TINKER v. DES MOINES (1969)

DIRECTIONS

Read the Case Background *and* Key Question*. Then analyze* Documents A-M*. Finally, answer the* Key Question *in a well-organized essay that incorporates your interpretations of* Documents A-M*, as well as your own knowledge of history.*

Case Background

The Vietnam War was one of the most controversial political issues of the 1960s. By 1965, the United States had large numbers of troops in Vietnam and many Americans had begun to question the wisdom of the war.

In December 1965, students John (age 15) and Mary Beth Tinker (age 13) decided they would have their say as part of a larger, community protest of the Vietnam War. Together with a friend, John and Mary Beth agreed to wear black armbands to school to mourn the dead and protest the War. Amid rumors of the planned protest, the School Board of the Des Moines Independent Community School District implemented a policy banning the wearing of armbands in school. Any offending students would be suspended. The three students continued with their plans and wore their armbands to school. All three were suspended until they agreed not to wear the armbands.

The Tinkers argued that by banning the armbands and suspending students for wearing them, public school officials had violated the First Amendment. The case eventually went to the Supreme Court in 1968. The Court had to address two central questions: 1) was the expressive behavior of the students an exercise of "speech" that warranted protection under the First Amendment's speech guarantee? and 2) how can individual liberties be balanced with the need for discipline, the rights of others, and the "special characteristics" of the public school environment? (The decision would not apply to private schools.)

KEY QUESTION

Evaluate the extent to which the First Amendment should protect symbolic speech, and the degree to which that protection should be guaranteed to students in public school.

Documents you will examine:

- A The First Amendment, 1791
- B *West Virginia Board of Education v. Barnette*, 1943
- C "Vietnam War Protesters Outside The White House," 1965
- D Three Examples of "Hate Mail" Received by the Tinker Family
- E Oral Argument: The Tinkers' Case, *Tinker v. Des Moines*, 1969
- F Oral Argument: The School's Case, *Tinker v. Des Moines*, 1969
- G Majority Opinion (7-2), *Tinker v. Des Moines*, 1969
- H Concurring Opinion, *Tinker v. Des Moines*, 1969
- I Dissenting Opinion (Hugo Black), *Tinker v. Des Moines*, 1969
- J Dissenting Opinion (John Marshall Harlan), *Tinker v. Des Moines*, 1969
- K "Lorena, Paul, and Mary Beth Tinker," 1969
- L Dissenting Opinion, *Street v. New York*, 1969
- M "A Symbolic Protest Mounted by Vietnam Veterans Against the War," 1976

STUDENTS AND THE CONSTITUTION

by Warner Winborne, Ph.D.

"It can hardly be argued that students or teachers shed their constitutional rights … at the schoolhouse gates. This has been the unmistakable holding of this Court for almost 50 years." So wrote Justice Fortas for the Court in *Tinker v. Des Moines* (1969). Students certainly enjoy their constitutional rights to speech, press, free exercise of religion and privacy that all other citizens enjoy. But the Court has never found that any of these rights are absolute. Rather, they might yield in the face of compelling state interests. As such, the Court sometimes finds that the compelling interest of a peaceable and orderly educational environment is sufficiently compelling to trump the exercise of students' rights.

In *Tinker*, the Court considered whether the students had a right to expressive speech in school. The Court had previously found that some actions were so expressive in their nature as to warrant protection as speech. Nevertheless, because the message was conveyed through an action, the state might have a less than compelling reason to regulate the act and still satisfy the Constitution. In *Tinker*, a few students wore armbands to school in protest of the Vietnam War. The students were suspended, and the Court was asked whether this constituted a violation of the students' right to free speech. The Court ruled in favor of the students, finding no cause for alarm regarding the students' desire to wear the armbands. In the absence of any uproar or outcry, and with no disturbance resulting from the wearing of the armbands, the majority found the action to be close to "pure speech." The dissenters either disagreed with the finding of negligible disturbance at the school, or they would give the widest latitude to the discretion of the school authorities.

