Constitutional Convention were tasked with the difficult duty of creating a government that distributed the power between the federal government and states in a manner that would appease many. The solution was federalism. As with many new and novel ideas, there would be opposition and unforeseen consequences.

**Standards**

- NCHS (5-12): Era III, Standards 3A, 3B
- CCE (9-12): IC1, 2A1, IIIA1, IIIA2
- NCSS: Strands 5, 6, and 10

**Recommended Time**

One 45-minute class period

**Objectives*****Students will:***

- Identify powers belonging to the federal government, state government, and shared by both.
- Understand Article I, Section 8 and the Tenth Amendment to the Constitution.
- Understand Federalist and Anti-Federalist views of the power sharing relationship of the federal government and the states.
- Analyze current events in the context of federalism.
- Evaluate issues and determine if they would be best dealt with at the federal or state level.

**Materials****STUDENT**

- Key Terms
- Background Essay
- Reading Quiz (optional)
- Handout A: Federalism Free Association
- Handout B: Federalism Venn Diagram
- Handout C: Article I, Section 8 and Amendment Ten of the Constitution

**TEACHER**

- Key: Handout B

**Lesson Plan****1. Background/  
Homework**

[10 minutes]

A. On the day prior to the lesson, have students read the Lesson One **Background Essay**, “What Is a Federal Republic?”

**2. Warm-Up**

[10-15 minutes]

**A.** Begin discussion of federalism by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrightsinstitute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**B.** Divide students into pairs or trios and distribute **Handout A: Federalism Free Association**. Explain to students that all four terms are examples of federalism issues. Have students follow the directions on the handout. Then, share answers with the class in a large group discussion.

***Suggested Responses***

*Jim Crow laws, which mandated different treatment based on race, outlawed interracial marriage, etc., are often referred to by opponents of strong state governments. “You have the*

*right to remain silent” is the first sentence of a suspect’s “Miranda rights”—so called because of the 1966 case Miranda v. Arizona which held that all states must uniformly inform suspects of their rights. Slot machines and casinos are legal by law in some states but not in others. The federal government has not said that states may not allow casinos. Speed limits are set by individual states, but the federal government has attempted to force states to adhere to a national speed limit by withholding certain funding from those states that do not.*

### 3. Activity

[20 – 30 minutes]

**A.** Distribute **Handout B: Federalism Venn Diagram** and have students complete it individually.

**B.** Divide students into groups of four and read **Handout C: Article I, Section 8 and Amendment Ten of the Constitution**.

**C.** While in groups, have students identify any similarities or differences between what they wrote on **Handout B** and the powers listed in the Constitution on **Handout C**.

**D.** As a class, briefly discuss the following:

- Their results and observations about the similarities and differences between their Venn diagrams and the Constitution.
- How they think the Founders viewed the size of the federal government and its relationship with the state governments.

### Suggested Responses

*The Founders wanted a stronger central government than that provided by the Articles of Confederation. The Constitution and the Tenth Amendment created a limited central government allowing state sovereignty. State constitutions and bills of rights, not the federal Constitution and Bill of Rights, would have most impact on citizens’ lives.*

## Extension Options

### Homework

**A.** Using the local newspaper, have students identify two current federalism issues and write one paragraph per issue explaining why the issue is an example of federalism.

**B.** Have students identify a portion(s) of Article I, Section 8 and the Tenth Amendment that they would like to revise to clearly specify the duties of Congress and the rights of the states. After revising the relevant portions, answer the following questions:

- Why did you make the changes?
- How would the proposed changes affect the country today?

### Enrichment

**A.** Have students research current issues of federalism such as same-sex marriages or national standards in education. Are these issues best left to individual states, or should the federal government be involved? Ask students to take a position on whether the federal government or state governments would best handle their topic and write a one-page essay explaining their reasoning.

# The Bill of Rights and *Federalism*

## LESSONS 1 & 2 *Key Terms*

### Unlock the Key Terms

Choose a key term and use that term twice today in conversation.

**Directions:** As you read each Background Essay, be on the lookout for these key terms. After reading, write out the correct definition for each term.

ratify \_\_\_\_\_

\_\_\_\_\_

commerce \_\_\_\_\_

\_\_\_\_\_

Jim Crow laws \_\_\_\_\_

\_\_\_\_\_

Commerce Clause \_\_\_\_\_

\_\_\_\_\_



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## LESSON 1 **What Is a Federal Republic?**

**W**e, the people, of the United States..." As Virginians met in 1788 to ratify the new United States Constitution, Patrick Henry objected to these words. He and other Anti-Federalists believed the new Constitution gave too much power to the national government and not enough to the states. Henry demanded, "Who authorized them to speak the language of, 'We, the people,' instead of, 'We, the states?' If the states [are] not the agents of this compact, it must be one...national government...of the people of all the states."

### READING TIP:

As you read, try to think ahead and predict what the next paragraph will be about.

### Why Did the Founders Create Two Separate Powers?

The struggle between powers of the state and federal government is as old as our government itself. In the United States, the state and federal systems share power. Sometimes, state and federal powers come into conflict. The principle that guides the division of powers is called federalism.

The Founders were always wary of government power. They wrote the Constitution to limit its authority. One way they did this was to create two distinct levels of government. The federal government has specific powers, and others belong to the states or the people individually.

The Founders believed the Articles of Confederation created a central government that was too weak. Therefore, they gave greater powers to the federal government in the new Constitution. Among these were the powers to direct commerce between states, to coin money, to raise armies, and to collect taxes.

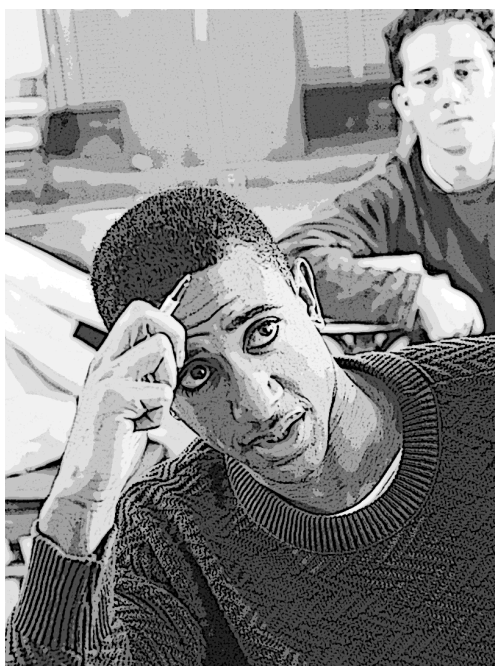
The two major political groups at the time were the Federalists and the Anti-Federalists. They disagreed about this new distribution of power. Anti-Federalists felt that the states should retain more power. They also believed the people needed a bill of rights to protect themselves against the federal government. Federalists favored a strong central government and weaker state governments.

### What Is the Purpose of the Tenth Amendment?

When eight individual states proposed rights to be included in a bill of rights, the one proposed by all was the principle now contained in the Tenth Amendment. The Tenth Amendment makes clear that the people and the states keep all powers not specifically given to the federal government. In fact, the Bill of Rights originally did not apply to state governments. The Founders included the Tenth Amendment to support the division of power between the people and the states, on the one hand, and the federal government on the other hand.

The Constitution, therefore, grants certain powers to the federal government with strict limits. Although the states gave some of their





powers to the new federal government, they kept many others.

### **What Were Jim Crow Laws?**

One major criticism of strong state power comes from the legacy of slavery. After the Civil War and Reconstruction, the slaves had been freed but they were not equal under law.

A majority of states enacted Jim Crow laws. These racist laws were named after a black character in minstrel shows. They outlawed interracial marriage, and legalized segregation and different treatment based on race.

By 1914, every Southern state and many northern states had passed laws that created two separate societies: one for whites, and one for blacks and “non-whites.” Blacks could not use white facilities like restrooms, restaurants, or parks, or even be buried in the same cemeteries as whites. In the case of *Plessy vs. Ferguson* (1896), the Supreme Court allowed so-called “separate but equal” accommodations in railway cars. By September 1949, only fifteen states had no segregation laws in effect. Twenty states required separate schools for blacks and whites.

The first major legal blow to Jim Crow laws was the landmark 1954 decision of *Brown v. Board of Education*. In this case, the Supreme Court found segregation in schools unconstitutional. This eventually meant that the states

would have to follow the directions of the federal government and integrate their schools. The 1954 *Brown* case marked the beginning of the Civil Rights Movement and the end of the Jim Crow period.

Jim Crow laws illustrate the conflict between state and federal power. In response to Jim Crow laws, many argued for increased federal power. They pointed to the legal inequality caused by state government. They claimed a strong federal government could correct such wrongs. They made the case that states often commit wrongful acts, and that the federal government is an important force to correct these wrongs.

Others disagreed, pointing out that state power allows the states to make policies that meet the needs of their citizens, or to adopt successful policies from other states. What is right for some states—casinos and gambling, for example—may not be welcome in others. The federal government, they say, should not be able to decide for every state. Another current example of this question is whether states should be able to allow same-sex marriage, or if that ability should be determined by the federal government with an amendment to the Constitution.

The American federal system was designed to prevent abuses of power. Neither a very strong federal system nor complete state independence has been shown to be perfect. Finding the right balance of power has been vital to liberty through the years and still is today.

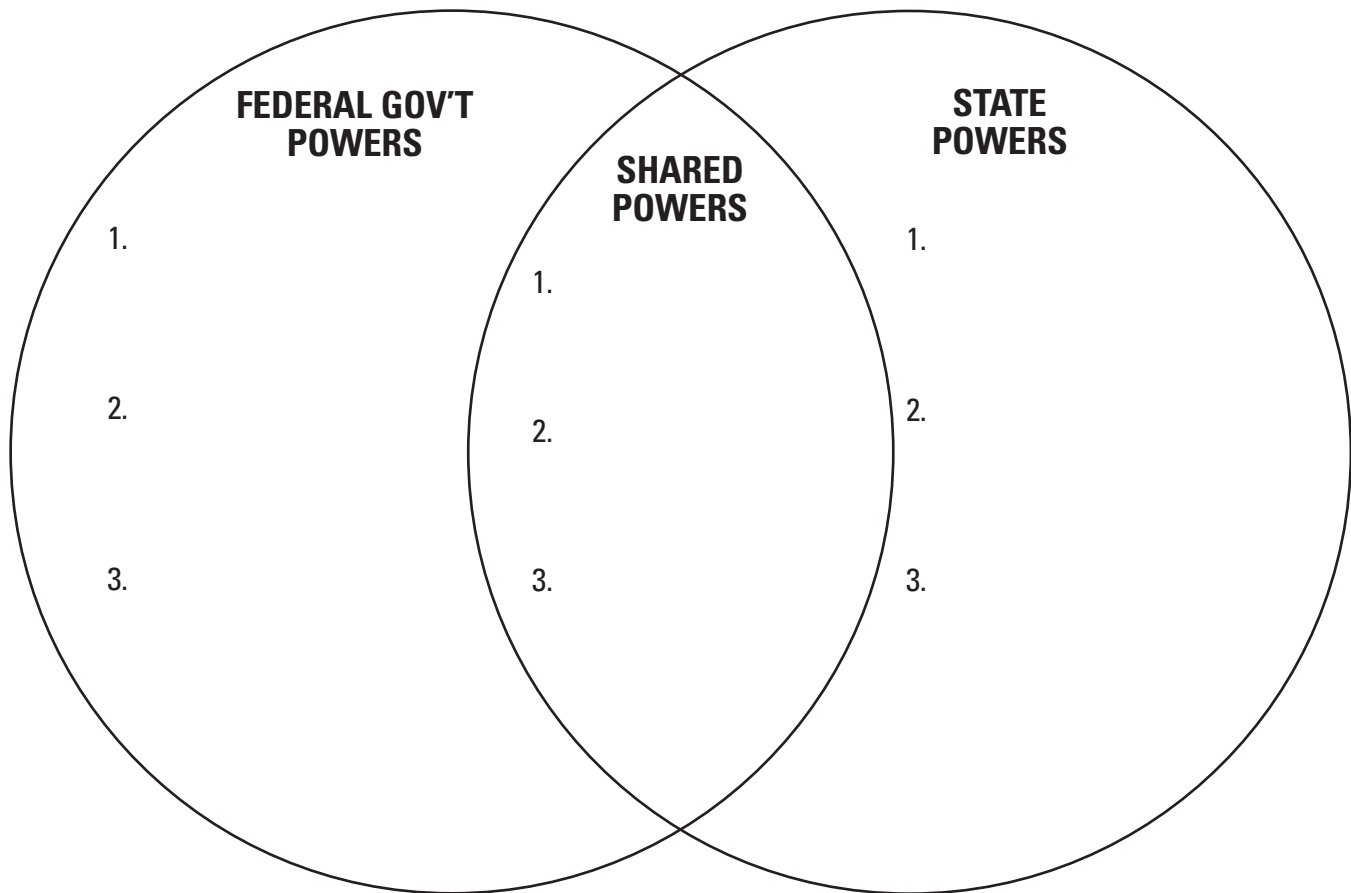
**LESSON 1** *Federalism Free Association*

**Directions:** Brainstorm words and ideas associated with each term and write them in the space below.

<p><b>Jim Crow Laws</b></p>	<p><b>"You Have the Right to Remain Silent"</b></p>
<p><b>Slot Machines and Casinos</b></p>	<p><b>Speed Limits</b></p>

**LESSON 1** ***Federalism Venn Diagram***

**Directions:** Imagine you are creating a new system of government and you have to decide how to distribute power between the federal government and the states. How would you accomplish that goal? Complete the Venn diagram and identify three powers you would give strictly to the federal government, three you would give strictly to the states, and three powers the two would share.



Explain why you distributed the powers as you did.

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## LESSON 1 *Article I, Section 8 of the Constitution & Amendment Ten*

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**Section 8.** The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

## LESSON 1 **Article I, Section 8 of the Constitution (continued)**

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To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

### ***The Tenth Amendment***

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

## LESSON

## 2

***How Has the Supreme Court Applied the Commerce Clause?*****Overview**

The battle between the power of the federal government and state governments has been an ongoing struggle during the course of our nation's history. How much power does the Commerce Clause allow the federal government to have over the states? What exactly are the powers reserved for the states according to the Tenth Amendment? These questions have been addressed by the Supreme Court, but not always with the same result. The Court's decisions have resulted in both expansion and contraction of the federal government's power as the Court has interpreted the Commerce Clause.

**Standards**

- NCHS (5-12): Era III, Standard 3B; Era VIII, Standard 2C
- CCE (9-12): IIIA, IIIC
- NCSS: Strands 2, 5 6, and 10

**Recommended Time**

One 45-minute class period.

**Objectives*****Students will:***

- Identify ways different levels of government affect their daily lives.
- Understand the evolution of the role of the Commerce Clause in federal government power.
- Understand ways the Supreme Court has interpreted the Commerce Clause.
- Evaluate government action in terms of the power given to it by the Commerce Clause.

**Materials****STUDENT**

- Background Essay
- Reading Quiz (optional)
- Federalism DVD and Viewing Guide
- Handout A: What Is the Purpose of the Commerce Clause?
- Handout B: The Government and You

**TEACHER**

- Key: Handout A
- Key: Handout B

**Lesson Plan*****1. Background/  
Homework***

*[10 minutes the day before]*

**A.** The day prior to class, have students begin **Handout A: What Is the Purpose of the Commerce Clause?** and read the Lesson Two **Background Essay, "How Has the Supreme Court Applied the Commerce Clause?"**

**B.** Begin discussion of federalism by talking about a "real life" news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrightsinstitute.org>, for daily headlines or a complete "Bill of Rights in the News" activity.

***2. Warm-Up***

*[10-15 minutes]*

**A.** Share responses to the homework **Handout A.**

**B.** Show Federalism DVD and have students complete Viewing Guide.

### 3. Activity

[20-30 minutes]

**A.** Divide students into groups of three or four and distribute **Handout A: The Government and You**. Ask the students to brainstorm ways in which government touches their lives on a daily basis. After several minutes, bring the class back together and ask for individuals to share their answers. (A transparency or whiteboard could be used to gather the class responses.) See the Answer Key for suggested responses.

**B.** Next, ask students to label the examples according to which level of government—federal, state, and/or local—is involved. Place an “F” next to the item for federal, an “S” next to state, and an “L” next to local. (Many examples will be labeled more than once.)

**C.** Review the meaning of the Commerce Clause: “Congress shall have the power...to regulate commerce with foreign nations and among the several states and with the Indian Tribes”.

**D.** Ask the students to consider which of the activities on the list which they’ve indicated as “Federal” would fall—in their opinions—under the Commerce Clause. Complete the last column of **Handout A** as a class.

#### *Suggested Responses*

*Answers will vary, but students should focus on constitutional arguments for their position. (e.g., not whether or not the action is a good idea, but whether it is constitutional for the federal government to take that action.)*

**E.** Wrap up with a large group discussion. Did students realize that the government affects their lives in such various and numerous ways?

### Extension Options

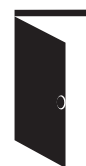
#### **Homework**

**A.** Where should the federal government draw the line—To speed or not to speed? In an effort to control highway funding, the federal government effectively instituted a national speed limit of 55 miles per hour in 1973. Congress has lifted the limit, but they may put it back at any time. Has the federal government overstepped its power when it determines speed limits for the states? How should speed limits on public roads be deter-

mined? At what level of government should decisions be made? Have students provide justifications for their answers in a two or three paragraph essay.

#### **Enrichment**

**A.** Have students research President Franklin D. Roosevelt’s proposal to add Justices to the Supreme Court, and create a PowerPoint or other visual presentation explaining whether they believe it was an appropriate method to influence the decisions of the Court.



#### **Real Life Portal**

Assign students to groups of three, with one representative for each of the following: local government, state government, and federal government. Ask each group to brainstorm ways that citizens can affect change in their group’s level of government policy. Then, over the course of several weeks, have students put those ideas into action: attend local government meetings, write letters to their legislators, or volunteering for a candidate’s campaign. Have each group report to the class what they learned and create a master “Citizen’s Toolbox” of ways each student can have a voice in government at all levels.



## LESSON 2 *How Has the Supreme Court Applied the Commerce Clause?*

**L**aws can be good and unconstitutional at the same time. Sometimes the hardest question the Supreme Court has to ask is not “Is this law good and just?” but “Does the federal government have the power to make this law in the first place?”

For example, can the federal government control child labor? Create gun-free school zones? Can it make certain laws to protect domestic violence victims? Although the Court might believe that a law is well intended and fair, it may find the law unconstitutional if it goes beyond the power given to the federal government by the Constitution.

### READING TIP:

Use a highlighter to mark sections you think are important to remember.

### What Is the Commerce Clause?

The reach of the Commerce Clause, found in Article 1, Section 8 of the Constitution, is the focus of debate about federal power. It states, “Congress shall have the power...to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

Midway through the twentieth century, Congress started using the Commerce Clause as the grounds for the enactment of many laws. The Commerce Clause has been one basis for the expansion of federal power.

### Can the Federal Government Regulate Child Labor?

One of the first twentieth century cases to deal with federalism and the Commerce Clause was *Hammer v. Dagenhart* in 1918. The Court ruled that the federal government could not outlaw child labor in manufacturing activities where the process took place in one state and did not cross state lines.

The Court might have agreed that it was a worthy goal to protect young children from long work hours. However, it did not agree that the federal government possessed the power to legislate on this issue. The Court found that the Tenth Amendment left this power to the states and that Congress could not make rules related to the production of goods.

### How Did Things Begin to Change in the 1930s?

The Supreme Court changed its way of thinking in the 1930s under great political stress. President Franklin Delano Roosevelt created many new programs called the “New Deal”. One program was Social Security, which gives pensions and aid to the disabled and elderly. Other programs regulated the stock market. At first, the Supreme Court ruled in several cases that Congress had no authority to create such programs.

In 1937, President Roosevelt spoke out against the Supreme Court for its actions on the New Deal legislation. He wanted the president to be able to add one new justice

*The Commerce Clause has been one basis for the expansion of federal power.*

for every current justice over the age of 70. Most experts now view his idea as a political plan to help his legislation.

To ease some of the political conflict, one justice began voting to support the New Deal. Another justice retired, and was replaced by a supporter of the New Deal programs. The new majority found the increased federal power constitutional. The conflict had sharply divided the country and tested the federal system of government.

The Supreme Court was going in a new direction. Congress was able to create laws regulating, banning, and supporting a wide range of activities. Federal power expanded for over fifty years.

### **How Has the Supreme Court Ruled Recently?**

The Supreme Court is now going in a new direction. In 1995, the Court in a 5–4 decision overturned a federal law creating gun-free school zones. Since schools prepare people for the business world, Congress believed it could regulate guns in school. However, in *United States v. Lopez* (1995), the Court ruled that Congress did not have the power to ban firearms in schools. The *Lopez* case dealt only with possession of arms, not commerce. The Court reasoned that Congress had gone too far in making laws under the Commerce



Clause. This case marked the first time since 1936 that the Supreme Court ruled in this way.

Since *Lopez*, the Supreme Court has ruled in cases dealing with federalism and the Commerce Clause. One important case in 2000, *United States v. Morrison*, overturned parts of the Violence Against Women Act. The Court held, also in a 5–4 decision, that the Commerce Clause did not give Congress the power to allow rape victims to sue their attackers in federal court for money damages.

The long history of the Supreme Court shows that laws it once said were constitutional have later been overturned, and vice versa. The balance of power among states and the federal governments may continue to shift for many years to come.

## LESSON 2 *What Is the Purpose of the Commerce Clause?*

**Directions:** Before reading the Lesson Two Background Essay, “How Has the Supreme Court Applied the Commerce Clause,” respond to the statement in the middle with a yes or no in the left-hand column. After reading, respond again to the statement and put your answer in the right-hand column. Then answer questions 1–3 below.

Response Before Reading	The Commerce Clause	Response After Reading
	1. Congress has always had the power to reduce the number of hours a child can work.	
	2. Congress uses the Commerce Clause to only regulate the exchange of money and goods between states.	
	3. After Franklin D. Roosevelt tried to change the membership of the Supreme Court, the Court became more supportive of his New Deal programs.	
	4. Congress has the power to create gun-free school zones around public schools.	
	5. Over time, the Supreme Court has restricted the use of the Commerce Clause as a justification for federal laws.	

1. Evidence from the reading that supports your responses.

Statement 1 \_\_\_\_\_  
 Statement 2 \_\_\_\_\_  
 Statement 3 \_\_\_\_\_  
 Statement 4 \_\_\_\_\_  
 Statement 5 \_\_\_\_\_

2. What have you learned about the evolution of the Commerce Clause and how Congress has used it?

\_\_\_\_\_  
 \_\_\_\_\_

3. Do you think the Founders thought the Commerce Clause would be used to expand the power of the Federal government? Why or why not?

