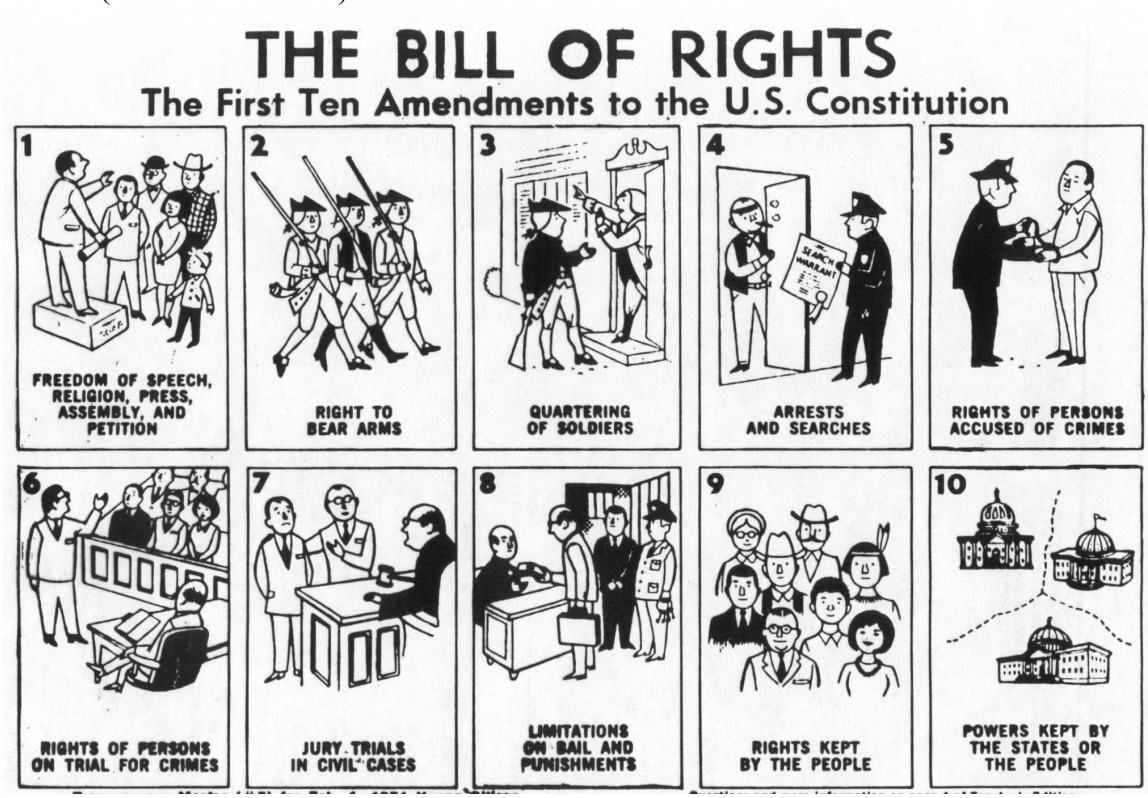
UNIT 3:
Civil Liberties and Civil Rights
DC TRIPS
Room 2B

Through the U.S. Constitution, but primarily through the Bill of Rights and the Fourteenth Amendment, citizens and groups have attempted to restrict national and state governments from unduly infringing upon individual rights and from denying equal protection under the law. Sometimes the Court had handed down decisions that protect both public order and individual freedom, and at other times the Court has set precedents protecting one at the expense of the other.

MAKE SURE YOU UNDERSTAND:

1. Provisions of the U.S. Constitution's Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. (Liberty and Order)
2. Protections of the Bill of Rights have been selectively incorporated by way of the Fourteenth Amendment's "due process" clause to prevent state infringement of basic liberties. (Liberty and Order)
3. The Fourteenth Amendment's "equal protection clause" as well as other constitutional provisions have often been used to support the advancement of equality. (Civic participation in a representative democracy)
4. Public policy promoting civil rights is influenced by citizen-state interactions and constitutional interpretation over time. (Competing policy-making interests)
5. The Court's interpretation of the U.S. Constitution is influenced by the composition of the Court and citizen-state interactions. At times, it has restricted minority rights and, at others, protected them. (Constitutionalism)



Do you know your rights?

Should we?

Why?

Any missing?

Time to Assess How We are Doing.

After each DC TRIP assess how your voyage is going. Use the following guidelines.

Self-Assessment

5 4 3 2 1 0

How did I do today?

5 – Fully completed/observable collaboration
4 – Solid progress/collaborated well
3 – Solid progress/did not collaborate
2 – Little progress/collaborated well
1 – Little progress/did not collaborate
0 - Did not complete

3.1: Explain how the U.S. Constitution protects individual liberties and rights**.**

5 4 3 2 1

3.2: Describe the rights protected in the Bill of Rights**.**

5 4 3 2 1

3.3: Explain the extent to which the Supreme Court's interpretation of the First and Second Amendments reflects a commitment to individual liberty**.**

5 4 3 2 1

3.4: Explain how the Supreme Court has attempted to balance claims of individual freedom with laws and enforcement procedures that promote public order and safety**.**

5 4 3 2 1

3.5: Explain the implications of the doctrine of selective incorporation**.**

5 4 3 2 1

3.6: Explain the extent to which states are limited by the due process clause from infringing upon individual rights**.**

5 4 3 2 1

3.7: Explain how constitutional provisions have supported and motivated social movements**.**

5 4 3 2 1

3.8: Explain how the government has responded to social movements**.**

5 4 3 2 1

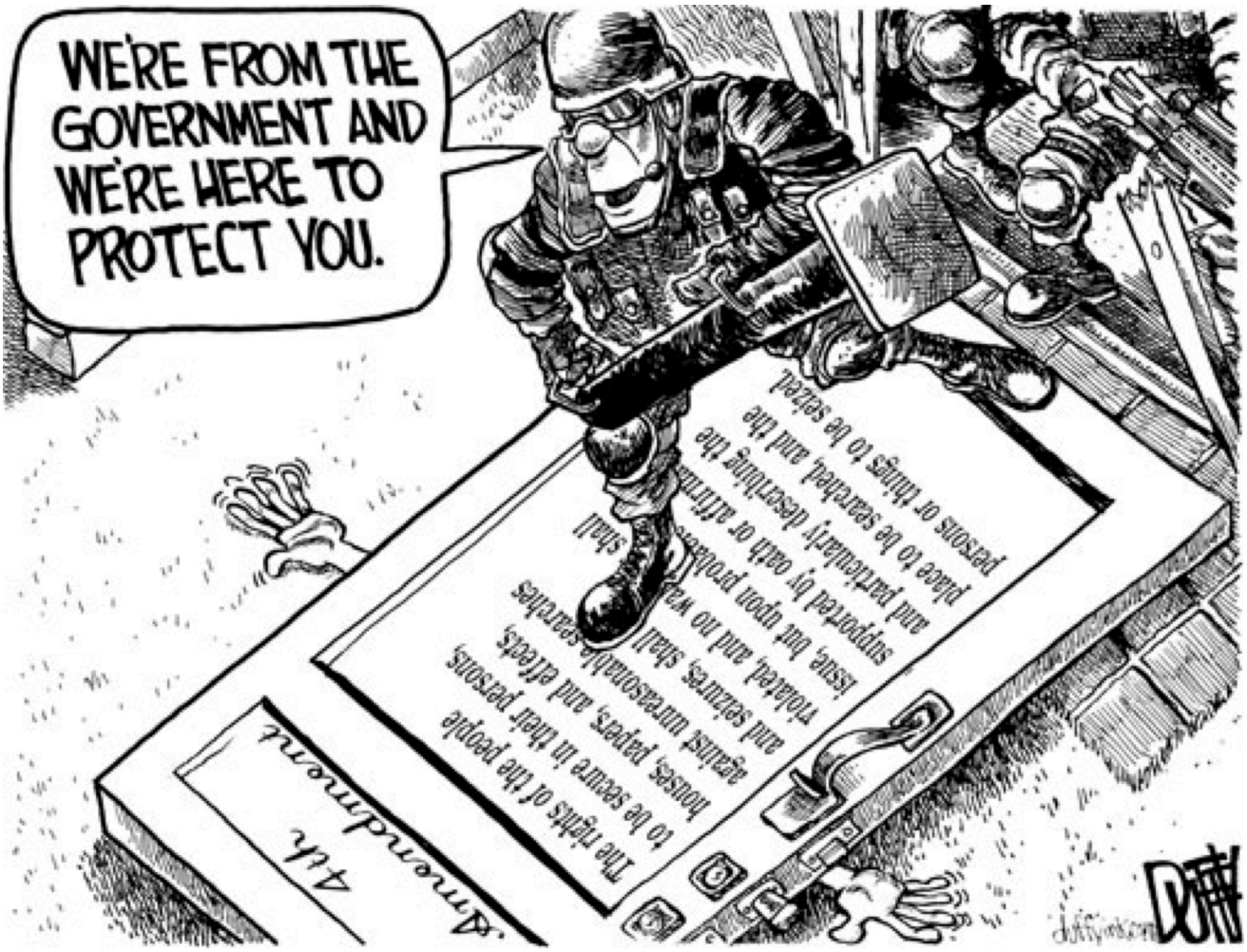
3.9: Explain how the Court has at times allowed the restriction of the rights of minority groups and at other times has protected those rights**.**