In a concurring opinion in *Tinker*, Justice Stewart noted that, "Although I agree with much of what is said in the Court's opinion, and with its judgment in this case, I cannot share the Court's uncritical assumption that, school discipline aside, the First Amendment rights of children are co-extensive with those of adults." This question, of whether the free speech rights of students were the equal of those of adults was raised in *Hazelwood v. Kuhlmeier*. Here, a student newspaper, published as part of a journalism class, was to run an article on student pregnancy and another on the impact of divorce on students. Consistent with school practice, the article proofs were submitted to the school principal prior to publication. He withheld the articles, finding the first inappropriate for a young audience, and the latter unfair to those parents criticized by their

children. The student authors and editors sued, claiming that the prior restraint violated their rights to free speech and press. The Court, however, found that the school had acted reasonably.

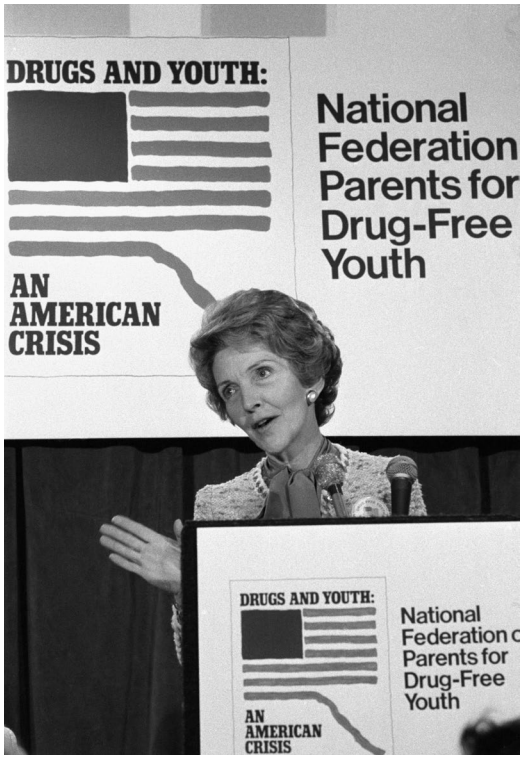
The first question before the Court was whether the free speech rights of students were the same as those of adults. The Court determined that since the student is engaged in an instructive exercise, the school may reasonably limit speech and expression to the extent that those limitations serve a pedagogical function, even if those limitations would be impermissible for adults. The second question before the Court was whether the student newspaper constituted an "open forum" for expression, in which case, free speech rights should be given the widest latitude. Newspapers are commonly considered an "open forum" for expression, and schools frequently make their grounds freely available to student groups and community groups for meetings. But in this case, the newspaper was produced as a class assignment, and intended for student consumption. The expenses of publishing the newspaper were almost entirely borne by the school. Thus the Court determined a public forum did not exist, and the students could not expect the same level of free speech that they might had this been an independent, daily newspaper.

Dissenters on the Court objected because the majority distinguished this case from *Tinker*. In *Tinker*, the Court found that only speech which "materially disrupts classwork or involves substantial disorder or invasion of the rights of others" can be censored. Yet here the majority claims that any speech inconsistent with the educational mission of the school might be restricted.

Apart from First Amendment rights, students have also found that their rights to privacy are also conditioned by their status as students. In *New Jersey v. T.L.O.* (1985), the Court found that a warrantless search of a student's purse was reasonable and hence constitutional, given probable cause. That is, because the school authority had probable cause to believe that the student had violated school policy (in this case smoking in the bathroom), a search of the student's purse was reasonable. In *Vernonia School District v. Acton* (1995), the Court found that drug testing of student-athletes was permissible given the minimal nature of the intrusion (athletes must submit to physicals) and the determination of the existence of a drug problem in the school district in general, and among the student-athletes in particular.

In *Tinker*, the Court found that only speech which "materially disrupts classwork or involves substantial disorder or invasion of the rights of others" can be censored.

But in *Pottowatomie v. Earls* (2002) the Tecumseh, Oklahoma school district required drug-testing of all middle and high school students engaging in any competitive extra-curricular activity. The respondent in this case, Lindsay Earls, was a member of the marching band, show choir and Academic Team. There was no evidence that she used drugs, nor was there evidence that drug use was a problem in the school district. But the Court found that the state's interest in discouraging drug use among its students was sufficiently compelling to justify the intrusion on students' privacy. Indeed, students could avoid the invasion of privacy, the Court noted, by choosing not to participate in competitive activities.