\_\_\_\_\_  
 \_\_\_\_\_

**LESSON 2**    *The Government and You*

The Commerce Clause: Article I, Section 8 of the Constitution

**“Congress shall have the power...to regulate commerce with foreign nations and among the several states and with the Indian Tribes”**

**Directions:** Think of all the ways that the government and its regulations affect your life each day. Begin with awakening each morning and list as many government actions as you can think of. Then, check off whether this is an action of the federal government, the state government, or the local government. *(Many examples will be labeled more than once.)* The last column will be completed as a class.

STUDENT HANDOUT-B

Action	Federal?	State?	Local?	Commerce?
<i>Waking up to the clock radio</i>	X			

# *The Bill of Rights and Incorporation*

Explores incorporation of the Bill of Rights against the states that is provided by the Fourteenth Amendment.

Also highlights the opinions on incorporation of notable Supreme Court Justices.



# The Bill of Rights and *Incorporation*

## **Fourteenth Amendment, Section 1**

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## **Unit Introduction**

Incorporation—the application of parts of the Bill of Rights to the states through the Fourteenth Amendment—is a complex legal and constitutional issue. Nevertheless, incorporation involves a simple question: What are the fundamental rights of Americans, no matter which state they live in? Though challenging, the concept of incorporation is key to understanding the explosion of cases involving the Bill of Rights in the 20th century as well as the power of Supreme Court in defining and defending the rights of Americans.

## **Unit Objectives**

*Students will:*

- Explain why the Fourteenth Amendment was ratified.
- Understand what the Fourteenth Amendment says.
- Understand how the Fourteenth Amendment has been applied by the Supreme Court.
- Analyze competing models of incorporation.
- Evaluate the impact incorporation has had on our constitutional system and on society.

## **Synopsis of Lessons and DVD**

### **Lesson 1**

Students are introduced to the history behind the Fourteenth Amendment, its language, and its impact on specific Bill of Rights provisions.

### **Lesson 2**

Students explore the Supreme Court's internal debate over incorporation, its impact on American law and society, and how citizens can exercise and defend their rights.

*"The words 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States' seem to me an eminently reasonable way of expressing the idea that henceforth the Bill of Rights shall apply to the States."*

—JUSTICE HUGO BLACK



## LESSON

## 1

**What Is Incorporation?****Overview**

What is the meaning and purpose of the Fourteenth Amendment? Should it be read to only deal with the unique circumstances presented by the end of the Civil War? Or should its protections apply to all individuals? Over time, the meaning has been interpreted to include the protection of various classes of people and circumstances. The Supreme Court has used the Fourteenth Amendment to address the abuses of states against their citizens.

**Standards**

- NCHS (5-12): Era III, Standards 3B, 3C; Era V, Standard 3A
- CCE (9-12): IA1, IB1, IIC1
- NCSS: Strands 2, 5, 6, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Explain why the Fourteenth Amendment was ratified.
- Define incorporation.
- Interpret the Fourteenth Amendment.
- Understand how the Fourteenth Amendment has been applied to the States.
- Evaluate how the Fourteenth Amendment has been used to protect the rights of individuals.

**Materials****STUDENT**

- Key Terms
- Background Essay
- Reading Quiz (optional)
- Incorporation DVD and Viewing Guide
- Handout A: Supreme Court Incorporation Cases
- Handout B: The Founders and Incorporation

**TEACHER**

- Transparency Master A
- Key: Handout A
- Key: Handout B

**Lesson Plan****1. Background/  
Homework**

*[10 minutes the day before]*

**A.** On the day prior to class, have students read Lesson One **Background Essay, “What Is Incorporation?”** After they read, ask students to write a one-sentence definition of incorporation.

**2. Warm-Up**

*[10-15 minutes]*

**A.** Begin discussion of incorporation by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrights.institute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**B.** Have students share their sentences from last night’s homework.

**Suggested Responses**

*Incorporation is applying all or some of the Bill of Rights to the states; or, incorporation means the federal government can make sure states do not violate the rights of their citizens.*

**C.** Put up an overhead of **Handout A: Pathway to Incorporation**. Go over the flow chart and answer any questions students have.

### **3. Activity** *[20-30 minutes]*

**A.** Show Incorporation DVD and have students complete Viewing Guide.

**B.** Distribute **Handout B: Supreme Court Incorporation Cases** and have students use their **Background Essay** to complete the chart. Using an overhead, have students come up and fill in the information about each case. (Case information is provided for *Slaughterhouse Cases*, as the information is not in the **Background Essay**.)

**C.** Divide students into groups of three or four and distribute **Handout C: The Founders and Incorporation**. Students should discuss the questions in their groups and begin to formulate responses. They should complete **Handout C** for homework to share their answers next class.

## **Extension Options**

### **Homework**

**A.** Have students use the local newspaper and choose an article about a fundamental right protected in the Bill of Rights. Ask students to:

- Identify the fundamental right.
- Identify the amendment addressed.
- Describe what action is being taken by either the state or federal government concerning the fundamental right.
- Explain whether or not they believe action taken by the state or federal government violates a fundamental right.

**B.** Ask students to consider the following question and write a two to three paragraph response: Were the rights of American citizens more effectively protected by the Bill of Rights alone, or by the Fourteenth Amendment? Justify your answer using information from this lesson and class discussion.

## **Enrichment**

**A.** Ask students to research their home state constitution and bill of rights and summarize the differences between them and the federal Constitution and Bill of Rights. Does the federal Constitution protect certain rights that the state constitution does not? Or vice-versa?



### **Real Life Portal**

Have students research current incorporation issues such as same sex marriage, execution of minors or individuals who are mentally incompetent, laws regulating the use of medicinal marijuana, or assisted suicide. Then ask them to investigate what the policies are in their home state. Finally, have them write a letter to the editor expressing their view about whether certain rights should be incorporated against states.

# The Bill of Rights and *Incorporation*

## LESSONS 1 & 2 *Key Terms*

### Unlock the Key Terms

Choose a key term and use that term twice today in conversation.

**Directions:** As you read each Background Essay, be on the lookout for these key terms. After reading, write out the correct definition for each term.

just compensation \_\_\_\_\_

\_\_\_\_\_

ratify \_\_\_\_\_

\_\_\_\_\_

incorporation \_\_\_\_\_

\_\_\_\_\_

privileges and immunities \_\_\_\_\_

\_\_\_\_\_

due process \_\_\_\_\_

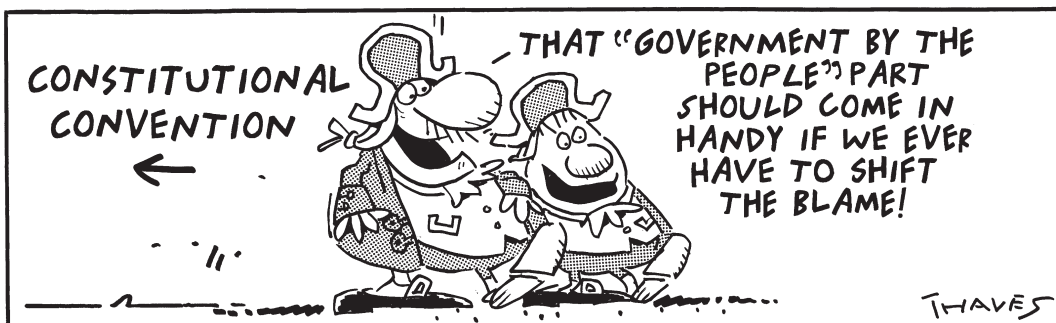
\_\_\_\_\_

total incorporation \_\_\_\_\_

\_\_\_\_\_

fundamental fairness \_\_\_\_\_

\_\_\_\_\_



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## LESSON 1 **What Is Incorporation?**

**T**he Supreme Court said in 1833 that if a state wished to “execute heretics, shut down newspapers, or confiscate property,” nothing in the Constitution gave the federal government the power to interfere.

In the 1833 case of *Barron v. Baltimore*, the Supreme Court ruled that Maryland did not have to pay just compensation to a man whose wharf had been destroyed because the state had diverted streams. The wharf owner would have to turn to the Maryland constitution for help. Some saw this decision as support for the checks and balances system of the United States government. Others saw it as a big problem. Should states have to honor the protections in the Bill of Rights?

### READING TIP:

After you finish reading, try restating the first three rules of the Fourteenth Amendment in your own words.

### Why Was the Fourteenth Amendment Written?

After the Civil War, all three branches of government were struggling over how to treat former slaves. Congress passed the Civil Rights Act of 1866. It made former slaves citizens and provided for protection against abuses by state governments. President Andrew Johnson vetoed the act. Congress had enough votes to override President Johnson’s veto, so the law stood. The Supreme Court, however, soon overturned most Civil Rights legislation saying it was not within Congress’s power. It was back to square one for those who supported the laws.

It was clear that laws alone could not promise the rights of former slaves. Congress looked for a more lasting solution. As a result, the Fourteenth Amendment was ratified in 1868.

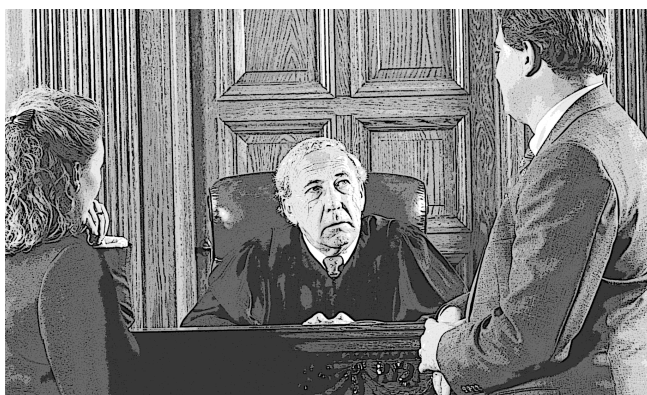
### What Is Incorporation?

Before the Fourteenth Amendment, state governments were limited only by their own constitutions. Most states had their own bills of rights similar to the United States Bill of Rights. When the Supreme Court uses the Fourteenth Amendment to apply other constitutional amendments to state governments, it is said to have “incorporated” those amendments.

The key to understanding the doctrine of “incorporation” is in section one of the Fourteenth Amendment. The Amendment begins by saying that all who were born or naturalized in the United States are citizens. After that, the Amendment goes on to make three rules about government action and citizens.

### What Does Privileges and Immunities Mean?

The first rule is called the “privileges and immunities clause.” It says: “*No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States....*” The significant part of this clause is the first two words: “No state....” The Founders were clear that the Bill of Rights applied only to the federal government, not the states.



Despite Congress' clear goal of protecting rights, the Fourteenth Amendment's language is very broad. Which rights are the "privileges or immunities" of citizens? What rights must states grant? In addressing these questions, the Supreme Court has focused on the first two clauses: privileges and immunities, and due process.

The Court was quick to limit the reach of the privileges and immunities clause. In the 1873 *Slaughterhouse Cases*, the Court ruled that the clause covered only a few federal rights. In dissent, Justice Stephen J. Field argued that the majority's reading was too narrow. Field thought a more reasonable reading was that the privileges and immunities clause guaranteed all Americans the rights listed in the Bill of Rights.

### **What Is the Due Process Clause?**

The second clause continues, "...nor shall any State deprive any person of life, liberty, or property, without due process of law." This is called the "due process clause." Again, the Amendment places limits on the actions of state governments.

In *Quincy Railways v. Chicago* (1897), the Court ruled that the state of Illinois acted wrongly when it took property without paying just compensation. The Court argued Illinois

had violated Quincy's Fourteenth Amendment right to due process—a right also guaranteed by the Fifth Amendment. The Court used the Fourteenth Amendment to apply the Bill of Rights to a state action.

### **What Is "Equal Protection?"**

Finally, the "equal protection" clause of the Fourteenth Amendment says, "...nor deny to any person within its jurisdiction the equal protection of the laws."

The most famous equal protection case is the 1954 *Brown v. Board of Education*. This case dealt with the practice of segregating schools by race. Many schools claimed they were providing "separate but equal" facilities for whites and African Americans. The Supreme Court unanimously did away with the idea that "separate" facilities are "equal." Therefore, segregation in schools violated the Fourteenth Amendment, which guarantees all citizens "equal protection of the laws."

### **Why Is Incorporation Debated?**

Many debate whether incorporation is a good idea. Some argue that the Founders were very clear that the Bill of Rights should only apply to actions of the federal government. Even in cases of shocking abuse, some assert, the federal government cannot get involved. This ensures the federal government cannot get too much power.

Over the next seventy-five years, the Court's use of the Fourteenth Amendment increased. It employed the due process clause to strike down many state laws and to incorporate specific provisions of the Bill of Rights. This deeply altered the Founders' Bill of Rights. Whether it has been altered for the better or for the worse is debated still today.



## LESSON 1 *Pathway to Incorporation*

There are two major steps in incorporating protections. The Court must determine A: if there is a fundamental right involved? and B: is incorporating (a right guaranteed in one of the first ten amendments) the only way the right can be protected?

**If you were a justice of the Supreme Court, you would consider the following questions when deciding whether or not to incorporate an amendment.**

### QUESTIONS

**A.**  
**Is there an essential or fundamental right**  
(privilege or immunity,  
due process)  
**being denied by a state?**

**B.**  
**Is incorporating**  
(applying a portion of the  
Bill of Rights to the states)  
**the only way to ensure the  
right will be protected?**

If the  
answer is  
**YES**

If the answer is NO,  
incorporation  
will not occur.

### DECISIONS

The Fourteenth  
Amendment will be  
used to incorporate the  
amendment and apply it  
to the states to protect a  
fundamental right.

**LESSON 1** *Supreme Court Incorporation Cases*

**Directions:** After reading the Lesson One Background Essay, “What Is Incorporation?” complete the chart. For each case, explain the facts of the case, and the impact each court case did or did not have on the incorporation process.

FACTS AND OUTCOME OF THE CASE	IMPACT ON INCORPORATION
<i>Barron v. Baltimore</i> (1833)	
<i>Slaughterhouse Cases</i> (1873) The Supreme Court said that Louisiana could grant a 25-year monopoly to a slaughterhouse. The other slaughterhouse owners barred from their trade were not entitled to just compensation from Louisiana.	
<i>Quincy Railways v. Chicago</i> (1897)	
<i>Brown v. Board of Education</i> (1954)	



**LESSON 1** *The Founders and Incorporation*

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**Directions:** Please write a two or three sentence response for each question.

1. Why do you think the Founders wrote the Bill of Rights to only apply to actions by the federal government?

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2. If governments exist to protect inalienable rights (such as life, liberty, and property), then why did the Founders not require states to honor those rights?

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3. If “a state wishe[s] to execute heretics, shut down newspapers, or confiscate property,” do you believe the federal government should have the power to interfere? What about in less extreme cases? Explain your answer.

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## LESSON

## 2

**What Are Americans' Fundamental Freedoms?****Overview**

Incorporation's effects have been far reaching—perhaps even more than the writers of the Fourteenth Amendment had imagined. The role of government has been fundamentally transformed, as has the influence of the Supreme Court. The basic responsibility of government to protect fundamental rights has not changed, but citizens and the courts are still answering the question of what exactly those fundamental rights are.

**Standards**

- NCHS (5-12): Era III, Standards 3B, 3C; Era V, Standard 3A
- CCE (9-12): IB4, IIIB1, IIIC1
- NCSS: Strands 2, 5, 6, and 10

**Recommended Time**

One 45-minute class period.

**Objectives**

*Students will:*

- Examine their personal beliefs about federal government power and responsibility.
- Understand both sides of the incorporation debate.

- Analyze the implications of incorporation on the federal government's role in society.

**Materials****STUDENT**

- Background Essay
- Reading Quiz (optional)
- Handout A: Attitude Inventory
- Handout B: Incorporation Debate Chart
- Handout C: Understanding Incorporation

**TEACHER**

- Key: Handout B
- Key: Handout C

**Lesson Plan****1. Background/  
Homework**

*[10 minutes the day before]*

**A.** On the day prior to class, have students read the Lesson Two **Background Essay**, “**What Are Americans' Fundamental Freedoms?**”

**B.** Begin discussion of federalism by talking about a “real life” news story highlighting the topic. Visit the Bill of Rights Institute website, <http://www.billofrightsinstitute.org>, for daily headlines or a complete “Bill of Rights in the News” activity.

**2. Warm-Up**

*[10-15 minutes]*

**A.** Distribute **Handout A: Attitude Inventory** and have students complete it individually. Ask students to write down their “first instinct” and not to over-think each statement.

**B.** Divide class into groups of four to share all of their responses within groups.

**C.** Finally, ask each group to come to a consensus about numbers nine and ten, and report to the class which statement they most agree with.

**3. Activity**

*[20-30 minutes]*

**A.** Divide students into pairs to complete **Handout B: Incorporation Debate Chart**.

**B.** Put a transparency of the handout on the overhead and have individual students come up and fill out the chart once work is completed.

**C.** Ask students which Justice has the stronger argument, and allow class discussion.

**D.** Put **Handout C: Understanding Incorporation** on the overhead and distribute to class. Ask students to discuss how the role of government has changed since the adoption of the Fourteenth Amendment. Underline the words “LIMITS” in the first part of the chart and “GUARANTEED” in the second part. Ask students to discuss the differences between the two definitions of the Bill of Rights.

### ***Suggested Responses***

*The original intent of the Bill of Rights was to place limits on federal government power. It had no authority over state constitutions or laws. Since the ratification of the Fourteenth Amendment—which specifies that no state shall make any law...—the federal government has, arguably, become responsible for making sure state governments do not abridge citizens' rights. See Answer Key for additional suggestions.*

**E.** Have students complete the chart and go over it as a class. Wrap up by comparing the final two quotes in **Handout C** and asking students how they feel about the statement that the Fourteenth Amendment is the fulfillment of the Declaration of Independence.

## **Extension Options**

### ***Homework***

**A.** Have students write a two to three paragraph response to the question: Whose opinion, Justice Black's or Justice Frankfurter's, is more rooted in the Constitution?

**B.** Have students write a fictional debate between Justices Black and Frankfurter about a current issue, and then simulate that debate in class. For example: Does the federal government have a responsibility to make sure men and women receive equal pay for equal work? Should states have the power to ban guns? The debates should refer to the specific question of what the “privileges or immunities” of citizens are.

### ***Enrichment***

**A.** Have students research the origins of famous American statements of liberty, and determine whether they are actually in the Constitution. Examples: “Separation of Church and State,” or “Better that 100 guilty men go free than one innocent man go to jail.” Have students create a PowerPoint or other type of presentation explaining to the class: Where do these ideas come from? If they are not in

the Constitution, how is it that we all identify with and agree with them? Or do we? What is incorporation's impact on American identity? Or, is there truly such a thing?

**B.** Ask students to assume the role of James Madison, known as “The Father of the Constitution.” Have them write a letter, as Madison, to Justices Black and Frankfurter telling them what he thinks about the Fourteenth Amendment. Issues Madison should consider: the change in balance between federal and state power; the success of protecting certain rights, and other changes that took place because of incorporation.

## LESSON 2 **What Are Americans' Fundamental Freedoms?**

Several Supreme Court Justices have wondered how far incorporation should go. The most famous debate on this was between Supreme Court Justices Hugo Black and Felix Frankfurter. Black argued that the Fourteenth Amendment was meant to apply the entire Bill of Rights to the states. But Frankfurter believed the Bill of Rights should be applied to the states only in specific situations.

### READING TIP:

Summarize each paragraph to make sure you understand it before moving on to the next one.

### What Is Total Incorporation? Is it Required by the Fourteenth Amendment?

Black supported “total incorporation.” Total incorporation means applying every part of the Bill of Rights to the states. Black argued that the due process clause of the Fourteenth Amendment protects life, liberty and property. Since the Bill of Rights is the most complete statement of American liberty, the Fourteenth Amendment applies all of it to the states.

Justice Frankfurter, on the other hand, argued that the Fourteenth Amendment does not require incorporation of any part of the Bill of Rights to the states. He said that it requires states to honor principles of “fundamental fairness.” While these principles might overlap with the Bill of Rights, they are not always the same. Frankfurter said the

Court should indeed apply the Bill of Rights when actions taken by a state “shock the conscience.” The Court, he argued, must remain mindful of “the needs both of continuity and change.” Black responded that Frankfurter’s philosophy was not clear and threatened all “the liberty safeguards” found in the Bill of Rights.

### What Is Incorporation’s Impact?

Incorporation produced two major effects. It gave the Supreme Court more power to define rights, and it has changed the meaning of the Bill of Rights. The Bill of Rights was originally a list of limits on federal government power. Incorporation changed these to a set of rights guaranteed by the federal



*The federal government has become larger and taken on more responsibility as a result of incorporation.*

government. Incorporation made the Supreme Court's influence and workload greater. It also gave more power to American citizens, who now have a way to challenge most government action.

The federal government has become larger and taken on more responsibility as a result of incorporation. State governments also grew larger during this period. All this growth in local, state, and federal activity created more chances for conflict of power. As a result, the Supreme Court has more influence.

In response to the changing view of government, Americans have shifted their view of themselves as citizens. Well into the nineteenth century, most Americans thought of themselves as citizens of their states. Over the last century, state sovereignty has decreased. With these changes, many people began to see the federal government as the main protector of their rights. Many no longer saw differences between states, and thought of themselves simply as "Americans."

Some legal scholars support incorporation. They see it as the fulfillment of the Declaration of Independence and its promise of "inalienable rights." But critics argue that the federal system was designed to protect state sovereignty as well as personal rights.

The Bill of Rights originally served to limit only the power of the federal government. Now, many point out that incorporation has given the federal government veto power over state law.

Though he was in the minority, this was a power James Madison had indeed wanted for the federal government. He wrote to George Washington, three months before the Philadelphia Convention, that federal veto power over state law would "control...the internal vicissitudes of State policy; and the aggressions of interested majorities on the rights of minorities and of individuals." Though Madison lobbied for this federal power at the Constitutional Convention, he was overruled and states retained sovereignty.

Whether the federal government, through incorporation, or state governments more effectively protect individual liberties is a question that is still debated today.



## LESSON 2 *Attitude Inventory*

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**Directions:** Place an “A” for “agree” or a “D” for “disagree” next to each statement.

- \_\_\_\_\_ 1. If I were traveling outside the country and someone asked me where I was from, I would answer “America” (or the United States, the U.S., etc.)
- \_\_\_\_\_ 2. If I were traveling outside the country and someone asked me where I was from, I would answer “my state.” (Virginia, California, Montana, etc.)
- \_\_\_\_\_ 3. I know what my rights are as an American.
- \_\_\_\_\_ 4. My state government is the best protector of my rights.
- \_\_\_\_\_ 5. The federal government is the best protector of my rights.
- \_\_\_\_\_ 6. I am aware of the differences between my state constitution and the federal Constitution.
- \_\_\_\_\_ 7. My state should have the power to make laws without the federal government looking over its shoulder.
- \_\_\_\_\_ 8. If my state passes a law that limits my rights, I should be able to challenge that law in the Supreme Court.
- \_\_\_\_\_ 9. If different states have different laws outlawing things like gambling, guns, drinking age, speed limits, etc., that is a good thing. States are more likely to pass laws in the best interest of their citizens.
- \_\_\_\_\_ 10. If different states have different laws regarding things like gambling, guns, drinking age, speed limits, etc., that is not a good thing. It is not fair for citizens of some states to have certain rights that citizens of other states do not.