5 4 3 2 1

3.1 Explain how the U.S. Constitution protects individual liberties and rights.

Questions/Current Event	Essentials
	1. The U.S. Constitution includes a Bill of Rights specifically designed to protect individual liberties and rights. 2. Civil liberties are constitutionally established guarantees and freedoms that protect citizens, opinions, and property against arbitrary government interference. 3. The application of the Bill of Rights is continuously interpreted by the courts.

See MUST KNOW Supreme Court cases.



1. What is the underlying idea of this cartoon?

2. How do we balance the power of government and the civil liberties of individuals? What is more important – liberty or order?

Double Check

3.1: Explain how the U.S. Constitution protects individual liberties and rights.

The U.S. Constitution includes a Bill of Rights specifically designed to protect individual liberties and rights.

- Briefly tell the story why the Bill of Rights were added to the U.S. Constitution.

- Explain the significance of the S.C. case Barren v. Baltimore (1833)

- What is the difference between civil liberties and civil rights?

- Explain how the Declaration of Independence has been cited as our promissory note for both liberty and equality

Civil liberties are constitutionally established guarantees and freedoms that protect citizens, opinions, and property against arbitrary government interference.

- What is meant by *arbitrary government interference*? Find examples throughout the world today of *arbitrary government interference.*

- Who tells us what our constitutionally established guarantees mean? What checks them?

The courts continuously interpret the application of the Bill of Rights.

- Find three (3) **recent** court cases that help us further define and interpret what our fundamental Bill of Rights freedoms mean.

MAKE SURE YOU UNDERSTAND: *Provisions of the U.S. Constitution's Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. (Liberty and Order)*

3.2 Describe the rights protected in the Bill of Rights.

Questions/Current Event | Essentials

	The Bill of Rights consists of the first ten Amendments to the Constitution, which enumerate the liberties and rights of individuals.

See MUST KNOW Supreme Court cases.

1. What is the underlying idea of this cartoon?

2. *Nearly four in 10 Americans can't name a single one of the five First Amendment freedoms, according to survey results. Speech enjoys the highest recall at a far-too-low 54 percent. Only 17 percent could name freedom of religion, 12 percent knew the amendment guarantees their right to assemble, 11 percent cited freedom of the press and 2 percent could name the right to petition government for a redress of grievances.*

Does this ignorance about our rights matter? How might we educate our citizens better about their fundamental rights?

Double Check

3.2: Describe the rights protected in the Bill of Rights.

For each of the enumerated rights below: record essential details and at least one (1) law or court case that has helped to define its meaning:

FIRST AMENDMENT

SECOND AMENDMENT

THIRD AMENDMENT

FOURTH AMENDMENT

FIFTH AMENDMENT

SIXTH AMENDMENT

SEVENTH AMENDMENT

EIGTH AMENDMENT

NINTH AMENDMENT

TENTH AMENDMENT

How do these enumerated powers apply to you while in high school? Explain. Agree?

MAKE SURE YOU UNDERSTAND: *Provisions of the U.S. Constitution's Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. (Liberty and Order)*

3.3 Explain the extent to which the Supreme Court's interpretation of the First and Second Amendments reflects a commitment to individual liberty.

Questions/Current Event

Essentials

1. The interpretation and application of the First Amendment's establishment and free exercise clauses reflect an ongoing debate over balancing majoritarian religious practice and free exercise, see Engel v. Vitale (1962) and Wisconsin v. Yoder (1972)
2. The S.C has held that symbolic speech is protected by the 1st Amendment - Tinker (1969).
3. Efforts to balance social order and individual freedom are reflected in interpretations of the First Amendment that limit speech.
4. In New York Times Company v. United States (1971) the Supreme Court bolstered the freedom of the press, establishing a "heavy presumption against prior restraint" even in cases involving national security.
5. The Supreme Court's decisions on the Second Amendment rest upon its constitutional interpretation of individual liberty.

See MUST KNOW Supreme Court cases.

1. What is the underlying idea of this cartoon?

2. Should speech be made more "free"? Do the wealthy unfairly have access to greater speech?

Double Check

3.3: **Explain the extent to which the Supreme Court's interpretation of the First and Second Amendments reflects a commitment to individual liberty.**

1. **The interpretation and application of the First Amendment's establishment and free exercise clauses reflect an ongoing debate over balancing majoritarian religious practice and free exercise, as represented by such cases as**:

   - *Engel v. Vitale (1962)—which declared school sponsorship of religious activities violates the establishment clause*
   - *Wisconsin v. Yoder (1972)—which held that compelling Amish students to attend school past the 8th grade violates the free exercise clause*

What is a danger of majoritarian rule? Why did our Bill of Rights emphasize minority rights? Explain how minority rights were protected in each of the cases above.

Differentiate between the First Amendment's establishment clause and free exercise clause:

2. **The Supreme Court has held that symbolic speech is protected by the First Amendment, demonstrated by Tinker v. Des Moines Independent Community School District (1969), in which the Court ruled that public school students could wear black armbands in school to protest the Vietnam War.**

How has the Court defined symbolic speech? Summarize how constitutional rights have been applied to students.

3. **Efforts to balance social order and individual freedom are reflected in interpretations of the First Amendment that limit speech, including:**

   - Time, place, and manner regulations – FIND EXAMPLES
   - Defamatory, offensive, and obscene statements and gestures – FIND EXAMPLES
   - That which creates a "clear and present danger" based on the ruling in *Schenck v. United States (1919)*. EXPLAIN

   It has been argued: "Liberty is both an end and a means." Do you agree? Explain.

4. **In New York Times Company v. United States (1971) the Supreme Court bolstered the freedom of the press, establishing a "heavy presumption against prior restraint" even in cases involving national security.**

Define "prior restraint." When can the government, according to court interpretation, limit the press?

5. **The Supreme Court's decisions on the Second Amendment rest upon its constitutional interpretation of individual liberty.**

What individual liberty is protected in the Second Amendment? How has our interpretation of this amendment changed over time? Should there be any limits? Explain.

MAKE SURE YOU UNDERSTAND: *Provisions of the U.S. Constitution's Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. (Liberty and Order)*

3.4 Explain how the Supreme Court has attempted to balance claims of individual freedom with laws and enforcement procedures that promote public order and safety.

Questions/Current Event	Essentials
	1. Court decisions defining cruel and unusual punishment involve interpretation of the Eighth Amendment and its application to state death penalty statutes. 2. The debate about the Second and Fourth Amendments involves concerns about public safety and whether or not the regulation of firearms or collection of digital metadata promotes or interferes with public safety and/or individual rights.

See MUST KNOW Supreme Court cases.

1. What is the underlying idea of this cartoon?

2. What should the balance be between social order and individual freedom? Are we out of balance today?

Double Check

3.4: **Explain how the Supreme Court has attempted to balance claims of individual freedom with laws and enforcement procedures that promote public order and safety.**

Court decisions defining cruel and unusual punishment involve interpretation of the Eighth Amendment and its application to state death penalty statutes.

