

Interpreting the Constitution: What Does That Mean?

Time Needed: One to two class periods

Materials Needed:

Student worksheets

Power Point or overhead projector

Copy Instructions:

Anticipation Activity (1 page; class set)

Interpretation Activities (2 pages; class set)

Answer Cards (paper-only option)

Learning Objectives. Students will be able to:

- Analyze Supreme Court cases that have interpreted the 5th and 8th Amendments
- Explain the role of the Supreme Court in interpreting the Bill of Rights
- Infer that constitutional language has specialized meaning determined by the Supreme Court
- Recognize that unique facts can determine whether a constitutional right applies to a situation

STEP BY STEP

- ANTICIPATE** by distributing one *New School Rule* activity to each student. Read the directions with the class and have students complete the activity.
- POLL** students to find out which items they circled. Emphasize the differences among students' choices. Ask students whether it was easy to determine what would be "necessary and useful." (The answer should be no.)
- DISTRIBUTE** the two interpretation activities. Tell students they will be looking at some real-life Supreme Court cases that interpreted the Constitution. Read the directions to the 8th Amendment activity with the class, then let students answer. You may choose to have students work in pairs or groups, or to discuss each case as a class.
- POLL** students on each case. Write a tally on the board to keep track of how many students chose "yes" and "no" for each case.
- REVEAL** the answers! **Power Point Option:** Use our ready-made Power Point presentation to reveal each answer. **Answer Card Option:** Cut out and distribute the answer cards among the students. (There are 15 total.) For each case, call on the students to raise their hand if they have the matching answer card. Have the student read the answer out loud to the class. Emphasize that many Supreme Court cases were decided years ago, but the decisions are still followed today.
- REPEAT** the procedure for the 5th Amendment activity.
- COMPARE** the poll to the actual answers. Were there any cases where the class came up with a different answer than the Supreme Court? Are there any cases where students disagree with the Court after knowing how the case came out?
- FOLLOW UP** the with the Follow-Up Active Participation Activity. DO NOT SKIP THIS STEP. This activity highlights many critical take-aways about constitutional interpretation that must be *inferred* from the lesson. Use this activity to emphasize that constitutional language can't just be taken at face value. The Court has given these phrases very specific and technical meanings based on particular circumstances.
- RETURN** to the introductory activity and tell students that "necessary and useful" now means "items required on a daily basis in most academic classes." Have students cross out all circled items they think no longer meet the definition.
- CLOSE** by discussing their choices and whether the new rule made it easier. Explain that the courts use individual cases to clarify what the Constitution means.

Interpreting the Constitution

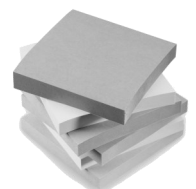
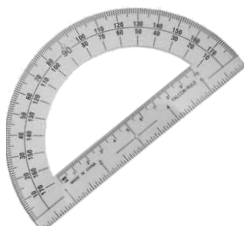
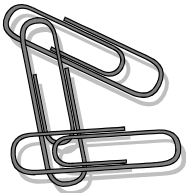
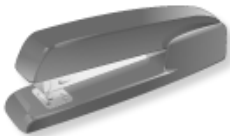
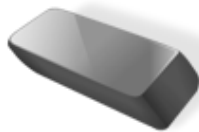
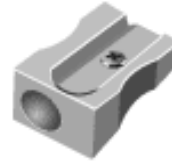
Name: _____

NEW SCHOOL RULE

All students have the right to necessary and useful school supplies.

They do? Great! But hang on... What does that mean? Pencils? Paper? Crayons? How can you tell which school supplies are "necessary" and "useful"?

Look at the pictures below. **Circle** everything you think is a "necessary and useful" school supply.





Hey! That's Cruel and Unusual! (Or is it...?)

The 8th Amendment prevents the government from giving people "cruel and unusual punishments." But what does that mean? How do you know when a punishment is "cruel" and "unusual"?

