

EISENHOWER AND THE LITTLE ROCK CRISIS (1957)

DIRECTIONS

Read the background essay. Then, using Documents A – K and your knowledge of history and current events, assess President Eisenhower’s constitutional justification for his decision to send federal troops to Little Rock, Arkansas, to enforce a federal court’s order to integrate public schools.

CONSTITUTIONAL PRINCIPLES

*Limited government
Federalism
Separation of powers*

Background

The Supreme Court case of *Brown v. Board of Education* (1954), with its declaration that segregated public schools were unconstitutional, overturned decades of precedent and challenged deeply-held social traditions. Southern resistance to the decision was widespread. President Dwight D. Eisenhower was not enthusiastic about federal judicial intervention in public education, but he carried out his constitutional responsibility to enforce the law by implementing desegregation in the District of Columbia. Not all state governments were quick to comply with the Supreme Court’s order to integrate “with all deliberate speed” and many fought against it openly. Arkansas Governor Orval Faubus ordered his state’s National Guard to block the entry of nine newly-enrolled African American students to Central High School in Little Rock. A violent mob gathered in front of the school, and city police failed to control it. Finally, when asked for assistance by the Mayor of Little Rock, President Eisenhower believed his constitutional duty to take care that the laws were faithfully executed left him no choice but to intervene, even to the point of using military force against American citizens.

TEACHING TIPS: EISENHOWER AND THE LITTLE ROCK CRISIS

LEARNING OBJECTIVES

- Students understand the events leading up to and including the Little Rock Crisis.
- Students analyze President Eisenhower's constitutional justification for his actions.
- Students assess the President's decision to use military force to prevent violent opposition to a court order.

ACTIVITIES

1. Have students read the background essay, **Handout A: Eisenhower and the Little Rock Crisis**, and answer the questions.
2. Lead students to compare and contrast the three photographs in the DBQ lesson: **Documents D, I, and J**, using the scaffolding questions provided for each document.
3. Assign appropriate documents for student analysis.
4. Have students complete handout, **Handout B: Analyzing Documents**, to show how each document is related to the Constitution, and how the documents are related to each other.
5. Use key question, "Assess President Eisenhower's constitutional justification for his decision to send federal troops to Little Rock, Arkansas, to enforce a federal court's order to integrate public schools." for class discussion or writing assignment, focusing on the constitutional principles involved in the event.
6. Extensions:
 - A. Have students read Eisenhower's entire radio address and summarize its key points.
 - B. Have students research the lives of the Little Rock Nine: Carlotta Walls, Jefferson Thomas, Elizabeth Eckford, Thelma Mothershed, Melba Pattillo, Terrence Roberts, Gloria Ray, Minnijean Brown, and Ernest Green.

See Appendix for additional Graphic Organizers.

BACKGROUND ESSAY

EISENHOWER AND THE LITTLE ROCK CRISIS

Segregation and the Courts

Since Reconstruction, many aspects of American life were segregated. In Southern states, as well as some Northern ones, laws known as Jim Crow laws permitted and often required segregated bathrooms, drinking fountains, parks, restaurants, and other public spaces. The Supreme Court upheld this legal practice in the case of *Plessy v. Ferguson* (1896).

A half century later, the Court ruled that “separate but equal” had no validity in public schools. *Brown v. Board of Education* (1954) declared segregation in public schools “inherently unequal” and unconstitutional. In a related case known as *Brown II* (1955), the Court ordered schools to desegregate “with all deliberate speed.”

Responses to Brown

The *Brown* decision was hailed as a victory for equal treatment under law. It recognized the color-blind nature of the Constitution, and that government cannot treat people differently based on their race. But the decision was also criticized by some for not relying on strict constitutional principles and depending too heavily on social science. Southern resistance to the *Brown II* order was widespread. Many saw the decision as an infringement on powers reserved to the states under the Constitution.

President Dwight D. Eisenhower was among those who had reservations about the decision. He believed that schools were the wrong place to begin desegregating American society. He thought it would be more prudent to begin with places like parks and restaurants. Finally, Eisenhower believed that changes to traditional social practices could not be imposed by law, but had to come from the people themselves.

Despite his personal beliefs, Eisenhower performed his duty to ensure the laws were faithfully executed by enforcing desegregation in schools and other public facilities in the District of Columbia.

The Little Rock Crisis

The Little Rock school board had developed a plan to start integration in the 1957-58 school year and the federal district court ordered it to begin. Nine African American students enrolled at Central High School. Segregationists threatened to protest. Arkansas Governor Orval Faubus ordered the state’s National Guard to the school to “keep order.” But in fact, the Guard members blocked the African American students from entering the school. The federal district court ordered Governor Faubus to withdraw the Guard, which he did.

The nine students tried again three weeks later, this time escorted by city police.

They went in a rear door to avoid the angry mob that had once again gathered. African American journalists who had come to cover the event were attacked. Protesters soon forced their way into the building. Police escorted the students out for their own safety.

The Mayor of Little Rock sent President Eisenhower a telegram describing the events and concluding with a suggestion: “If the Justice Department desires to enforce the orders of the federal court in regard to integration in this city, the city police will be available to lend such support as you may require.”

Less than twenty-four hours later came a second telegram from the Mayor, telling of a violent mob larger than the day before and now begging for help: “I am pleading to you

... in the interest of humanity, law, and order ... to provide the necessary federal troops within several hours.”

Eisenhower hated the idea of using federal troops against Americans. However, he believed that his constitutional duty to enforce the law was, in his words, “inescapable.” His decision was the result of reflection and discussion with advisors. His handwritten notes show that he was concerned with protecting the image of the US as a nation committed to the rule of law.

The troops would be there “NOT to enforce integration, but to prevent opposition by violence to orders of a court.” He and his Attorney General discussed similar events from American history, including George Washington’s response to the Whiskey Rebellion. Finally, he reasoned that federalizing the Arkansas National Guard and sending the Army to Little Rock to enforce the court order would prevent pitting “brother against brother.”

Executive Order 10730

Eisenhower issued a proclamation ordering the mob around the school to “disperse.” But again the mob returned. The next day, Eisenhower issued Executive Order 10730.

Critical Thinking Questions

1. Describe the significance of *Plessy v. Ferguson* (1896), *Brown v. Board of Education* (1954), and *Brown II* (1955) in one brief sentence each.
2. What was the “Little Rock Crisis”?
3. How did Eisenhower respond to the situation in Little Rock?
4. What was the constitutional support for his action?
5. Are there constitutional arguments against Eisenhower’s action? Explain.

This Order authorized military force “for the removal of obstruction of justice ... with respect to matters relating to enrollment and attendance at public schools in the Little Rock School District, Little Rock, Arkansas.”

A thousand members from the 101st Airborne Division arrived to keep the peace. Exercising his constitutional power, the President also placed all 10,000 men of the Arkansas National Guard under federal control, removing them from the command of Governor Faubus. The soldiers kept the crowd under control, in some cases escorting protesters away at gunpoint.

The students were able to attend class almost a month into the school year. But images of US soldiers pointing rifles and other weapons at Americans shocked the nation. Governor Faubus protested Eisenhower’s actions, saying, “My fellow citizens, we are now an occupied territory ... What is happening in America?” During the summer of 1958, a state law called for all four of Little Rock’s public high schools to be shut down for the 1958-59 school year. One US Senator from Georgia compared the US troops to Adolf Hitler’s storm troopers. Eisenhower did not make the decision lightly, and the debate over the wisdom of his response continues.

EISENHOWER AND THE LITTLE ROCK CRISIS

CONSTITUTIONAL PRINCIPLES

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Federalism
Separation of powers

KEY QUESTION

Assess President Eisenhower’s constitutional justification for his decision to send federal troops to Little Rock, Arkansas, to enforce a federal court’s order to integrate public schools.