- How many states still have death penalties? Does the Federal government have the death penalty? How many were executed last year? What states had the most? Did the Federal government execute anyone last year?

- Make an argument for/against the death penalty. List at least three (3) pieces of evidence. Must include authoritative voices.

The debate about the Second and Fourth Amendments involves concerns about public safety and whether or not the regulation of firearms or collection of digital metadata promotes or interferes with public safety and/or individual rights.

- What limits do we/can we place on firearm production and sales? Do you agree? Explain.

- Compare U.S. gun laws with gun laws in at least two (2) other world countries.

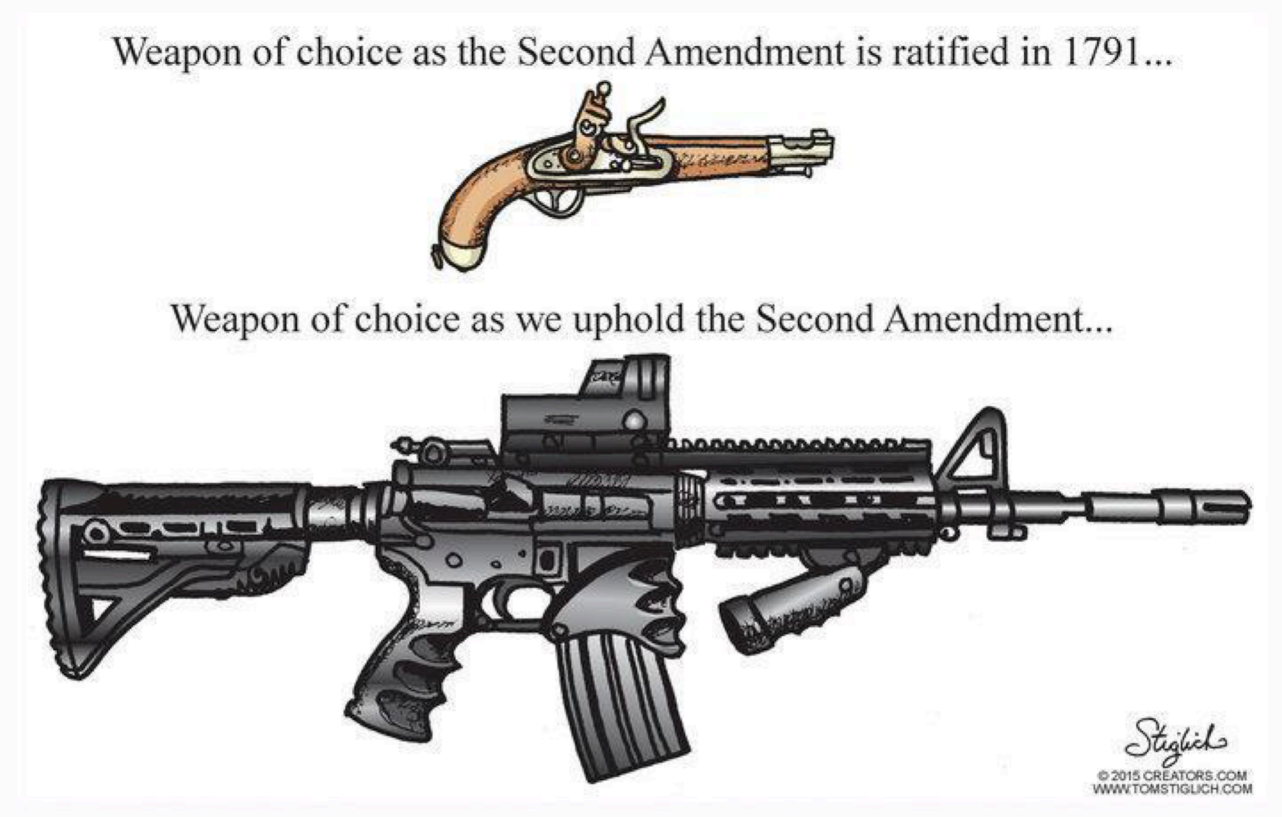
- Find court decisions (at least two) that deal with the Fourth Amendment and the protection of digital content. Do you agree or disagree with these findings?

MAKE SURE YOU UNDERSTAND: *Provisions of the U.S. Constitution's Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. (Liberty and Order)*

3.5 Explain the implications of the doctrine of selective incorporation.

Questions/Current Event	Essentials
	1. The doctrine of selective incorporation has imposed limitations on state regulation of civil rights and liberties as represented by: McDonald v. Chicago (2010), which ruled the 2nd Amendment's right to keep and bear arms for self-defense in one's home is applicable to the states through the 14th Amendment

See MUST KNOW Supreme Court cases.



1. What is the underlying idea of this cartoon?

2. The NRA is a powerful interest group in American politics. How many members does the NRA claim? What makes them so powerful? Why has the Second Amendment taken on larger than life proportions?

Double Check

2.4: **Explain the implications of the doctrine of selective incorporation**

1. ***The Court has on occasion ruled on enhancing states' power over individual liberty in spite of selective incorporation, as represented by: Gitlow v. New York (1925), which held that while the First Amendment applies to the states via the 14th Amendment, the states may prohibit speech having a tendency to cause danger to public safety.***

What was the long lasting precedent in the court case Barron v. Baltimore (1833)?

Review the definition of *selective incorporation*. How did this case change the Barron precedent?

Gitlow was the first case to authoritatively apply to the states First Amendment protections. Investigate a timeline of cases that led the Supreme Court to gradually incorporate [apply] the Bill of Rights.

2. ***The doctrine of selective incorporation has imposed limitations on state regulation of civil rights and liberties as represented by: McDonald v. Chicago (2010), which ruled the 2nd Amendment's right to keep and bear arms for self-defense in one's home is applicable to the states through the 14th Amendment***

List the protections found in the Fourteenth Amendment.

The precedent in *McDonald* probably does not happen without the case *Heller* v. *District of Columbia* (2008). Explain the importance of the Heller decision. Did the Supreme Court get this right? Explain.

How has gun policy become a *wedge* issue in American politics? Investigate how guns impact voting behavior.

MAKE SURE YOU UNDERSTAND: *Protections of the Bill of Rights have been selectively incorporated by way of the Fourteenth Amendment's "due process" clause to prevent state infringement of basic liberties. (Liberty and Order)*

3.6 Explain the extent to which states are limited by the due process clause from infringing upon individual rights.

Questions/Current Event	Essentials
	1. The Court has on occasion ruled on enhancing states' power over individual liberty in spite of selective incorporation, as represented by: Gitlow (1925) 2. The Miranda rule involves the interpretation and application of accused persons' due process rights as protected by the Fifth and Sixth Amendments. 3. Pretrial rights of the accused and the prohibition of unreasonable searches and seizures are intended to ensure that citizen liberties are not eclipsed by the need for social order and security. 4. The due process clause has been applied to guarantee the right to an attorney and protection from unreasonable and searches and seizures. 5. While a right to privacy is not explicitly named in the Constitution, the Court has interpreted the due process clause to protect the right of privacy from state infringement.

See MUST KNOW Supreme Court cases.

1. What is the underlying idea of this cartoon?

2. Roe v. Wade (1973) has underscored the deep culture war that has been waged in America for decades. Explain. What is a culture war? Who are the two sides? Who is winning? Explain.

Double Check

3.6: **Explain the extent to which states are limited by the due process clause from infringing upon individual rights.**

1. The Court has on occasion ruled on enhancing states' power over individual liberty in spite of selective incorporation, as represented by:

Gitlow v. New York (1925) – Explain the details of this case. Cite language from the majority opinion that includes the 14th Amendment's "due process" language and application of First Amendment privileges to the states.

2. The Miranda rule involves the interpretation and application of accused persons' due process rights as protected by the Fifth and Sixth Amendments, yet the Court has sanctioned a "public safety" exception that allows unwarned interrogation to stand as direct evidence in court.

- Review the Miranda rule. What does it guarantee?
- Find "public safety" exceptions that allow unwarned interrogations. What has the court said?