# The Bill of Rights and *Incorporation*

## LESSON 2 *Incorporation Debate Chart*

**Directions:** Fill in the chart with information from the Background Essay about each side of the incorporation debate between Supreme Court Justices Hugo Black and Felix Frankfurter.

What did each Justice believe about...	Justice Hugo Black	Justice Felix Frankfurter
1....when the Bill of Rights should be applied to the states?	Supported _____ _____ _____.	The Bill of Rights applies to states only _____ _____.
2....the Fourteenth Amendment's impact?	The _____ of the 14th Amendment protects _____.	The Fourteenth Amendment does not require _____.
3....the meaning of "liberty?"	_____ is the most complete statement of American liberty.	States must honor principles of "_____ _____."
4....when the Supreme Court should take action to incorporate amendments?	_____, because to not do so would _____.	The Supreme Court should apply the Bill of Rights to states when _____ _____.



# The Bill of Rights and *Incorporation*

## LESSON 2 *Understanding Incorporation*

**Directions:** Fill in the chart below by re-writing each statement in your own words.

1. The Bill of Rights was originally a list of limits on federal government power...	
2. ...incorporation changed these to a set of rights guaranteed by the federal government.	
3. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."	SOURCE/DATE
4. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law..."	SOURCE/DATE

# *Answer Key*



# Answer Key

## The Founders

### Lesson 1

#### **Handout B: Foundations of Our Rights**

**Magna Carta:** Amendments:  
1,3,4,5,6,8

**Petition of Right:** Amendments:  
4,5,6,8

**Body of Liberties:**  
Amendments: 1,5,6,8

**Declaration of Right and Toleration Acts:** 1,2,4,5,6,8

**Rights Violated in Colonies:**  
1,2,3,4,5,6

**Two Treatises of Government:**  
Explains the concept of natural rights and the purposes of government, which is to protect rights.

**Declaration of Independence:**  
Explains why people are entitled to have government protect rights, and announces formal separation of the colonies from Great Britain, since the British government did not protect individual rights.

**The United States Constitution:** Framework or system for providing a limited central government that would protect individual rights.

#### **Handout C: Founding Documents and Philosophies**

**1.** Both John Locke's *Two Treatises on Government* and the Declaration of Independence are explanations of why people are entitled to have government protect individual rights. Thomas Jefferson used important ideas from Locke's philosophy in drafting the Declaration.

**2.** The documents were written almost 100 years apart, and in different continents. Jefferson changed "life, liberty and property" to "life, liberty and the pursuit of happiness."

**3.** The Founders wrote the Constitution to provide a stronger central government. The Bill of Rights was their attempt to protect citizens from what they believed could become an overbearing central government.

**4.** Students may suggest that each document reflected concern about the biggest abuses of its time period.

**5.** Answers will vary.

## Reading Quiz

1. B
2. C
3. D
4. C
5. B
6. D

### Lesson 2

#### **Handout A: Understanding Positions of Federalists and Anti-Federalists**

##### **Federalists believed:**

- A bill of rights was not needed because the Constitution created a government of limited powers.
- Composing a list of rights might endanger any unlisted rights.
- State constitutions already included declarations of rights.

##### **Anti-Federalists believed:**

- The Central government might grow too strong and suppress freedoms.
- Several states (Massachusetts, South Carolina, New Hampshire, Virginia, New York, and North Carolina) approved the new Constitution only on the condition that a listing of rights be added to it.
- Popular opinion supported the development of a bill of rights.

**1.** The purpose of government is to protect unalienable rights (such as life, liberty, property, and the pursuit of happiness.) Secondly, both central authority and some level of state authority should be protected.

**2.** Answers will vary.

### **Handout B: Federalists and Anti-Federalists Venn Diagram**

#### **Federalists**

- A bill of rights was not needed; the Constitution creates a limited national government.
- Specific listing of rights might be dangerous.
- A strong central government is needed to protect rights.
- States have their own declarations of rights.

#### **Anti-Federalists**

- Did not trust a strong central government
- Some states demanded a bill of rights.
- Popular opinion favored a list of rights.

#### **Both**

- Purpose of government is to protect rights.
- Some authority for state level
- Some authority for national level
- Foundational principles

### **Handout C: Primary Passage Quotes**

1. F—George Washington
2. F—Roger Sherman
3. AF—George Mason
4. F—Alexander Hamilton
5. AF—George Mason
6. AF—George Mason
7. F—James Madison
8. AF—Thomas Jefferson

### **Reading Quiz**

1. D
2. A
3. A
4. B
5. C

## **Religion**

### **Lesson 1**

### **Handout A: Religion at My School**

Answers will depend on the individual school.

### **Handout B: Establishment Scenarios**

1. **Lemon test:** Did the School Board, based on its minutes/discussion, intend the moment of silence to be a time for prayer? If so, then perhaps a violation.  
**endorsement test:** Does not endorse any one religion.  
**coercion test:** No.

**2. Lemon test:** May violate Lemon, both aiding religion and entangling government and religion.

**endorsement test:** Teacher may be endorsing her Christian religion.

**coercion test:** Maybe—implied pressure from the teacher.

**3. Lemon test:** May violate Lemon, hurting religion by suggesting atheism.

**endorsement test:** Raises the question, is “I am an Atheist” similar to endorsing a religion?

**coercion test:** Maybe—implied pressure from the teacher.

**4. Lemon test:** May violate Lemon, helping religion and entangling religion and government but *Zelman* may allow this.

**endorsement test:** Does not endorse any one religion.

**coercion test:** No, because students choose the school.

**5. Lemon test:** No.

**endorsement test:** No. Religion is discussed as literature and the teacher question is for discussion of the impact of a literary work.

**coercion test:** No.

**6. Lemon test:** May violate Lemon, unemployed must attend prayer meeting.

**endorsement test:** May violate endorsement, if prayers would be from the Jewish faith.

**coercion test:** Maybe, as participants are forced to attend prayer.

**7. Lemon test:** May violate Lemon, helping religion and mixing religion and government.

**endorsement test:** Endorses Christianity with reference to Jesus Christ; Conflict between the Establishment Clause and Free Exercise Clause: the valedictorian's right to publicly express her religious beliefs.

**coercion test:** May be coercion, as students are required to attend graduation.

### Reading Quiz

1. C
2. D
3. C
4. A
5. C

### Lesson 2

#### Handout C: Free Exercise Issues

**1. Possible Conflict:** Restricting all personal photos or wall hangings may be an infringement of free religious exercise.

**Violation:** Unclear; no relevant precedent

**2. Possible Conflict:** Forcing medicine on practitioners of Christian Science goes against their religious beliefs.

**Violation:** Unclear; no relevant precedent

**3. Possible Conflict:** Employees are forced to contribute to an insurance system that provides services (birth control and abortion) that may not be allowed by their religion.

**Violation:** Unclear; no relevant precedent

**4. Possible Conflict:** The Amish objected to the acceptance of money from the government, and believed care of the elderly was family and community, not government responsibility.

**Violation:** No. Legislative exemption was obtained in 1951, but court eventually ruled Amish must pay taxes. (*United States v. Lee*, 1982)

**5. Possible Conflict:** May violate free exercise to not allow religious headgear such as yarmulkes or headscarves.

**Violation:** No. (*Goldman v. Weinberger*, 1986).

**6. Possible Conflict:** Some religions do not permit the swearing of oaths on the Bible or anything else.

**Violation:** Unclear; no relevant precedent

### Reading Quiz

1. C
2. D
3. A
4. B
5. B

### Expression

#### Lesson 1

#### Handout A: Speech Example Cards

1. Not protected
2. Protected
3. Protected
4. Not protected
5. Not protected

#### Handout B: Statements About Freedom of Speech

##### Group A

- The first quote demonstrates restrictions on free speech as held by the Supreme Court. They show that speech and expression are not unlimited rights.

##### Group B

- Although the Supreme Court has placed restrictions on speech, it still goes to great lengths to protect it—and in particular protect political speech.

- Democracy is messy, but that “messiness” is the price we pay for freedom. Dictatorship, on the other hand, is orderly in part because freedom of expression is often severely restricted.
- Living in a free society means that no one, even those who hold the majority view, have the right to suppress others’ opinions.
- Tolerating other viewpoints does not mean you have to take them on yourself, or even particularly like them.
- A willingness to listen to others’ arguments allows us to test our own beliefs, and reinforce or modify them.

### Reading Quiz

1. A
2. B
3. C
4. C
5. D

### Lesson 2

#### Handout A: *Tinker v. Des Moines (1969)*

**1.** Tinker and four other students were suspended for wearing black armbands to school in protest of the Vietnam War.

**2.** Tinker argued the students’ rights to freedom of expression were being violated.

**3.** The school district cited fears that the armbands might cause trouble in schools due to the controversy about the war.

**4.** Some students will argue the school was right to ban the armbands because tensions were high and violence might erupt. These students might point out that even if physical violence did not occur, that the armbands might distract students and teachers to the point of disrupting the learning environment. Other students may say that the school was wrong, and that Tinker had the stronger case, because the students have a right to express their views. They may point out that since the school had allowed other forms of symbolic expression (iron crosses, for example) that the armbands should be allowed.

**5.** The court decided in favor of the Tinkers. Justice Abe Fortas wrote the Court’s opinion. He said, “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” He noted that the district could not use general unsupported fears of disturbances to limit free speech. Fortas added, “Any vari-

ation from the majority’s opinion may inspire fear. Any word spoken in the classroom, in the lunchroom, or on the campus that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take that risk...”

#### Handout B: *Texas v. Johnson (1989)*

**1.** Johnson was arrested breaking a Texas law that made it a felony to desecrate a venerated object. (He burned a flag). Johnson appealed his case and his conviction was reversed. The state of Texas then appealed to the Supreme Court.

**2.** The First Amendment’s protection of “expressive conduct” is involved.

**3.** The State of Texas cited the law about desecrating a venerated object, and claimed Johnson’s actions risked a breach of the peace.

**4.** Some students will side with Texas, agreeing that Johnson’s actions are so offensive to so many that his right to expression should not be protected. They may agree that the risk of others resorting to violence after witnessing the flag being burned is too great. Other students will side with Johnson, and agree with the Appeals



court for reversing his conviction, because he was peacefully expressing a political view. They may point out that the First Amendment was intended to protect the expression of unpopular political views.

**5.** The Supreme Court upheld the Appeals Court decision in favor of Johnson. The Court noted that Johnson's act, coming at the end of the Republican Convention, was clearly political in nature. It concluded, "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea offensive or disagreeable." It also repeated the Appeals Court citation of the Supreme Court's decision in *West Virginia Board of Education v. Barnette* (1943), "Recognizing that the right to differ is the centerpiece of our First Amendment freedoms, a government cannot mandate by fiat a feeling of unity in its citizens. Therefore, that very same government cannot carve out a symbol of unity and prescribe an approved set of messages to be associated with that symbol when it cannot mandate the status or feeling the symbol purports to represent."

### Reading Quiz

1. D
2. D
3. C
4. C
5. D
6. B

### Lesson 3

### Reading Quiz

1. C
2. C
3. B
4. B
5. C

### Guns

### Lesson 1

### Handout A: Group Discussion Guide

**1.** Answers will vary. The group representing the British soldiers may claim they own the weapons. The Sons of Liberty will likely say the guns belong to them. The Town Council may attempt to find a middle ground. Students should consider the question of gun ownership in terms of the colonial power struggle as well as individual rights. Student responses to what the Concord Town Council should recommend might fall in these main categories:

- Let the British confiscate the weapons; then work with the British government to settle grievances and maintain peace.
- Fight against the British soldiers and start a war with the mighty British empire.
- Run and hide as many weapons as possible to prepare for guerrilla warfare.

**2.** Sons of Liberty might say to insist on keeping all their weapons to resist tyranny. British Soldiers may say that colonists should not have weapons, because rebellion jeopardizes the safety of citizens. The Concord Town Council should recognize the complexity of the situation—there are good reasons to help the British soldiers maintain order, and there are also good reasons to support the Sons of Liberty as they fight against British rule.

**3.** Answers will vary. Students should consider the issue of gun control by governmental authority as opposed to personal ownership as addressed in the first question. Some students will say the residents of Concord own the weapons, but the British have the right to regulate or "control" them by confiscation. Others will claim the British do not have the power to abridge the claimed natural right of people to defend themselves with guns.

**Handout B: Town Council Discussion Guide**

Answers will vary.

**Reading Quiz**

1. A
2. C
3. B
4. C

**Lesson 2**

**Reading Quiz**

1. C
2. C
3. A
4. D
5. D

**Private Property**

**Lesson 1**

**Transparency Master A: Property or Not?**

All are examples of property

**Handout A: Understanding the Third, Fourth, Fifth, Seventh and Eighth Amendments**

**Third:** Recognizes the right of people to control the property in their homes.

**Fourth:** Recognizes the right of people to control (“be secure”) in their persons (self-ownership) and homes (physical property).

**Fifth:** Safeguards private property ownership by ensuring due process when the government tries to take property. The Fifth Amendment also provides for government to pay property owners in those times when it does take their property.

**Seventh:** Ensures a jury trial to safeguard property rights in disputes.

**Eighth:** Protects property rights (money) by prohibiting excessive bail and fines.

**Handout B: What Is Ownership?**

**1.** Ownership means one has the legitimate right to control and direct the use of an object or idea

**2.** Self-ownership means a person has control and directs the use of him or herself, as long as it does not harm another or interfere with others’ rights to do the same.

**3.** Ideas are called intellectual property. You can own an original idea, but you cannot own an idea that is common knowledge.

**4.** An individual has property rights in all three, as long as that property right does not interfere with the rights of others.

**5.** Some students may point to disparities in wealth among communities and the results that some have everything they need while others do not even have enough to eat. Others may say that yes, the government should protect individual property rights, because without the right to control what is yours, there would be no motivation to work hard.

**6.** Some students may say that yes, the government should protect a person’s right to control his or her body. The gov-

ernment should not, for example, outlaw piercing or tattoos on the one hand, or drugs, assisted suicide or abortion on the other. Other students may respond, using the same examples (assisted suicide, abortion, drug use, etc) that people should not be able to do whatever they want to their bodies, because the government has an interest in protecting citizens.

**7.** Some students may say that owning an “idea” is too vague a term, and impossible to truly protect. Others may point out that just as a carpenter may create a table that is obviously his physical property, an inventor may come up with an idea for a machine that is just as much his property.

**8.** Answers will vary.

### Reading Quiz

- 1.** D
- 2.** C
- 3.** D
- 4.** B
- 5.** A

### Lesson 2

#### Handout A: Property Script and Questions

**1.** Though the government has not actually taken away the Smith’s land, it has effectively

deprived the Smiths of their use of it, as well as substantially lowered its value. This violates the Fifth Amendment’s takings clause.

**2.** Some students will say that yes, it is a taking because the value of the land is now zero due to government action. Others will say that no, it is not a taking, because the government has not taken their land away, only said that there can be no construction on the land.

**3.** Students who say that it is a taking may cite *Lucas v. South Carolina Costal Commission* (1992). The Court ruled that the owner of beachfront land be paid back after a state law stopped all new construction on the property. He had intended to build single-family homes on the land. Since he could no longer do this, the land’s economic value was reduced to zero. The court ruled that this was a taking even though the land had not literally been taken away, because the state took away all the economic value of the land.

Students who say that no, it is not a taking, may cite *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002). In its decision, the Court ruled that, “a temporary restriction causing a diminution in value is not [a

taking].” In the Smith script example, it is not stated whether the ban is temporary or permanent.

### Reading Quiz

- 1.** C
- 2.** D
- 3.** C
- 4.** C

## Criminal Procedure

### Lesson 1

#### Handout A: Criminal Procedure Protections

**Fourth Amendment: 2.** “No warrants shall issue, but upon probable cause.” Police must show probable cause to get a search warrant; **3.** “. . . describing the place to be searched and the persons or things to be seized.” The warrant must name the place or person that police will search, as well as what they are looking for.

**Fifth Amendment: 2.** People may not be put on trial more than once for the same crime; **3.** “No person . . . shall be compelled to be a witness against himself.” People do not have to give evidence that may make them appear guilty; **4.** “No person shall be deprived of life, liberty or property without due process of law.” The rules must

be followed when a person is accused of a crime, being tried for it, or facing punishment for it; **5.** *“Nor shall private property be taken for public use without just compensation.”* The government cannot take things from people to give to the community unless it pays the owner a fair price.

**Sixth Amendment:** **1.** *“The accused shall enjoy the right to a speedy and public trial by an impartial jury.”* People accused of crimes have the right to a trial by jury in a timely and open manner;

**3.** *“To be confronted with witnesses against him.”* Defendants have the right to know who the witnesses are against them;

**4.** *“...to have compulsory process for obtaining witnesses in his favor...”* Defendants have the right to present witnesses who might help their case;

**5.** *“...and to have the assistance of counsel for his defense.”* Defendants have the right to a lawyer to help defend them.

**Eighth Amendment:** **1.** Bail cannot be unreasonably high; **2.** *“...nor excessive fines imposed.”* Bail cannot be unreasonable. **3.** *“...nor cruel and unusual punishments inflicted.”* Punishments may not be brutal or bizarre.

### Handout B: Criminal Procedure Review

1. grand
2. trial, court
3. attorney, lawyer
4. accused
5. more than once
6. bail
7. people/persons or place
8. evidence, testimony, information
9. jury, petit jury
10. a fair price, compensation, money

### Reading Quiz

1. A
2. D
3. D
4. C
5. C

## Lesson 2

### Handout A: Selected Fourth Amendment Decisions of the Supreme Court

**2.** An incorrectly written search warrant could result in any evidence obtained being excluded from trial.

**3.** The Supreme Court found a “right to privacy” by virtue of the First, Third, Fourth, and Ninth Amendments.

**4.** Evidence gained by listening to and/or recording a conversation without the person’s permission or without a warrant may not be used in court, because people have a “reasonable expectation of privacy.”

**5.** The Court found that using a heat-sensing device to try to find heat lamps used to grow illegal plants was unconstitutional without a warrant.

**6.** People must give their names to police officers investigating a crime.

**7.** Schools may force athletes to be tested for drugs at random.

**8.** Any students who participate in extra-curricular activities may be tested for drug use.

### Handout B1: Case Study —United States v. Banks (2003)

#### Arguments for Banks:

- Banks could not hear the knock while in the shower.
- There was too little time to answer the door (unreasonable).

#### Arguments against Banks:

- Police do not want to give time to destroy evidence.
- Weapons may be used if police do not use surprise.
- Warrant allows entry to search.

**Opinion of the Court:**

The police may enter without a knock, “if reasonable suspicion that...announcing presence...would allow destruction of evidence. ...We think that after fifteen to twenty seconds without a response, police could fairly suspect that cocaine would be gone if they were reticent any longer.”

**Handout B2: Case Study**  
**—Maryland v. Pringle**  
**(2003)**

**Arguments for Pringle:**

- There was no evidence that the money and drugs were Pringle’s and not the other occupants’.
- Car owner should not have given permission to search—harmed Pringle.

**Arguments against Pringle:**

- Car owner did give permission for search.
- Money and drugs belonged to at least one occupant.
- Pringle confessed.

**Opinion of the Court:**

The Court held “Because the officer had probable cause to arrest Pringle, the arrest did not contravene the Fourth and Fourteenth Amendments. . . Here, it is uncontested that the officer, upon recovering the suspected cocaine, had probable cause to believe that a felony had been committed...

As it is an entirely reasonable inference from the facts here that any or all of the car’s occupants had knowledge of, and exercised dominion and control over, the cocaine, a reasonable officer could conclude that there was probable cause to believe that Pringle committed the crime of possession of cocaine, either solely or jointly.”

**Handout B3: Case Study**  
**—Illinois v. McArthur**  
**(2001)**

**Arguments for McArthur:**

- Tera McArthur had reason to lie about the drugs—she was moving out of the home and could reasonably be assumed to be angry with him and want to get him in trouble.
- The officer had no right to enter the trailer, even the doorway, to watch McArthur.

**Arguments against McArthur:**

- Tera McArthur saw the drugs. She used to live there and could know if her husband used drugs.
- McArthur would likely have destroyed the drugs without supervision.
- McArthur was kept out of his house for a relatively short time and even then, was allowed to enter the house twice, with the officer in the doorway.

**Opinion of the Court:**

“We conclude that the restriction at issue was reasonable and hence lawful, in light of the following circumstances, which we consider in combination. First, the police had probable cause to believe that McArthur’s trailer home contained evidence of a crime and contraband, namely unlawful drugs. The police had had an opportunity to speak with Tera McArthur and make at least a very rough estimate of her reliability. They knew she had had a firsthand opportunity to observe her husband’s behavior, in particular with respect to the drugs at issue...Second, the police had good reason to fear that, unless restrained, McArthur would destroy the drugs before they could return with a warrant...Third, the police made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy. They neither searched the trailer nor arrested McArthur before obtaining a warrant...Fourth, the police imposed the restraint for a limited period of time, namely, two hours...As far as the record reveals, this time period was no longer than was reasonably necessary for the police, acting with diligence, to obtain the warrant.”



**Handout D: Exceptions to Search Warrant Requirements**

Answers will vary.

**Reading Quiz**

1. C
2. B
3. C
4. B
5. D

**Citizen Juries**

**Lesson 1**

**Handout A: The History of Juries**

1. King John declared all trials would be by jury, but he was often hostile to juries and ignored their verdicts.
2. King Charles fined the jurors in the trial of William Penn hefty sums for refusing to convict Penn. The court eventually removed the fines.
3. The British often did not honor right to a jury trial. Instead, they sent colonists back to England to be tried by a single judge in admiralty courts.

**Handout C: Analyzing Jury Powers**

1. Students may say that the Founders believed that ordinary citizens were the most competent people to determine guilt or innocence, and that applying a society's laws (serving on a jury) is just as important as electing the lawmakers who write those laws (voting). Their experience under British abuse of jury trial protections likely strengthened their resolve to prevent such abuse in their new government.

2. Answers will vary.

**Handout D: The Fifth, Sixth and Seventh Amendments**

1. Fifth
2. impartial
3. the state where the alleged crime took place
4. most federal civil cases
5. 16-23; 12
6. 3

**Reading Quiz**

1. A
2. B
3. D
4. B
5. B

**Lesson 2**

**Handout B: Jury Pool Selection Sheet**

**Round One:** Eliminate jurors 2, 5, 6, 7, 9, 10, 12.

**Round Two:** Eliminate jurors 1, 3, 4, 8, and 11.

**Round Three:** Answers will vary.

**Round Four:** Eliminate all jurors.

**Round Five:** Answers will vary.

**Reading Quiz**

1. D
2. D
3. B
4. B
5. A

**Personal Liberty**

**Lesson 1**

**Handout D: Court Decision Guideline**

1. The school board wants to enhance security for students, and protect taxpayer property from vandalism.
2. The Supreme Court has generally viewed students in school and public places as having lower expectations of privacy than adults in public places. Mandatory drug testing of

athletes has been ruled constitutional, as have searches of lockers by administrators.