Dissenting in *Earls* was Justice Ruth Bader Ginsburg, who concurred with the Court opinion in *Vernonia*. Yet in *Earls*, Justice Ginsburg believes that the Court has gone too far in limiting students' privacy rights. Searches must be reasonable, and she finds the testing of those not inclined to drug use, and absent any finding of a drug problem to be unreasonable. Further, the danger of drug use to student athletes is quite substantial, posing severe health risks associated with their sports. Yet there seem to be no equivalent health risk to those engaged in non-athletic competition such as Future Homemakers, Future Farmers, or marching band. Tongue firmly in cheek, Ginsburg writes, "Notwithstanding nightmarish images of out-of-control flatware, livestock run amok, and colliding tubas disturbing the peace and quiet of *Tecumseh*, the great majority of students the School District seeks to test in truth are engaged in activities that are not safety sensitive to an unusual degree." Lastly, while athletes might share a diminished sense of privacy given the nature of a locker room, there is no locker room for the Academic Team, hence a greater expectation of privacy.

As is the case in its First and Fourth Amendment jurisprudence elsewhere, in the case of students, the Court attempts to balance the exercise of these freedoms with compelling state interests. And maintaining an orderly classroom environment, or teaching a particular lesson, or preventing drug use have on occasion proven to be sufficiently compelling interests to limit students' rights to speech, press and privacy.

Dr. Warner Winborne is Assistant Professor of Political Science at Hampden-Sydney College in Virginia, where his particular areas of interest include Aristotle, Adam Smith, and Thomas Hobbes. The Executive Director for the Center for the Study of the Constitution, he specializes in the Fourth, Ninth, and Fourteenth Amendments. He has presented papers at the Midwest Political Science Association's annual conferences, chaired a roundtable discussion of Lani Guinier's and Gerald Torres' The Miner's Canary *at the American Political Science Association conference, and is the author of* Modernization and Modernity: Thomas Hobbes, Adam Smith and Political Development.

DOCUMENT A

The First Amendment, 1791

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

- **Underline the five freedoms of the First Amendment, and write a one-sentence summary of how the amendment protects expression.**

DOCUMENT B

***West Virginia Board of Education v. Barnette*, 1943**

Symbolism is a primitive but effective way of communicating ideas. The use of an emblem or flag to symbolize some system, idea, institution, or personality, is a short cut from mind to mind. Causes and nations, political parties, lodges and ecclesiastical groups seek to knit the loyalty of their followings to a flag or banner, a color or design. The State announces rank, function, and authority through crowns and maces, uniforms and black robes; the church speaks through the Cross, the Crucifix, the altar and shrine, and clerical reiment. ....A person gets from a symbol the meaning he puts into it, and what is one man's comfort and inspiration is another's jest and scorn.

- **How does this document define symbolism?**

DOCUMENT C

“Vietnam War Protesters Outside The White House,” 1965

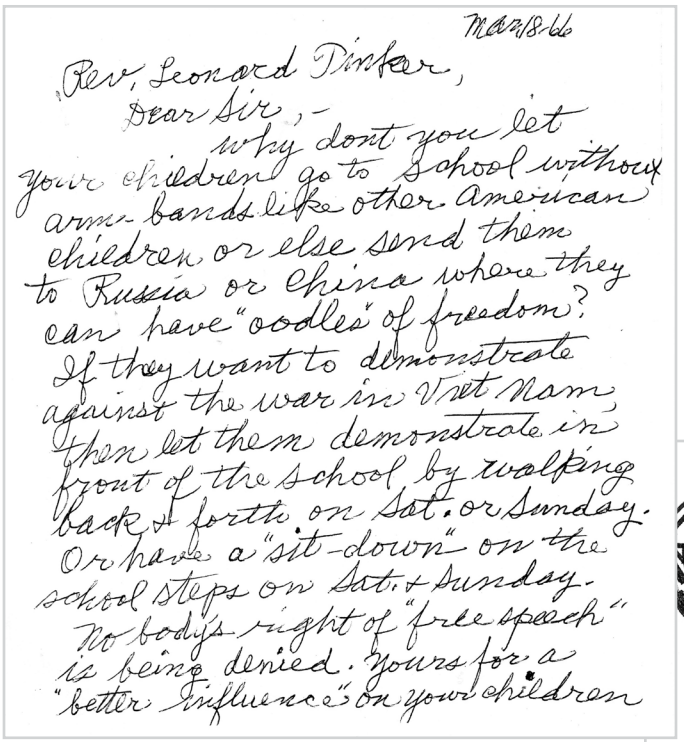
- **What is the message of these protestors?**