Each of the following cases happened in real life and was heard by the United States Supreme Court. Read each one, and check YES if you think it describes a "cruel and unusual" punishment. Check NO if you think it does not.

Daily Debate

VOL. 1 No. 1 © 2012 Daily Debate

MADISON, WEDNESDAY MORNING, JANUARY 3, 2012

42 Pages \$1.50

1. Electric Chair Mistake

A person is sentenced to death for murder. On the first try, the electric chair shocks the prisoner but does not kill him. They put the prisoner back in his cell, fix the chair, and plan to try again later.

My Guess: Yes No Supr. Court: Yes No

2. Second-Hand Jail Smoke

A prisoner is exposed to second-hand cigarette smoke while in prison.

My Guess: Yes No Supr. Court: Yes No

3. No Prison X-Ray

A person in prison hurts his back while working in prison. He is given medical treatment, but doctors do not perform an X-ray.

My Guess: Yes No Supr. Court: Yes No

4. Prison Guard Beating

A prisoner is beaten by prison guards while he is handcuffed and shackled. The guards do not have a reason to use force on the prisoner. The prisoner suffers only minor injuries, including bruises, swelling, and loose teeth.

My Guess: Yes No Supr. Court: Yes No

5. Execution of the Mentally Retarded

A man is convicted of abduction, armed robbery, and murder. At the sentencing hearing, an expert testifies the defendant is mildly mentally retarded. The jury sentences the man to death.

My Guess: Yes No Supr. Court: Yes No

6. No Special Circumstances

A judge sentences a person to death for committing murder. A state law does not allow the judge to consider any special or individual circumstances when deciding whether to give the prisoner the death penalty.

My Guess: Yes No Supr. Court: Yes No

7. Juvenile Death Sentence

A boy commits murder when he is 17 years old. At age 18, he is tried and sentenced to death.

My Guess: Yes No Supr. Court: Yes No

8. School Paddling

A state law allows public school teachers to discipline students with corporal punishment. A middle school teacher hits several students with a wooden paddle. One student can't use his arm for a week.

My Guess: Yes No Supr. Court: Yes No



"I Take the Fifth!"

The 5th Amendment says the government cannot "compel" (force) a person "to be a witness against himself." But how do you know when someone is being "compelled"? When are you being a "witness" against yourself?

Each of the following cases happened in real life and was heard by the United States Supreme Court. Read each one, and check YES if you think the person has been compelled to be a witness against him/herself. Otherwise check NO.

Daily Debate

VOL. 1 No. 1 © 2012 Daily Debate

MADISON, WEDNESDAY MORNING, JANUARY 3, 2012

42 Pages \$1.50

1. FBI Informant Tell-All

A prisoner is being threatened by other prisoners because of a rumor that he killed a child. He is befriended by a prisoner who is a paid informant for the FBI. The informant offers to protect the prisoner if the prisoner tells him whether the rumor is true. The prisoner admits to the murder.

My Guess: Yes No Supr. Court: Yes No

2. Appealing to a Robber's Conscience

Three police officers drive a robbery suspect to the police station. The officers have not yet found the gun used in the robbery. On the way to the station, one officer mentions to another officer that there is a school for handicapped children nearby. He says it would be terrible if one of the school children finds the gun and hurts themselves. Hearing this, the suspect tells the officers where the gun is.

My Guess: Yes No Supr. Court: Yes No

3. Oops — A Truth Serum

A drug addict is arrested for robbery and murder. After being in police custody for several hours, he begins to have severe withdrawal symptoms. A police doctor gives the suspect medication. Nobody realizes that one of the medicines has the effect of a "truth serum." The police continue to question the suspect after he takes the medication. Within a short time, the suspect confesses.

My Guess: Yes No Supr. Court: Yes No

4. Forced to Model a Shirt

Investigators trying to solve a murder want to know whether a certain shirt belongs to the suspect. They make the suspect try the shirt on despite his objection, and the shirt fits him. This evidence is used in a trial to help convict him.