**3.** The Supreme Court ruled in *Tinker v. Des Moines* (1969) that students do not shed their constitutional rights at the school-house gate. If students have a right to privacy outside of school, then they should have it in school as well.

**4.** It depends. Cameras could probably not be used in places where reasonable expectations of privacy are higher, such as private offices, restrooms and locker rooms. Cameras likely would be permitted in common areas, such as hallways, cafeterias, libraries and other more public areas that do not have expectations of privacy associated with them. Employee concerns would have to be taken into consideration as well, as several courts have ruled that employees have a fundamental right to be free from surveillance. Finally, the type of activities to be filmed must be considered. Privacy protections (in this case, Fourth Amendment protections) increase to the extent that the activity being filmed is personal (private conversations, etc) as opposed to business/school related.

**5.** Answers will vary.

### Reading Quiz

1. D
2. C
3. C
4. B
5. D

### Lesson 2

#### Handout A: Supreme Court Personal Liberty Decisions

**1A:** At issue was married couples' legal right to use birth control. The Court held that the CT law outlawing the use of contraceptives was unconstitutional. In identifying a "right to privacy," the court determined that a married couples' right to use birth control was a personal decision and not subject to government regulation. **1C:** The right to privacy in marriage is sacred and existed long before our government. The Ninth Amendment is important to protecting this privacy. Also, several rights in the first eight amendments imply that people have a right to privacy. **1E:** There is no right to privacy, and governments can pass laws which violate individuals' privacy.

**2A:** At issue was the power of states to outlaw abortion. The Court held that states could not restrict abortion in the first trimester, and allowed for some restrictions thereafter. The

Court found that "the right of privacy includes the abortion decision." **2C:** A woman's right to decide whether to continue or end a pregnancy is supported by the Fourteenth as well as Ninth Amendments. **2E:** The abortion decision does not involve the right to privacy.

**3A:** At issue was the right of adults to engage in consensual homosexual conduct. The Court held that Georgia outlawing sodomy was constitutional. The Court found no right to engage in homosexual conduct in the Constitution. **3C:** We are not willing to recognize a fundamental right to gay intimate behavior. **3E:** Knowing that others make choices that do not agree with your belief system does not give you the power to raid their homes, consciences, and other personal spaces.

**4A:** At issue was Texas's law outlawing homosexual (but not heterosexual) sodomy. The Court overturned *Bowers v. Hardwick* (1986). **4C:** To have liberty, you have to be able to control your thoughts and intimate behaviors. We are overturning *Bowers v. Hardwick* (1986). **4E:** People do not have an absolute right to liberty. States can restrict liberty, as long as they follow the rule of law.



### Reading Quiz

1. B
2. A
3. D
4. D

## Federalism

### Lesson 1

#### Handout B: Federalism Venn Diagram

Possible answers include:

#### FEDERAL GOVERNMENT POWERS

- Declare war
- Coin money
- Raise an army
- Make laws
- Provide for the safety of its citizens

#### STATE POWERS

- Set guidelines for education
- Provide for roads
- Provide police and fire departments
- Establish local speed limits

#### SHARED POWERS

- Collect taxes
- Make laws
- Provide courts

### Reading Quiz

1. A
2. D
3. A
4. D
5. B

### Lesson 2

#### Handout A: What Is the Purpose of the Commerce Clause?

#### Chart

1. No
2. No
3. Yes
4. No
5. Yes

#### Questions

1. Statement 1—*Hammer v. Dagenhart* (1918); Statement 2— Social Security; Statement 3— the court approved of the increased federal power; Statement 4—*United States v. Lopez* (1995); Statement 5—*United States v. Morrison* (2000).
2. The power of the Commerce Clause expanded as a result of the New Deal, but has been restricted by *United States v. Lopez* (1995).
3. Answers will vary.

#### Handout B: The Government and You

**Waking up to the clock radio:** The Federal Communications Commission (FCC) regulates content of programs transmitted over the airwaves. (F)

**Using toothpaste and cosmetics:** The federal Food and Drug Administration (FDA) enforces regulations on medicines and cosmetics. (F)

#### Using the toilet and shower:

Water purity and water content is regulated by the federal and local governments. (F,L)

#### Use of electrical devices, such as a hair dryer or razor:

Electricity is regulated by federal and state governments; electrical devices are checked for safety by federal agencies. (F,S)

**Wearing clothes:** Federal child-labor laws and international treaties regulate who makes clothes sold in the United States and how they are made. (F)

**Eating breakfast:** Food is regulated by the FDA. Some states set standards for certain foods. (F,S)

**Putting out the garbage:** Local government operates sanitation trucks. (L)

**Making phone calls:** The Federal Trade Commission (FTC) and the FCC regulate use of phone lines. (F)

**Watching morning television:** The FCC regulates program content. (F)

**Driving a car to school:** A person must obtain a state license and may be required by the state to purchase insurance. Insurance companies are regulated by the federal government. Cars must usually pass a state inspection. Local traffic laws must be obeyed. Roads are funded by local, state, and federal governments. (F,S,L)

**Going to a public school:** Local governments operate the schools, and state governments have authority over them. Students in these schools must meet state standards. The safety of the workplace is monitored by the federal Occupational Safety and Health Administration (OSHA). (F,S,L)

**Going to a job after school:** The safety of the workplace is monitored by OSHA. Federal, state, and local taxes are taken out of paychecks. (F,S,L)

### Reading Quiz

1. B
2. C
3. C
4. A

## Incorporation

### Lesson 1

#### Handout A: Supreme Court Incorporation Cases

Impact on incorporation:

**Barron v. Baltimore (1833):** The Supreme Court said that Maryland did not have to pay a wharf owner just compensation for the loss of his property value. The Fifth Amendment only applied to the States.

**Slaughterhouse Cases (1873):** Narrowed the scope of the privileges and immunities clause.

**Quincy Railways v. Chicago (1897):** Used the Fourteenth Amendment to apply a provision of the Bill of Rights to the states.

**Brown v. Board of Education (1954):** Applied equal protection clause of 14th Amendment to the states, and said no state could deny citizens equal protection of the law.

#### Handout B: The Founders and Incorporation

1. Some students will say that the Founders were very concerned about keeping the central government's power in check, and therefore made certain that states retained the ability to govern themselves. Others will point to disparate state interest at the time of the Founding. They may suggest that the Founders wanted to unify the states, and a limiting document was the best way to accomplish that goal.

2. Some students may say that the Founders were inspired by various state bills and declarations of rights, and so they felt that each state constitution would protect the rights of its citizens. Others may point out

that they did not believe it was the federal government's job to interfere in state governments, and that it did not have the power to require states to honor any rights.

3. Answers will vary. Students should address the issue of state abuse of citizens' rights and whether they believe the federal government's involvement constitutes an abuse of power.

### Reading Quiz

1. A
2. A
3. B
4. D
5. C
6. B

### Lesson 2

#### Handout B: Incorporation Debate Chart

**1. Black:** Supported "total incorporation" or applying the entire Bill of Rights to the states. **Frankfurter:** The Bill of Rights applies to states only in specific situations.

**2. Black:** The due process clause of the Fourteenth Amendment protects Americans' life, liberty and property.

**Frankfurter:** The Fourteenth Amendment does not require incorporating any part of the Bill of Rights to the states.

**3. Black:** The Bill of Rights is the most complete statement of American liberty.

**Frankfurter:** States must honor principles of “fundamental fairness.”

**4. Black:** Always, because to not do so would threaten all the liberty safeguards of the federal Bill of Rights.

**Frankfurter:** The Supreme Court should apply the Bill of Rights to states when a state takes action which “shocks the conscience.”

### ***Handout C: Understanding Incorporation***

**1.** The Bill of Rights was written as a list of things the federal government cannot do (pass laws restricting freedom of speech, or conduct unreasonable searches and seizures, for example). These limits on government power applied only to the federal government. The Bill of Rights did not mean that state legislatures could not pass laws restricting freedom of speech, etc.

**2.** Incorporation changed the Bill of Rights to a set of rights the federal government must make sure all citizens have. The Fourteenth Amendment’s language “No state shall make any law...” empowered citizens of every state to appeal to the Supreme Court when they felt their rights were being violated. It is now arguably the Federal Government’s responsibility to hear these appeals and decide the constitutionality of state laws.

**3.** The Declaration of Independence (1776). It is obvious that everyone is born with equal rights. Some of these rights are life, freedom, and seeking happiness, fulfillment, or joy.

**4.** The Fourteenth Amendment (1868). States may not pass laws that violate the rights and protections of American citizens. States cannot take away citizens’ life, freedom, or possessions without following the law.

### ***Reading Quiz***

- 1.** A
- 2.** B
- 3.** B
- 4.** A
- 5.** B

# *Reading Quizzes*



# QUIZ

## LESSON 1

### ***What Are the Origins of the Bill of Rights?***

1. Why was Magna Carta important?
  - A. It guaranteed voting rights to all Englishmen.
  - B. It guaranteed personal and property rights to Englishmen.
  - C. It defined English citizenship.
  - D. It defined American citizenship.
2. According to John Locke, what is the purpose of government?
  - A. To make people happy and wealthy
  - B. To regulate individuals
  - C. To protect individual and natural rights
  - D. To defend countries from invasion
3. Colonists felt that their individual rights should be protected by:
  - A. Natural rights theory
  - B. English documents and common law
  - C. Colonial documents
  - D. All of the above
4. What document did North American colonists issue in 1776 when they felt their rights as Englishmen had been violated?
  - A. The Rights of Man and the Citizen
  - B. The Bill of Rights
  - C. The Declaration of Independence
  - D. The Constitution
5. How did George Mason contribute to the development of American rights?
  - A. He wrote the Bill of Rights.
  - B. He wrote the Virginia Declaration of Rights.
  - C. He wrote the Constitution.
  - D. He brought English common law to the American judicial system.
6. Who wrote The United States Bill of Rights?
  - A. Thomas Jefferson
  - B. George Mason
  - C. George Washington
  - D. James Madison

# QUIZ

## LESSON 2

### ***Why a Bill of Rights? What Impact Does It Have?***

1. Which of these arguments did the Federalists support?
  - A. A bill of rights was needed to keep the central government from taking rights away from individuals and states.
  - B. A bill of rights was needed so that people would know exactly what rights they did or did not have.
  - C. A bill of rights was unnecessary because the national government had no direct relationship to individuals.
  - D. A bill of rights was unnecessary because the Constitution itself limits federal powers
2. Which of these arguments did the Anti-Federalists support?
  - A. A bill of rights was needed to keep the central government from taking rights away from individuals and states.
  - B. A bill of rights was needed so that people would know exactly what rights they did or did not have.
  - C. A bill of rights was unnecessary because the national government had no direct relationship to individuals.
  - D. A bill of rights was unnecessary because the powers of the national government are enumerated and extend to only certain cases.
3. Which of these American leaders was a Federalist?
  - A. James Otis
  - B. Alexander Hamilton
  - C. Thomas Jefferson
  - D. George Mason
4. Who wrote the Congressional proposals that eventually became the Bill of Rights?
  - A. Thomas Jefferson
  - B. James Madison
  - C. George Washington
  - D. Patrick Henry
5. Why did the Bill of Rights affect more Americans in the twentieth century?
  - A. States increasingly violated individual rights.
  - B. The Supreme Court began limiting more individual rights.
  - C. The federal government grew and entered areas of American life it had left alone in the eighteenth and nineteenth centuries.
  - D. All of the above



# QUIZ

## LESSON 1

### ***The Establishment Clause: How Separate Are Church and State?***

1. Which statement best describes religious practices in Colonial North America?
  - A. No religious discrimination was tolerated.
  - B. All English colonies allowed only Christians to practice their faith.
  - C. People in the colonies practiced different religions, and some colonies were more religiously tolerant than others.
  - D. All of the English colonists came to North America to practice their faith freely.
2. Where did the phrase “a wall of separation between church and state” originate?
  - A. Magna Carta
  - B. The Bill of Rights
  - C. The English Toleration Act of 1689
  - D. Thomas Jefferson’s letter to a Baptist association in Connecticut
3. Which of these is a part of the Supreme Court’s Lemon test?
  - A. Does the law allow people to practice religion freely?
  - B. Do laws regarding religious practice follow local customs?
  - C. Does the law help or hurt religion?
  - D. Does the law follow state laws?
4. Which of these practices has the Supreme Court judged to be constitutional?
  - A. Religious clubs holding meetings on school grounds after school
  - B. School-sponsored prayer
  - C. Ten Commandments posted in public school classrooms
  - D. Students voting on whether to read a prayer at sporting events
5. The Supreme Court ruled in the case of *Zelman v. Simmons-Harris* (2002) that public money could be used for which of these purposes?
  - A. Allowing groups to use public stadiums for religious meetings
  - B. Paying ministers and other religious leaders in the military
  - C. Paying for vouchers for students to attend non-public schools
  - D. Purchasing equipment for religious observances at schools

# QUIZ

## LESSON 2

### *What Is the Impact of the Free Exercise Clause?*

1. What two concepts did the Supreme Court's decision in the *Cantwell v. Connecticut* (1940) case embrace?
  - A. Freedom to worship and freedom to refrain from worshiping
  - B. Freedom to worship and to have access to places of worship
  - C. Freedom to believe and freedom to act
  - D. Freedom to criticize religion and freedom to organize for religious purposes
2. In the *Cantwell* case, the court ruled that the only time the government could interfere with religious belief was
  - A. When students insisted on praying in public schools
  - B. When there was a compelling state interest
  - C. When religious practices offended community standards
  - D. The government cannot ever interfere with religious beliefs
3. What did the Supreme Court rule in *Employment Division v. Smith* (1990)?
  - A. Oregon could deny an unemployment claim because Smith committed a crime.
  - B. Oregon could deny an unemployment claim because the United States government did not have jurisdiction over Oregon's treatment of Native Americans.
  - C. Oregon could not deny an unemployment claim because a treaty protecting Native American religious practices was superior to state laws.
  - D. Oregon could not deny an unemployment claim because smoking peyote is a protected Native American religious practice protected by the First Amendment.
4. What rulings has the court handed down regarding the Amish people?
  - A. No religious group's practices can overrule any law.
  - B. Amish children are excused from mandatory high school attendance.
  - C. Any state or national law that violates Amish religious practices is unconstitutional.
  - D. None of the above.
5. Which of these issues has created the most difficulty for the Supreme Court in deciding Free Exercise cases?
  - A. Many people establish religions and practices in an effort to get around laws.
  - B. People of many different faiths live side by side in our society.
  - C. Atheists have no religion and cannot be protected by the same laws that protect those who do.
  - D. None of the above

# QUIZ

## LESSON 1

### *Why Is Free Speech Important?*

1. James Madison supported open discussion of political topics for all the following reasons EXCEPT:
  - A. Citizens of the new nation should not talk about laws and policies.
  - B. Interest groups should be able to discuss ideas.
  - C. People might act violently if they can't express their ideas.
  - D. Peaceful discussion is better than violent action.
2. The four freedoms include all the following EXCEPT:
  - A. Free speech
  - B. Free education
  - C. Freedom to assemble
  - D. Freedom to petition the government
3. What is tyranny?
  - A. Chaos
  - B. Monarchy
  - C. Seizing the government to force one's beliefs on people
  - D. Violence
4. What form of free speech did the Supreme Court protect in the case of *Brandenburg v. Ohio* (1969)?
  - A. Obscene speech
  - B. Hate speech
  - C. Speech encouraging violent opposition to law
  - D. Private discussions between individuals
5. The Supreme Court has ruled that speech includes the following forms of expression:
  - A. Non-verbal acts
  - B. Symbolic acts
  - C. Spoken words
  - D. All of the above

# QUIZ

## LESSON 2

### How Has Expression Evolved?

1. When they wrote the First Amendment, what kind of speech were the Founders most concerned with protecting?
  - A. Religious speech
  - B. Court testimony
  - C. Private speech
  - D. Speech about politics
2. Which Supreme Court Justice said that free speech is “the marketplace of ideas” in a free society?
  - A. Stephen Fields
  - B. Lewis Powell
  - C. Thurgood Marshall
  - D. Oliver Wendell Holmes
3. Laws which restrict speech must do all of the following EXCEPT:
  - A. Limit speech as little as possible
  - B. Limit only unprotected speech
  - C. Limit speech that criticizes the government
  - D. Be content neutral
4. In *Schenck v. United States* (1919), the Supreme Court ruled that the government can limit speech under what special circumstances?
  - A. When the majority of citizens disagree with the expressed point of view
  - B. When someone distributes pornography on school grounds
  - C. When someone presents a clear and present danger to the country
  - D. When someone makes an anti-Islamic speech outside a mosque
5. According to the Supreme Court, which of these forms of speech are protected by the First Amendment?
  - A. Some forms of obscenity
  - B. Indecent photos
  - C. “Virtual” child pornography
  - D. All of the above
6. What First Amendment right did the Court uphold in *Texas v. Johnson* (1989)?
  - A. The right to advertise cigarettes
  - B. The right to burn the U.S. flag
  - C. The right to broadcast pornographic pictures on TV
  - D. The right to use obscene language in a public place

# QUIZ

## LESSON 3

### ***What Is the History of Freedom of the Press and Assembly?***

1. How did the Sedition Act limit the free exchange of ideas?
  - A. It established one national newspaper.
  - B. It shut down most newspapers.
  - C. It silenced some critics of President John Adams.
  - D. It made publishing all political material illegal.
2. Which of these is an example of censorship?
  - A. An entertainer is not invited to perform at a concert because she expressed her political views.
  - B. A parent limits the amount of time her son can spend instant-messaging with friends.
  - C. An army sergeant reviews newspaper articles written by American soldiers in Iraq to be certain that no information that might be helpful to the enemy is included.
  - D. A storeowner won't allow people who swear into his shop.
3. What is prior restraint?
  - A. Showing good motives for what newspapers are about to print
  - B. Getting official approval from the government before printing
  - C. Extending the protections of the Fourteenth Amendment to the states
  - D. None of the above
4. When was the right to petition government first guaranteed to Englishmen?
  - A. After the English Civil War
  - B. At the time of Magna Carta
  - C. In the nineteenth century
  - D. People in England do not have the right to petition.
5. According to the Supreme Court decision in *Madsen v. Women's Health Clinic* (1994), what First Amendment right can sometimes be restricted?
  - A. Association
  - B. Petition
  - C. Assembly
  - D. The court has never allowed any First Amendment right to be restricted.

# QUIZ

## LESSON 1

### *What Are Origins and Interpretations of the Right to Bear Arms?*

1. When were Englishmen first guaranteed the right to bear arms?
  - A. Sometime before the Norman Conquest of 1066
  - B. 1066
  - C. In Magna Carta in 1215
  - D. In the English Bill of Rights in 1688
2. What is a militia?
  - A. A national army
  - B. A place to store the government's weapons
  - C. Individuals who have weapons to defend an area
  - D. A private army which uses force to accomplish a political objective or for money.
3. Who owned guns during the American Revolution?
  - A. All Americans
  - B. Most people
  - C. Only the national government was allowed to own guns.
  - D. Only state governments were allowed to own guns.
4. Which of the following is NOT a subject of Second Amendment debate?
  - A. The meaning of the word "militia"
  - B. The origin of the right to bear arms
  - C. The meaning of the term "necessary"
  - D. The meaning of the phrase "the people"

# QUIZ

## LESSON 2

### *How Has the Second Amendment Been Interpreted?*

1. What are the two parts of the Second Amendment known as?
  - A. The opening phrase and the closing phrase
  - B. The introduction and the conclusion
  - C. The preamble and the operative clause
  - D. The Second Amendment does not have two parts.
2. In *Presser v. Illinois* (1886), the Court ruled that the right to keep and bear arms did not include which activity?
  - A. Hunting
  - B. Displaying guns on carriages
  - C. Parading and drilling
  - D. Owning military-grade weapons
3. In *United States v. Miller* (1939), who did the Court say the “militia” was?
  - A. All physically capable men
  - B. The National Guard
  - C. Professional soldiers
  - D. A standing army
4. Why did Heller challenge the District’s gun law in *District of Columbia v. Heller* (2008)?
  - A. The law did not ban all types of guns.
  - B. He believed a strict licensing requirement violated the Fourth Amendment.
  - C. Concealed weapons were a threat to safety.
  - D. He believed a total ban on handguns violated the Second Amendment.
5. The Court ruled in *District of Columbia v. Heller* (2008) that the right to self-defense was what?
  - A. Inherent
  - B. A right of all people
  - C. Pre-existing
  - D. All of the above



# QUIZ

## LESSON 1

### ***What Is Property? Why Protect It?***

1. Which of these property rights violations contributed to the American revolt against England?
  - A. Searches with no warrants
  - B. Forced housing of troops
  - C. Random arrests
  - D. All of the above
2. Why did Thomas Jefferson change John Locke's "property" to "pursuit of happiness" in the Declaration of Independence?
  - A. Jefferson did not believe people should own private property.
  - B. Jefferson thought that Locke's idea of property was too broad.
  - C. Jefferson expanded the idea of property to include things like the satisfaction of creativity.
  - D. None of the above
3. In *Property*, James Madison made the following point about the personal ownership of property:
  - A. Only individuals can own property.
  - B. Government has no power to take property from individuals.
  - C. Property rights are not natural rights.
  - D. Property includes a person's religious beliefs, opinions, and body.
4. Which amendment to the Constitution guarantees just compensation when the government takes property from individuals?
  - A. Third Amendment
  - B. Fifth Amendment
  - C. Seventh Amendment
  - D. Ninth Amendment
5. How does the Seventh Amendment help secure property rights?
  - A. It guarantees jury trials in common law disputes in suits involving more than twenty dollars.
  - B. It establishes a common currency.
  - C. It prohibits the national government from taxing land.
  - D. It guarantees homestead rights for landless people.

# QUIZ

## LESSON 2

### ***How Does the Fifth Amendment Protect Private Property?***

1. When the government takes property from someone, how much does the government have to pay?
  - A. The seller gets to set the price.
  - B. The Tax Board determines the price.
  - C. Courts establish a fair market value as “what a willing buyer would pay in cash to a willing seller at the time of the taking.”
  - D. The government assesses the property and sets whatever price it wants.
2. What is eminent domain?
  - A. The United States owns all of the land in the United States.
  - B. People may claim unused government land.
  - C. The states own the land within their state boundaries.
  - D. The government can take land from private individuals for public use.
3. All of the following are examples of eminent domain EXCEPT:
  - A. Taking private land to build railroads
  - B. Taking private land to build highways
  - C. Property owners charging high monthly rents
  - D. Reducing the value of land through regulation
4. How has the Internet created problems in protecting property?
  - A. The Internet makes it easier for the government to take property.
  - B. The Internet has forced property values to increase.
  - C. The Internet has made it easier to steal intellectual property such as music or books.
  - D. It is difficult for the Court to decide who owns the information on the Internet.