DOCUMENT D

Three Examples of "Hate Mail" Received by the Tinker Family

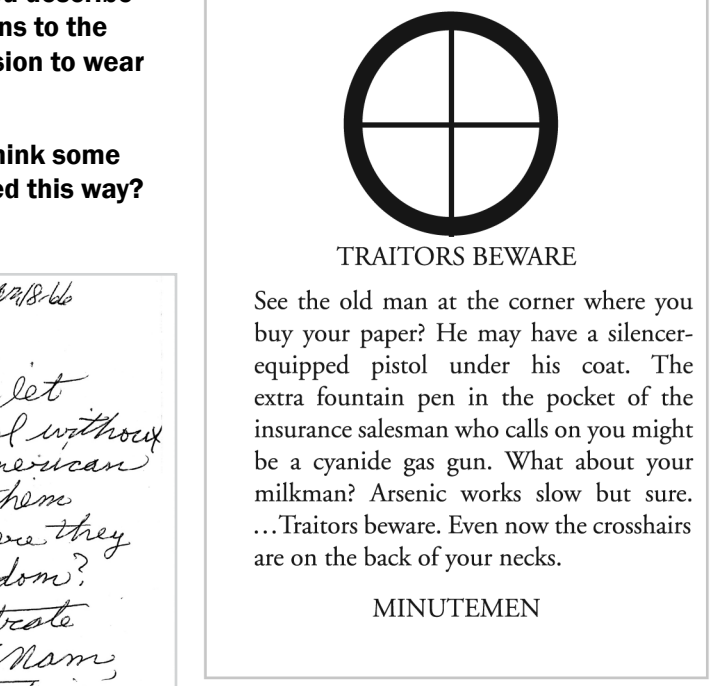
Note: "Iowans for Peace" was a group opposed to the Vietnam War

- **How would you describe these reactions to the Tinkers' decision to wear armbands?**
- **Why do you think some people reacted this way?**



Mar 18 66

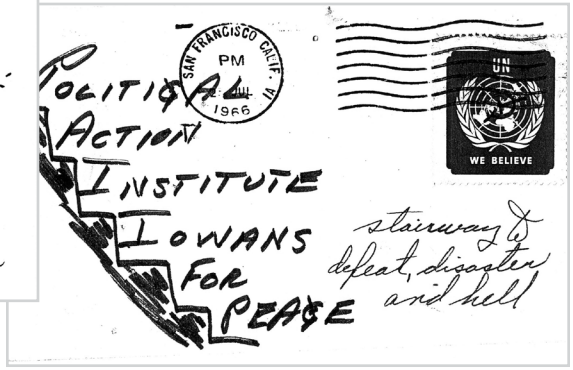
Rev. Leonard Dinsear,
Dear Sir,-
why dont you let
your children go to School without
arm-bands like other American
children or else send them
to Russia or China where they
can have "oodles" of freedom?
If they want to demonstrate
against the war in Viet Nam,
then let them demonstrate in
front of the school by walking
back & forth on Sat. or Sunday.
Or have a "sit-down" on the
school steps on Sat. & Sunday.
No body's right of "free speach"
is being denied. Yours for a
"better influence" on your children



TRAITORS BEWARE

See the old man at the corner where you buy your paper? He may have a silencer-equipped pistol under his coat. The extra fountain pen in the pocket of the insurance salesman who calls on you might be a cyanide gas gun. What about your milkman? Arsenic works slow but sure. …Traitors beware. Even now the crosshairs are on the back of your necks.

MINUTEMEN



DOCUMENT E

Oral Argument: The Tinkers' Case, *Tinker v. Des Moines*, 1969

Justice White: Why did they wear the armbands in the class, to express that message [of protest against the Vietnam War]?