- A The United States Constitution, Article II (1789)
- B The Tenth Amendment (1791)
- C The Fourteenth Amendment (1868)
- D “Terrence Roberts and Two Arkansas National Guardsmen,” September 4, 1957
- E Telegram from Little Rock Mayor Mann to President Eisenhower, 6:24 PM, September 23, 1957
- F Proclamation 3204, September 23, 1957
- G Telegram from Mayor Mann to President Eisenhower, 9:16 AM, September 24, 1957
- H Executive Order 10730, September 24, 1957
- I “Operation Arkansas: A Different Kind of Deployment Photo,” September 25, 1957
- J “Bayonet Point,” September 25, 1957
- K Eisenhower’s Address to the Nation, September 24, 1957

DOCUMENT A

The United States Constitution, Article II (1789)

The executive power shall be vested in a President of the United States of America. ...The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States. ...He shall take care that the laws be faithfully executed....

- 1. Summarize these constitutional duties of the President.**
- 2. What is the militia?**

DOCUMENT B

The Tenth Amendment (1791)

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.

- 1. If a power is not given to the national government in the Constitution, who keeps it?**

DOCUMENT C

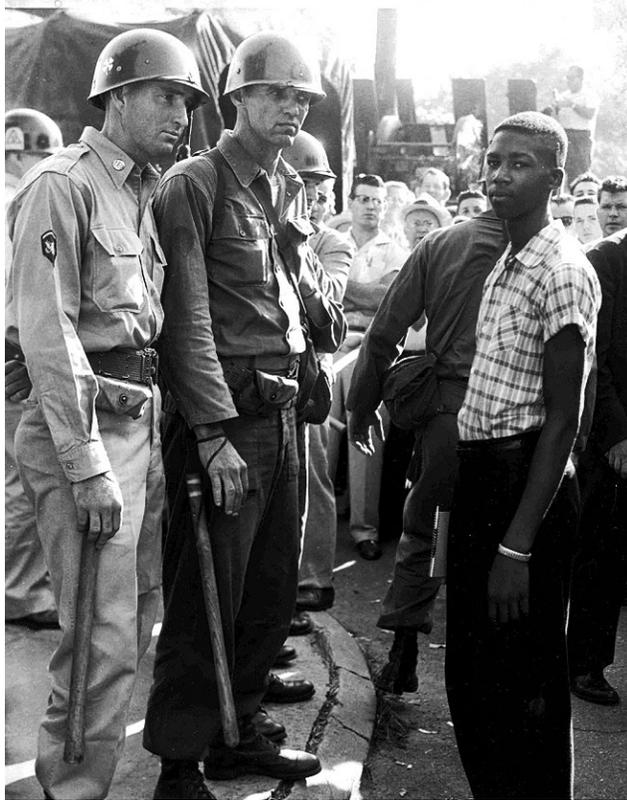
The Fourteenth Amendment (1868)

No state shall ... deny to any person within its jurisdiction the equal protection of the laws.

- 1. Put this clause of the Fourteenth Amendment in your own words.**

DOCUMENT D

“Terrence Roberts and two Arkansas National Guardsmen,” September 4, 1957



1. What date was this photograph taken?
2. What duties do the National Guard members seem to be carrying out with respect to student Terrence Roberts?

DOCUMENT E

Telegram from Little Rock Mayor Mann to President Eisenhower, 6:24 PM, September 23, 1957

O.F.
142-A-5-A

The White House
Washington

SEP 23 1957
GENERAL FILLS

MA024 PD
57 SEP 23 PM 6 24

referred to
Mr. Murphy
6:35 pm
23 Sept 57
sent to
Mr. DeLoach
4:30 pm
23 Sept 57
sent
XOF 5

LITTLE ROCK ARK SEP 23 344PMC

THE PRESIDENT

THE WHITE HOUSE

THE CITY POLICE, TOGETHER WITH THE STATE POLICE, MADE A VALIANT EFFORT TO CONTROL THE MOB TODAY AT CENTRAL HIGH SCHOOL. IN THE FINAL ANALYSIS, IT WAS DEEMED ADVISABLE BY THE OFFICER ON THE GROUND AND IN CHARGE TO HAVE THE COLORED CHILDREN REMOVED TO THEIR HOMES FOR SAFETY PURPOSES. XOF 142-A

THE MOB THAT GATHERED WAS NO SPONTANEOUS ASSEMBLY. IT WAS

Little Rock, Ark., School Integration

1. When was this telegram sent?
2. What is Mayor Mann's message to the President?
3. How does Mann describe the "agitators"?

AGITATED, AROUSED, AND ASSEMBLED BY A CONCERTED PLAN OF ACTION.

ONE OF THE PRINCIPAL AGITATORS IN THE CROWD WAS A MAN BY THE NAME OF JIMMY KARAM, WHO IS A POLITICAL AND SOCIAL INTIMATE OF GOVERNOR FAUBUS, AND WHOSE WIFE IS NOW WITH GOVERNOR'S PARTY AT THE SOUTHERN GOVERNOR'S CONFERENCE. KARAM HAS A LONG RECORD OF EXPERIENCE IN STRIKE-BREAKING, AND OTHER ACTIVITIES SUCH AS HE ENGAGED IN TODAY.

THE MANNER IN WHICH THE MOB WAS FORMED AND ITS ACTION, TOGETHER WITH THE PRESENCE OF JIMMY KARAM, LEADS TO THE INEVITABLE

CONCLUSION THAT GOVERNOR FAUBUS AT LEAST WAS COGNIZANT OF WHAT WAS GOING TO TAKE PLACE.

DETAILED INFORMATION ON THE EVENTS OF THE DAY WILL BE TURNED OVER TO THE JUSTICE DEPARTMENT FOR SUCH ACTION AS THE FEDERAL GOVERNMENT DEEMS APPROPRIATE. XOF 142-A-5

IF THE JUSTICE DEPARTMENT DESIRES TO ENFORCE THE ORDERS OF THE FEDERAL COURT IN REGARD TO INTEGRATION IN THIS CITY, THE CITY POLICE WILL BE AVAILABLE TO LEND SUCH SUPPORT AS YOU MAY REQUIRE.

I AM NOT MAKING THIS WIRE PUBLIC. THIS IS FOR YOUR INFORMATION AND FOR THE JUSTICE DEPARTMENT TO USE AS IT CONSIDERS NECESSARY

WOODROW W. MANN, XOF 142-B
MAYOR LITTLE ROCK ARKANSAS.

DOCUMENT F

Proclamation 3204, September 23, 1957

IMMEDIATE RELEASE September 23, 1957

James C. Hagerty, Press Secretary to the President

THE WHITE HOUSE
U. S. NAVAL BASE
NEWPORT, RHODE ISLAND

OBSTRUCTION OF JUSTICE IN THE STATE OF ARKANSAS
BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION
3204

WHEREAS, certain persons in the State of Arkansas, individually and in unlawful assemblages, combinations, and conspiracies, have wilfully obstructed the enforcement of orders of the United States District Court for the Eastern District of Arkansas with respect to matters relating to enrollment and attendance at public schools, particularly at Central High School, located in Little Rock School District, Little Rock, Arkansas; and

WHEREAS, such wilful obstruction of justice hinders the execution of the laws of that State and of the United States, and makes it impracticable to enforce such laws by the ordinary course of judicial proceedings; and

WHEREAS, such obstruction of justice constitutes a denial of the equal protection of the laws secured by the Constitution of the United States and impedes the course of justice under those laws:

NOW, THEREFORE, I, Dwight D. Eisenhower, President of the United States, under and by virtue of the authority vested in me by the Constitution and Statutes of the United States, including Chapter 15 of Title 10 of the United States Code, particularly Sections 332, 333 and 334 thereof, do command all persons engaged in such obstruction of justice to cease and desist therefrom, and to disperse forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed,

DONE at the City of Newport, Rhode Island this twenty-third day of September in the year of our Lord nineteen hundred and fifty-seven, and of the Independence of the United States of America the one hundred and eighty-second.