# QUIZ

## LESSON 1

### *What Are the Rights of the Accused?*

1. What were general warrants?
  - A. Documents allowing British officials to search for anything on anyone's property
  - B. Documents used to convict colonists
  - C. Orders for the arrest of class of people
  - D. Orders that verdicts of colonial juries could be reversed by the king
2. According to the Fifth Amendment, when can an accused criminal be forced to testify against him or herself?
  - A. When s/he is arrested
  - B. When the state believes that other witnesses are lying
  - C. During sentencing
  - D. Accused persons can never be forced to testify at their own trials.
3. What rights does the Sixth Amendment guarantee accused criminals during their trials?
  - A. The right to an attorney
  - B. The right to call and confront witnesses
  - C. The right to know the specific crime of which they are accused
  - D. All of the above
4. What kinds of punishment does the Eighth Amendment prohibit?
  - A. Punishments which limit personal liberty
  - B. Monetary punishments
  - C. Cruel or unusual punishments
  - D. Impounding of vehicles
5. Why did Madison put so many protections for the rights of accused criminals in the Bill of Rights?
  - A. He was a lawyer and wanted his clients to win.
  - B. He had been arrested, tried, convicted, and punished unfairly during the American Revolution.
  - C. He feared that a majority of people could use the criminal justice system to abuse their power over those they did not like.
  - D. Leaders were afraid the national government would try to take away their power through unfair trials.

# QUIZ

## LESSON 2

### *How Are Fourth Amendment Protections Enforced?*

1. Which two branches of government have to agree that probable cause exists before a search warrant can be issued?
  - A. The legislative and the executive
  - B. The legislative and the judicial
  - C. The judicial and the executive
  - D. The state and federal
2. The exclusionary rule says that prosecutors cannot use \_\_\_\_\_ seized during a search in violation of the Fourth Amendment.
  - A. Persons
  - B. Evidence
  - C. Photos
  - D. Witnesses interviewed
3. When can illegally obtained evidence be used?
  - A. It can be used in civil cases.
  - B. Prosecutors can use this evidence when questioning witnesses.
  - C. When officers can prove they made every effort to act legally.
  - D. When the crime is horrible and the defendant will go free when the evidence shows that he is guilty.
4. In the *Board of Education of Pottawatomie County v. Earls* (2002), the Supreme Court said school districts may conduct random drug tests on:
  - A. Student athletes only
  - B. Any student involved in extracurricular activities
  - C. Teachers and other school employees
  - D. No one, unless police have a search warrant
5. What part of the Constitution says Congress shall make no law violating the right to privacy?
  - A. Article 1
  - B. The Second Amendment
  - C. The Tenth Amendment
  - D. The Constitution does not mention the right to privacy.

# QUIZ

## LESSON 1

### *What Is the Tradition of Citizen Juries?*

1. In 1215, King John of England declared in Magna Carta that freemen would only be imprisoned by:
  - A. the lawful judgement of their peers
  - B. the king
  - C. noblemen
  - D. church judges
2. What important principle of English law did the Penn case establish?
  - A. The courts of England have no authority in religious laws.
  - B. Jurors cannot be punished for their verdicts.
  - C. Jurors can be punished for their verdicts.
  - D. The King can overrule juries.
3. What does a grand jury do?
  - A. They re-try a case.
  - B. They decide guilt or innocence.
  - C. They set the penalty for a crime.
  - D. They decide if there is enough evidence to go to trial.
4. What is jury nullification?
  - A. The right of a jury to overrule a judge's order.
  - B. The right of a jury to refuse to convict someone who has broken a law.
  - C. The right of a jury to set a penalty for a crime.
  - D. The right of a single juror to prevent a verdict.
5. All of the following were results of jury nullification in the nineteenth century EXCEPT:
  - A. Abolitionists remained free.
  - B. The Fugitive Slave Law was passed.
  - C. The abolitionist movement continued.
  - D. People continued to help run-away slaves.

# QUIZ

## LESSON 2

### *What Is the Role of Jurors?*

1. What did Thomas Jefferson think about jury duty?
  - A. It was not important in a country with trained judges.
  - B. It was not important in a constitutional system in which laws took care of themselves.
  - C. It was the only important duty a citizen should perform.
  - D. It was more important than voting.
2. For which of these reasons can a person be “struck” from a jury?
  - A. Political bias
  - B. Personal bias
  - C. Knowledge of the participants in the trial
  - D. All of the above
3. Where are most jury lists drawn from?
  - A. Volunteer jury pools
  - B. Voter registrations and driver’s license lists
  - C. Telephone books
  - D. Lists supplied by opposing sides in the trial
4. What happens to sequestered jurors?
  - A. They are sent to jail for not doing their job or doing it wrong.
  - B. They live away from their family in a hotel during the trial.
  - C. They are recycled in the jury pool and may be called to serve again.
  - D. They are eliminated from a jury for cause.
5. All of the following are ways to participate in democratic society EXCEPT:
  - A. finding ways to get out of jury duty
  - B. studying the legal system
  - C. learning about the rule of law
  - D. recognizing the power of juries

# QUIZ

## LESSON 1

### *How Does the Constitution Protect Personal Liberty?*

1. All of the following are part of the definition of personal liberty EXCEPT:
  - A. The freedom to act and do the legal things you want to do
  - B. The right to control your own destiny
  - C. The right to travel to places you want to see
  - D. The right to force others to act on your behalf
2. The rights in the Bill of Rights fulfill the promise of which document?
  - A. Magna Carta
  - B. The Petition of Right
  - C. The Declaration of Independence
  - D. The Articles of Confederation
3. How has the Supreme Court recognized a right to privacy?
  - A. The right to privacy is listed in the First Amendment.
  - B. The right to privacy is listed in the Ninth Amendment.
  - C. The right to privacy is implied by the First, Third, Fourth and Fifth Amendments.
  - D. The Supreme Court has not recognized a right to privacy.
4. What do the Fifth and Fourteenth Amendments protect that helps ensure personal liberty?
  - A. The right to travel
  - B. The right to due process
  - C. The right to drive
  - D. The right to free association
5. Due process means all of the following EXCEPT:
  - A. The government must act fairly.
  - B. Laws themselves must be constitutional.
  - C. Legislation must respect individual rights and be enforced fairly.
  - D. The government cannot interfere in any way in individuals' lives.



# QUIZ

## LESSON 2

### *What Is the Scope of the Bill of Rights?*

1. James Madison felt strongly that the Ninth Amendment was needed because:
  - A. He was a staunch Anti-Federalist.
  - B. It ensures the rights listed in the Bill of Rights are not considered more important than those rights not listed.
  - C. He thought all rights should be specifically listed.
  - D. He wanted to provide good debates for posterity.
2. What do Ninth Amendment rights debates focus on?
  - A. Whether some personal liberty rights are truly natural rights
  - B. Whether the Founders themselves would have approved of certain actions
  - C. Whether a majority of voters approve of certain actions
  - D. Whether certain rights were listed in Magna Carta
3. In *Griswold v. Connecticut* (1965), the Supreme Court did all of the following EXCEPT:
  - A. Found the right to privacy within marriage to be protected by the Ninth Amendment.
  - B. Held that the right to privacy within marriage was older than the Bill of Rights.
  - C. Found further Constitutional basis beyond the Ninth Amendment for its decision.
  - D. Held that states could regulate married couples' use of birth control.
4. The Supreme Court decision *Roe v. Wade* (1973):
  - A. Found the right to an abortion is founded on the Ninth and Fourteenth Amendments.
  - B. Held that the right of privacy is broad enough to encompass a woman's decision to terminate her pregnancy.
  - C. Is opposed by those who believe the legality of abortion should be left up to the people through their elected representatives.
  - D. All of the above

# QUIZ

## LESSON 1

### What Is a Federal Republic?

1. Federalism is:
  - A. The principle that guides the division of federal and state power
  - B. The doctrine that the federal government can always determine state law
  - C. A monarchical government
  - D. A style of furniture
2. Powers given to the central or federal government by the Constitution include all of the following EXCEPT:
  - A. To direct commerce between the states
  - B. To coin money and collect taxes
  - C. To raise armies
  - D. To issue driver's licenses
3. What is the purpose of the Tenth Amendment?
  - A. It makes clear that the people and the states keep all powers not specifically given to the central government.
  - B. It forbids Congress from regulating interstate commerce.
  - C. It allows states to make treaties.
  - D. It enables the central government to prohibit slavery.
4. Which of the following is NOT TRUE of Jim Crow laws?
  - A. Jim Crow laws legalized segregation.
  - B. Jim Crow laws favored Caucasians.
  - C. Jim Crow laws were upheld in *Plessy v. Ferguson* (1896).
  - D. Jim Crow laws were upheld in *Brown v. Board of Education* (1954).
5. The significance of *Brown v. Board of Education* (1954) includes all of the following EXCEPT:
  - A. The Supreme Court found segregation in schools unconstitutional.
  - B. The Supreme Court determined that states could provide "separate but equal" facilities for people of different races.
  - C. State governments would eventually have to follow the directions of the federal government and integrate their schools.
  - D. The case marked the end of the Jim Crow period and the beginning of the Civil Rights Movement.

# QUIZ

## LESSON 2

### *How Has the Supreme Court Applied the Commerce Clause?*

1. What does the Commerce Clause do?
  - A. It gives Congress the power to produce and sell goods.
  - B. It gives Congress the power to regulate commerce with foreign nations, among the states, and with Indian tribes.
  - C. It allows the executive branch to regulate commerce with foreign nations, among the states, and with Indian tribes.
  - D. It allows the Supreme Court to regulate commerce with foreign nations, among the states, and with Indian tribes.
2. In *Hammer v. Dagenhart* (1918), why did the Supreme Court rule that the federal government could not be in charge of child labor?
  - A. Because the Tenth Amendment left this power to the states.
  - B. Because Congress could not make rules related to the production of goods.
  - C. Both A and B
  - D. None of the above
3. How did the Supreme Court's philosophy about federal power change following President Franklin D. Roosevelt's New Deal legislation?
  - A. The Supreme Court placed tighter limits on federal government power.
  - B. The Supreme Court forbade Congress from creating laws about child labor.
  - C. Federal power expanded as Congress was able to pass laws regulating, banning and supporting a wide range of activities.
  - D. The Supreme Court found that the federal government did not have the power to create a Social Security program.
4. What is the significance of *United States v. Lopez* (1995)?
  - A. It marked the first time since 1936 that the Supreme Court held that Congress had gone too far in making laws under the Commerce Clause.
  - B. The Court found that Congress could create gun-free school zones.
  - C. It continued the trend of increased federal power.
  - D. It was a unanimous decision allowing Congress to ban firearms in school buildings.

# QUIZ

## LESSON 1

### *What Is Incorporation?*

1. What does the term “incorporation” mean?
  - A. Using the Fourteenth Amendment to apply the Bill of Rights to the states
  - B. Eliminating rights which are only guaranteed by state constitutions and not by the U.S. Bill of Rights
  - C. Creating new rights from constitutional interpretation
  - D. None of the above
2. The Founders wrote the Bill of Rights to apply to:
  - A. Only actions of the federal government
  - B. Only actions of the state governments
  - C. Actions of both the state and federal government
  - D. Actions of neither the state nor federal governments
3. Why did Congress pass the Civil Rights Act of 1866?
  - A. To destroy federalism
  - B. To protect former slaves from abuses by state governments
  - C. To give federal powers to the states
  - D. To strip former Confederate leaders of their citizenship
4. The due process clause of the Fourteenth Amendment:
  - A. Limits state actions
  - B. Guarantees the rights protected by the Fifth Amendment
  - C. Protects individuals against wrongful actions of the states
  - D. All of the above
5. Which of the following is an example of the equal protection clause in action?
  - A. Only women may receive welfare assistance.
  - B. Only Asian-Americans can receive scholarships to state universities.
  - C. People of all races must receive the same consideration when applying for jobs.
  - D. Only boys may attend a public school.
6. How did the Court’s ruling in *Quincy Railways v. Chicago* (1897) redefine the Fourteenth Amendment?
  - A. It said that the Fourteenth Amendment does not apply to the states.
  - B. The Supreme Court used the Fourteenth Amendment to apply the Bill of Rights to a state action.
  - C. It said that the Fourteenth Amendment only applied to freed slaves.
  - D. It said that the Fourteenth Amendment was unconstitutional.

# QUIZ

## LESSON 2

### ***What Are Americans' Fundamental Freedoms?***

1. What incorporation theory did Justice Hugo Black support?
  - A. Total incorporation
  - B. Fundamental fairness
  - C. Unitary incorporation
  - D. Selective incorporation
2. Which of the following statements about Americans' fundamental freedoms is true?
  - A. Americans' fundamental freedoms are life, liberty, and the pursuit of happiness.
  - B. The Supreme Court has ruled that the Bill of Rights' protections are a list of Americans' fundamental freedoms.
  - C. The question of what Americans' fundamental freedoms are is still debated today.
  - D. Americans' fundamental freedoms are freedom of speech and freedom of religion.
3. What effect has incorporation had on the Supreme Court?
  - A. It decreased the Court's power to define rights.
  - B. It increased the Court's power to define rights.
  - C. It changed the number of Justices from nine to twelve.
  - D. None of the above
4. What effect has incorporation had on the meaning of the Bill of Rights?
  - A. It changed it from being a list of limits on federal government power to a set of rights guaranteed by the federal government.
  - B. It changed it from being a set of rights guaranteed by the federal government to a list of limits on federal government power.
  - C. It changed it from a set of protections from the federal government to a set of protections guaranteed by both states and the federal government.
  - D. It changed it from a set of rights to a set of responsibilities.
5. How have Americans' views of themselves as citizens shifted in the last century?
  - A. Americans are more likely to identify with their states than with the national government.
  - B. Americans are more likely to identify their national government as the protector of rights.
  - C. Americans are more likely to identify themselves as individuals with no loyalty to anyone.
  - D. None of the above

## ***Teacher Notes***

# *Landmark Supreme Court Cases*

LANDMARK  
SUPREME COURT  
CASES





# Landmark Supreme Court Cases

## Religion

### ESTABLISHMENT CLAUSE

*Everson v. Board of Education* (1947)

The Court upheld a New Jersey policy of reimbursing parents of parochial and private school students for the costs of busing their children to school on the grounds that assistance went to the child, not the church.

*Torcaso v. Watkins* (1961)

A unanimous Court ruled that a Maryland requirement that candidates for public office swear that they believe in the existence of God is a religious test and violates the Establishment Clause.

*Engel v. Vitale* (1962)

The Court ruled that New York state could not require a state-composed prayer to begin the school day. Even such a non-denominational prayer as this one was unconstitutional government sponsorship of religion.

*Abington School District v. Schempp* (1963)

A Pennsylvania law requiring that each public school day open with Bible reading was struck down.

*Murray v. Curlett* (1963)

A Maryland law requiring prayer at the beginning of each public school day was declared unconstitutional.

*Epperson v. Arkansas* (1968)

The Court overturned an Arkansas law prohibiting the teaching of evolution.

*Lemon v. Kurtzman* (1971)

The Court struck down a Pennsylvania law reimbursing religious schools for textbooks and teacher salaries. The decision held that a program does not violate the Constitution if: (a) it

has a primarily secular purpose; (b) its principal effect neither aids nor inhibits religion; and (c) government and religion are not excessively entangled.

*Stone v. Graham* (1980)

State laws mandating the display of the Ten Commandments in public school classrooms are declared unconstitutional.

*Marsh v. Chambers* (1983)

States have the right to hire a chaplain to open legislative sessions with a prayer or invocation.

*Lynch v. Donnelly* (1984)

The Court upheld a nativity display among other symbols in a public park "to celebrate the Christmas Holiday and to depict the origins of that Holiday."

*Wallace v. Jaffree* (1985)

The Court overturned an Alabama law setting aside a minute for "voluntary prayer" in public schools.

*Edwards v. Aguillard* (1987)

The Court ruled that Louisiana could not require public schools that taught evolution to teach creationism as "Creation Science."

*Allegheny County*

*v. Greater Pittsburgh ACLU* (1989)

The Court upheld the right of states to celebrate the Christmas holiday with a joint menorah-Christmas tree display. The Court also ruled that a nativity scene donated by a Catholic group could not be displayed alone on the courthouse steps.

*Board of Education of Westside Community Schools v. Mergens* (1990)

The Court upheld the 1990 Equal Access Act, which required that public schools give religious

groups the same access to facilities that other extracurricular groups enjoy.

*Lee v. Weisman* (1992)

The Court ruled against officially approved, clergy-led prayer at public school graduations.

*Zobrest v. Catalina Foothills School District* (1993)

A school district must provide a sign interpreter to a hearing-impaired child at a religious school under the Individuals with Disabilities Education Act.

*Kiryas Joel School District v. Grumet* (1994)

The Court struck down a New York law creating a special school district to benefit disabled Orthodox Jewish children, because it benefited a single religious group and was not neutral to religion.

*Capitol Square Review and Advisory Board v. Pinette* (1995)

The Court held that Ohio could not refuse to permit the KKK to erect an unattended cross in a traditional public forum adjoining the state house.

*Santa Fe Independent School District v. Doe* (2000)

The Court held that a school district's policy of permitting student-led, student-initiated prayer at football games was unconstitutional.

*Good News Club v. Milford Central School* (2001)

Religious clubs must be allowed to meet in public schools after class hours as other groups were permitted to do. Excluding the religious club was unconstitutional content-based discrimination, and permitting the meetings would not violate the Establishment Clause.

*Mitchell v. Helms* (2000)

The Court upheld federal provision of computer equipment to all schools—public, private and parochial—under the Elementary and Secondary Education Act.

*Zelman v. Simmons-Harris* (2002)

The Court upheld a government program providing tuition voucher aid for Cleveland schoolchildren to attend a participating public or private, religious or non-religious school of their parents' choosing.

*Elk Grove Unified School District*

*v. Newdow* (2004)

The father of an elementary student challenged 1954 addition of the words “under God” to the Pledge of Allegiance, claiming that it violated both the Establishment and Free Exercise Clauses. The Court did not rule on the question of whether the pledge is constitutional. Rather, it held that the father did not have standing to bring the suit on behalf of his daughter, as he was a “non-custodial parent.”

## FREE EXERCISE CLAUSE

*Reynolds v. United States* (1879)

The Court upheld the federal law against polygamy in Utah territory. Freedom of religion means “freedom to hold an opinion or belief, but not to take action in violation of social duties or subversive to good order.”

*Jacobsen v. Massachusetts* (1905)

The Court upheld a Massachusetts statute requiring all students, despite religious beliefs to the contrary, to be vaccinated before starting school in the interest of public health and safety.

*Minersville v. Gobitis* (1940)

The Court upheld a Pennsylvania flag-salute law, saying that “religious liberty must give way to political authority.” This was reversed in *West Virginia v. Barnette* (1943) on both free exercise and free speech grounds.

*Cantwell v. Connecticut* (1940)

The Court began applying the Free Exercise

Clause to the states and recognized an absolute freedom of belief.

*Braunfeld v. Brown* (1961)

The Court upheld a Pennsylvania law requiring stores to be closed on Sundays, even though Orthodox Jews claimed the law unduly burdened them since their religion required them to close their stores on Saturdays as well. The Court held that the law did not target Jews specifically as a group.

*Sherbert v. Verner* (1963)

The Court ruled that states could not deny unemployment benefits to a person for turning down a job requiring him/her to work on the Sabbath.

*Wisconsin v. Yoder* (1972)

The Court ruled that Amish adolescents could be exempt from a state law compelling school attendance for all 14- to 16-year-olds, since their religion required living apart from the world and worldly influence.

*McDaniel v. Paty* (1978)

A Tennessee law barring members of the clergy from public office was overturned. Such a law directly targeted individuals because of their religious profession.

*Thornton v. Caldor* (1985)

The Court struck down a Connecticut law prohibiting private employers from firing employees who refused to work on any day they claimed was their Sabbath.

*Goldman v. Weinberger* (1986)

Upheld in this case were Air Force sanctions against a Jewish chaplain who wore a yarmulke (skull cap) on duty in defiance of regulations. The military's interest in uniformity and discipline outweighed an individual's free exercise rights.

*Employment Division v. Smith* (1990)

Oregon could deny unemployment benefits to someone dismissed from a job for smoking peyote during a religious ceremony. Peyote smoking was illegal, and the state could refuse benefits to anyone who lost a job because of illegal activity.

*Church of the Lukumi Babalu Aye v. City of Hialeah* (1993)

The Court found that laws passed by four Florida cities banning animal sacrifice were targeted at the Santeria religion, which employs animal sacrifice in prayer, and therefore the laws were unconstitutional.

## Expression

### **SPEECH: General**

*Schenck v. United States* (1919)

During World War I, Schenck mailed letters to draftees urging them to peacefully protest the draft. The Court held that the First Amendment did not protect Schenck since, during wartime, such free expression "would create a clear and present danger" to the country.

*Gitlow v. New York* (1925)

The Supreme Court applied protection of free speech to the states.

*Chaplinsky v. New Hampshire* (1942)

The Court held that the First Amendment did not protect "fighting words ... which by their very utterance inflict injury or tend to incite an immediate breach of the peace."

*West Virginia State Board of Education v. Barnette* (1943)

The Court ruled that the West Virginia policy requiring students and teachers to recite the Pledge of Allegiance was unconstitutional.

*United States v. O'Brien* (1968)

The Court upheld the conviction of a young man who burned his draft card in protest against the Vietnam War as a gesture of symbolic free speech. The Court held that the cards were a necessity for the legitimate government purpose of raising an army, and the law forbidding their destruction was narrowly tailored to achieve this and was not aimed at suppressing dissent.

*Tinker v. Des Moines* (1969)

The Court ruled that students wearing black armbands to protest the Vietnam War was “pure speech,” or symbolic speech protected by the First Amendment.

*Brandenburg v. Ohio* (1969)

The Supreme Court held that the First and Fourteenth Amendments protected Brandenburg’s speech advocating violence at a Ku Klux Klan rally. States may not forbid advocacy to action unless such advocacy is directed at producing “imminent lawless action” and is likely to produce such action.

*Cohen v. California* (1971)

A California statute prohibiting the display of offensive messages (such as “F\*\*\* the Draft” on a jacket) violated freedom of expression. The Court struck down “censorship of particular words as a convenient guise for banning the expression of unpopular views.”

*Miller v. California* (1973)

This case set forth rules for obscenity prosecutions, but it also gave states and localities flexibility in determining what is obscene.

*Bethel School District v. Fraser* (1986)

Suspension of a student for violation of a school’s “disruptive conduct rule” for a student government nomination speech full of “elaborate, graphic, and explicit sexual metaphor” did not violate his right to freedom of speech. The

same latitude granted to an adult is not permitted to children in public schools because lessons of mature conduct cannot be learned if a school permits lewd, offensive speech or conduct.