My Guess: Yes No Supr. Court: Yes No

5. Didn't Read the Rights

Detectives take a suspect into an interrogation room and ask her questions. The detectives do not tell her what her rights are before they ask her questions. She confesses to a crime.

My Guess: Yes No Supr. Court: Yes No

6. Blood Draw

A man is arrested at a hospital after a car accident. The officer believes the man has been drinking and driving. He orders a doctor to take a blood sample even though the man protests. The sample shows alcohol in the man's blood.

My Guess: Yes No Supr. Court: Yes No

7. Bedside Interrogation

After a drug raid, a suspect ended up in the intensive care unit. The barely conscious suspect was hooked up to all sorts of tubes and equipment. Detectives go to his bedside and interrogate him. Even though the suspect keeps asking them to stop, the detectives continue to ask questions. His statements are used at trial to convict him.

My Guess: Yes No Supr. Court: Yes No

Interpreting the Constitution

Name: _____

| 8th Amendment Answers | Supreme Court's Answer: |
|--|-------------------------|
| 1) Was the malfunctioning electric chair “cruel and unusual punishment” under the 8th Amendment? | <i>no</i> |
| 2) Is second-hand smoke “cruel and unusual punishment” under the 8th Amendment? | <i>maybe</i> |
| 3) Was not doing an X-ray “cruel and unusual punishment” under the 8th Amendment? | <i>no</i> |
| 4) Was beating up the prisoner “cruel and unusual punishment” under the 8th Amendment if the injuries were not serious? | <i>yes</i> |
| 5) Is it “cruel and unusual punishment” under the 8th Amendment to execute a mentally retarded person? | <i>yes</i> |
| 6) Was it “cruel and unusual punishment” under the 8th Amendment for the state law to allow the death penalty but prohibit looking at special circumstances? | <i>yes</i> |
| 7) Was it “cruel and unusual punishment” under the 8th Amendment to give the death penalty to someone under 18 | <i>yes</i> |
| 8) Was paddling the public school student “cruel and unusual punishment” under the 8th Amendment? | <i>no</i> |

Interpreting the Constitution

Name: _____

| 5th Amendment Answers | Supreme Court's Answer: |
|---|-------------------------|
| 1) Did the "friend's" offer of protection compel the suspect to be a witness against himself under the 5th Amendment? | <i>yes</i> |
| 2) Did mentioning the danger to handicapped children compel the suspect to be a witness against himself? | <i>no</i> |
| 3) Did the medicine compel the suspect to be a witness against himself even though the police didn't know it was a "truth serum?" | <i>Yes (but...)</i> |
| 4) Did making the suspect try on the shirt compel the suspect to be a witness against himself? | <i>no</i> |
| 5) Does interrogating someone without telling them their rights compel them to be a witness against themselves? | <i>Yes (sort of)</i> |
| 6) Did forcing the suspect to give a blood sample compel him to be a witness against himself? | <i>no</i> |
| 7) Did questioning the suspect in the hospital compel him to be a witness against himself? | <i>yes</i> |

CARD 8A

No! The Court said the Constitution protects against a cruel method of execution. In this case, nobody intended to cause the prisoner unnecessary pain. Just because an accident happened the first time does not mean the method itself is cruel. (Many state courts have ruled that electrocution is unconstitutional, but the Supreme Court has not.)

Louisiana ex. rel. Francis v. Resweber (1947)

CARD 8B

Maybe! (But not in this case.) The Court said prison officials may not ignore a condition that could lead to serious health problems. If a prisoner was locked in his cell with a heavy smoker against his will, that could violate the 8th amendment. In this case, the prisoner was no longer in a cell with a heavy smoker. Also, the prison had a policy to respect the wishes of non-smokers.