3. Pretrial rights of the accused and the prohibition of unreasonable searches and seizures are intended to ensure that citizen liberties are not eclipsed by the need for social order and security, including:

- The right to legal counsel, speedy and public trial, and an impartial jury – **Is right to counsel enough? Should it be competent counsel? Look for examples. Explain the VOIR DIRE process. Do you think all courts should be televised? Explain.**
- Protection against warrantless searches of cell phone data – **What have the courts said? Find examples. What would you say if you were a judge?**
- Limitations placed on bulk collection of telecommunication metadata (Patriot and USA Freedom Acts) – **Investigate what the most current law and interpretation is on the collection of metadata.**

4. The due process clause has been applied to guarantee the right to an attorney and protection from unreasonable and searches and seizures, as represented by: Gideon v. Wainwright (1963), which guaranteed the right to an attorney for the poor or indigent The exclusionary rule that stipulates evidence illegally seized by law enforcement officers in violation of the suspect's Fourth Amendment right to be free from unreasonable searches and seizures cannot be used against that suspect in criminal prosecution.

- **FIND EXAMPLES of the EXCLUSIONARY RULE in action. How has the court recently STRENGTHENED/WEAKENED the exclusionary rule?**

5. While a right to privacy is not explicitly named in the Constitution, the Court has interpreted the due process clause to protect the right of privacy from state infringement. This interpretation of the due process clause has been the subject of controversy:

- **The Roe precedent has evolved since 1973. Track how the Supreme Court has changed its meaning over time. Who are the biggest players in this culture war issue?**

MAKE SURE YOU UNDERSTAND: *Protections of the Bill of Rights have been selectively incorporated by way of the Fourteenth Amendment's "due process" clause to prevent state infringement of basic liberties. (Liberty and Order)*

3.7 Explain how constitutional provisions have supported and motivated social movements.

Questions/Current Event	Essentials
	1. Civil rights protects individuals from discrimination based on characteristics such as race, national origin, religion, and sex; these rights are guaranteed to all citizens under the due process and equal protection clauses of the U.S. Constitution, as well as acts of Congress 2. The leadership and events associated with civil, women's, and LGBT rights are evidence of how the equal protection clause can motivate social movements, as represented by: Dr. Martin Luther King's "Letter from a Birmingham jail" and the civil rights movement of the 1960s/National Organization for Women and the women's rights movement/Pro-life (Anti-abortion) movement

1. What is the underlying idea of this cartoon (HINT: check date and "O" on bag)?

2. Are we now living in a "post-racial" America? Explain.

Double Check

3.7: **Explain how constitutional provisions have supported and motivated social movements**

1. *Civil rights protects individuals from discrimination based on characteristics such as race, national origin, religion, and sex; these rights are guaranteed to all citizens under the due process and equal protection clauses of the U.S. Constitution, as well as acts of Congress*

   - *Investigate "the equal protection clause" language of the Fourteenth Amendment. What did the authors of the amendment have in mind? How would you define "equality" today? How should the government protect your brand of equality?*

   - *Define "discrimination." What is meant by "discrimination based on characteristics such as race, national origin, religion, and sex"? What do each of these characteristics mean? Should we add more? How do other countries protect their citizens from discrimination? Find examples.*

2. *The leadership and events associated with civil, women's, and LGBT rights are evidence of how the equal protection clause can motivate social movements, as represented by*:

   [**For each of the following provide essential details**]

   Dr. Martin Luther King's "Letter from a Birmingham jail" and the civil rights movement of the 1960s

   National Organization for Women and the women's rights movement

   Pro-life (Anti-abortion) movement

What's more important in bringing about social change – laws changing or cultural norms changing? Explain through the use of examples.

MAKE SURE YOU UNDERSTAND: *The Fourteenth Amendment's "equal protection clause" as well as other constitutional provisions have often been used to support the advancement of equality. (Civic participation in a representative democracy)*

3.8 Explain how the government has responded to social movements.

Questions/Current Event

Essentials

The government can respond to social movements through court rulings and/or policies:

- The Civil Rights Act of 1964
- Title IX of the Civil Rights Act Amendments (1972)
- The Voting Rights Act of 1965
- Brown v. Board of Education I (1954)—which declared that race-based school segregation violates the Fourteenth Amendment's equal protection clause
- Brown v. Board of Education II (1955)—which held that school districts and federal district courts must implement the Court's decision in Brown v. Board of Education I (1954) "with all deliberate speed"

1. What is the underlying idea of this cartoon? What is Title IX and how did it impact college athletics?

2. Investigate the number of intercollegiate athletes – break down by gender. What are the arguments for and against Title IX and its impact? What do you think?

Double Check

3.8 Explain how the government has responded to social movements.

[**For each of the following provide essential details**]

The Civil Rights Act of 1964

Title IX of the Civil Rights Act Amendments (1972)

The Voting Rights Act of 1965

Brown v. Board of Education I (1954)

Brown v. Board of Education II (1955)

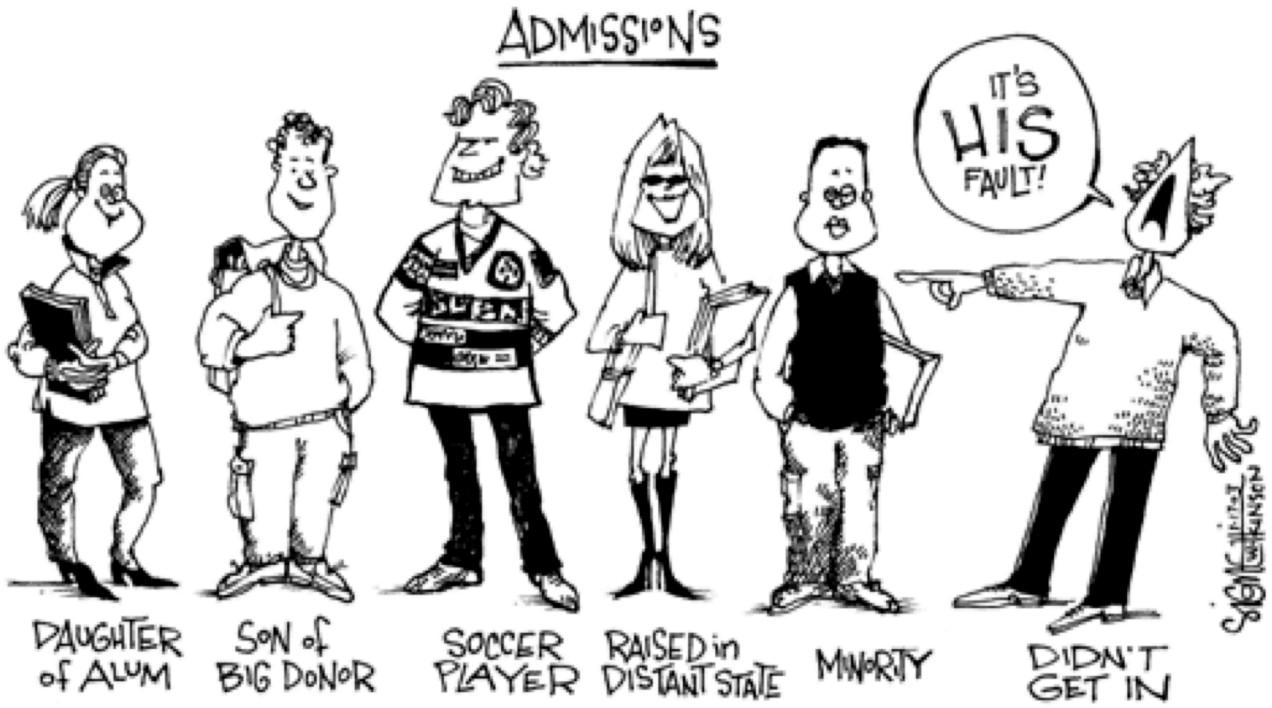
For one of the above items – look for a recent court case or legislative action.

Are these provisions stronger or weaker today? Explain. What laws might you like to see passed to further advance civil rights?

MAKE SURE YOU UNDERSTAND: *Public policy promoting civil rights is influenced by citizen-state interactions and constitutional interpretation over time. (Competing policy-making interests)*

3.9 Explain how the Court has at times allowed the restriction of the rights of minority groups and at other times has protected those rights.

