

Bill of Rights Scenarios for Critical Thinking Practice

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First Edition

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To the teacher:

One way to get students to prove their understanding of U.S. Government content is to have them analyze problems or scenarios. Students show a deeper understanding of the Constitution by writing solutions to real world problems. This is precisely what is expected in the Common Core – critical thinking and problem solving ability. Here is how the Common Core expresses expectations in the English Language Arts standards related to Social Studies for high school students:

CCSS.ELA-LITERACY.RI.11-12.8

*Delineate and evaluate the reasoning in seminal U.S. texts, including the application of constitutional principles and use of legal reasoning (e.g., in U.S. Supreme Court majority opinions and dissents) and the premises, purposes, and arguments in works of public advocacy (e.g., *The Federalist*, presidential addresses).*

CCSS.ELA-LITERACY.RI.11-12.9

*Analyze seventeenth-, eighteenth-, and nineteenth-century foundational U.S. documents of historical and literary significance (including *The Declaration of Independence*, the Preamble to the Constitution, the Bill of Rights, and Lincoln's Second Inaugural Address) for their themes, purposes, and rhetorical features.*

What follows are scenarios I have used over the years to find out if my students really know the Bill of Rights. The scenarios work best after the students have studied the first ten amendments and discussed them with the teacher or each other. Students love discussing the Bill of Rights and asking “what if” questions. So scenarios are a natural way to assess student understanding.

You can use these scenarios any way you want. You can use a few at a time or all at once. You can use them as formative assessments to gauge student understanding as you go. You can also use them as a summative assessment at the end of the unit. I have included point values. Of course, you will modify them to fit your needs.

Please note: I have not prepared a scenario for all ten amendments in the Bill of Rights. Only Six amendments are covered by scenarios. I have also included an answer key with citations to Supreme Court decisions, where applicable. Use this information when teaching the students about the Bill of Rights.

9. You are a member of the Magic Snowman religious community. You are a fifth generation member. You are very pious and go to the weekly services without fail. The Magic Snowman members (known as snowpeople) follow strict principles regarding charity, chastity and caring. They are known in their communities for their great charitable projects and are quite respected. At their services, while the children are in Sunday school all day with sober adults, the congregants drink enough wine to cause hallucinations (some of them see snowmen, thus the name). One day the police come into the service and arrest all of the members and shut down the church. Can the police do that?

10. Last night you got a call from a friend who owns a house located just off of Main Street. He got a letter from the County that said they need to widen the road. The letter went on to say that because the County was only taking a 50-foot strip across his front lawn they would not need to reimburse him for his land. He knew you were taking a government class and thought he would ask you if the government could take a small part of his land without paying him. Can the County do this?

Bill of Rights Scenarios Answer Key

Scenario # 1

Identify the Amendment: *Third Amendment (Quartering Soldiers)*

Answer the Question:

The Third Amendment of the U.S. Constitution prohibits the quartering of soldiers in private residences. In other words, the government cannot force citizens to let soldiers live in their houses. What the president and Congress did was against the Constitution or unconstitutional.

Scenario # 2

Identify the Amendment: *Fifth Amendment (Double Jeopardy)*

Answer the Question:

The Fifth Amendment prohibits Double Jeopardy. Once you have been acquitted (found not guilty), you cannot be tried for that same crime again. So there will not be another O.J. criminal trial for the murder of Simpson's ex-wife and her friend.