Helling v. McKinney (1993)

CARD 8C

No! The Court said it is cruel and unusual punishment if a prison *purposely* ignores a prisoner's serious injury or illness because that would inflict unnecessary suffering and pain. But in this case, the prisoner saw the doctor many times. He was treated for his back injury as well as other medical problems. So the Court said it may have been bad medical judgment for the doctor not to perform an X-ray, but that is not cruel and unusual punishment.

Estelle v. Gamble (1976)

CARD 8D

Yes! The Court said that prison guards may have to use force to keep order, but they are not allowed to hurt prisoners on purpose. If prison guards maliciously use force to cause harm, they violate the 8th Amendment. In that case, it doesn't matter whether the prisoner's injuries are serious.

Hudson v. McMillian (1992)

CARD 8E

Yes! The Court said research shows that mentally retarded defendants often have issues that may affect their decision making. Therefore, the usual reasons for giving the death penalty don't apply as easily to the mentally retarded. Also, the issues they deal with also put them more at risk of being wrongfully sentenced to death. Therefore, the Court said that under our modern standards of decency, it violates the 8th Amendment to execute a mentally retarded person.

Atkins v. Virginia (2002)

CARD 8F

Yes! The Court said that before sentencing someone to death for a crime, it is important to make sure that death is the appropriate punishment. There cannot be a law that stops the judge from considering special circumstances that affect whether the death penalty is appropriate for the crime.

Bell v. Ohio (1978)

CARD 8G

Yes! The Court said juveniles under age 18 are different from adults. They are less mature and more reckless than adults. They respond more to peer pressure, and their character is not yet fully formed. Therefore, juveniles are not among the "worst offenders" that the death penalty is meant for. The Court said it violates the 8th Amendment to give the death penalty to a person under 18.

Roper v. Simmons (2005)

CARD 8H

No! The Court said children in public schools are not like prisoners in prison. Public schools are open to the public. Friends and teachers see what is going on, and kids go home each day to their families. If a school goes too far in punishing a student, it could be sued or the teacher could face criminal charges. Therefore, the Court said public school students don't need 8th Amendment protection like prisoners do. They are protected in ways prisoners are not. 8th Amendment protection from cruel and unusual punishment is limited to punishment for crimes.

Ingraham v. Wright (1977)

CARD 5A

Yes! The only reason the prisoner confessed was because he was afraid that, without protection from his friend, other prisoners would hurt him. The Court said a threat of physical violence is enough to cause a statement to be compelled. There does not have to be actual physical violence.

Arizona v. Fulminante (1991)

CARD 5B

No! The Court said the suspect was not compelled to confess. First, the officers were talking to each other, not to the suspect. More importantly, although the officers may have hoped the suspect would react to what they were saying, they had no reason to believe the suspect would care whether children got hurt.

Rhode Island v. Innis (1980)

CARD 5C

Yes (but...). In this case, the Court said it didn't matter whether the police realized the medication had the effect of a truth serum. If the suspect could not exercise his free will, then his statements were compelled. However, in a later case, the Court said a confession is only compelled if there is some kind of police wrongdoing. Even so, the later case did not overrule this one. The Court said the officers "knew the suspect had been given drugs," which was enough.

Townsend v. Sain (1963); Colorado v. Connelly (1986)

CARD 5D

No! The Court said being a witness against yourself only applies to communication. When he was forced to put on the shirt, he was not forced to communicate anything. If the 5th Amendment could stop this, then it could also stop the jury from looking at the suspect and comparing him to a photograph of someone.

Holt v. U.S. (1910)

CARD 5E

Sort of! The Court said that when a person is interrogated by police, there is a great danger that the person will be compelled to speak. A person is put into an unfamiliar place away from other people. During an interrogation, police often behave in an intimidating way because they are trying to get information. Because of this, The Court said people's right against self-incrimination must be safeguarded. In order to guard against people being compelled to speak against themselves, police must tell them what their rights are before questioning begins. If they don't, they can't use the person's statements as evidence.