Questions/Current Event	Essentials
	1. Decisions affecting the rights of minority groups demonstrates that minority rights have been restricted at times and protected at other times, as represented by: *Plessy v. Ferguson (1896)/Brown v. Board of Education I and II* (1954-55) The Supreme Court has upheld the rights of the majority in cases that limit and prohibit majority–minority districting. 2. The debate on affirmative action includes justices who insist that the Constitution is colorblind and those who maintain that it forbids only racial classifications designed to harm minorities, not help them.



1. What is the underlying idea of this cartoon?

2. Is diversity a core value? Explain.

Double Check

3.9 **Explain how the Court has at times allowed the restriction of the rights of minority groups and at other times has protected those rights.**

1. *Decisions affecting the rights of minority groups demonstrates that minority rights have been restricted at times and protected at other times, as represented by*:

   - *Plessy v. Ferguson (1896)*
   - *Brown v. Board of Education I and II* (1954-55)

What was the primary difference between the Plessy precedent and the Brown precedent?

2. *The Supreme Court has upheld the rights of the majority in cases that limit inter-district school busing and those that prohibit majority–minority districting*.

Find historical examples where inter-district busing took place. Describe the results. What were the positives and negatives of this approach? Are there any other [better] ideas?

Find two (2) examples of majority-minority Congressional districting [look at Illinois District 4]. What are the positives and negatives of this approach? Are there any other [better] ideas?

3. *The debate on affirmative action includes justices who insist that the Constitution is colorblind and those who maintain that it forbids only racial classifications designed to harm minorities, not help them*.

Find Supreme Court evidence for the following affirmative action positions [quote the case and justice]

"Constitution is colorblind"

"Forbids only racial classifications"

If you were a member of Congress . . . what would your position be on affirmative action? Write a brief press release:

MAKE SURE YOU UNDERSTAND: *The Court's interpretation of the U.S. Constitution is influenced by the composition of the Court and citizen-state interactions. At times, it has restricted minority rights and, at others, protected them. (Constitutionalism)*

Engel* v. *Vitale (1962)

Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. No better example than the emotional issue of our religious freedom as found in the First Amendment. Religious freedom has been central to the American way of life. "Our Constitution was made for a religious people," said Founding Father John Adams. So it should not come as any surprise to learn that when the United States Supreme Court got involved with religious life in America it would ignite a passionate response. Though the First Amendment guaranteed, "Congress shall make no law respecting an establishment of religion," a Protestant hegemony assured certain customs and traditions would be commonplace here, even in the public square. Individual state practices, as well, were not burdened by the religion clauses of the First Amendment until 1947 with the incorporation of the establishment clause in the case Everson v. Board of Education. With the Supreme Court now empowered to police neutral religious practices in every local village and hamlet a bevy of plaintiffs emerged to challenge certain long held traditions. One such tradition was the offering of Christian prayers in public schools. Following the "wall of separation" precedent in Everson, the high Court ruled against any and all public school led prayers in the landmark case Engel v. Vitale (1962). Few cases have solicited such emotionally charged reactions. Hundreds of constitutional amendments were proposed to overturn the decision and calls for impeaching Supreme Court justices became commonplace. In the end, the customs and traditions dutifully found in our public square would have to change. Governments could no longer sanction religious activity. "No law respecting an establishment of religion" would be tolerated. And no prayer could change that.

Mr. Justice Black delivered the opinion of the court [excerpted here]

"The respondent Board of Education of Union Free School District No. 9, New Hyde Park, New York, acting in its official capacity under state law, directed the School District's principal to cause the following prayer to be said aloud by each class in the presence of a teacher at the beginning of each school day:

> Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.

…Parents challenged the constitutionality of both the state law authorizing the School District to direct the use of prayer in public schools and the School District's regulation ordering the recitation of this particular prayer on the ground that these actions of official governmental agencies violate that part of the First Amendment of the Federal Constitution which commands that 'Congress shall make no law respecting an establishment of religion' -- a command which was 'made applicable to the State of New York by the Fourteenth Amendment of the said Constitution.'

…We think that, by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity…

…Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the First Amendment, both of which are operative against the States by virtue of the Fourteenth Amendment. Although these two clauses may, in certain instances, overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce non-observing individuals or not…"

1. Using what you already know and context clues from the *Vitale* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. The ruling in *Engel* v. *Vitale* (1962) was made possible due to the landmark ruling in *Everson* v. *Board of Education* (1947). Review the *Everson* ruling and explain its significance to *Engel* v. *Vitale*.

3. This case seemingly impacted both the establishment clause and the free exercise clause of the First Amendment. Did the court correctly focus on the establishment clause? Explain.

4. The uses of religion in the public square, even today, are hardly settled. We still have "In God We Trust" printed on our currency. Congress still opens every session with a prayer. In the light of the *Engel* precedent, how can these practices continue? Research and write a legal brief explaining what can and cannot be tolerated with respect to religion in the public square today.

Wisconsin* v. *Yoder (1972)

The United States motto is simple, E Pluribus Unum, out of many one. Our Founders envisioned "a plural society," one that welcomed diversity but encouraged harmony when solving compelling state interests. But what if certain groups want to be exempt from the state's compelling interests? What if the pluribus loses its Unum? This was the issue in Wisconsin v. Yoder (1972). A group of rural Amish, a traditional religious sect that eschews modern comforts, chose not to cooperate with Wisconsin's compulsory high school education laws. The Amish claimed it violated their First Amendment right to their "free exercise of religion." Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. Compelling Amish students to attend school past the eighth grade violated the free exercise clause, the court argued. The court emphasized our tradition of religious tolerance and the accommodation of religious differences. Some have called the Yoder precedent the "high water mark of free exercise." The allowance of religious exemptions to other state laws, however, has not met a similar conclusion. For instance in the case Employment Division v. Smith (1990) the court rejected the argument of two drug counselors who wanted to be exempt from Oregon's prohibition to use peyote based upon their own religious practices. Congress attempted to ameliorate likeminded disputes with the passage of the Religious Freedom Restoration Act (1993). Disputes continue to vex our courts. Our pluribus continues to test our Unum.

Mr. Chief Justice Burger delivered the opinion of the court [excerpted here]

"…On complaint of the school district administrator for the public schools, respondents were charged, tried, and convicted of violating the compulsory attendance law in Green County Court, and were fined the sum of $5 each. Respondents defended on the ground that the application of the compulsory attendance law violated their rights under the First and Fourteenth Amendments. The trial testimony showed that respondents believed, in accordance with the tenets of Old Order Amish communities generally, that their children's attendance at high school, public or private, was contrary to the Amish religion and way of life. They believed that, by sending their children to high school, they would not only expose themselves to the danger of the censure of the church community, but, as found by the county court, also endanger their own salvation and that of their children. The State stipulated that respondents' religious beliefs were sincere…

…There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education…

…We must not forget that, in the Middle Ages, important values of the civilization of the Western World were preserved by members of religious orders who isolated themselves from all worldly influences against great obstacles. There can be no assumption that today's majority is 'right,' and the Amish and others like them are "wrong." A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different…

…For the reasons stated we hold, with the Supreme Court of Wisconsin, that the First and Fourteenth Amendments prevent the State from compelling respondents to cause their children to attend formal high school to age 16. Our disposition of this case, however, in no way alters our recognition of the obvious fact that courts are not school boards or legislatures, and are ill-equipped to determine the 'necessity' of discrete aspects of a State's program of compulsory education. This should suggest that courts must move with great circumspection in performing the sensitive and delicate task of weighing a State's legitimate social concern when faced with religious claims for exemption from generally applicable educational requirements. It cannot be overemphasized that we are not dealing with a way of life and mode of education by a group claiming to have recently discovered some "progressive" or more enlightened process for rearing children for modern life…"

1. Using what you already know and context clues from the *Yoder* excerpt, what fundamental constitutional questions were answered in this landmark case? Why does the opinion reference both the First and Fourteenth Amendments?

2. According to this opinion the State has "a high responsibility for education of its citizens." Explain.

3. Explain how the Court opinion utilized history in the argument? Do you think judges should limit themselves to the letter of the law or also use history to make their decisions?