(SEAL) DWIGHT D. EISENHOWER

By the President:
JOHN FOSTER DULLES
Secretary of State

(OVER)

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1. What does President Eisenhower order the people gathered in front of Central High School to do?
2. What constitutional authority does he claim?

DOCUMENT G

Telegram from Mayor Mann to President Eisenhower, 9:16 AM, September 24, 1957

<p>Class of Service This is a fast message unless it is deferred character is indicated by the proper symbol.</p>	<h2 style="margin: 0;">WESTERN UNION</h2> <h3 style="margin: 0;">TELEGRAM</h3> <p style="font-size: small; margin: 0;">W. P. MARSHALL, President</p>	<p>SYMBOLS DL=Day Letter NL=Night Letter LT=International Letter Telegram</p>
<p>The filing time shown in the date line on domestic telegrams is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination.</p>		
<p>0916 AM 24 57</p>		
<p>NP328 P LRA006 LONG PRD RX=LITTLEROCK ARK 24 916AMC= PRESIDENT DWIGHT D EISENHOWER= THE WHITE HOUSE NEWPORT RI= THE IMMEDIATE NEED FOR FEDERAL TROOPS IS URGENT. THE MOB IS MUCH LARGER IN NUMBERS AT 8AM THAN AT ANY TIME YESTERDAY PEOPLE ARE CONVERGING ON THE SCENE FROM ALL DIRECTIONS MOB IS ARMED AND ENGAGING IN FISTICUFFS AND OTHER ACTS OF VIOLENCE. SITUATION IS OUT OF CONTROL AND POLICE CANNOT DISPERSE THE MOB I AM PLEADING TO YOU AS PRESIDENT OF THE UNITED STATES IN THE INTEREST OF HUMANITY LAW AND ORDER AND BECAUSE OF DEMOCRACY WORLD</p>		
<p>THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE</p>		

1. When was this telegram sent?
2. How does the message in this telegram differ from Mann's telegram in Document E? Why is this significant?

<p>Class of Service This is a fast message unless it is deferred character is indicated by the proper symbol.</p>	<h2 style="margin: 0;">WESTERN UNION</h2> <h3 style="margin: 0;">TELEGRAM (30)</h3> <p style="font-size: small; margin: 0;">W. P. MARSHALL, President</p>	<p>SYMBOLS DL=Day Letter NL=Night Letter LT=International Letter Telegram</p>
<p>The filing time shown in the date line on domestic telegrams is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination.</p>		
<p>WIDE TO PROVIDE THE NECESSARY FEDERAL TROOPS WITHIN SEVERAL HOURS. ACTION BY YOU WILL RESTORE PEACE AND ORDER AND COMPLIANCE WITH YOUR PROCLAMATION= WOODROW WILSON MANN MAYOR OF LITTLEROCK ARKANSAS=</p>		
<p>THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE</p>		

DOCUMENT H

Executive Order 10730, September 24, 1957

EXECUTIVE ORDER 10730

PROVIDING ASSISTANCE FOR THE REMOVAL OF AN OBSTRUCTION OF JUSTICE WITHIN THE STATE OF ARKANSAS

... WHEREAS the command contained in ... Proclamation [3204] has not been obeyed and willful obstruction of enforcement of said court orders still exists and threatens to continue....

Section 1. I hereby authorize and direct the Secretary of Defense to order into the active military service of the United States as he may deem appropriate to carry out the purposes of this Order, any or all of the units of the National Guard of the United States and of the Air National Guard of the United States within the State of Arkansas to serve in the active military service of the United States for an indefinite period and until relieved by appropriate orders.

SEC. 2. The Secretary of Defense is authorized and directed to take all appropriate steps to enforce any orders of the United States District Court for the Eastern District of Arkansas for the removal of obstruction of justice in the State of Arkansas with respect to matters relating to enrollment and attendance at public schools in the Little Rock School District, Little Rock, Arkansas....

- 1. What type of document is this?**
- 2. Why does Eisenhower refer to his earlier proclamation (Document F)?**
- 3. What action does Eisenhower “authorize and direct” in Section 1?**
- 4. What action does Eisenhower “authorize and direct” in Section 2?**

DOCUMENT I

“Operation Arkansas: A Different Kind of Deployment Photo,” September 25, 1957



- 1. What date was this photograph taken?**
- 2. What duties are the members of the 101st Airborne Division carrying out with respect to the African American students?**
- 3. Why might this photo have been entitled “A Different Kind of Deployment Photo”?**

DOCUMENT J

“Bayonet Point,” September 25, 1957



- 1. What duties are the members of the 101st Airborne Division carrying out with respect to the integration protestors?**
- 2. How does this action compare with the one depicted in Document D?**

DOCUMENT K

Eisenhower's Address to the Nation, September 24, 1957

Our personal opinions about the [*Brown v. Board of Education*] decision have no bearing on the matter of enforcement. ...During the past several years, many communities in our Southern States have instituted [integration] plans. They thus demonstrated to the world that we are a nation in which laws, not men, are supreme. I regret to say that this truth—the cornerstone of our liberties—was not observed [at Central High School in Little Rock]....

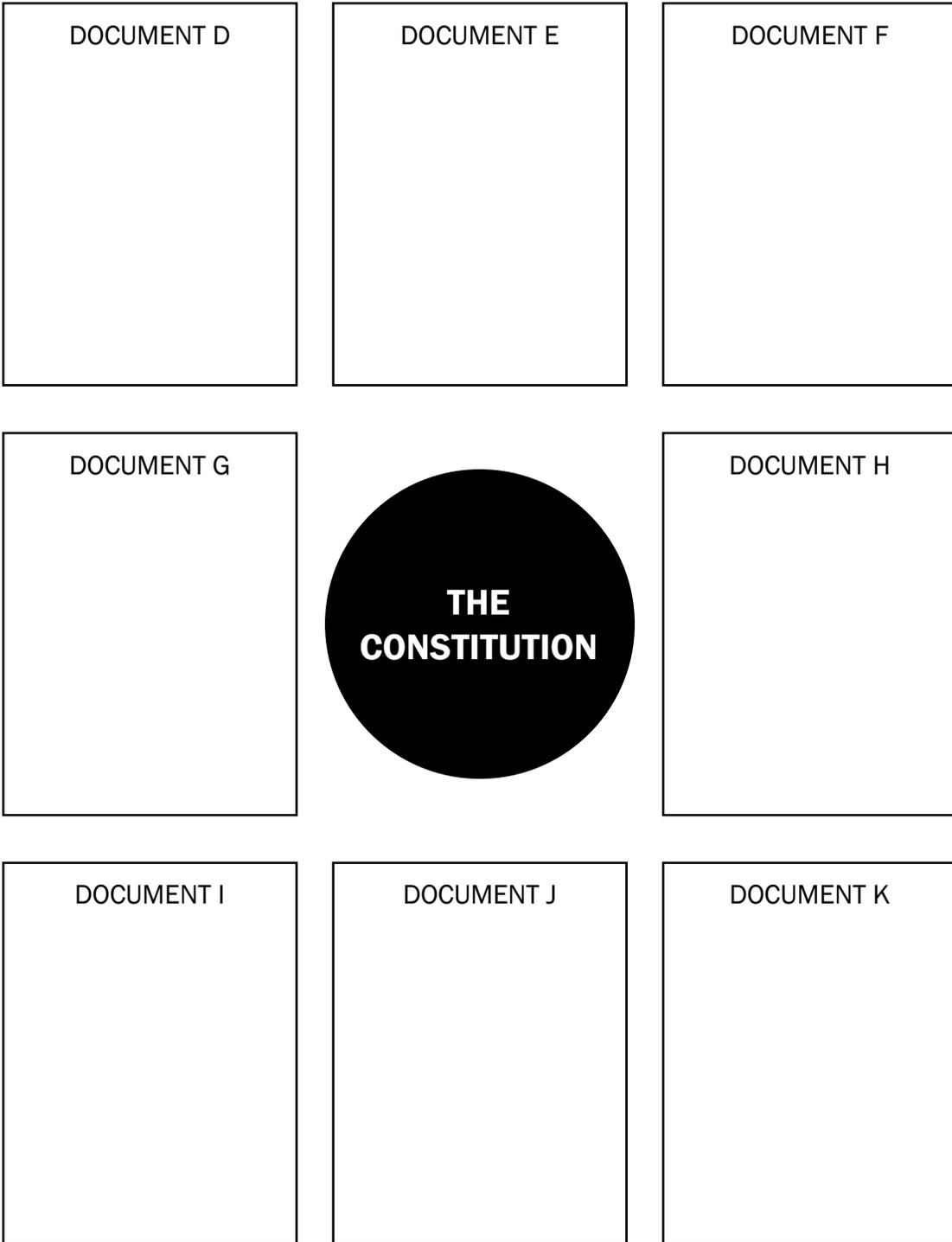
The very basis of our individual rights and freedoms rests upon the certainty that the President and the Executive Branch of Government will support and insure the carrying out of the decisions of the Federal Courts, even, when necessary with all the means at the President's command. Unless the President did so, anarchy would result. There would be no security for any except that which each one of us could provide for himself. ...Mob rule cannot be allowed to override the decisions of our courts.