Miranda v. Arizona (1966)

CARD 5F

No! When the officer told the doctor to take the blood sample even after the suspect protested, the suspect was compelled to give blood. However, the Court said being a "witness" against yourself only applies to communication. The suspect was compelled to give physical evidence. He was not compelled to communicate anything.

Schmerber v. California (1966)

CARD 5G

Yes! The suspect was at the detective's mercy. He could not move because of all the equipment he was hooked up to, and he was in a lot of pain. He also said he was confused and could not think clearly. The detective ignored all the suspect's requests to stop the interrogation. The Court said that under these circumstances, the suspect could not exercise his free will.

Mincey v. Arizona (1978)

Interpreting the Constitution

Name: _____

Active Participation Follow-Up Activity

8TH AMENDMENT

Directions: Read each statement aloud. Have the entire class answer in unison, either by saying “True” or “False” as a chorus or by showing “thumbs up” for true and “thumbs down” for false. Listen or watch for a mix of answers, indicating confusion. Use each statement as an opportunity for quick review/discussion.

8th Amendment Follow-Up

1. The Court doesn’t believe any punishment is “cruel and unusual” if someone is a criminal. (**False.** *The whole point of the 8th Amendment is to protect criminals from excessive punishment.*)
2. Whether a punishment is “cruel and unusual” under the Constitution often depends on the details of the situation. (**True.** *Different situations call for a different analysis of what is cruel and unusual.*)
3. “Cruel and unusual” under the Constitution might be different from your personal definition of what is cruel. (**True.** *Not only that, but the Court has said the definition of “cruel and unusual” will change as society evolves.*)
4. It’s easy to figure out whether a situation qualifies as “cruel and unusual” punishment. (**False.** *The Court must look at all the details and consider how it has decided cases in the past.*)
5. The 8th Amendment only applies where someone has committed a crime, not in other situations. (**True.** *So far, this is what the Court has said. But the Court could decide to interpret the Constitution differently in the future.*)
6. The Court has a list of “cruel and unusual” punishments that it uses to decide the cases. (**False.** *Each situation is different.*)
7. The Court sometimes considers whether officials intended to cause pain and suffering. (**True.** *The Court cares whether prison officials were trying to hurt people or just trying to do their jobs.*)
8. The death penalty is considered cruel and unusual as applied to some groups of people but not others. (**True.** *For example, juveniles and the mentally retarded may not be executed.*)

Interpreting the Constitution Name: _____

Active Participation Follow-Up Activity

5TH AMENDMENT

Directions: Read each statement aloud. Have the entire class answer in unison, either by saying "True" or "False" as a chorus or by showing "thumbs up" for true and "thumbs down" for false. Listen or watch for a mix of answers, indicating confusion. Use each statement as an opportunity for quick review/discussion.

5th Amendment Follow-Up

1. "Compelled" means "forced." (**True.** *The 5th Amendment prohibits forcing suspects to communicate evidence against themselves.*)
2. With the 5th Amendment, the Court is worried about police wrongdoing that forces a confession. (**True.** *The Court has talked about the intimidating tactics used during police interrogation.*)
3. It's easy to figure out whether someone was compelled to speak. (**False.** *The Court must look at the details of each situation.*)
4. Being a "witness" against yourself only applies to communicating information. (**True.** *The Court has said trying on a shirt, for example, is not communication.*)
5. Suspects are completely protected because police can't make suspects be a witness against themselves. (**False.** *There are some things police can make suspects do that aren't considered communication.*)
6. The Court doesn't care how police get a confession as long as the criminal is caught. (**False.** *The Court is concerned about police practices, and law enforcement officers must follow certain rules when interrogating suspects.*)
7. The main consequence of violating this part of the 5th Amendment is the evidence can't be used at trial. (**True.** *Evidence obtained by compelling someone to be a witness against themselves can't be used to convict the person of the crime.*)
8. People accused of a crime have the right to remain silent. (**True.** *The Court has put protections in place to safeguard this right. Police must read suspects their rights.*)