4. The tone of this opinion suggests that the Court was reluctant to grant this or any exemption to state law. Explain.

Tinker v. Des Moines Independent Community School District (1969)

Do students lose their rights when they walk through the schoolhouse gate? This was the question in the case Tinker v. Des Moines (1969). We know the First Amendment's free speech clause has been given a "preferred position." But does it apply equally to kids sitting in classrooms? The Des Moines public school system in 1965 said: "No." "Schools are no place for demonstrations," the school system's spokesperson said in response to five students who had been suspended for showing up to class wearing black arm bands in protest of the Vietnam War. The Supreme Court would be called upon again to interpret the reach of the First Amendment. Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. Public school students, as decided in this case, could wear black armbands in school to protest the Vietnam War. Though the court recognized the school's right to maintain order within the classroom, "school officials do not possess absolute authority over their students." Furthermore the court argued, "Fear that something might happen, is not a basis for quelling all student speech." Finding the proper balance between order and liberty is never easy. Be encouraged, however, that as you learn about your civil liberties they do not exist in theory alone. You gain possession of your liberties today, right now, regardless of your age. For this we can thank the courage of John and Mary Beth Tinker who decided to speak out against war while sitting in just another high school math class.

Mr. Justice Fortas delivered the opinion of the court [excerpted here]

"…The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and, if he refused, he would be suspended until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted…

…The District Court recognized that the wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment… the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment…

…First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate…

…In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school, as well as out of school, are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views…"

1. Using what you already know and context clues from the *Tinker* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. According to this opinion what was the school districts rationale for punishing the students? Explain. Check out the Court's dissenting opinion by Justice Hugo Black.

3. Justice Fortas writes in his opinion, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." This is one of the most quoted lines from Supreme Court history. Write it in your own words. Our liberties have limits. What reasonable limits should apply to students at school?

4. Investigate how the *Tinker* precedent plays out in your school. Provide examples.

New York Times Company v. U.S. (1971)

New York Times Company v. U.S. (1971) is often referred to as the Pentagon Papers Case. The Pentagon Papers were thousands of pages of "top secret" documents compiled by the Secretary of Defense that documented the murky narrative of the United States involvement in the Vietnam War. One of its authors, Daniel Ellsberg, was incensed at what the Papers' revealed and chose to "leak" the documents to the New York Times. The Times began printing excerpts of the Pentagon Papers on June 13, 1971. Almost immediately the Nixon Administration saw the exposure of the Pentagon Papers in the press as a threat to national security. Ongoing peace talks in Vietnam, Nixon thought, would be jeopardized by this security breach in the American press. The Nixon Justice Department requested an injunction against the Times to stop the presses. The U.S. government had never before asked the courts to stop a national newspaper in this way. Due to the immediacy of the injunction, the Supreme Court agreed to resolve this issue within a matter of days. Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. The Court returned a 6-3 decision that upheld the power and authority of the First Amendment's freedom of the press. New York Times Company v. U.S. (1971) bolstered the freedom of press, establishing a "heavy presumption against prior restraint" even in cases involving national security. There can be little doubt that a strong nation requires a free press. Years later Daniel Ellsberg was asked if "leaks" to the press and subsequent attempts by the government to pursue prosecution in our day bear any resemblance to the Pentagon Papers Case? Ellsberg without hesitation responded by saying, "The parallels are very strong." Each generation will see its freedoms challenged and tested.

Per Curiam opinion of the court along with Justice Black's concurring opinion [excerpted here]

"…We granted certiorari in these cases in which the United States seeks to enjoin the New York Times and the Washington Post from publishing the contents of a classified study entitled 'History of U.S. Decision-Making Process on Viet Nam Policy'…

… "Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity"…

…The Government "thus carries a heavy burden of showing justification for the imposition of such a restraint."…

…The District Court for the Southern District of New York, in the New York Times case, and the District Court for the District of Columbia and the Court of Appeals for the District of Columbia Circuit, in the Washington Post case, held that the Government had not met that burden. We agree…"

"In seeking injunctions against these newspapers, and in its presentation to the Court, the Executive Branch seems to have forgotten the essential purpose and history of the First Amendment. When the Constitution was adopted, many people strongly opposed it because the document contained no Bill of Rights to safeguard certain basic freedoms. They especially feared that the new powers granted to a central government might be interpreted to permit the government to curtail freedom of religion, press, assembly, and speech. In response to an overwhelming public clamor, James Madison offered a series of amendments to satisfy citizens that these great liberties would remain safe and beyond the power of government to abridge. Madison proposed what later became the First Amendment in three parts, two of which are set out below, and one of which proclaimed:

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

1. Using what you already know and context clues from the *NYTimes* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. The court opinion begins with, "We granted certiorari…" What does this mean? How many cases appealed to the Supreme Court each year receive *certiorari*? Using the context clues from the opinion, what was the journey of this case before it reached the Supreme Court?

3. What does this court mean by "prior restraint"? The court does not deny that the government can use prior restraint, but just not in this case. Investigate. When and how can the government meet the heavy burden of prior restraint?

4. What is so special about our First Amendment freedoms? Why did Madison call them "the great bulwarks of liberty"?

Schenck v. U.S. (1919)

Few would dispute that freedom of speech is one of our most valued civil liberties. But does the First Amendment's free speech clause give us license to say anything we want anywhere? The Supreme Court was called upon to answer this question for the first time in the case Schenck v. U.S. (1919). At issue in this case was a law passed by Congress during World War I called the Espionage Act (1917). The law made it illegal for individuals to obstruct the military draft and/or to spur disloyalty during the war. Charles Schenck disapproved of this law. He sent 2,000 pamphlets to recent draftees urging them to resist the war effort. Charles Schenck was arrested and convicted in violation of the Espionage Act. Schenck claimed that the law violated his fundamental right to free speech. Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. In this case the Court upheld Schenck's conviction. Oliver Wendell Holmes, writing for the Court, argued: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." The First Amendment may not protect your free speech in instances where there is a "clear and present danger." By allowing for an argument based upon "circumstance" the Schenck precedent settled little. Deciding what is dangerous is anything but clear.

Mr. Justice Holmes delivered the court opinion [excerpted here]

"This is an indictment in three counts. The first charges a conspiracy to violate the Espionage Act of June 15, 1917, c. 30, § 3, 40 Stat. 217, 219, by causing and attempting to cause insubordination, &c., in the military and naval forces of the United States, and to obstruct the recruiting and enlistment service of the United States, when the United States was at war with the German Empire, to-wit, that the defendants willfully conspired to have printed and circulated to men who had been called and accepted for military service under the Act of May 18, 1917, a document set forth and alleged to be calculated to cause such insubordination and obstruction. The count alleges overt acts in pursuance of the conspiracy, ending in the distribution of the document set forth. The second count alleges a conspiracy to commit an offence against the United States, to-wit, to use the mails for the transmission of matter declared to be nonmailable by Title XII, § 2 of the Act of June 15, 1917, to-wit, the above mentioned document, with an averment of the same overt acts. The third count charges an unlawful use of the mails for the transmission of the same matter and otherwise as above. The defendants were found guilty on all the counts. They set up the First Amendment to the Constitution forbidding Congress to make any law abridging the freedom of speech, or of the press, and bringing the case here on that ground have argued some other points also of which we must dispose…

…We admit that, in many places and in ordinary times, the defendants, in saying all that was said in the circular, would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force.

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 that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right…"

1. Using what you already know and context clues from the *Schenck* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. Justice Holmes' opinion relies on "circumstances." Explain. What are the advantages and disadvantages of this kind of argument? Find other historical examples where circumstances affected legal outcomes.

3. *Schenck* established the "clear and present danger" test? Explain. Is it still used today?

4. In his opinion Holmes wrote one of the most noted lines in Court history, "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." Do you find it to be persuasive? What is the operative free speech precedent today?