The running of our school system and the maintenance of peace and order in each of our States are strictly local affairs and the Federal Government does not interfere except in a very few special cases and when requested by one of the several States. In the present case the troops are there, pursuant to law, solely for the purpose of preventing interference with the orders of the Court. The proper use of the powers of the Executive Branch to enforce the orders of a Federal Court is limited to extraordinary and compelling circumstances. Manifestly, such an extreme situation has been created in Little Rock....

- 1. What does Eisenhower mean when he says the US is “a nation in which laws, not men, are supreme”?**
- 2. What “certainty” does Eisenhower call the “very basis of our individual rights and freedoms”?**
- 3. What two conditions does Eisenhower state must be present in order for the federal government to interfere in state and local affairs?**

ANALYZING DOCUMENTS

Directions: For each document, explain how the Constitution applies, then draw additional lines between documents and explain the connections you see.





Identifying and Teaching against Misconceptions: Six Common Mistakes about the Supreme Court

By Diana E. Hess

This article originally appeared in Social Education, the official journal of the National Council for the Social Studies (NCSS). Reprinted here with permission of the author and NCSS.

My colleagues in science and math tell me that discussing students' preconceptions and misconceptions is a typical part of the discourse about teaching in their fields. By contrast, I rarely hear social studies teachers talk about this—

perhaps because so much of the content in social studies is or could be contested and we therefore shy away from labeling students' ideas as “pre” or “mis” conceptions.¹

As a general rule, in my social studies courses I tend to focus on topics and issues that are controversial or—as I often argue—are taught as “settled” and really need some unsettling.² But I do not think that everything that should be taught in social studies is controversial. In fact, much of what I think students should learn is not controversial—just hard. Consequently, I have come to believe that it is important for teachers to think deeply about the kinds of understandings that students come in with, identify their conceptions, and then organize teaching purposely to develop the “pre” and correct “the mis.”

An institution that is commonly taught about in middle and high schools is the U.S. Supreme Court. Many people—adults and young people alike—hold misconceptions about how it works. Interestingly, however, this lack of knowledge does not stop people from having a generally positive opinion of the Court—especially relative to the other two branches of the federal government.³ Every so often, polling is done that asks people to name Supreme Court justices as well as other groups (e.g., the Three Stooges and the Seven Dwarfs). The findings are always embarrassing and a bit bizarre. Notably, an astonishingly large percentage of people in the United States know all three of the stooges' names (74 percent to be exact), and about 80 percent can name two of Snow White's dwarfs.

By comparison, 63 percent of Americans cannot name two Supreme Court justices.⁴ Clearly, we should not over-generalize—it may be that some people who cannot name justices actually know a lot about the Supreme Court. Conversely, knowing the name of a justice does not indicate that a person understands anything substantive about the Court. Yet it is my sense that most people are not informed about what the Supreme Court does—in part because the media typically pays little attention to the Court, except when a Supreme Court position falls vacant and a new justice has to be nominated and approved.⁵

For many teachers, then, it is likely that while most of their students may have vague ideas and feelings about the Court, they are not coming into the classroom with robust content knowledge. However, this does not mean that they do not have any conceptions about the Court and what it does, or should do. In my experience teaching high school students in a variety of venues, and listening to hundreds of middle and high school teachers talk about their understandings about the Court—and what their students tend to know and not know—I have encountered six key misconceptions that many people hold about the Court (and the Constitution) that need to be corrected, or at least contested.

1. THE CONSTITUTION APPLIES TO EVERYONE AND EVERYTHING

When I was teaching high school government, history, and law courses, it was not unusual for students to believe that virtually every person and organization with which they interacted had to “follow” the Constitution. Because many students thought the Supreme Court only heard cases that dealt with the Constitution, this mistaken belief often worked to corrupt their understanding of what the Court did. It was not unusual for me to hear students say that their parents had violated their Fourth Amendment rights when they searched their bedrooms; complain that a private organization limited their free expression rights when it enforced strict behavior rules for activities; or argue that employers were violating their rights under the Constitution when they told them what to wear to work.

This mistaken belief about the Constitution’s reach is a sign that the core concept of “state action” had not been formed. That is, in virtually all circumstances, the Constitution only applies to actions taken by a federal, state, or local government actor. But my students believed that any person or organization that “governed” them by exerting authority in their lives was analogous to the “state” and therefore had to follow the Constitution. For example, one of my students believed that his employers were violating workers’ Fourth Amendment rights when they searched employee lockers.

This was a clear signal that he held a misconception about the reach of the Constitution. If he had understood the concept of state action, he would have realized that because his employer was a private entity, not the government, it was under no obligation to adhere to the procedures required by the Fourth Amendment. I realized that for a variety of reasons, my students seemed to have one large concept labeled “rights” under which they thought everything fit—as opposed to a more variegated understanding of the multiple sources of rules and rights. I have since come to believe that many people, not just young people, do not know what state action is. Thus, a fundamental misconception needs to be corrected by explicitly teaching students about the limits of the Constitution’s reach, and particularly about the difference between state and non-state actions. This is a perfect topic for a concept formation lesson where students are provided with examples of constitutional cases that clearly illustrate state action (as well as non-examples) and asked to identify who is being accused of violating the Constitution (e.g., a prison warden, a public school board, or a city council).

2. THE LIBERATION GENERALIZATION

Another belief that many people hold is that the Court’s primary and most frequently enacted function is to liberate people from the heavy hand of a discriminatory majority.

Supreme Court scholar Michael Klarman traces this misconception to the Court's landmark decision in *Brown v. Board of Education*. Klarman explains,

*The conventional assessment of the Court's countermajoritarian capacity has been distorted, I believe, by a single decision—Brown. Because that ruling rescued us from our racist past, the conventional storyline runs, the Court plainly can and does play the role of heroic defender of minority rights from majoritarian oppression.*⁶

The Supreme Court is not so much an error-correcting court as a uniformity-producing institution.