Johnston [representing the Tinkers]: To express the message.

White: And [for others] to understand it?

Johnston: And to understand it.

White: And to absorb that message?

Johnston: And to absorb the message.

White: ...while they [other students] are studying arithmetic or mathematics, they are supposed to be taking in this message about Vietnam?

Johnston: ...the message the students chose in this particular incident was specifically designed in such a way that it would not cause that kind of disruption. None of the teachers testified [of disruption] at the hearing in the district court....

White: Physically it wouldn't make a noise. It wouldn't cause a commotion, but don't you think that it would cause some people to direct their attention to the armband and the Vietnam War and think about that rather than what they were ... supposed to be thinking about in the classroom?

Johnston: ...It might for a few moments have done that, and I think it perhaps might have distracted some students just as many other things do in the classroom which are allowed from time to time....

- **Compare Mr. Johnston's explanation of the students' intentions to the definition of symbolism in Document B.**

DOCUMENT F

Oral Argument: The School's Case, *Tinker v. Des Moines*, 1969

Herrick [representing the DesMoines Independent School District]: [T]he right of freedom of speech or the right of demonstration in the schoolroom and on the school premises must be weighed against the right of the school administration to make a decision which the administration, in good faith, believed and its discretion was reasonable to preserve order and to avoid disturbance and disruption in the schoolroom....

[I]t was a matter of the explosive situation that existed in the Des Moines schools at the time the regulation was adopted. ...A former student of one of our high schools was killed in Vietnam. Some of his friends are still in school. It was felt that if any kind of a demonstration existed, it might evolve into something which would be difficult to control.

Justice Marshall: Do we have a city in this country that hasn't had someone killed in Vietnam?

Herrick: No, I think not your honor. But, I don't think it would be an explosive situation in most, in most cases, but if someone is going to appear in court with an armband here protesting the thing, then it could be explosive. That's the situation we find here....

Marshall: It could be [explosive]. Is that your position?

Herrick: Yes. It could be.

- **What "explosive situation" does Mr. Herrick claim motivated the school to suspend students for wearing armbands?**
- **Does the evidence in Documents C and D support this claim?**

DOCUMENT G

MAJORITY OPINION

Majority Opinion (7-2), *Tinker v. Des Moines*, 1969

It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. ...The problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style, or deportment. It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to "pure speech."

If a regulation were adopted by school officials forbidding discussion of the Vietnam conflict, or the expression by any student of opposition to it anywhere on school property except as part of a prescribed classroom exercise, it would be obvious that the regulation would violate the constitutional rights of students, at least if it could not be justified by a showing that the students' activities would materially and substantially disrupt the work and discipline of the school. In the circumstances of the present case, the prohibition of the silent, passive "witness of the armbands," as one of the children called it, is no less offensive to the Constitution's guarantees.

- **Why did the Court rule that the Tinkers' armbands were protected speech?**
- **What kind of expressive conduct in public school does the Court say should NOT be protected?**

DOCUMENT H

Concurring Opinion, *Tinker v. Des Moines*, 1969

Although I agree with much of what is said in the Court's opinion, and with its judgment in this case, I cannot share the Court's uncritical assumption that, school discipline aside, the First Amendment rights of children are coextensive with those of adults.

- **What objection does the concurring opinion make about the majority opinion?**

DOCUMENT I

Dissenting Opinion (Hugo Black), *Tinker v. Des Moines*, 1969

...I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases.

The truth is that a teacher of kindergarten, grammar school, or high school pupils no more carries into a school with him a complete right to freedom of speech and expression than an anti-Catholic or anti-Semite carries with him a complete freedom of speech and religion into a Catholic church or Jewish synagogue ...[There is no] complete constitutional right to go into those places contrary to their rules and speak his mind on any subject he pleases....

Uncontrolled and uncontrollable liberty is an enemy to domestic peace. ...School discipline, like parental discipline, is an integral and important part of training our children to be good citizens. ...The Federal Constitution [does not] compel ... teachers, parents, and elected school officials to surrender control of the American public school system to public school students. I dissent.