Gideon v. Wainwright (1963)

The Incorporation Doctrine was a game changer. Little by little the Bill of Rights were applied to the states using the due process clause of the Fourteenth Amendment. By incorporating or applying the protections found in the Bill of Rights to the states via the Fourteenth Amendment the Supreme Court solidified our civil liberties even more. The due process clause of the Fourteenth Amendment has been interpreted to prevent the states from infringing upon basic liberties. A prime example of the court using the incorporation doctrine can be seen in the case Gideon v. Wainwright (1963). Clarence Earl Gideon was serving time in a Florida prison for a crime he claimed he did not commit. At his trial he had no attorney. He could not afford one. The Florida constitution did not guarantee counsel and the Sixth Amendment guarantee to an attorney did not apply in Florida criminal cases. Using the Fourteenth Amendment's due process clause to apply the Sixth Amendment even in state cases meant Clarence Gideon would receive another trial, this time with an attorney. Clarence Gideon was set free. The case of Gideon v. Wainwright (1963) guaranteed the right to an attorney for the poor or indigent not only at the federal level but at the state level as well. Thanks to the Incorporation Doctrine the Sixth Amendment's right to counsel now applies to everyone, everywhere. The Incorporation Doctrine is a game changer.

Mr. Justice Black delivered the court opinion [excerpted here]

"Petitioner was charged in a Florida state court with having broken and entered a poolroom with intent to commit a misdemeanor. This offense is a felony under Florida law. Appearing in court without funds and without a lawyer, petitioner asked the court to appoint counsel for him, whereupon the following colloquy took place:

'The COURT: Mr. Gideon, I am sorry, but I cannot appoint Counsel to represent you in this case. Under the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense'…

…The Sixth Amendment provides, 'In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.' We have construed this to mean that, in federal courts, counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived…

…A defendant's need for a lawyer is nowhere better stated than in the moving words of Mr. Justice Sutherland in Powell v. Alabama:

'The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence'"…

1. Using what you already know and context clues from the *Gideon* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. Explain how and why the Sixth Amendment was not applied to Clarence Gideon during his original trial. What legal provision was necessary in order for the Court to apply the Sixth Amendment to the states?

3. INVESTIGATE. How many men were incarcerated in Florida prisons in 1963 without counsel at their trials? What happened to them after the Gideon decision? How many states did not provide for counsel before 1963?

4. FOR DEBATE. Some would argue today that having counsel in a trial is no longer enough. Any defendant should be guaranteed competent counsel. What do you think?

Roe v. Wade (1973)

Few Supreme Court cases are as politically charged as Roe v. Wade (1973). Our two major political parties continue to make Roe a clear dividing point in their platforms. At issue in Roe v. Wade (1973) was a women's right to choose an abortion during the first trimester without state government interference. Bodily autonomy rights are not explicitly found in the U.S. Constitution. Yet the Court in Griswold v. Connecticut (1965) interpreted that the right to personal privacy was implicit throughout the Bill of Rights. And using the incorporation doctrine the Court held the due process clause of the Fourteenth Amendment prevented states from infringing upon basic liberties, including the right to privacy. The right to privacy was now made explicit via a court interpretation. The Roe v. Wade (1973) opinion relied heavily on the Griswold precedent. Roe extended the right of privacy to a woman's decision to have an abortion. "Pro-choice" and "Pro-life" groups continue to define our political landscape. The issue of abortion has become a litmus test question for those seeking public office and to prospective federal judges. Roe v. Wade (1973) reminds us that the incorporation doctrine has both legal and political consequences. By giving more and more authority to our national courts our local governments have less and less to say about the kind of world we choose to live in.

Mr. Justice Blackmun delivered the court opinion [excerpted here]

"…We forthwith acknowledge our awareness of the sensitive and emotional nature of the abortion controversy, of the vigorous opposing views, even among physicians, and of the deep and seemingly absolute convictions that the subject inspires. One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and to color one's thinking and conclusions about abortion…

…Roe alleged that she was unmarried and pregnant; that she wished to terminate her pregnancy by an abortion "performed by a competent, licensed physician, under safe, clinical conditions"; that she was unable to get a "legal" abortion in Texas because her life did not appear to be threatened by the continuation of her pregnancy; and that she could not afford to travel to another jurisdiction in order to secure a legal abortion under safe conditions. She claimed that the Texas statutes were unconstitutionally vague and that they abridged her right of personal privacy, protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. By an amendment to her complaint, Roe purported to sue "on behalf of herself and all other women" similarly situated…

…The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as Union Pacific R. Co. v. Botsford, (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution…

…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…"

1. Using what you already know and context clues from the *Roe* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. Justice Blackmun recognized the "sensitive and emotional nature" of this case. Explain.

3. Justice Blackmun acknowledged that privacy is not explicitly mentioned in the constitution. Roe asserted that her right to privacy was "protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments." Explain.

4. FOR DEBATE. Research Pro-Choice and Pro-Life views. What are the best arguments on both sides? Make your argument. Should there be any limits?

Gitlow v. New York (1925)

When the Bill of Rights was first ratified their protections applied exclusively to the national government. "Emphatically not to the states," it was argued. This understanding would change with the passage of the Fourteenth Amendment (1868) following the Civil War. The Fourteenth Amendment declared, "...No state could deprive anyone of life, liberty, or property without due process of law." The due process clause of the Fourteenth Amendment has been interpreted to prevent the states from infringing upon basic liberties. In political science this is called the Incorporation Doctrine. Navigating this profound change would have broad implications for federalism and the role of the United States Supreme Court. Gitlow v. New York (1925) was the first time the court made the First Amendment's guarantee of free speech binding upon the states. Gitlow incorporated free speech. The merits of the case become secondary to this crucial landmark moment. Nevertheless the Gitlow story feels familiar to certain contemporary issues that we face. Benjamin Gitlow was a part of the radical American Communist Party that appeared to many to be promoting a violent overthrow of the government. The state of New York in 1902 had criminalized the advocacy of anarchy, "a dangerous doctrine at any time." In addition to incorporating free speech, the Supreme Court found Benjamin Gitlow responsible for the probable outcome of his words. His conviction was upheld. States may prohibit speech having a tendency to cause danger to public safety. Incorporation today receives little debate. The "bad tendency" principle, however, is tested each and every day on our streets as we attempt to balance both our liberties and the government's responsibility to keep its citizens safe.

Mr. Justice Sanford delivered the court opinion [excerpted here]

"Benjamin Gitlow was indicted in the Supreme Court of New York, with three others, for the statutory crime of criminal anarchy…

…The contention here is that the statute, by its terms and as applied in this case, is repugnant to the due process clause of the Fourteenth Amendment…

…For present purposes, we may and do assume that freedom of speech and of the press which are protected by the First Amendment from abridgment by Congress are among the fundamental personal rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the States. We do not regard the incidental statement in Prudential Ins. Co. v. Cheek … that the Fourteenth Amendment imposes no restrictions on the States concerning freedom of speech, as determinative of this question…

…It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom…

…That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question…

1. Using what you already know and context clues from the *Gitlow* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. Explain why the Fourteenth Amendment was so critical in this First Amendment case.

3. Compare and contrast the Schenck case with this case. How are they similar? How are they different?

4. FOR DEBATE. Ultimately this case surrounds a state's coercive police powers. Justice Sanford wrote: "That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question." Is it open to question today? Explain.

McDonald v. Chicago (2010)

Little by little the Supreme Court has applied the protections of the Bill of Rights to the states using the due process clause of the Fourteenth Amendment. The due process clause of the Fourteenth Amendment, over time, has been interpreted to prevent the states from infringing upon basic liberties. Nationalizing the Bill of Rights, often called the Incorporation Doctrine, was first seen in the case Gitlow v. New York (1925). In Gitlow the court incorporated free speech. McDonald v. Chicago (2010) was the most recent instance of incorporation. The Second Amendment right to keep and bear arms for self-defense is now applicable to the states. Incorporation has broad implications for federalism. With the McDonald decision attempts by local governments to legislate against gun violence has become more problematic. For most of our history state and local governments, our "laboratories of democracy," were able to experiment with various gun control measures. More specifically state and local governments were able to tailor gun laws to address their own unique populations. Now under the McDonald precedent gun laws must take into account the opinion of the Supreme Court. The "right to bear arms" is one of our most familiar and defended individual liberties. Even so gun violence continues to vex public policy makers. In McDonald v. Chicago (2010) the court inserted the national government as the final arbitrator in this dispute.