I learned about the relationship between *Brown* and the formation of the “liberation generalization” when a very skillful and experienced teacher told me how learning about the contemporary Supreme Court worked to diminish her interest in teaching a course in American government. She had attended a professional development program where she was taught that the primary function of the Supreme Court is to ensure uniformity in the federal judiciary. Consequently, most of the cases the Court chooses to decide revolve around legal issues for which there was disagreement among the lower federal courts. This information was profoundly disturbing to this teacher. She exclaimed, “I grew up at the time of *Brown*—we revered the Court.” Because she interpreted the ruling in *Brown* as a particularly potent representation of the Court liberating people from racist policies that the “majority” had enacted, she had come to believe that this was what the Court typically did. While there is a robust debate about whether the purpose of the Court should be to provide individuals with protection against the majority, there is less controversy among scholars about whether the Court sees that as its role, or has in fact, actually done that on a consistent basis. This is not to suggest that there are no examples of the Court performing this function, just that this particular role of the Court may be more the exception rather than the rule.

Most recently, the Court's controversial decision in the 2003 gay rights case *Lawrence v. Texas* has been interpreted by some as a particularly powerful example of the Court's majority acting to liberate or defend a group that was targeted by legislation (e.g., the “majority”). In this case, the Court ruled that a Texas state law that criminalized homosexual sodomy violated the due process clause of the 14th amendment. But it is important to note that many of the opponents of the Court's decision in the case have challenged the very right of the Court to overturn majority decisions—especially if they are about topics that are not explicitly mentioned in the Constitution. Teaching to correct Teaching to correct students' misconception that the Court's primary role is to liberate people is challenging, because this is clearly one function of the Court—and when that function is performed, the cases are often very important, so they garner landmark status. Yet it is a misrepresentation to teach that this is the focus of the Court most of the time.

3. THE BELIEF IN ERROR CORRECTION

Another common misconception that many lay people hold is that the role of the Court—as the “highest court”—is to correct errors when lower courts have made mistakes. But in most cases, the fact that a federal or state court below made a decision that seems to

be erroneous is not, by itself, a major reason why the Court takes a case. Most students would be surprised to know that if the error is actually a dispute over the “true” facts, then the errors are solely in the domain of the trial courts and will be not corrected or even addressed by the appellate courts. This is not to suggest that the Court does not overturn lower court decisions on issues of law (in fact, about 75 percent of the cases the Court decides do overturn a decision from below), but that is not its primary function. The Supreme Court is not so much an error-correcting court as a uniformity-producing institution. To understand the significance of this distinction, it is important to understand how cases get to the Court in the first place. Virtually all the cases decided by the United States Supreme Court have been granted a writ of *certiorari*. *Certiorari* is a Latin word that means “to be informed of.” Black’s Law Dictionary defines a writ of *certiorari* as:

“An order by the appellate court to bring the case before them when the court has discretion on whether or not to hear an appeal.” The Court does not have to grant requests for writs of *certiorari*, and most of the petitions requesting one are denied. For example, in most years the Court receives about 7,500 petitions for *certiorari*, but they typically take only 75-85 cases.

The vast majority of cases the Court agrees to decide each year involve a question about which there is disagreement among the lower federal Courts of Appeals (this is called a “circuit conflict”).⁷ Supreme Court litigator Tom Goldstein analyzed the Court’s docket in one recent term and found that 80 percent of cases involved a circuit conflict.⁸ As a general rule of thumb, the conflict must be significant enough to deserve attention. There are many instances in which the Court does not hear a case even when there is a circuit conflict. But if a strong argument can be made that a case focuses on an important question for which there is currently a conflict among circuits, and there is a need for a uniform answer across the nation (such as what a part of the federal tax code means), then it is more likely that the Court will decide to hear the case than they would a case for which there was not a circuit conflict.

4. THE GIDEON EFFECT

In addition to addressing misconceptions about the kind of cases the Court typically decides, it is important to teach accurate information about who is more likely to get a case heard by the Court. Among the cases the Court has selected to hear, very few are *in forma pauperis*, or cases filed by people who cannot afford the filing fee. In recent terms, an average of only one-tenth of one percent of paupers’ petitions were granted review (8 cases out of 6,386 in 2002-2003), compared to an average of 4 percent of paid cases (83 cases out of 1,869 in 2002-2003), during the same terms. This is extremely important information because it illustrates how relatively rare it is for the Court to take a case filed by a person in prison, a common misperception sometimes referred to as the “Gideon effect,” after *Gideon v.*

While many standard government textbooks mention that individuals and groups can file amicus briefs, few explain how deeply and broadly engaged many groups are in the work of the Court on a variety of levels.

Wainwright, in which the petitioner, Clarence Earl Gideon, famously appealed to the Court with his handwritten petition. This case is commonly taught—as it should be—but if not put in the context of its rarity, the effect of the case will be to reinforce a misconception about what kinds of cases the Court typically considers, and why.

5. A RULING IS A “RIGHT” ANSWER

In addition to misconceptions about what kinds of cases the Court takes, and for what reasons, it appears that many people believe that when the Court decides a case, its members are identifying the “right” answer to a challenging question. As Justice Robert Jackson famously wrote, however, “We are not final because we are infallible, but we are infallible only because we are final.” In an unusual statement, Jackson’s remark acknowledges that the Court makes mistakes. By definition, then, it seems logical that the Court’s rulings are supposed to be “right” answers. If they were not, how could the Court make mistakes? The Court often goes to great lengths to communicate this belief when it overturns its own precedents. In these decisions, the majority will often say that the Court got it wrong in the past, and this wrong must now be righted. But if that were really the case, then how do we explain the tendency of the Court to split on many hot-button cases, such as those that involve affirmative action, abortion, gay rights, or presidential-vote counting? Although most of the Court’s decisions are not split, in the cases involving matters that are especially divisive to the public, the Court often splits as well.

What makes the *Brown* decision so unusual is that it was the exception to this general rule—a divisive issue that the Court decided unanimously. When the Court wades into matters that deeply divide people in the United States, it is usually a solid bet that they involve questions for which there is lively dispute about what the correct answer should be. That is, there is a lively intellectual contest going on that involves scholars and the public about what is the right answer to a constitutional or legal question. Rather than being viewed as final arbiters in this intellectual debate, justices are better seen as participants in the debate—and what they rule is not “right,” just what a majority of the Court agree on at a particular time. Finality, not being right, is what the system is designed to produce. Today, we would not say that the Court’s decision in the *Dred Scott* case was “right,” but it was final from a legal standpoint, even though the social and political issue was an open wound. This does not mean that the Court’s decisions can be ignored, but its decisions can certainly be criticized— and indeed, this is an important productive part of public discourse in a democratic society. Teachers who adopt this latter view are more likely to ask students to evaluate whether they think the Court made the correct decision in a particular case, a pedagogical move that would go a long way toward correcting the misconception that what the Court rules is right simply because it emanated from the Court. In other words, Justice Jackson may have overstated his case (perhaps intentionally so) when he said the Court was infallible because it was final. A more accurate read of the Court’s role in the knowledge-production process (which is one way to characterize the sector that the Supreme Court is in) is to say that the Court is neither infallible nor final. Either of those options would be, by definition, antithetical to democratic notions of how the meaning of what is “right” comes to be constructed and reconstructed.