*Texas v. Johnson* (1989)

The Court upheld flag burning as symbolic speech: “Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”

*R.A.V. v. St. Paul* (1992)

The decision overturned the conviction of a juvenile accused of burning a cross in the yard of a black family on the grounds that the law punished speech that could not be regulated solely on the basis of its content. Other means were available to punish or prevent cross burning, said the Court, and the law was not content neutral.

*Reno v. ACLU* (1997)

The 1996 Communications Decency Act is ruled unconstitutional since it was overly broad and vague in its regulation of speech on the Internet, and since it attempted to regulate indecent speech which is protected.

*United States v. American Library Association* (2003)

The federally mandated use by public libraries of Internet-filtering software to prevent viewing of pornography by minors does not violate the First Amendment rights of library patrons.

*Watchtower Bible and Tract Society v. Stratton* (2002)

City laws requiring permits for political advocates going door to door are unconstitutional and offensive because “in the context of everyday public discourse, a citizen must first inform the government of her desire to speak to her neighbors.” Such a mandate would have a “chilling effect” on political communication and is impermissible.

*Virginia v. Hicks* (2003)

The city of Richmond has the right to ban non-residents from public housing complexes. The public housing authority's trespass policy was not overbroad and did not infringe upon free speech rights under the First Amendment.

*Virginia v. Black* (2003)

The state may ban cross burning with intent to intimidate, but the cross burning act itself is insufficient evidence from which to infer intent.

*Ashcroft v. ACLU* (2004)

The Child On-Line Protection Act violated the First Amendment because it was overbroad, it resulted in content-based restrictions on speech, and there were less-restrictive options available to protect children from harmful materials.

*Morse v. Frederick* (2007)

The First Amendment did not protect a public school student's right to display a banner reading "Bong Hits 4 Jesus." While students have the right to engage in political speech, the right was outweighed by the school's mission to discourage drug use.

***SPEECH: Campaign Finance****Buckley v. Valeo* (1976)

This campaign finance case permitted "reasonable restrictions" on individual, corporate and group contributions to candidates; limits on campaign expenditures were disallowed since these "place substantial and direct restrictions" on protected political expression.

*Colorado Republican Federal Campaign Committee v. FEC* (1996)

The Court ruled that campaign spending by political parties on behalf of congressional candidates may not be limited as long as the parties work independently of the candidates.

*Federal Election Commission v. Wisconsin Right to Life* (2007)

The Bipartisan Campaign Reform Act's limits on political "issue ads" was an unconstitutional violation of the First Amendment.

***SPEECH: Commercial****Virginia Board of Pharmacy v. Virginia Citizens Consumer Council* (1976)

This 7-1 decision protected a pharmacy's right to advertise prices on First Amendment grounds.

*Linmark v. Willingboro* (1977)

The Supreme Court ruled that a town prohibition on "For Sale" and "Sold" signs improperly restricted the flow of commercial information and was thus unconstitutional.

*United States v. United Foods* (2001)

Mandatory advertising assessments imposed upon cooperatives of mushroom growers are "contrary to First Amendment principles" in that they are a form of "compelled subsidies for speech."

***PRESS****Rex v. Zenger* (1735)

The colony of New York tried John Peter Zenger, a newspaper publisher, for seditious libel against the colonial governor. At that time, truth was not a defense in a libel case. The jury acquitted Zenger, whose defense is seen as the cornerstone of American press freedom.

*Near v. Minnesota* (1931)

A state law authorizing "prior restraints" of publications was "inconsistent with the conception of liberty of the press as historically conceived and guaranteed" and was unconstitutional. This decision also extended protection of freedom of the press to the states (incorporation).



*New York Times v. Sullivan* (1964)

The First Amendment protected all statements about public officials unless the speaker lies with the intent to defame. This overturned a judgment awarding damages to an Alabama police official after the *Times* ran a critical ad.

*New York Times v. United States* (1971)

In the Pentagon Papers case, the Court lifted a temporary injunction against publication of leaked information since such publication would not cause an “inevitable, direct and immediate” event imperiling the safety of American forces. Prior restraint was unjustified.

*Nebraska Press Association v. Stuart* (1976)

The Court ruled against a judge’s gag order in a murder trial; such a prior restraint on the media is unconstitutional.

*Hustler v. Falwell* (1988)

The Court ruled that the First Amendment prohibits public figures from recovering damages for intentional infliction of emotional harm without showing that the publication contained a false statement of fact made with actual malice.

*Hazelwood School District v. Kuhlmeier* (1988)

Removal by a principal of articles from a school newspaper produced as part of a journalism class was “reasonably related to legitimate pedagogical concerns.” A school need not tolerate speech inconsistent with its basic educational goal.

**ASSEMBLY/ASSOCIATION**

*Dejonge v. Oregon* (1937)

This extended to the states the federal protection of the right of peaceful assembly for lawful discussion.

*NAACP v. Alabama* (1958)

The Court upheld the right of freedom of association while striking down an Alabama law requiring associations to disclose their membership lists.

*Edwards v. South Carolina* (1963)

This upheld the right of persons to demonstrate peacefully on public property. The state can not “make criminal the peaceful expression of unpopular views.” The convictions of students arrested for peaceful demonstrations against segregation were overturned.

*Lloyd Corporation v. Tanner* (1972)

Shopping mall owners may prohibit demonstrators from assembling in their private malls since the First Amendment applies to public, not private property.

*Village of Skokie v. National Socialist Party* (1978)

The Court ruled that the National Socialist (Nazi) Party could not be prohibited from marching peacefully, simply because of the content of their message.

*Rotary International*

*v. Rotary Club of Duarte* (1987)

California state law requiring Rotary Clubs to admit women to membership was constitutional and did not violate “expressive association.” Any small infringement of members’ rights is “justified by the State’s compelling interest in eliminating discrimination against women and assuring them equal access to public accommodations.”

*Madsen v. Women’s Health Clinic* (1994)

The Court upheld restrictions on abortion protesters, including limits on noise amplification and a required buffer zone.

*Hurley v. Irish American GLIB Association* (1995)

The Court ruled that forcing a privately-organ-



ized parade, celebrating Irish-American contributions to the United States, to include homosexual, lesbian and bisexual groups, violated the organizers' First Amendment rights. Such action would be a form of coerced speech.

*Schenck v. Pro-Choice Network of Western New York* (1997)

The Court overturned a fifteen-foot "floating buffer" around patients leaving or entering an abortion clinic; "fixed buffers" were permitted since they protected the government's interest in public safety.

*Chicago v. Morales* (1999)

The city's anti-loitering gang law was unconstitutionally vague in including harmless behavior and in giving police too much discretion to decide what constitutes loitering.

*Boy Scouts of America v. Dale* (2000)

Forcing the Boy Scouts to admit a homosexual as a scout leader would violate the private organization's right of freedom of association. Forced inclusion of an unwanted person infringes on the group's rights if that person's presence would affect the group's ability to advocate its viewpoints; this is the right of "expressive association."

## PETITION

*NAACP v. Button* (1963)

The Court ruled that states could not prohibit NAACP from soliciting people to serve as litigants in federal court cases challenging segregation.

*Meyer v. Grant* (1988)

States could not bar groups from hiring individuals who circulate petitions in support of a ballot measure. "The First Amendment protects appellates' right not only to advocate their cause but also to select what they believe to be the most effective means for doing so."

*Buckley v. American Constitutional Law Foundation* (1999)

The Court ruled that states could not require petition circulators to be registered voters, wear name badges, or disclose information about themselves and their salaries. These are unconstitutional limits on speech.

## GUNS

*United States v. Cruikshank* (1876)

The Supreme Court recognized the right of the people to keep and bear arms. It concurred that the right predated the Constitution and the Bill of Rights. They ruled that the right to bear arms was not dependent on the Constitution for its existence; consequently, the Second Amendment only forbade the Congress, not the states, from "infringing" on the acknowledged right to bear arms.

*Presser v. Illinois* (1886)

The Second Amendment did not protect peoples' right to parade and drill with firearms. The Court suggested that the Second Amendment applied to the states through the Fourteenth Amendment.

*Miller v. Texas* (1894)

The Court confirmed that it had not incorporated the Second Amendment and applied it to the states through the Fourteenth Amendment. Since Miller had not made his objections in a timely fashion, the Court refused to address his arguments regarding incorporation.

*United States v. Miller* (1939)

States could not disarm the people, because to do so would interfere with the federal government's power to raise a militia. However, the Second Amendment did not protect the right to possess sawed-off shotguns, as this type of weapon was unrelated to a well-regulated militia.

*Lewis v. United States* (1980)

This case determined whether part of a 1968 law that prohibits the possession of firearms by convicted felons violated the Second Amendment. The Court acknowledged that among the rights denied convicted felons was the right to bear arms.

*District of Columbia v. Heller* (2008)

The District of Columbia's law banning handguns and requiring long guns to be kept disassembled or trigger-locked was an unconstitutional violation of the Second Amendment. The Second Amendment's protection of the right to keep and bear arms included the right to keep suitable weapons at home for self-defense.

**PRIVATE PROPERTY***United States v. Causby* (1946)

The Court found a taking when low-flying jets at an airbase made farming impossible on nearby land even though the government never actually claimed the land itself.

*United States v. Cors* (1949)

The Court ruled that the owner of a taken tugboat was not entitled to the market value at the time of the taking (during World War II) since the government's need for the boat in the war inflated its price.

*Loretto v. Teleprompter Manhattan* (1982)

In the case of a New York law granting a cable company permanent access to parts of private apartment buildings, the Court found that partial takings had to be compensated for since such access constituted a physical invasion of the property.

*Lucas v. South Carolina Coastal Council* (1992)

The Court ruled that the owner of a beachfront property had to be compensated after a state law

stopped all new construction on the property, totally eliminating its economic value.

*Dolan v. City of Tigard* (1994)

The Court forbade cities from requiring property owners to give up parts of their land for public use in order to receive permits to develop that land (in cases where the city's demands had no connection with the development intended by the owner).

**CITIZEN JURIES***Rex v. Zenger* (1735)

The colony of New York tried John Peter Zenger, a newspaper publisher, for seditious libel against the colonial governor. At that time, truth was not a defense in a libel case. The jury nullified the law and acquitted Zenger.

*Strauder v. West Virginia* (1880)

The Court ruled that no citizen might be excluded from a jury pool because of race.

*Sparf, et al. v. United States* (1895)

The Court explained that federal judges were not obligated to inform jurors of their rights and powers to bring in a verdict based on the juror's own judgment of the law.

*Smith v. State of Texas* (1941)

Racial discrimination in jury selection violates the Constitution.

*Hernandez v. Texas* (1954)

The Court ruled that no citizen might be excluded from a jury pool because of national origin.

*Duncan v. Louisiana* (1968)

Duncan was accused of simple assault and was tried and convicted without a jury. The Court gave him a new trial, emphasizing the role of the jury in preventing government oppression.

*Taylor v. Louisiana* (1975)

No citizen might be excluded from a jury pool on account of sex.

*Batson v. Kentucky* (1986), *Powers v. Ohio* (1991)

The Court found that the Equal Protection clause of the Fourteenth Amendment prohibited attorneys from using peremptory challenges to strike prospective jurors solely on the basis of race.

*J.E.B. v. Alabama* (1994)

The Equal Protection clause of the Fourteenth Amendment prohibits attorneys from using peremptory challenges to strike prospective jurors solely on the basis of gender.

## **CRIMINAL PROCEDURE AND SEARCHES**

*Powell v. Alabama* (1932)

The Court ruled that indigent members of society (in this case, the Scottsboro Boys), when charged with a capital crime, must be given competent counsel at the expense of the public.

*Betts v. Brady* (1942)

The Court refused to grant the right to an attorney to all indicted or accused individuals; they believed the courts must hear each non-capital situation and decide on a case-by-case basis.

*Bartkus v. Illinois* (1959)

The Court ruled that prosecutions in state and federal courts for the same act are not violations of due process and double jeopardy protections; persons may be tried twice for the same crimes, once in federal court and once in state court.

*Mapp v. Ohio* (1961)

All evidence obtained by searches and seizures in violation of the Constitution is inadmissible in court; this is the “exclusionary rule.”

*Robinson v. California* (1962)

A California law imprisoning those with “illness” of drug addiction was a cruel and unusual punishment in violation of the Eighth Amendment. The law punished people because of their “status” of addiction and was not aimed at the purchase, sale, or possession of illegal drugs.

*Gideon v. Wainwright* (1963)

The Supreme Court overturned *Betts v. Brady* and required that any indigent person accused of a felony must be given an attorney at the public's expense.

*Escobedo v. Illinois* (1964)

The Court extended the “exclusionary rule” to include any confessions obtained by unconstitutional means. Once questioning reaches past a stage of “general inquiry,” the suspect has the right to have an attorney present.

*Miranda v. Arizona* (1966)

Since the police had not informed Miranda of his constitutional right to keep silent, his rights were violated and conviction was set aside.

*Terry v. Ohio* (1968)

The Court found that a “stop and frisk” is a “search and seizure” under the Fourth Amendment and, under certain circumstances, is a reasonable crime prevention practice. Seized evidence may be admissible.

*Furman v. Georgia* (1972)

The imposition and carrying out of the death penalty was held to constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments because it was done in “an arbitrary, discriminatory, and capricious manner.”

*Gregg v. Georgia* (1976)

Georgia's law imposing the death penalty under very specific circumstances and guidelines was

held constitutional. The death penalty “does not invariably violate the Constitution.” The judicious and careful use of the penalty was justified in that it met contemporary standards of society, served a deterrent or retributive purpose, and was not arbitrarily applied.

*Ingraham v. Wright* (1977)

Corporal punishment in schools was not held to be prohibited under the Eighth Amendment as cruel and unusual.

*Nix v. Williams* (1984)

The Court found that if police learn of evidence by unconstitutional means, they may still introduce it at trial if they can prove that they would have found the evidence anyway through constitutional means. There is an “inevitable discovery” exception to the Exclusionary Rule.

*New Jersey v. T.L.O.* (1985)

The Fourth Amendment ban on unreasonable searches applied to those conducted by public school officials as well as by law enforcement personnel; however, the Court used a less strict standard of “reasonable suspicion” to conclude that the search of a student’s purse by public school officials did not violate the Fourth and Fourteenth Amendments.

*Vernonia v. Acton* (1995)

Students must submit to random drug testing in order to participate in interscholastic athletics; the policy was “reasonable and hence constitutional.” Students in a school environment “have a lesser expectation of privacy than members of the population generally.”

*Chandler v. Miller* (1997)

Georgia’s requirement of drug tests for candidates for designated state offices did not fit “within the closely guarded category of constitutionally permitted suspicionless searches.” This test “diminishes personal privacy for a symbol’s

sake. The Fourth Amendment shields society against that state action.”

*Knowles v. Iowa* (1998)

Police searches of vehicles on routine traffic stops are an “unreasonable search and seizure.”

*Wyoming v. Houghton* (1999)

Police may search the belongings of all passengers in a car when lawfully seeking evidence against the driver.

*Bond v. United States* (2000)

The Fourth Amendment is violated when officials squeeze a carry-on bag in a bus overhead compartment and discover illicit drugs.

*Dickerson v. United States* (2000)

The Supreme Court ruled that Congress could not pass a law that would contradict a Supreme Court ruling. They cited *Marbury v. Madison* (1803) as the source of their power.

*Indianapolis v. James* (2001)

The Court invalidated the city’s roadblock program because it was “indistinguishable from the general interest of crime control” and did not fit into the established exceptions to individualized suspicion.

*Kyllo v. United States* (2001)

Warrantless use of thermal-imaging devices to monitor heat emissions from a private residence violates the Fourth Amendment protection against unreasonable searches.

*Ferguson v. City of Charleston* (2001)

Public hospital testing of pregnant women for cocaine use and reporting the results to police officials is an unconstitutional search in violation of the Fourth Amendment.

*Board of Education of Pottawatomie County v. Earls* (2002)

School district requirements of drug tests for all students participating in any extra-curricular activities were upheld by the Court. The testing is a “reasonable means of furthering the School District’s important interest in preventing and deterring drug use among its schoolchildren.”

*Groh v. Ramirez* (2004)

An incorrectly written search warrant could result in any evidence obtained being excluded from trial.

*Hamdi v. Rumsfeld* (2004)

A U.S. citizen captured in Afghanistan was labeled an “enemy combatant” and detained without access to a lawyer or the court system. The Court held that the executive branch cannot indefinitely hold a U.S. citizen without basic due process protections.

*Hiibel v. Sixth Judicial District of Nevada* (2004)

The Court ruled that requiring citizens to identify themselves to police does not violate their Fourth or Fifth Amendment rights if police have a “reasonable suspicion” that someone was involved in or has knowledge of a crime.

*Rasul v. Bush* (2004) and *Al Odah v. United States* (2004)

The Supreme Court held that United States courts do have jurisdiction to consider legal appeals filed on behalf of foreign citizens being detained in Guantanamo Bay Naval Base, Cuba. Further, the Court ruled that the right to *habeas corpus* does not depend on citizenship.

*Rumsfeld v. Padilla* (2004)

The Court was asked to consider whether American citizens captured outside a combat zone can be declared “enemy combatants” and held indefinitely without access to a lawyer or the court system. The Court did not address the

question in its decision, but rather held that the case had been improperly filed.

*Roper v. Simmons* (2005)

Executing individuals for crimes they committed when they were under eighteen years of age violated the Eighth Amendment’s prohibition on cruel and unusual punishment. The Court reasoned that this form of capital punishment violated “evolving standards of decency.”

*Hudson v. Michigan* (2006)

The Exclusionary Rule did not apply to evidence gathered during “no knock” searches. Police who did not first knock on the door, announce themselves, and wait a reasonable time before forcing their way in would still be subject to any penalties called for by state law, but evidence obtained could still be used at trial.

*Boumediene v. Bush* (2008)

The Military Commissions Act of 2006 was an unconstitutional suspension of the writ of *habeas corpus* for prisoners being held at Guantanamo Bay. Detainees had the Fifth Amendment right not to be deprived of liberty without due process of law, and were protected by the Geneva Conventions.

## **PERSONAL LIBERTY**

*Kent v. Dulles* (1958)

The Court ruled that “freedom to travel is, indeed, an important aspect of the citizen’s liberty.”

*Griswold v. Connecticut* (1965)

In stating a “right to privacy,” the Court determined that a married couple’s decision to use birth control was a personal decision and not subject to government regulation.

*Loving v. Virginia* (1967)

Virginia’s antimiscegenation law banning interracial marriages was declared an unconstitutional-



al violation of the Equal Protection Clause because it had no legitimate purpose “independent of invidious racial discrimination.”

*Roe v. Wade* (1973)

The Court found that “the right of personal privacy includes the abortion decision.”

*Bowers v. Hardwick* (1986)

The Court found no right to engage in homosexual activities in the Constitution.

*Rotary International*

*v. Rotary Club of Duarte* (1987)

California state law requiring Rotary Clubs to admit women to membership was constitutional and does not violate “expressive association.” Any small infringement of members’ rights is “justified by the State’s compelling interest in eliminating discrimination against women and assuring them equal access to public accommodations.”

*Washington v. Glucksberg* (1997)

The Court held that the right to physician-assisted suicide did not exist in the Constitution and that state prohibitions were constitutional.

*Boy Scouts of America v. Dale* (2000)

Forcing the Boy Scouts to admit a homosexual as a scout leader would violate the private organization’s right of freedom of association. Forced inclusion of an unwanted person infringes on the group’s rights if that person’s presence affects the group’s ability to advocate its viewpoints; this is a right of “expressive association.”

*Owasso Independent School District*

*v. Falvo* (2001)

Peer grading of student papers was upheld by the Court as this did not violate the Family Education Rights and Privacy Act.

*Lawrence v. Texas* (2003)

The Court ruled that Texas’ anti-sodomy law “furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual,” and this law is unconstitutional because it violates the Due Process clause of the Fourteenth Amendment.

*Sell v. United States* (2003)

Forced medication of a mentally incompetent defendant is constitutionally acceptable when the courts follow specific guiding principles in order to have him or her participate in his trial.

*Smith v. Doe* (2003)

The Court upheld Alaska’s Sex Offender Registration Act as a civil sanction in the interest of public safety; therefore, the enforcement of the law did not violate the *Ex Post Facto* clause of the Constitution.

*Gonzales v. Carhart* (2007)

A federal law banning a late-term abortion procedure, partial birth abortion, was upheld. The law was not unconstitutionally vague, and did not impose an undue burden on mothers. Further, because Congress had determined that the procedure was never medically necessary, an exception for the health of the mother was not needed.

## FEDERALISM

*Hammer v. Dagenhart* (1918)

The Court ruled that under the Tenth Amendment, only the states and not the federal government could regulate child labor (on the grounds that manufacturing is not commerce and not subject to federal regulation).

*South Dakota v. Dole* (1987)

A federal law that would withhold 5 percent of a state’s highway funds if it did not raise its minimum drinking age to 21 was ruled constitutional.

The Court believed it was passed in the interest of the “general good” and by “reasonable means.”

*United States v. Lopez* (1995)

The Court ruled that the Commerce Clause did not give Congress the power to enact the federal Gun-Free School Zones Act.

*United States v. Morrison* (2000)

The Supreme Court ruled that neither the Commerce Clause nor the Fourteenth Amendment gave Congress the power to enact the Violence Against Women Act.

*Gonzalez v. Raich* (2005)

A California law allowing citizens to grow marijuana for personal, medical use was overruled by a federal law declaring marijuana an illegal substance. The Court held that personal marijuana growth was related to interstate commerce and therefore Congress had the authority to ban it under the Commerce Clause.

## **INCORPORATION**

*Slaughter House Cases* (1873)

The Court ruled that the privileges and immunities clause protected only certain narrow federal rights (such as the right to travel, to petition Congress, and to vote in national elections), not the protections found in the Bill of Rights.

*Quincy Railways v. Chicago* (1897)

The Court ruled that the state of Illinois acted unconstitutionally when it took property without paying just compensation. The Court ruled that Illinois had violated Quincy's Fourteenth Amendment right to due process.