Mr. Justice Alito delivered the court opinion [excerpted here]

"…Two years ago, in District of Columbia v. Heller (2008), we held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense, and we struck down a District of Columbia law that banned the possession of handguns in the home. The city of Chicago (City) and the village of Oak Park, a Chicago suburb, have laws that are similar to the District of Columbia's, but Chicago and Oak Park argue that their laws are constitutional because the Second Amendment has no application to the States. We have previously held that most of the provisions of the Bill of Rights apply with full force to both the Federal Government and the States. Applying the standard that is well established in our case law, we hold that the Second Amendment right is fully applicable to the States…

…After our decision in Heller, the Chicago petitioners and two groups filed suit against the City in the United States District Court for the Northern District of Illinois. They sought a declaration that the handgun ban and several related Chicago ordinances violate the Second and Fourteenth Amendments to the United States Constitution. Another action challenging the Oak Park law was filed in the same District Court by the National Rifle Association (NRA) and two Oak Park residents. In addition, the NRA and others filed a third action challenging the Chicago ordinances. All three cases were assigned to the same District Judge…

…In Heller, we held that the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense. Unless considerations of stare decisis counsel otherwise, a provision of the Bill of Rights that protects a right that is fundamental from an American perspective applies equally to the Federal Government and the States. We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in Heller. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings…"

1. Using what you already know and context clues from the *McDonald* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. The *McDonald* case piggybacked on the *DC* v. *Heller* (2008) case. Explain the relationship. Do you agree with the decision in *Heller*?

3. Justice Alito mentions the National Rifle Association (NRA) in his opinion. What is this group and explain how groups like this help determine legal agendas in our court system.

4. FOR DEBATE. Certainly gun violence is an issue in the United States. Does the *McDonald* decision render governments powerless in the fight against gun violence? Explain by looking at how municipal governments have responded to the precedent in *McDonald* and the ongoing fight against gun violence.

Plessy v. Ferguson (1896)

With the passage of the Fourteenth Amendment "a second American Revolution" was begun. The role of the national government in protecting both due process and equal protection took on unprecedented powers. State power and authority was compromised as the central government took on far greater power than was initially granted in our original constitution. The "due process clause" of the Fourteenth Amendment has been interpreted to prevent the states from infringing upon basic civil liberties. The Fourteenth Amendment's "equal protection clause" has often been used to support the advancement of our basic civil rights. State governments, however, are not the only ones who can mistakenly apply inequalities. The United States Supreme Court in Plessy v. Ferguson (1896) may have thought they were advancing equality. In fact, by upholding the "separate but equal" doctrine racial segregation by the states became even more entrenched in law. Jim Crow laws, common in the South following the Civil War, mandated de jure racial segregation in most public spaces. In the Plessy case, a Louisiana law that required separate accommodations for white and black patrons in railroad cars was contested. The court overwhelmingly ruled to support the Louisiana law. In a prescient dissenting opinion Judge John Marshall Harlan wrote, "Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law…In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott Case." It would take another generation before the Court would overturn the "separate but equal" doctrine. Equality is what equality does.

Mr. Justice Brown delivered the court opinion [excerpted here]

"…This case turns upon the constitutionality of an act of the General Assembly of the State of Louisiana, passed in 1890, providing for separate railway carriages for the white and colored races…

…The constitutionality of this act is attacked upon the ground that it conflicts both with the Thirteenth Amendment of the Constitution, abolishing slavery, and the Fourteenth Amendment, which prohibits certain restrictive legislation on the part of the States…

…The object of the [Fourteenth Amendment] was undoubtedly to enforce the absolute equality of the two races before the law, but, in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced…

…We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. The argument necessarily assumes that if, as has been more than once the case and is not unlikely to be so again, the colored race should become the dominant power in the state legislature, and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption. The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals…"

1. Using what you already know and context clues from the *Plessy* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. Explain the relationship of the Fourteenth Amendment to this case.

3. This case focused on separate railway cars. What examples did the court use to justify their decision?

4. FOR DEBATE. The court opinion relied upon an argument about "inferiority." Separate but equal facilities, Justice Brown argued, does not stamp a "badge of inferiority." How does this argument play today in what some might argue is a similar environment of "de facto" segregation?

Brown v. Board of Education, I (1954)

The decision in Brown v. Board of Education (1954) served as a pivotal catalyst in the formal dismantling of racial inequality throughout the United States. The United States Supreme Court, utilizing the authority given in the Fourteenth Amendment, became an important agent for social justice. Though it was not easy, even for the courts. The Court had heard oral arguments in the case the previous term and the justices fund themselves divided. A rehearing was ordered for the following year. In the Fall of 1953, before rehearing Brown, Chief Justice Fred Vinson died. With the appointment of Earl Warren as Chief Justice, those seeking an historic ruling in Brown found encouragement. Chief Justice Warren would ultimately be able to shepherd a landmark unanimous decision. In Brown the Fourteenth Amendment's "equal protection clause" was used to support the advancement of equality in our public school system. Race-based school segregation violates the equal protection clause. De jure segregation in public schools, practiced throughout the South into the 1950s, was ruled to be unconstitutional. The Plessy precedent of "separate but equal" was no longer operative. The Court ruled unanimously "the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." As important and symbolic as these words were they would be met with resistance. Remember the Supreme Court has no official arm of enforcement. In many communities the Brown decision would fall on deaf ears. In many places the new law of the land was not enforced. Nevertheless the quest to live up to our creed of "equal protection" for all now found a friend in the United States Supreme Court. The Court would be called upon again in Brown II (1955) to clarify how best to realize the impact of their words. Undoing the shadow of systemic discrimination that had been in place since our founding would not be as simple as a landmark gesture by nine justices in 1954.

Mr. Chief Justice Warren delivered the court opinion [excerpted here]

"…In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a non-segregated basis. In each instance, they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment…

…Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does…

…We conclude that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal…

1. Using what you already know and context clues from the *Brown* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. In what way did separate schools deprive the plaintiffs of their equal protection?

3. Summarize in your own words the Court's argument on the importance of education. Do you agree?

4. INVESTIGATE. Compare and contrast schools from the 1950s to today. What might Chief Justice Warren say today about public schools, the opportunities they provide, and the impact of this decision?

Brown v. Board of Education, II (1955)

Brown v. Board of Education I (1954) stated a goal. "Separate educational facilities are inherently unequal." Racial segregation in public school is unconstitutional. But how to remedy generations of embedded discrimination? The Supreme Court took on this challenge in Brown v. Board of Education II (1955). The authority of the court to do so was found in the Fourteenth Amendment's "equal protection clause" which is used to support the advancement of equality. After skillful discussion, research and study a unanimous Court settled upon a reasonable remedy. School districts and federal officials must implement the Court's decision in Brown v. Board of Education, I (1954) "with all deliberate speed." The respective segregation cases had their disputes remanded to the lower courts, from which they came, who now were required by law to "make a prompt and reasonable start toward full compliance" with Brown I. Many looking back in hindsight wonder if the Court's words lacked forcefulness. As one Supreme Court clerk from the process said looking back, "the Court had done a great service in that it had gotten unanimity, we had gotten the ball rolling, we'd taken the cork out of the bottle, Plessy was gone, there were equal rights for the people – we'd all done a wonderful thing." Together Brown I and Brown II set America on a course to realize the Fourteenth Amendment's guarantee of equal protection for all. The journey continues.

Mr. Chief Justice Warren delivered the court opinion [excerpted here]

"These cases were decided on May 17, 1954. The opinions of that date, declaring the fundamental principle that racial discrimination in public education is unconstitutional, are incorporated herein by reference. All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. There remains for consideration the manner in which relief is to be accorded…

…Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts…

While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases…

…[T]he cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases…"

1. Using what you already know and context clues from the *Brown II* excerpt, what fundamental constitutional questions were answered in this landmark case?

2. Explain why it was necessary for the Court to hear the Brown case twice. What is the difference between *Brown* I and *Brown* II?

3. Summarize in your own words the Court's argument on the importance of education. Do you agree?

4. DEBATE. Assess the impact of the Court's order to comply with the Brown decision with "all deliberate speed."