6. INTEREST GROUPS AND THE COURT: DISROBING THE BLIND JUSTICE METAPHOR

Another significant misconception that many people hold about the Court is that Court decisions are made without influence from the public—or specifically, from groups the public forms to influence policy, such as Planned Parenthood and Liberty Forum. This misconception is probably linked to the mistaken belief that the Court’s primary function is to serve in an anti-majoritarian role; if the Court is supposed to constantly “check” the majority, then it must not be susceptible to its views. However, even a cursory understanding of how interest groups influence the work of the Court indicates that the notion that the Court makes decisions without input from the public is false. The important influence that individuals and interest groups have on the Court’s thinking is not something that the Court hides; indeed, it openly admits and even references such influences. For example, it is fairly common knowledge that individuals and groups interested in the outcome of a case file *amicus* (or friend of the court) briefs, in which they are expected to provide important ideas and information they want the Court to consider when ruling on the case. The Court relies on these briefs, and it is clear that some of them are quite influential. Although an unusually large number of such briefs were filed in the two University of Michigan affirmative action cases (over 100), many of the justices asked questions that referred to one in particular—a brief supporting affirmative action filed by a group of former military academy superintendents and retired military officers. This brief was also referenced in the majority decision written by Justice Sandra Day O’Connor.

While many standard government textbooks mention that individuals and groups can file *amicus* briefs, few explain how deeply and broadly engaged many groups are in the work of the Court on a variety of levels. Interest groups routinely pay for or provide a party’s legal representation. In fact, they often “shop” for compelling cases that they think the Court will resolve in their favor. This has been a frequently used litigation tactic by groups of every persuasion. These same groups serve the reverse function—working to keep cases off the Court’s docket—by discouraging petitioners from going forward with an appeal (or in one recent example, encouraging a party to settle a case even after the Court had granted review).⁹

Not only are many interest groups deeply involved in the work of the Court, but some are involved in an inordinate number of the Court’s cases. In the term that just ended, the National Chamber Litigation Center, Inc. (the public policy law firm affiliated with the U.S. Chamber of Commerce) filed 18 briefs in support of certiorari, 15 briefs on the merits, for a total of more than 25 percent of the Court’s cases.

When one high school teacher learned this at a recent professional development institute about the Supreme Court, she exclaimed, “But isn’t that just like lobbying—and aren’t the courts supposed to be independent?” This exclamation sparked a very interesting conversation about what the role of interest groups in the Court should be.¹⁰ What became clear to the teachers attending the event was that interest groups are much more involved with the Court than those teachers had previously believed—and they now needed to figure out how to communicate that to students.

THE EFFECT OF CORRECTING MISCONCEPTIONS

Teaching to correct students' misconceptions about the Supreme Court may seem like a form of myth busting. Some people might think that this will diminish students' respect for important government institutions. In fact, it is possible that teaching to correct students' misconceptions may cause students to be less likely to revere the Court. However, we should not fear this result. I think we should be more nervous about teaching students to revere institutions. After all, awe is the enemy of inquiry. Conversely, it is more important that people know how institutions, such as the Supreme Court, really work if they are to truly understand what influence it has on U.S. society. Correcting many of the misconceptions I have described could serve an important role in disentangling the damaging connection that is often made between reverence and engaged citizenship. For example, someone who understands that the Court's primary and most frequently enacted function is to create uniformity in the federal court system may be less likely to view the Court as a political savior. This can be a good thing if we want to encourage people to let their views be known in the policy-making process. I am not suggesting that the Supreme Court, as an institution, does not deserve respect—I think it does, even though, like most people, I disagree with some of its decisions. But true respect is much more powerful when it comes from a strong knowledge base that can only be built if we recognize misconceptions and teach in a very explicit way to correct or at least expose them.

I doubt that all students hold the misconceptions I have discussed, or that my list of misconceptions is complete. However, I have frequently encountered them in my experience teaching about the Court. In the past, I did not consistently and purposely plan instruction to target students' misconceptions and work to change them. Now, I intend to work toward that goal, because eliminating misconceptions about critically important institutions in our society is a step to building deep knowledge about how such institutions actually work—surely a more important goal than simply fostering reverence.

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¹ Thanks to Jeff Passe for this explanation of why there is a difference in the discourse about misconceptions in the science, math, and social studies teaching communities.

² For example, I have written a number of articles about how *Brown v. Board of Education* is taught, in which I argue that we need to teach the controversies of *Brown* and its aftermath and that we rarely do. See Diana Hess, "Moving beyond Celebration: Challenging Curricular Orthodoxy in the Teaching of *Brown* and its Legacies," *Teachers College Record* 107, no. 3 (2005): 2046-2067.

³ See PollingReport.com, <http://www.pollingreport.com/institute.htm>, for recent opinion poll data about the views that people in the United States have about the Supreme Court, especially relative to their opinions about Congress and the presidency.

⁴ Zogby International, July 28, 2006, <http://www.zogby.com/wf-AOL%20National.pdf>.

⁵ Of course, there are times when the Court receives quite a bit of attention; two recent notable examples are *Bush v. Gore*, and the decision in 2005 on eminent domain (*Kelo v. City of New London*).

⁶ Michael J. Klarman, “How Brown Changed Race Relations: The Backlash Thesis,” *Journal of American History* 81, no. 1 (1994):81-118.

⁷ Go to <http://www.uscourts.gov/courtlinks> for a map showing the federal circuits.

⁸ Information received from Tom Goldstein via personal communications on September 5, 2006.

⁹ In 1997, the Court granted certiorari in an affirmative action case about whether race could be a factor in teacher lay-offs. Before the oral arguments, the school board agreed to a surprise out-of-court settlement that was funded by a consortium of civil rights groups who feared that the Court would rule against affirmative action.

¹⁰ This teacher was attending the Supreme Court Summer Institute sponsored by Street Law, Inc., and the Supreme Court Historical Society.

CLASSROOM APPLICATIONS

Scaffolding questions are provided as an option. Teachers of AP or honors classes may choose not to have students write answers to these.

Context/Background information for some documents is provided as an option to brief students on historical/legal context and significance.

DBQ Strategies:

- Write the Key Question on the board and give each student a copy of one document. Ask this question: Does this document help you to answer this question? If so, how? If not, what additional information might you need? Allow students 3-4 minutes to answer these questions. Then, have students pair up, sharing their documents and answering the same questions. Have each pair join another and repeat the process. Finally, bring the entire class together and answer the Key Question as a group.
- Write the Key Question on the board and spend one class period having students analyze documents and answer the scaffolding questions, followed by one class period writing their answers to the key question.
- Divide students into pairs or trios and assign one or more documents per group. Then ask groups to report on their documents to the class, being sure that they explain how their specific documents can help to answer the Key Question.
- Go over DBQs as a large group, using scaffolding questions and key questions as discussion prompts.
- Give students the documents from a case and have them craft a key question.
- Have students complete a Case Briefing Sheet (see p. 231) to reinforce key concepts.
- Have students determine for each document which side would be more likely to use it in oral argument of the case. (See graphic organizers, p. 232.)
- Conduct a Moot Court presentation (see p. 235 for directions).
- Lightning Round Moot Court: This strategy might be especially helpful to provide a quick review of a number of cases. Assign two students to each case—one to present the petitioner’s position and one to present the respondent’s. Each student has two minutes to present his/her position to the entire class, which then must vote on this question: Is the law in question a valid exercise of government power under the relevant constitutional principles?
- Have students conduct research to discover more details about the people involved in a case, and then report to the class.
- Develop an illustrated timeline to depict changes and trends in interpretation of a given constitutional principle.
- Develop political cartoons to highlight the important issues in a case.

ONLINE RESOURCES

Consult any of the following websites for additional resources to learn more about the Supreme Court and landmark cases.