## **The following portions of the Bill of Rights have been incorporated against actions by state governments:**

Freedom of Speech, *Gitlow v. New York* (1925)

Freedom of the Press, *Near v. Minnesota* (1931)

Right to Counsel in Capital Cases,  
*Powell v. Alabama* (1932)

Freedom of Assembly, *DeJonge v. Oregon* (1937)

Free Exercise of Religion,  
*Cantwell v. Connecticut* (1940)

No Established National Religion,  
*Everson v. Board of Ed.* (1947)

Right to Public Trial, *In re: Oliver* (1948)

Ban on Unreasonable Search and Seizure,  
*Wolf v. Colorado* (1949)

No Evidence from Illegal Searches,  
*Mapp v. Ohio* (1961)

No Cruel and Unusual Punishment,  
*Robinson v. California* (1962)

Right to Counsel in All Felony Cases,  
*Gideon v. Wainwright* (1963)

No Self-Incrimination, *Malloy v. Hogan* (1964)

Right to Confront Adverse Witnesses,  
*Pointer v. Texas* (1965)

Right to Impartial Jury, *Parker v. Gladden* (1966)

Right to Obtain Defense Witnesses,  
*Washington v. Texas* (1967)

Right to Speedy Trial,  
*Klopfer v. North Carolina* (1967)

No Double Jeopardy, *Benton v. Maryland* (1968)

Right to Counsel for Imprisonable  
Misdemeanors, *Argersinger v. Hamlin* (1972)

Right to Notice of Accusation,  
*Rabe v. Washington* (1972)



**Students and the Supreme Court***Jacobsen v. Massachusetts* (1905)*Minersville v. Gobitis* (1940)*West Virginia v. Barnette* (1943)*Everson v. Board of Education* (1947)*Engel v. Vitale* (1962)*Abington School District v. Schempp* (1963)*Murray v. Curlett* (1963)*Epperson v. Arkansas* (1968)*Tinker v. Des Moines* (1969)*Wisconsin v. Yoder* (1972)*Ingraham v. Wright* (1978)*Stone v. Graham* (1980)*New Jersey v. T.L.O.* (1985)*Wallace v. Jaffree* (1985)*Bethel School District v. Fraser* (1986)*Edwards v. Aguillard* (1987)*Hazelwood v. Kuhlmeier* (1988)*Westside Community Schools v. Mergens* (1990)*Lee v. Weisman* (1992)*Zobrest v. Catalina Foothills School District* (1993)*Kiryas Joel School District v. Grumet* (1994)*Vernonia v. Acton* (1995)*Santa Fe Independent School District v. Doe* (2000)*Mitchell v. Helms* (2000)*Good News Club v. Milford Central School* (2001)*Owasso Independent School District  
v. Falvo* (2001)*Zelmans v. Simmons-Harris* (2002)*Board of Education of Pottawatomie County  
v. Earls* (2002)

# *DVD Viewing Guides*



# The Founders

## Segment 1

### Content

1. What was the Magna Carta? What rights did the British Declaration of Rights grant?
2. How were American colonists influenced by British documents?
3. What documents did British colonists write to protect their rights?
4. Where did Thomas Jefferson say rights originated?
5. What was the Virginia Declaration of Rights? Who wrote them? What did they protect?
6. Who wrote the United States Bill of Rights?

### Discussion

Think back to the pictures of the Founders you have just seen. What kinds of people were deciding what rights to protect? Is this reflected in the rights they did protect?

## Segment 2

### Content

1. Why did the original writers of the Constitution leave out a bill of rights?
2. What political group demanded a bill of rights?
3. Who wrote the Bill of Rights? Why did he write it?
4. What did Thomas Jefferson say about a bill of rights?
5. Why did James Madison fear that a bill of rights might not work?
6. How many Amendments were originally proposed to Congress?
7. Why was the Bill of Rights added at the end of the Constitution?

### Discussion

James Madison feared that a bill of rights would not protect individuals from the abuse of their rights by popular majorities. Can you think of examples of a majority taking away rights from individuals? In the country? In your town? At school? How do you think those rights might be made more secure?

# Religion

### Content

1. What relationship did most of the Founders want the national government and religion to have?
2. How did states treat religion during the first years of our nation?
3. What did Thomas Jefferson think was the best relationship between church and state?
4. What Supreme Court case first applied the First Amendment to the states?
5. What is the Lemon test?
6. How has the Court applied the Lemon test?
7. What is the endorsement test?

### Discussion

Why did the Founders want to make sure that the national government was neutral on the issue of religion, neither helping it out nor holding it back? Can you think of ways the government could help religions? How could it hold them back?

# Expression

## Segment 1

### Content

1. When did the English Parliament first get unrestricted rights to debate political matters?
2. What caused the case *Schenck v. U.S.* to come to the court? Why was the decision important?
3. What did Justice Oliver W. Holmes compare Schenck's speech to?
4. What did the court call free speech in the case of *Garrison v. Louisiana*?
5. What brought the case of *Tinker v. Des Moines* to court? Whose rights did the Court protect with this decision?
6. What kind of speech was protected in the Court's decision in *Brandenburg v. Ohio*?

### Discussion

Should the government have extra powers when regulating forms of expression in schools? Why or why not?

## Segments 2 & 3

### Content

1. List three ways the Founders used freedom of expression during the American Revolution.
2. What is non-speech?
3. What is symbolic speech?
4. What right was protected in the case *Texas v. Johnson*?
5. What did the Court decide in the case *Cohen v. California*?
6. What was the Communications Indecency Act? What did the court rule about it in *ACLU v. Reno*?

### Discussion

Should a person have the right to burn the American flag? Why or why not? Some people have proposed a Constitutional Amendment to ban flag burning. Would you favor such an Amendment? Why or why not?

Pornographic pictures, obscene language, and hateful vulgarities are all forms of expression. Should the government set any restrictions on this kind of expression? Why or why not?

## Segment 4

### Content

1. When did English noblemen first get the right to assemble?
2. List three ways Americans use their freedom to assemble.
3. Whose right to protest was upheld in the case *Edwards v. South Carolina*?
4. What principle of assembly did the Court clarify in the case *Village of Skokie v. Nationalist Socialist Party*?
5. What two groups had a conflict in *Hurley v. Irish-American GLIB*? Why did the court find against GLIB?

### Discussion

Should the same principles of free assembly apply to both American Nazis who want to parade through a Jewish neighborhood and African American civil rights marchers who want to march to a state capital? Why or why not?

# Guns

## Content

1. What amendment to the Constitution deals with the right to bear arms?
2. What is a militia?
3. What is the difference between powers and rights?
4. What caused the battles of Lexington and Concord?
5. Who served in the militia before the American Revolution?
6. How much did the Framers debate the amendment protecting a right to bear arms?
7. What restrictions on gun ownership has the Supreme Court upheld? What test did it apply to these laws?
8. Why did the Founders favor an armed citizenry?

## Discussion

What regulations should be put on weapons ownership? Should there be any restrictions on which individuals can own guns? Why or why not? What powers should the government have in regulating gun control?

# Private Property

## Content

1. List three kinds of property.
2. How does the Fifth Amendment protect property?
3. When did the most government taking of private property occur?
4. What is a “regulatory taking”?
5. What did the Court decide in *Lucas v. South Carolina Coastal Commission*?
6. What did the Court decide in *Dolan v. City of Tigard*? Why?
7. Has the Court upheld laws restricting the use of historic buildings?
8. Does the government have to pay for property damage it causes stopping a riot?

## Discussion

The government wants to take away your home to build a senior citizen center. Do you think the government should be able to do this? Why or why not? How much should the government pay you for your home? Who should decide this price?

# Criminal Procedure

## Content

1. What constitutional amendment keeps the police from making random searches?
2. Why did the Founders create a situation in which two branches of government have to agree before a legal search can take place?
3. What is probable cause?
4. What is the exclusionary rule?
5. Why do some people think that the exclusionary rule is costly and inefficient?

## Discussion

Should the exclusionary rule keep prosecutors from using evidence in court? Why or why not? What should happen to police who violate the exclusionary rule?

## Citizen Juries

### Content

1. In what three documents did the Founders mention the right of trial by jury?
2. What amendment guarantees the right of a jury trial in all criminal cases?
3. Who serves on juries?
4. What percentage of a jury has to agree to a verdict in a criminal trial?
5. What is jury nullification?

### Discussion

Should people be allowed to “opt-out” of jury duty because it is inconvenient? What are justifiable excuses for declining to serve on a jury?

## Personal Liberty

### Content

1. What specific rights does the Ninth Amendment protect?
2. What right did the Court uphold in the case *Griswold v. Connecticut*?
3. What are “due process” rights? List two ways they have been used.
4. What personal right was at the center of the case, *Roe v. Wade*?
5. What did the Court decide in the case *Planned Parenthood v. Casey*?
6. Who is Jack Kavorkian?
7. Does the Supreme Court recognize a constitutional right to commit suicide?
8. What did the Court decide in the case *Bowers v. Hardwick*?
9. What did the Court decide in *Lawrence v. Texas*? Why?

### Discussion

The Founders knew and people today agree that there are rights not specifically listed in the Constitution. What are some of these rights and should they be protected by the Ninth Amendment?

## Federalism

### Content

1. How did the Constitution re-define citizenship?
2. What powers did the Constitution take from the states and give to a national government?
3. What was the original intent of the Commerce Clause of the Constitution?
4. How did President Roosevelt's New Deal lead to a re-interpretation of the Commerce Clause?
5. How did President Roosevelt propose to overrule the Supreme Court's decisions about his New Deal policies?
6. Why did President Roosevelt's proposal fail?
7. How did the 1995 case *United States v. Lopez* redefine how the Commerce Clause was applied?

### Discussion

Which level of government do you think should have the power to regulate the following: drinking or driving age; speed limits on interstate highways; policies on carrying concealed handguns; and educational requirements for minors?



# Incorporation

## Content

1. Whose actions did the U.S. Bill of Rights originally restrict?
2. According to Chief Justice John Marshall's opinion in *Barron v. Baltimore*, what individual rights could a state take away from a person?
3. What power did Congress want when the Fourteenth Amendment was ratified?
4. What three rights does the Fourteenth Amendment guarantee?
5. What Constitutional principle did the *Slaughterhouse Cases* decide?
6. What part of the Fourteenth Amendment did the Supreme Court apply to the states in the *Quincy Railways v. Chicago* case?
7. What parts of the Bill of Rights apply to the states today?
8. Why do most civil rights activists favor federal incorporation of the Bill of Rights?

## Discussion

Justice Hugo Black believed in total incorporation. Do you agree or disagree? Why?

## ***Teacher Notes***

# *Glossary*



# Glossary

**Abolitionists**—People who contributed to the cause of emancipation and worked to end slavery.

**Alleged**—Asserted or stated to be true, but not proven.

**Anti-Federalists**—The political faction that did not support the ratification of the Constitution because they believed it would create a powerful and eventually despotic central government. Once the Constitution was ratified, they demanded a bill of rights.

**Articles of Confederation**—The compact that was first made by the original 13 states of the United States. The articles were adopted March 1, 1781, and remained the supreme law until March 1789, when the Constitution was ratified by enough states to go into effect.

**Bail**—Money paid as a bond in exchange for an accused person's release, providing security that s/he will appear in court.

**Censor**—To examine and prohibit the publication of material deemed objectionable.

**Clear and Present Danger**—In *Schenck v. United States* (1919), the Supreme Court ruled that Schenck's actions, in the words of Justice Oliver Wendell Holmes, presented a "clear and present danger" to the country because of the active resistance he was advocating.

**Coercion Test**—Test used by the current Supreme Court to judge Establishment Clause cases. If a law coerces (forces) a person to participate in a religious ceremony, that law is unconstitutional.

**Commerce**—The exchange, buying, and selling of goods, often involving transporting items and commodities from place to place.

**Commerce Clause**—United States Constitution Article 1 Section 8, in part, "The Congress shall have the power...; To regulate commerce with foreign nations, and among the several States, and with the Indian tribes; ..."

**Commercial Speech**—Defined by the Supreme Court as communication between businesses, their customers, and the public.

**Common Law**—English and American legal precedents regarding disputes among private individuals involving property, torts, and contracts, as well as basic rules of evidence and criminal law.

**Content Neutral**—The principle that speech cannot be restricted because of its content alone.

**Criminal Procedure**—Process by which the government charges a person with a criminal violation and brings him or her to trial.

**Cruel and Unusual Punishment**—Refers to punishments that are excessively harsh, including torture.

**Double Jeopardy**—The act of putting a person through a second trial for an offense for which s/he has already been prosecuted.

**Due Process**—Requirement that government must use fair and reasonable procedures in making, applying, and enforcing the law.

**Elastic Clause**—U.S. Constitution Article 1 Section 8, in part, "The Congress shall have the power...; To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States." The Elastic Clause is also referred to as the "Necessary and Proper" Clause.

**Eminent Domain**—Process by which the government takes ownership of private property, usually for the purpose of large-scale public projects.

**Endorsement Test**—Test used by the current Supreme Court to judge Establishment Clause cases. Government policies or actions that endorse (support) a specifically religious message violate the Establishment Clause.

**Establishment Clause**—Clause of the First Amendment prohibiting the establishment of a national church and federal interference with state churches. In 1947, the Supreme Court ruled that the Fourteenth Amendment prohibits state governments' involvement with religion.

**Excessive Fines**—Fines disproportionate to the actual offense are excessive and unreasonable.

**Exclusionary Rule**—Provides that evidence obtained illegally, in violation of the Fourth Amendment, is excluded and cannot be used in court.

**Expression**—Conduct or activity that conveys an idea or opinion.

**Expressive Association**—The right to associate with those you wish. In *Boy Scouts of America v. Dale* (2000), the Supreme Court ruled that groups have the right to “expressive association.” Choosing their members may be a way they express their message to society.

**Fair Market Value**—Amount the government must pay a property owner for taking his or her property. The Supreme Court defines fair market value as “what a willing buyer would pay in cash to a willing seller at the time of the taking.”

**Federalism**—A political association in which government power is divided between a central government and state governments. In the system of government set up in the United States Constitution, the national government has specific powers, while all other powers are reserved to state governments or to the people.

**Federalists**—A political faction that supported the ratification of the Constitution, not necessarily with a bill of rights. They believed the Constitution would provide a small, limited, but effective, central government.

**Free Association**—The right to form or voluntarily join groups of one's choosing.

**Free Exercise Clause**—Clause of the First Amendment prohibiting the federal government (and later the state governments) from interfering with an individual's right to exercise his religion as s/he sees fit.

**Freedom of Belief**—The Supreme Court has ruled that individuals are free to believe anything they wish pertaining to religion, and that the truthfulness of such beliefs cannot be judged in a court of law.

**Fugitive Slave Laws**—Laws passed to allow slave owners to recover slaves who had escaped.

**Fundamental Fairness**—A term used by Justice Felix Frankfurter to explain what he believed the Fourteenth Amendment should protect. Frankfurter argued that the Fourteenth Amendment should protect only those rights that citizens could expect as a matter of fundamental fairness (as interpreted by the Supreme Court), without which a just legal system would be impossible.

**General Warrant**—The general warrant allows for the searching of almost any place, at any time, and need not specify what evidence is sought. British authorities often used general warrants to find contraband hidden by American colonists.

**Grand Jury**—Grand juries decide if there is enough evidence to proceed with a trial. It is called “grand” because it has more members than a petit jury (in most states). Federal grand juries must consist of at least sixteen people.

**Imminent**—About to happen, ready to take place.

**Impartial**—Unbiased, objective, fair. The Sixth Amendment protects the right to a trial before a jury of impartial citizens.

**Incorporation**—The Supreme Court’s application of portions of the Bill of Rights to the states through the Fourteenth Amendment. Originally, the Bill of Rights applied only to actions of the federal government.

**Inevitable Discovery**—If the police prove that certain evidence would surely have been found through legal means, it may be presented at trial even if a search warrant was not obtained.

**Intellectual Property**—Authors, researchers, inventors, and artists have an interest in protecting their rights to the products of their minds. These things are called intellectual property. Songs, books, or poems are property, just like cars, houses, or land.

**Jim Crow Laws**—Laws passed by a majority of states between 1880 and 1960 which outlawed interracial marriage and enforced segregation of “non-white” races from whites.

**Jurisprudence**—The philosophy of law or principles on which law and legal decisions are based.

**Jury Nullification**—A jury has the right and the power to bring in a verdict of “not guilty” in spite of the weight of evidence or the judge’s instructions. If the jury believes the law broken is unjust, they can set the accused free.

**Jury Pool**—Made up of the people who live in the court’s jurisdiction, who may be selected for jury duty. These persons are selected at random to ensure a fair cross-section of the community.

**Just Compensation**—Payment by the government to an individual whose property has been taken for public use, as required by the Fifth Amendment. The government must pay a just amount for the property taken.

**Lemon Test**—Three-part test used by the Court to distinguish acceptable and unacceptable government involvement in religion. Acceptable policies or actions must: a) have a primarily secular purpose; b) neither principally aid nor harm religion; and c) not cause the government to be excessively entangled with religion.

**Locke, John**—English philosopher who argued that people have natural rights simply because they are human, including the right to self-defense, acquiring property, and living according to conscience. People form governments to protect these rights.

**Magna Carta**—The oldest document in the British and American heritage of rights, written in 1215. Through the centuries, Magna Carta freedoms found their way into English common law. More than half the Amendments in the Bill of Rights have roots in the Magna Carta.



**Militia**—In the Eighteenth Century, this term generally referred to an army composed of ordinary citizens rather than professional soldiers, and even the whole body of physically fit civilians eligible by law for military service. Today it may refer to a military force that is not part of a regular army and is subject to call for service in an emergency.

**Miranda Warnings**—Warnings given to suspects before they are questioned and/or when they are arrested. “You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to have an attorney present during questioning. If you cannot afford an attorney, one will be appointed for you.”

**Natural Rights**—Rights individuals possess by virtue of their humanity. Protected by written constitutions and bills of rights.

**Obscene Speech**—Expression that appeals solely to the audience’s sexual (rather than artistic) interest. The Supreme Court has ruled that obscene speech can be regulated.

**Partial Taking**—To deprive a property owner of the use or enjoyment of a portion of their property.

**Personal Liberty**—The right and power to engage in certain actions without control or interference of a government.

**Petition**—A formal written request, often signed by many citizens and presented to government, urging a course of action or change in policy.

**Prior Restraint**—Censoring or requiring approval on what the press may print before such material is actually published.

**Privileges and Immunities**—Clause of the Fourteenth Amendment prohibiting states from making or enforcing laws “which shall abridge the privileges or immunities of citizens of the United States.”

**Probable Cause**—Suspicion or belief, supported by facts and circumstances, which would lead a reasonable person to believe that a person has committed a crime.

**Property**—Things over which an owner legitimately has control and obtains value. While most people think of property as land, it also includes other material objects; information, ideas, and creative works.

**Ratify**—To formally approve.

**Religious Neutrality**—Doctrine that government policies must be neutral toward religion, not hurting or helping it significantly.

**Right**—Sphere of activity to which a person has a legitimate legal, moral, or social claim.

**Right of Exclusion**—Right to keep other individuals from using or taking one’s property.

**Right to Privacy**—This right is not specifically listed in the Constitution, but the Supreme Court has found it to exist by virtue of the First, Third, Fourth and Fifth Amendments. The right to privacy is key to many issues of personal liberty.

**Total Incorporation**—Applying all of the Bill of Rights’s protections to state governments.

**Self-Incrimination**—Admitting to a crime or giving evidence/testimony that tends to make one-self appear guilty.

**Self-Ownership**—The principle that each individual owns (has a property) in his or her body and thoughts.

**Sequestered**—Jurors who are sequestered must live apart from their families, usually in a hotel, and must have no access to media sources for the length of the trial.

**Sovereignty**—Freedom from controlling influence.

**Standing Army**—A permanent military group maintained in peace, as well as war.

**Symbolic Speech**—Symbolic speech expresses ideas nonverbally.

**Taking**—A government action or law that deprives an individual of the use or enjoyment of his or her property.

**Tyranny**—Oppressive power, often referring to a single government ruler.

**Unbiased**—Impartial, not favoring one side over another, and treating all equally.

**Unenumerated Rights**—The rights not listed in the Bill of Rights, but still retained by the people. They are the natural rights that the Founders considered inalienable.

**Voucher System**—Parents receive a fixed amount of public funds called a voucher to pay for a private or religious school of their choice.

## ***Teacher Notes***

# *Educational Resources*



# Educational Resources

## Civic Resources and National Standards

CIRCLE: University of Maryland and the Carnegie Corporation: The Civic Mission of Schools  
[http://www.civicmissionofschools.org/campaign/cms\\_report.html](http://www.civicmissionofschools.org/campaign/cms_report.html)

Center for Civic Education Content Standards  
<http://www.civiced.org/912toc.htm>

National Council for the Social Studies (NCSS) Content Standards  
<http://www.socialstudies.org/standards/strands/>

National Council for History in the Schools (NCHS) Content Standards  
[http://www.education-world.com/standards/national/soc\\_sci/us\\_history/5\\_12.shtml#nss-ush.5-12.3](http://www.education-world.com/standards/national/soc_sci/us_history/5_12.shtml#nss-ush.5-12.3)

## Education Resources

AMDOCS: Documents for the Study of American History  
<http://www.ku.edu/carrie/docs/amdocs>

America's Story  
<http://www.americaslibrary.gov>

American Bar Association Division for Public Education  
<http://www.abanet.org/publiced/>

The Avalon Project at Yale  
<http://www.yale.edu/lawweb/avalon/avalon.htm>

Constitution Society  
<http://www.constitution.org>

Cornell University  
<http://www.law.cornell.edu/supct>

Digital History  
<http://www.digitalhistory.uh.edu/>

FindLaw Supreme Court Opinions  
<http://www.findlaw.com/casecode/supreme/html>

First Amendment Center On-Line  
<http://www.firstamendmentcenter.org>

The Founders' Constitution  
<http://press-pubs.uchicago.edu/founders/tocs/toc.html>

Founding.com—A User's Guide to the Declaration of Independence  
<http://www.founding.com>

Freedom Forum  
<http://www.freedomforum.org/>

The Gilder Lehrman Institute of American History  
<http://gilderlehrman.org/>

James Madison Papers  
<http://www.virginia.edu/pjm/gwhome.html>

Justice Talking  
<http://www.justicetalking.org>

Legislative Information on the Internet  
<http://thomas.loc.gov/>

Library of Congress: American Memory  
<http://memory.loc.gov/ammem/>

National Archives  
<http://www.archives.gov>

National Constitution Center  
<http://www.constitutioncenter.org>

Our Documents  
<http://www.ourdocuments.gov>

Oyez: U.S. Supreme Court Multimedia  
<http://www.oyez.org/>

Teaching American History  
<http://www.teachingamericanhistory.org>

### Literary Resources

Hoyt, Linda. *Make It Real: Strategies for Success with Informational Texts*. New Hampshire: Heinemann, 2002.

\_\_\_\_\_. *Revisit, Reflect, Retell: Strategies for Improving Reading Comprehension*. New Hampshire: Heinemann, 1998.

Routman, Regie. *Reading Essentials : The Specifics You Need to Teach Reading Well*. New Hampshire: Heinemann, 2002.

### Note on Standards

The following national standards are referenced in this publication:

CCE—Center for Civic Education, National Standards for Civics and Government

NCHS—National Center for History in the Schools, National History Standards

NCSS—National Council for the Social Studies



# Web Site Evaluation

Title of Web page being evaluated:

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URL: http:// 

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## Source Evaluation

Web site's content author(s) and/or sponsoring group or organization:

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Does the site give any information about the credentials of the author(s)?                      Yes                      No

If so, what? (If not, you can try to run a search on the author(s) or organization to get more information. Sometimes, the author(s) e-mail address is included for more information.)

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Check the domain part of the URL and tell if and how this might affect the reliability of the content (i.e. gov=government source, com=commercial site, edu=educational site, org=organization, usually non-profit, net=network, mil=military). Remember that individuals often put personal pages on some of these sites.