- **Summarize Black's objections to the majority ruling.**

DOCUMENT J

Dissenting Opinion (John Marshall Harlan), *Tinker v. Des Moines*, 1969

[S]chool officials should be accorded the widest authority in maintaining discipline and good order in their institutions. To translate that proposition into a workable constitutional rule, I would, in cases like this, cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns—for example, a desire to prohibit the expression of an unpopular point of view, while permitting expression of the dominant opinion.

- **What action by public school officials does Harlan assert would violate the First Amendment rights of students?**

DOCUMENT K

"Lorena, Paul, and Mary Beth Tinker," 1969

- **Do the armbands look the way you expected them to?**
- **Do you agree with the majority of Justices that these armbands would not cause disruption?**

DOCUMENT L

Dissenting Opinion, *Street v. New York*, 1969

...Action, even if clearly for serious protest purposes, is not entitled to the pervasive protection that is given to speech alone. ...It may be subjected to reasonable regulation that appropriately takes into account the competing interests involved.

- **Restate this document in your own words.**

DOCUMENT M

"A Symbolic Protest Mounted by Vietnam Veterans Against the War," 1976

- **Compare this example of a symbolic protest of the Vietnam War with the Tinkers' actions.**
- **Should the First Amendment protect this kind of symbolic speech?**

DIRECTIONS

Answer the Key Question *in a well-organized essay that incorporates your interpretations of* Documents A-M, *as well as your own knowledge of history.*

KEY QUESTION

Evaluate the extent to which the First Amendment should protect symbolic speech, and the degree to which that protection should be guaranteed to students in public school.

THE ISSUE ENDURES

Flyer for student-organized protest, Austin, TX, 2005

- **Would a poster such as this 'materially and substantially' disrupt the learning environment?**

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-majoritiarian 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://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
Additional notes: How did majority/dissenting opinions align with each attorney's position?		

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 2nd-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 "The angels are starting to sing!"	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	Slights 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

Miranda ruling has led accused persons to assume their confessions will not be used in Court.

UNIT FOUR: Students and the Constitution

Tinker v. Des Moines

Document A: Religion, speech, press, assembly and petition. It stops Congress from restricting these freedoms.

Document B: Symbols are quick and easily understood ways of communicating ideas.

Document C: End the Vietnam War.

Document D: 1. Angry, outraged, hostile, threatening, intimidating, sarcastic, challenging. 2. Some considered the Tinkers to be unpatriotic traitors. Others suggested less disruptive ways for the Tinkers to express their beliefs.

Document E: They both see symbols as a way of communicating.

Document F: 1. Because a Des Moines student had been recently killed in Vietnam. 2. Document C depicts peaceful protest; elements of Document D illustrate the potential for violence.

Document G: 1. They were "akin to pure speech." 2. Expressive conduct which would "materially and substantially disrupt the work and discipline of the school."

Document H: The concurring opinion denies that First Amendment rights of children are the same as those of adults.

Document I: There is no "complete constitutional right" to speak one's mind in any place, time or manner he chooses.

Document J: Restrictions not related to school concerns, but rather to restrict unpopular viewpoints.

Document K: 1. Answers will vary. 2. Answer will vary.

Document L: Action does not have the same protection as speech.

Document M: Both used symbols to publicly express anti-war statements. The Tinkers' symbols were small, did not use words, and were on their individual persons. The Vietnam Veterans Against the War protest used large symbols, did use words, and defaced a piece of public property.

Hazelwood v. Kuhlmeier

Document A: 1791—Newspapers, pamphlets and other printed materials. Today—Newspapers, student newspapers, pamphlets, Internet blogs, television, radio, podcasts, magazines.

Document B: 1. If it substantially interferes with school discipline. 2. Silent, passive, and orderly.

Document C: Answers will vary.

Document D: 1. Non-disruptive, passive expression. 2. Between free speech and civility.

Document E: The statement shows that the students assumed their student newspaper was protected by the First Amendment.

Document F: Verifying sources, being objective, being fair, minimizing harm, being accountable.

Document G: 1. *Tinker* involved individual student expression while *Hazelwood* involves school-sponsored speech.

Document H: 1. Because it wasn't open to indiscriminate use by the public. 2. When they have legitimate pedagogical concerns and the speech is contrary to the school's educational mission.

Document I: 1. He personally thought the articles were inappropriate, and not because he believed they would disrupt