[http://billofrightsinstitute.org/resources/educator-resources/landmark-cases/
www.oyez.org](http://billofrightsinstitute.org/resources/educator-resources/landmark-cases/www.oyez.org)
<http://www.streetlaw.org/en/landmark.aspx>
<http://www.supremecourt.gov/>
<http://www.law.cornell.edu/supct/cases/name.htm>
<http://www.scotusblog.com/>

CASE BRIEFING SHEET

Case Name and Year: _____

Facts of the Case: _____

What is the constitutional question that the Supreme Court must answer?
(This is a yes/no question and spells out the specific part of the Constitution at issue.)

What constitutional principles are indicated in the case? _____

Summary of one side's arguments:

Summary of the other side's arguments:

How would you decide the case and why? _____

How did the Supreme Court majority decide the case and why? _____

What were the main points raised in any dissenting opinions? _____

What other Supreme Court cases are related in important ways? _____

CONSTITUTIONAL ISSUE EVIDENCE FORM

How would you use the documents provided to answer the constitutional question?

Case Name and Year:

Constitutional Issue:

Yes (Source/Evidence)		No (Source/Evidence)	

DOCUMENTS SUMMARY

Use this form to develop an overview of the evidence available.

Document name & date	Author	Answer to scaffolding question	How each side might use this document to answer the Key Question –OR– What is the main idea of this document?

ATTORNEY DOCUMENT ANALYSIS

Use this form to show which attorney would probably use each document provided, and why.

Petitioner	Both sides	Respondent
<p>Additional notes: How did majority/dissenting opinions align with each attorney's position?</p>		

MOOT COURT PROCEDURES

Preparation

- Encourage students to use the background knowledge they have developed. Attorneys and Justices of the U.S. Supreme Court apply a great deal of background and historical knowledge.
- Caution students that “gotcha” questions within the classroom context are not productive. “Justices” should not ask questions that, based on their background and class activities, would not be fair game.
- Decide whether students will be allowed to use online resources via their smartphones during the exercise—there are good arguments both for using and for not using them.
- Recommendation—do not allow “Justices” to interrupt the attorneys in the first time or two that you run moot courts. They can ask their questions at the end of each attorney’s oral arguments.
- Encourage teamwork among “attorneys” in their presentations. Each team should have a lead attorney, but others will help fill in as needed.

Divide class into 3 groups: 9 Justices, advocates for the petitioner, and advocates for the respondent (A fourth group could be journalists.)

- Give time for planning: Justices decide what questions they want answered in oral arguments; advocates for each side plan their oral arguments.
- Allow equal time for presentation of each side, including interruptions from Justices (or not—your choice). In the U.S. Supreme Court, each side has 30 minutes, and the Justices interrupt continuously.
- Justices deliberate and announce decision. Deliberation is actually done in strict privacy in the U.S. Supreme Court conference, but you decide for your class.

At the beginning of each session of the Supreme Court, the Marshal of the Court (Court Crier) announces:

“Oyez! Oyez! Oyez! All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!”

The Chief Justice will begin the oral argument phase by saying, “Petitioner, you may begin.”

The petitioner’s attorney says, “Mr. Chief Justice, and may it please the Court...”

Debrief: Discuss both the content of the case (Constitutional principle and its application) and the processes employed. Consider thinking and planning process, civil discourse process, and the application of these skills outside the classroom.

TIPS FOR THESIS STATEMENTS AND ESSAYS

Thesis Statement: The thesis statement condenses your arguments to a nutshell and appears in the opening paragraph, but it is not written until AFTER you have planned your overall response. (Planning process shown in table below.)

A good thesis statement—

- Fully addresses all parts of the prompt, while acknowledging the complexity of the issue.
- Clearly takes a side—makes a declarative statement that one thing was more important, more persuasive, etc. than another. Since the verb in the prompt is often something like “assess” or “evaluate,” the thesis statement should show which side the writer takes.
- Suggests a “table of contents” or road map for the essay—shows what elements enter into consideration.
- Begins an essay that is proven by abundant and persuasive facts and evidence.

In a DBQ essay, the student writes a well-organized response to target a specific prompt, analyzing pertinent documents in order to support his/her thesis. The steps described here will guide the process of handling the documents. (For Advanced Placement US History the response must include BOTH outside information AND information from the documents. On US History AP exams, one of the essays that must be written under timed conditions is the DBQ.)

DBQ Do and Don't

Steps	Do	Don't
1. Analyze the prompt and divide it into its components. A graphic organizer helps with this step.	Fully address the prompt. It is better to address all parts of the prompt, even if you must do some in a way that is less complete, than to spend all your time on just one of two parts or 3 of 4 parts.	Neglect part of the prompt because you spent too much time on the part you know more about.
2. Plan to prove your point. It is best to begin by planning the overall structure BEFORE even looking at the documents.	Organize your thoughts before writing the thesis statement. What are the logical points your essay needs to include?	Write a “laundry list” that simply summarizes each document.

Steps	Do	Don't
3. Check the documents to see how you can use them as tools.	Strive to use all the documents; but be sure you accurately understand their main ideas.	Take quotes or ideas out of context to use them in a manner other than the author intended.
4. Ask yourself when writing every paragraph: "How does this help to prove my thesis?"	Analyze to prove the position asserted in the thesis statement. Analysis is not the same thing as description or narrative. Merely making a series of true statements is not analysis. Key to analysis—is the essay answering the "So what?" question?	Use 1st- or 2 nd -person pronouns "I think the Supreme Court has the authority to use judicial review because..." "Have you ever wondered how the Supreme Court got the authority to overturn federal laws?"
5. Manage time wisely; writing long quotes will eat up thinking time.	Use relevant facts, evidence, proof. A well-chosen brief phrase in quotations and worked into your own sentence is powerful.	Use lengthy quotes. Pad the paper in an attempt to conceal a lack of analysis.
6. Give credit to sources.	Cite sources using the author's name and/or document title.	Write "According to Document B,..."
7. Think as you write!	Let logic and analysis drive the essay.	Let documents drive the essay.

RUBRIC FOR EVALUATING A DBQ ESSAY ON A 9-POINT SCALE

Adapted from AP US History guidelines

Score (Grade)	Thesis	Analysis (tends to be the most difficult component)	Entire Prompt	Documents	Outside Info (required for AP class)	Organization & Writing Skill	Errors
8-9 (95-100)	Contains a well-developed thesis which clearly addresses all aspects of the prompt and shows organizational roadmap	Effective analysis which shows & proves relationships; fully answers the "so what?" questions; more analytical than narrative.	Addresses all aspects of the prompt, though coverage may be slightly uneven	Effectively and appropriately uses all (or almost all) documents	Supports thesis with substantial and relevant outside information.	Clearly organized & well-written—evident on first reading, but we'll read it again just for pleasure. "Call the President; he needs to hear this essay!"	May contain minor errors. "Get this writer to proofread your next paper!"
5-6-7 (80-85-90)	Contains a thesis which addresses the prompt	Limited analysis; mostly descriptive; knowledge & comprehension level in use of facts	Slight or neglects some parts of the prompt	Uses some documents effectively	Supports thesis with some outside information	Acceptable organization; language errors do not interfere with comprehension and do not indicate misunderstanding of the topic	May contain errors that do not seriously detract from quality of the essay
2-3-4 (65-70-75)	Presents a limited, confused and/or poorly developed thesis	Simplistic explanations that do not indicate mastery of the content; may list facts without analysis	Deals with one aspect of the prompt in a general way or with additional parts in a superficial way	Quotes or briefly cites some documents, but does not use them as tools to support thesis	Contains little outside information	Demonstrates weak organizational and/or writing skills which interfere with comprehension	May contain major errors
0-1 (60 & below)	Contains no thesis or a thesis which does not address the prompt	Shows inadequate or inaccurate understanding of the prompt	Ignores part of the question	Contains little or no understanding of the documents or ignores them completely	Includes inappropriate, off-target, or no outside information	Is so poorly organized or written that it is difficult to understand	Contains numerous errors, both major and minor
–	Response is completely off-target. Examples: "I didn't have to pay for this exam and I'm not wasting my time on it"; "I know nothing about the prompt, but let me tell you about snow-boarding..."; "My former boyfriend is the world's biggest jerk and here's why..."						