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When was the site last updated, if given?

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Does the author tell you when the content information was obtained?                      Yes                      No

Does the author tell you where/how the information was obtained?                      Yes                      No

## Content Evaluation

Is the material relevant to the topic you are addressing?                      Yes                      No

Is the material adequate in terms of depth?                      Yes                      No

Is the information consistent with what you already know or have read?                      Yes                      No

Would the information have been available elsewhere in our library?                      Yes                      No

**Web Site Evaluation** *(continued)*

Would it have been easier to get this information from other sources?	Yes	No
Is the information up-to-date?	Yes	No
Does the author include links to other helpful sources?	Yes	No
Does the author include a bibliography of printed materials?	Yes	No
Can you print out the information?	Yes	No
Can you print out the bibliography?	Yes	No
Does the information represent a point of view or contain biases?	Yes	No

Explain briefly:

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How would you verify that this information is accurate and reliable?

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Do the graphics (pictures, charts, etc.) contribute to your understanding of the content?	Yes	No
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Could the graphics be used to enhance an oral presentation? <i>(Remember that text is usually too small to be seen from a distance when projected via an LCD panel or monitor.)</i>	Yes	No
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Overall assessment of this Web site for your purposes:	Excellent	Average	Poor
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Please comment on the Web site and its applicability to the assignment: Was the information valuable in terms of your research topic? What were the strengths and weaknesses of this site? How could this site be improved?

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—Created by Dr. Jana S. Eaton

# *Legal Experts and Scholars*



# Legal Experts and Scholars

## **CLINT BOLICK**

### **President and General Counsel, Alliance for School Choice**

Clint Bolick serves as president and general counsel of the Alliance for School Choice, founded in 2004. He also serves as Counsel for Strategic Litigation for the Institute for Justice. He has challenged regulatory barriers to entrepreneurship on behalf of start-up businesses in the inner city and leads the litigation effort to defend school choice programs. In 1998, he helped win a landmark ruling in *Jackson v. Benson* in the Wisconsin Supreme Court upholding the Milwaukee Parental Choice program.

Mr. Bolick received his J.D. from the University of California at Davis and his undergraduate degree from Drew University.

## **WALTER E. DELLINGER, III**

### **Professor of Law, Duke University**

Walter Dellinger is the Douglas B. Maggs Professor of Law at Duke University. He served as acting Solicitor General for the 1996-97 term of the Supreme Court. Professor Dellinger argued nine cases before the Supreme Court, the most by any Solicitor General since the 1970s. After serving in early 1993 in the White House as an advisor to the President on constitutional issues, Professor Dellinger was Assistant Attorney General and head of the Office of Legal Counsel (OLC).

Professor Dellinger is a graduate with Honors in Political Science from the University of North Carolina and graduated from Yale Law School, where he was an editor of the Yale Law Journal.

## **INGRID DURAN**

### **National Right to Life Committee**

Ingrid Ann Duran has been the state legislative assistant in the National Right to Life's State legislation Department since 1995. This department works with all 50 state affiliates to help write, propose, advocate and enact pro-life legislation. Ms. Duran currently serves as the Second Vice President of Maryland Right to Life and advises on legislative policy. She has drafted legislation for many states and has testified on behalf of pro-life bills in the Maryland Senate committee. She also volunteers on behalf of Hispanic Americans for Life and Black Americans for Life.

## **RICHARD A. EPSTEIN**

### **Professor of Law, University of Chicago Law School**

Richard A. Epstein is the James Parker Hall Distinguished Service Professor at the University of Chicago, where he has served as Professor of Law since 1973. He is now a director of its Olin Program in Law and Economics, and served as interim dean of the University of Chicago Law School in the spring of 2001. He has been a Fellow at the Hoover Institution since 2000. He was named James Parker Hall Professor in 1982 and Distinguished Service Professor in 1988. Professor Epstein has written many scholarly articles on a broad range of common law, constitutional, economic, historical, and philosophical subjects. Among the subjects he has taught are contracts, property, torts, and criminal law. He is a member of the Bill of Rights Institute's Academic Advisory Council.

Professor Epstein received a B.A. in philosophy, *summa cum laude*, from Columbia University, a B.A. in Law with first class honors from Oxford University in 1966, and an LL.B., *cum laude*, from the Yale Law School.

**CHAI R. FELDBLUM**

**Professor of Law, Georgetown University  
and Director, Federal Legislation Clinic**

Chai R. Feldblum joined the faculty of the Georgetown Law Center as a visiting professor for the 1991–93 academic years. In 1993, she established a new law school clinic, the Federal Legislation Clinic, and has served as the Clinic's Director since 1993. Prior to joining the law faculty, Professor Feldblum worked as a legislative counsel at the AIDS Action Council, and at the ACLU AIDS Project, focusing on federal legislation concerning AIDS. Professor Feldblum played a leading role in the drafting and negotiating of the Americans with Disabilities Act. She has also worked extensively in advancing gay and lesbian rights, particularly in the drafting of the Employment Nondiscrimination Act.

Professor Feldblum received her J.D. from Harvard Law School.

**ROBERT A. GOLDWIN, PH.D.**

**Resident Scholar, American Enterprise  
Institute**

Robert Goldwin's primary research areas at the American Enterprise Institute include constitutional studies, human rights, and education. One of his most significant books is *From Parchment to Power: How James Madison Used the Bill of Rights to Save the Constitution*. Among other positions, Dr. Goldwin has served as an associate professor at Kenyon College from 1960 to 1966, and special consultant to President Gerald Ford.

Dr. Goldwin received his B.A. from St. John's College and an M.A. and Ph.D. in Political Science from the University Of Chicago.

**MARCI A. HAMILTON**

**Professor of Law, Benjamin N. Cardozo  
School of Law, Yeshiva University**

Marci A. Hamilton holds the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law, Yeshiva University, where she is the founding Director of the Intellectual Property Law Program. She has been a visiting scholar at Princeton Theological Seminary, the Center of Theological Inquiry, and Emory University School of Law. She is an internationally recognized expert on the topics of constitutional law and copyright law.

Professor Hamilton received her J.D., *magna cum laude*, from the University of Pennsylvania, an M.A. in Philosophy and an M.A. in English from Pennsylvania State University, and her B.A., *summa cum laude*, from Vanderbilt University.

**STEPHEN P. HALBROOK, PH.D.**

**Attorney, Author of *A Right to Bear Arms***

Stephen P. Halbrook has argued the Fifth Circuit criminal appeal in the Branch Davidian/Waco case; challenges to assault weapon prohibitions in Massachusetts, New Jersey, California, Columbus, and Denver. He has also represented importers, manufacturers, dealers, special manufacturers, and special taxpayers in litigation against the Bureau of Alcohol, Tobacco, and Firearms. He was lead counsel in three Supreme Court cases including *Printz v. United States* (1997). He was an assistant professor of Philosophy at the Tuskegee Institute, Howard University, and George Mason University.

Dr. Halbrook graduated from Georgetown University Law Center, J.D. He also received a B.S. in Business, and Ph.D. in philosophy from Florida State University.

**KEVIN J. ("SEAMUS") HASSON**  
**President, The Beckett Fund for Religious Liberty**

Kevin J. Hasson left a large Washington, D.C. law firm to found The Beckett Fund for Religious Liberty in 1993. He has specialized in religious freedom cases for over twenty years. He is a former Attorney-Advisor for the U.S. Department of Justice's Office of Legal Counsel, where his responsibilities included advising the Reagan Administration on church/state issues.

Mr. Hasson is a 1985 *magna cum laude* graduate of the Notre Dame Law School and also holds a Masters Degree in Theology from the University of Notre Dame.

**DENNIS A. HENNIGAN**  
**Director, Legal Action Project at the Center to Prevent Handgun Violence**

Dennis Hennigan heads the Legal Action Project, a national public interest law program that provides *pro bono* legal representation to victims of gun violence. He has written and spoken extensively on liability and constitutional issues relating to firearms, including testifying before several congressional committees. He is the author of several law review articles on the Second Amendment. He was a partner in the law offices of Foley & Lardner for 11 years.

Mr. Hennigan received his B.A. from Oberlin College, and his J.D. from the University of Virginia School of Law.

**NAT HENTOFF**  
**Journalist/Author, *The Village Voice***

Mr. Hentoff is a nationally recognized columnist and author of several books including his current work, *The War on the Bill of Rights and the Gathering Resistance*. His honors include the

American Bar Association Silver Gavel Award, received in 1980 for his coverage of criminal justice, the Zenger Award, and the National Press Foundation Award for Distinguished Contributions to Journalism. Mr. Hentoff has authored numerous publications and articles, including biographies and novels for adults and children, works on education, politics, and jazz; and comprehensive writings on civil liberties and rights. Two of his most notable works are *Free Speech for Me—But Not for Thee: How the American Left and Right Relentlessly Censor Each Other* and *Listen to the Stories: Nat Hentoff on Jazz and Country Music*.

Mr. Hentoff graduated with honors from Northeastern University and did graduate work at Harvard. He was also a Fulbright fellow at the Sorbonne in Paris in 1950.

**GORDON LLOYD**  
**Professor of Public Policy, Pepperdine University**

Gordon Lloyd is Professor of Public Policy at Pepperdine University and a contributor to TeachingAmericanHistory.org. The co-author of three books on the American founding and author of two forthcoming publications on political economy, Professor Lloyd's areas of research include the New Deal, slavery and the Supreme Court, and the relationship between politics and economics. He has received many teaching, research, and leadership awards including admission to Phi Beta Kappa and an appointment as a Distinguished Visiting Scholar for the Oklahoma Scholarship Leadership Program.

Professor Lloyd earned his Bachelor's Degree at McGill University. He received his M.S. and Ph.D. at Claremont Graduate School.



**NELSON LUND****Professor of Law, George Mason University**

Nelson Lund is the Patrick Henry Professor of Constitutional Law and 2nd Amendment at George Mason University. He has acted as Associate Dean for Academic Affairs, and has written widely in the field of constitutional law, including articles on constitutional interpretation, federalism, separation of powers, the Second Amendment, the Commerce Clause, the Speech or Debate Clause, and the Uniformity Clause. Professor Lund has also published articles in the fields of employment discrimination and civil rights, the legal regulation of medical ethics, and the application of economic analysis to legal institutions and to legal ethics. He held positions at the United States Department of Justice, the Office of the Solicitor General, and the Office of Legal Counsel, and served in the White House as Associate Counsel to the President from 1989 to 1992.

Professor Lund earned his M.A. at Catholic University, his A.M and Ph.D. at Harvard University, and his J.D. from the University of Chicago.

**TIMOTHY LYNCH****Director, Project on Criminal Justice, The Cato Institute**

Timothy Lynch focuses on issues relating to the American criminal justice system as Director of the Project on Criminal Justice. He also writes on the Constitution and the Bill of Rights. In 2000, he served on the National Committee to Prevent Wrongful Executions. Since joining Cato in 1991, Lynch has published articles in *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *the ABA Journal*, *Legal Times*, and the *National Law Journal*. He co-edited the Cato Supreme Court Review for 2003/2004 and 2001/2002.

Mr. Lynch is a graduate of the Marquette University School of Law and a member of the Wisconsin and District of Columbia bar associations.

**BARRY LYNN****Executive Director, Americans United for Separation of Church and State**

Barry Lynn is Executive Director of Americans United for Separation of Church and State. From 1984 to 1991, he was legislative counsel for the Washington office of the American Civil Liberties Union. From 1974 to 1980, Reverend Lynn served in a variety of positions with the national offices of the United Church of Christ, including two years as legislative counsel.

Reverend Lynn is a member of the Washington, D.C. bar, and earned his law degree from Georgetown University Law Center. In addition, he is an ordained minister in the United Church of Christ and received his Theology degree from Boston University. He earned his Bachelor's Degree from Dickinson College.

**PAULINE MAIER****William R. Kenan, Jr. Professor of American History, Massachusetts Institute of Technology**

Pauline Maier is the William R. Kenan, Jr. Professor of American History. Her research interests include the American Revolution and American History through 1865. Among her many publications are *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776* (1972), and *The American People: A History* (1986), a junior-high school textbook. In 1997 she published *American Scripture: Making the Declaration of Independence*, a finalist for the National Book Critics' Circle Award. At present, she is working on

a book about the ratification of the federal Constitution. She is a member of the Bill of Rights Institute Academic Advisory Council.

Professor Maier received her Ph.D. from Harvard University.

**EDWIN MEESE, III**  
**Ronald Reagan Distinguished Fellow in Public Policy, The Heritage Foundation**

Edwin Meese, III is a Distinguished Visiting Fellow at the Hoover Institution, Stanford University, and a Distinguished Senior Fellow at the Institute of United States Studies, University of London. Mr. Meese served as U.S. Attorney General for President Ronald Reagan. As Chairman of the Domestic Policy Council and the National Drug Policy Board, and as a member of the National Security Council, he played a key role in the development and execution of domestic and foreign policy. During the 1970s, Mr. Meese was Director of the Center for Criminal Justice Policy and Management and Professor of Law at the University of San Diego. He earlier served as Chief of Staff for then-Governor Reagan and was a local prosecutor in California.

Mr. Meese earned his B.A. from Yale University and his J.D. from the University of California, Berkeley.

**KATE MICHELMAN**  
**President Emeritus, National Abortion Rights Action League (NARAL)**

Kate Michelman served for 18 years as president of NARAL before stepping down in April of 2004. Prior to joining NARAL in 1985, Ms. Michelman was Executive Director of Planned Parenthood in Harrisburg, Pennsylvania. She also provided clinical training of medical students and resi-

dents in child development while working as a Clinical Assistant Professor in the Department of Psychiatry at Pennsylvania State University School of Medicine in Hershey, Pennsylvania. In 1994 she served as a fellow at the John F. Kennedy School of Government's Institute of Politics at Harvard University. After leaving NARAL, Ms. Michelman began work with the Democratic National Committee.

**WILLIAM MOFFITT**  
**Attorney, Past President National Association of Criminal Defense Lawyers**

William Moffitt is a practicing criminal attorney and an acclaimed lecturer. He speaks to legal organizations and is on the faculty of the National Criminal Defense College. He has appeared in *Best Lawyers of America* for several years. Mr. Moffitt is the past vice-president and president of the National Association of Criminal Defense Lawyers and of the Virginia College of Criminal Defense.

Mr. Moffitt graduated from the University of Oklahoma and the Washington College of Law.

**TIM O'BRIEN, ESQ.**  
**Distinguished Visiting Professor of Law, Nova Southeastern University Law School**

Tim O'Brien is a Distinguished Visiting Professor of Law at Nova Southeastern University Law School in Ft. Lauderdale. From 1999-2000, he served as ABC news' chief correspondent at the United States Supreme Court. He has also worked with CNN and taught at Hofstra University. Mr. O'Brien was the writer and principal correspondent for the critically acclaimed ABC NEWS documentary, "Escape from Justice: Nazi War Criminals in America." The report received the Clarion Award for Human Rights reporting and an Alfred I. duPont-Columbia Award for excellence in journalism.

Mr. O'Brien earned his B.A. from Michigan State University; his M.A. from the University of Maryland, and a J.D. from the Loyola University School of Law in New Orleans. He is also a member of the Bar of the Supreme Court of the United States.

**DAVID O'STEEN, PH.D.**  
**Executive Director, National Right to Life Committee**

David O'Steen is Executive Director of the National Right to Life Committee, and has served as the Director for the Committee for a Pro-Life Congress, Executive Director of Minnesota Citizens Concerned for Life, Inc., and Executive Director of the National Right to Life Committee. He has been a pro-life consultant for numerous Congressional campaigns in 1978, 1980 and 1982. He has served as an organizational fundraising and legislative consultant to numerous state pro-life groups.

Dr. O'Steen earned his A.B. from Guilford College, an M.A. from the University of Georgia, and a Ph.D. from the University of Houston.

**WILLIAM OTIS**  
**Counselor to the Administrator, Drug Enforcement Agency, Department of Justice**

William Otis serves as Counselor to the Administrator at the Drug Enforcement Agency for the Department of Justice. He is a former U.S. Attorney, and Senior Litigation Counsel for the state of Virginia. In 1992, he served in the White House as Special Counsel to President George Bush. After the elections that year, he returned to the U.S. Attorney's Office as its chief appellate lawyer.

Mr. Otis is a graduate of the University of North Carolina and Stanford Law School.

**JACK RAKOVE, PH.D.**  
**Professor of History and American Studies, Stanford University**

Jack Rakove has taught History and American Studies at Stanford University for 25 years. He was a Visiting Professor of Law at New York University's Law School in 2000, although he is primarily a historian. In 1997, he won a Pulitzer Prize in History for his book, *Original Meanings: Politics and Ideals in the Making of the Constitution*. His research interests include the intersection of political thought during the era of the American Revolution and the role of historical thinking in contemporary constitutional disputes.

Professor Rakove earned his A.B. from Haverford College and a Ph.D. from Harvard University.

**DR. STEPHEN F. SMITH**  
**Associate Professor, University of Virginia School of Law**

Stephen F. Smith joined the University of Virginia Law School faculty in 2000 as an associate professor of law. Smith served in the Supreme Court and appellate practice group of Sidley & Austin in Washington, D.C. He also served as Associate Majority Counsel to a 1996 House of Representatives select subcommittee investigating U.S. involvement in Iranian arms transfers to Bosnia and as an adjunct professor at George Mason University School of Law.

Dr. Smith received his J.D. from the University of Virginia School of Law and received the Margaret G. Hyde Award and the Daniel Rosenbloom Award.

**ROD SMOLLA**

**Dean, and Allen Professor of Law,  
University of Richmond**

Rod Smolla is Dean of the Law School at University of Richmond, and Allen Professor of Law. Before joining the faculty at the University of Richmond, he served as the Arthur B. Hanson Professor of Law at the College of William and Mary School of Law. He also served as Director of the Institute of Bill of Rights Law at William and Mary. He is a member of The Bill of Rights Institute Academic Advisory Council.

Professor Smolla earned his J.D., first in his class, Order of the Coif, at Duke University School of Law, and also received the American Jurisprudence Awards in Torts and Constitutional Law. He received a B.A., *cum laude*, from Yale University.

**NADINE STROSSEN**

**President, ACLU and Professor of Law,  
New York Law School**

Nadine Strossen, Professor of Law at New York Law School, has written, lectured, and practiced extensively in the areas of constitutional law, civil liberties, and international human rights. Before becoming a law professor, she practiced law for nine years in Minneapolis and in New York City. In 1991, she was elected President of the American Civil Liberties Union, the first woman to head the organization.

Professor Strossen graduated Phi Beta Kappa from Harvard College and *magna cum laude* from Harvard Law School, where she was an editor of the Harvard Law Review.

**MARK TUSHNET**

**Professor of Law, Georgetown University**

Mark Tushnet is the Carmack Waterhouse Professor of Constitutional Law and Associate Dean of Research. He is co-author of four casebooks, including the most widely-used casebook on constitutional law; author of twelve books, including a two-volume biography of Justice Thurgood Marshall. He is former president of the Association of American Law Schools and Fellow of the American Academy of Arts and Sciences. He taught at University of Wisconsin at Madison until joining the Georgetown Law Center faculty in 1981.

Professor Tushnet received his B.A. from Harvard University and his M.A. and J.D. from Yale University.

**TODD ZYWICKI**

**Professor of Law, George Mason  
University**

Todd Zywicki is currently on sabbatical from George Mason University at Georgetown University. He teaches in the areas of bankruptcy and contracts, with a focus on law and economics for George Mason University School of Law. He came to the George Mason University School of Law from the Mississippi College of Law, where he had held a faculty position since 1996. Prior to teaching, he worked as an associate at Alston & Bird in Atlanta, Georgia, where he practiced bankruptcy law. He is a member of the Bill of Rights Institute Academic Advisory Council.

Professor Zywicki earned his J.D. at the University of Virginia, where he was executive editor of the Virginia Tax Review and John M. Olin Scholar in Law and Economics. He received a M.A. from Clemson University and his A.B. *magna cum laude* from Dartmouth College.

# *Suggested Letter to Parents*

Dear Parents,

As part of our study of the United States Constitution and Bill of Rights, we will be covering some controversial topics. In discussing the First and Ninth Amendments in particular, we will be exploring cases involving political protest, flag burning, obscene or indecent speech, abortion, gay marriage, and controversial news stories. The aim of the lesson is not to advance a particular view, but to aid students in exploring the legal and constitutional issues surrounding these subjects.

With each issue, students will be exposed to a range of opinions—and encouraged to challenge those opinions and make up their own minds. As young adults and citizens, students will encounter these issues on television, in the classroom, or just talking with their friends.

I encourage you to explore these issues with your son or daughter at home as well.

As always, if you have any questions or concerns, please send a note to school with your child. Also feel free to call or e-mail.

Sincerely,

# Field Testers

<p><b>Janice Adams</b> Crowley High School Crowley, Louisiana</p> <p><b>Doug Boardman</b> Chase High School Chase, Kansas</p> <p><b>Charlie Brown</b> Fairfield High School Fairfield, Montana</p> <p><b>LuAnn Clausen</b> Affiliated Alternatives Work and Learn Center Madison, Wisconsin</p> <p><b>Elise Cooksley</b> Two Rivers School North Bend, Washington</p> <p><b>Tom Fedele</b> Hendrick Hudson High School Montrose, New York</p> <p><b>Jaime Festa-Daigle</b> Lake Havasu High School Lake Havasu City, Arizona</p> <p><b>Susan Henderson</b> Laurel High School Laurel, Montana</p> <p><b>Jane Hildreth</b> LeFlore High School Mobile, Alabama</p> <p><b>Susan Hirsch</b> East Wake High School Wendell, North Carolina</p>	<p><b>Barry Hunter</b> South Plantation High School Plantation, Florida</p> <p><b>Rae Koumoulis</b> Middletown High School South Middletown, New Jersey</p> <p><b>Ruth Lewis</b> Richwoods High School Peoria, Illinois</p> <p><b>Barbara May</b> Central Bucks High School South Doylestown, Pennsylvania</p> <p><b>Theresa McAbee</b> Lewis County High School Weston, West Virginia</p> <p><b>Mark Oglesby</b> Howell High School Howell, Michigan</p> <p><b>Lori Pettine</b> Penn High School Mishawaka, Indiana</p> <p><b>David Seiter</b> Northridge High School Layton, Utah</p> <p><b>Dr. Patti Skates</b> Red Bank High School Chattanooga, Tennessee</p> <p><b>Rod Tillman</b> Stevens Point Area Senior High School Stevens Point, Wisconsin</p>	<p><b>Stephen Venezia</b> Marblehead High School Marblehead, Massachusetts</p> <p><b>Charlotte Walker</b> Clinton High School Clinton, Mississippi</p> <p><b>Kelly Walker</b> Kellam High School Virginia Beach, Virginia</p> <p><b>Edward Wyrwas</b> Good Shepherd Center Baltimore, Maryland</p>
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## ***Teacher Notes***



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