KEY QUESTION SCORING GUIDELINES FOR ALL ESSAYS

The Good-Excellent Essay

- Asserts a strong, clear, and well-developed thesis in response to the key question.
- Supports the thesis with outstanding analysis of Founding documents, custom, legal precedent and contemporary views.
- Intelligently applies and/or critiques the Court's opinion(s).
- Effectively uses many documents and incorporates prior knowledge.
- Contains only minor errors; is clearly organized and exceptionally well-written.

The Average-Good Essay

- Asserts a thesis in response to the key question.
- Supports the thesis with some analysis of Founding documents, custom, legal precedent and/or contemporary views. Analysis of some aspects may be cursory or absent.
- Critiques and/or applies the Court's opinion(s), but may demonstrate less command of nuance than the Good-Excellent Essay.
- Effectively uses many documents and incorporates prior knowledge.
- Contains few significant errors; is acceptably organized and written.

The Below Average-Average Essay

- Asserts a limited thesis or does not fully address the key question.
- Analysis is largely incomplete, superficial, or incorrect; may merely paraphrase or quote documents.
- Contains simplistic or incorrect application/critique of the Court's opinion(s).
- Uses few documents and incorporates little prior knowledge.
- Contains some significant errors and is poorly organized and written.

The Poor-Below Average Essay

- Lacks a thesis.
- Exhibits inadequate understanding of the question and the documents.
- Offers no application/critique of the Court's opinion(s).
- Uses very few documents and incorporates no prior knowledge.
- Contains numerous significant errors and is poorly organized and written.



CONSTITUTIONAL PRINCIPLES AND THEIR DEFINITIONS

The words and ideas of America's Founders were reflections of certain widely accepted understandings about how people can govern themselves to best protect liberty. These understandings include the concepts listed here.

Due process: Government must interact with all citizens according to the duly-enacted laws, applying these rules equally among all citizens.

Equal protection: The laws apply equally to all people; government assures equal opportunity but not equal outcomes.

Federalism: A system of dual sovereignty in which the people delegate certain powers to the national government, while the states retain other powers; and the people, who authorize the states and national government, retain all freedoms not delegated to the governing bodies.

Inalienable rights: Rights with which all of us are born. Examples are the rights to life, liberty, property, and the pursuit of happiness.

Liberty: Except where authorized by citizens through the Constitution, government does not have the authority to limit freedom.

Limited government: Citizens are best able to pursue happiness when government is confined to those powers which protect their life, liberty, and property.

Popular sovereignty: The power of the government comes from the people.

Private property: The natural right of all individuals to create, obtain, and control their possessions, beliefs, faculties, and opinions, as well as the fruit of their labor.

Representative/republican government: Form of government in which the people are sovereign (ultimate source of power) and authorize representatives to make and carry out laws.

Separation of powers/Checks and balances: a system of distinct powers built into the Constitution, to prevent an accumulation of power in one branch

ANSWER KEY

Document O: George H. W. Bush, Letter from President Bush to Internees (1991)

1. The constitutional ideals mentioned by President Bush were freedom, equality, and justice.
2. The ideals come from our constitutional principles of limited government, equal protection, and due process.
3. Accept reasoned responses with respect to the remaining question.

Document P: Duty of Absolute Candor: Katyal Blog Post (2011)

1. Based on this document, it appears clear that the relocation policy was not in any way based on military necessity.
2. Accept reasoned responses.

The Issue Endures

1. Covered persons includes anyone who was involved in planning or carrying out the Sept. 11, 2001 attacks on the U.S., as well as anyone connected with al-Qaeda, the Taliban, or others engaged in hostilities against the U.S.
2. Actions authorized against covered persons include indefinite detention without trial until the end of hostilities.
3. Access by covered persons to legal representation “will be balanced with national security considerations.”

EISENHOWER AND THE LITTLE ROCK CRISIS (1957)

Handout A: Eisenhower and the Little Rock Crisis Background Essay

1. The *Plessy* case upheld mandated segregation in public rail cars. The *Brown* decision invalidated segregation, holding that separate facilities were inherently unequal.

2. The Little Rock Crisis took place when the Governor of Arkansas refused to intervene when a mob prevented nine African American students from attending their school. A federal court had approved their desegregation plan as consistent with the *Brown* ruling and ordered integration to begin.
3. Eisenhower ordered the mob to disperse and when it did not, sent the 101st Airborne Division to keep the peace. He also federalized the Arkansas National Guard, removing those men from the Arkansas governor’s command.
4. Eisenhower described his constitutional duty to take care that the laws were faithfully executed as “inescapable.”
5. Students may say that the Constitution says the states and the people keep all the powers not given to the federal government and that therefore states are rightfully in charge of matters such as public education. They may also say that Article II says the President is Commander in Chief of the militia of the several states when called into actual service of the states, but that it does not say who can call them into service. Since Congress can declare war and provide for calling forth the militia, perhaps it is also Congress’s power to call the militia into service.

EISENHOWER AND THE LITTLE ROCK CRISIS DBQ

Document A: The United States Constitution (1789)

1. The President has the power to carry out the laws. He is in charge of the armed forces, and he is responsible for making sure the laws are enforced.
2. The militia could refer to the National Guard.

ANSWER KEY

Document B: The Tenth Amendment (1791)

1. the states or the people

Document C: The Fourteenth Amendment (1868)

1. States cannot make laws that do not apply to everyone equally.

Document D: “Terrence Roberts and Two Arkansas National Guardsmen,” September 4, 1957

1. September 4, 1957;
2. The Guard members do not seem to be taking any action with respect to Roberts. They are standing in front of the direction Roberts is facing, implying they are blocking him. Additional guard members seem to also be blocking the crowd.

Document E: Telegram from Little Rock Mayor Mann to President Eisenhower, 6:24 PM, September 23, 1957

1. the evening of September 23, 1957
2. There is a well-organized mob in front of Central High School. If the President wants to enforce the Court’s order, the city police will help them;
3. political allies of the Governor

Document F: Proclamation 3204, September 23, 1957

1. to disperse;
2. the need to enforce the laws; the need to enforce equal protection of the laws

Document G: Telegram from Mayor Mann to President Eisenhower, 9:16 AM, September 24, 1957

1. the morning of September 24, 1957
2. This message sounds much more urgent and begs the President for help. This message does not contain a note that the request will remain private, unlike the telegram in Document E. Accept reasoned answers.

Document H: Executive Order 10730, September 24, 1957

1. an executive order;
2. to show that he has attempted to resolve the situation without force but that the obstruction of the laws continues;
3. calling the US military into service, including the National Guard in Arkansas;
4. steps to disperse the mob and enforce desegregation in Little Rock.

Document I: “Operation Arkansas: A Different Kind of Deployment Photo,” September 25, 1957

1. September 25, 1957;
2. escorting and protecting them;
3. These servicemen are not in combat with anyone, as usually happens when troops are “deployed.”

Document J: “Bayonet Point,” September 25, 1957

1. They are forcing the protestors to leave at gunpoint.
2. This is a more forceful kind of crowd control than depicted in Document D.

Document K: Eisenhower’s Address to the Nation, September 24, 1957

1. Violent obstruction of the law is not an acceptable way to express disagreement;
2. the assurance that the Executive Branch will enforce the laws faithfully;
3. in cases with extraordinary circumstances and when the state requests help.