Scenario # 3

Identify the Amendment: *Fourth Amendment (Illegal Search)*

Answer the Question:

*The highway patrol officer violated the man's Fourth Amendment right to be free from unreasonable searches by the government. The officer did not have probable cause to search the man's car. The driver had not broken any laws and was not acting suspiciously. Here is what the Supreme Court had to say about probable cause in the *Dumbra v. U.S.* case: "In determining what is probable cause . . . [w]e are concerned only with the question whether the affiant had reasonable grounds at the time of his affidavit . . . for the belief that the law was being violated on the premises to be searched; and if the apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe that there was a commission of the offense charged, there is probable cause justifying the issuance of a warrant." *Dumbra v. United States*, 268 U.S. 435 (1925)*

Scenario # 4

Identify the Amendment: *First Amendment (Freedom of Speech)*

Answer the Question:

*You are wrong. There are limits to freedom of speech. In the famous Supreme Court case, *Schenck v. U.S.*, Justice Holmes stated:*

*"The most stringent protection of free speech would not protect a man falsely shouting fire in a theater and causing a panic." This scenario is based on the *Schenck* case. Therefore, the government is justified in arresting you for speech that caused a panic.*

Scenario # 5

Identify the Amendment: *Eighth Amendment (Excessive Bail)*

Answer the Question:

The Eighth Amendment prohibits excessive bail. It does not require the judge to grant bail. The Bail Reform Act of 1984 clarified the meaning of excessive bail in the U.S. The Act allows a judge to refuse to grant bail if the accused would pose a significant danger to the community or is a significant flight risk. The accused person in the scenario is accused of stealing a large amount of money. He/she was caught at the airport on the way to a foreign country. The judge could reasonably conclude that the accused would run away to another country if the judge allowed bail. Therefore, the judge acted constitutionally by not granting bail.

Scenario # 6

Identify the Amendment: *First Amendment (Seditious Speech)*

Answer the Question:

*The answer to this question is not black and white. A student could make a convincing argument supporting the constitutionality of the government action or an argument supporting the unconstitutionality of the government action. The scenario is based on the famous case, *Brandenburg v. Ohio*. In that case a Ku Klux Klan leader states in a televised speech set in a rural cornfield that "[w]e're not a revengent*

organization, but if our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it's possible that there might have to be some revengeance taken." Some of the clan members listening to the speech were holding guns. Brandenburg was arrested for seditious speech (speech threatening violence against the government). The Supreme Court held that Ohio violated Brandenburg's right to free speech because his speech did not (1) direct others to incite imminent lawless action and (2) his speech was not likely to incite imminent lawless action.

Argument showing that the action by the government in the scenario was constitutional: The scenario is different than the facts in the Brandenburg case. In the scenario the speaker was at the Ohio State House (the state legislature building) as close as possible to the government. Brandenburg was in a rural cornfield. The speaker in the scenario was specific about what would happen to the governor - stabbed in the back. Brandenburg talked about "revengeance" - a general negative statement. Therefore the argument could be made that because of how close he and his followers were to the seat of government and the specificity of the threat, that the speech would incite imminent lawless action. Arresting the speaker would have been constitutional.

Argument showing that the action by the government in the scenario was not constitutional: The scenario shows that the speaker was not serious about actually stabbing the governor because he used a plastic spoon in his speech. It also shows how the speaker's supporters reacted to the speech - they chanted "The gov's got to go". This does not sound violent. It sounds like they wanted to vote against him in the next election. Therefore, the speech does not direct others to incite imminent lawless action, nor was it likely to directly incite imminent lawless action. Arresting the speaker would have been unconstitutional.

Scenario # 7

Identify the Amendment: Sixth Amendment (Right to a Speedy Trial)

Answer the Question:

This scenario deals with the Sixth Amendment's right to a speedy trial. Based on the relatively trivial crime and the major administrative mistake, the courts would rule that your Sixth Amendment rights were violated. There is a good chance that you would have been sentenced to less than six months in jail if the process went the way it was supposed to. Based on the scenario, you did not get a speedy trial.

If it took you six months to get your trial because the courts were swamped with cases, the court would probably not rule that your Sixth Amendment rights were violated. Busy courts do not violate the Sixth Amendment's speedy trial clause. In *Barker v. Wingo* (1972), the Court determined that a five-year delay from arrest to trial was not too long.

Scenario # 8

Identify the Amendment: Fourth Amendment (Illegal Searches)

Answer the Question:

The FBI has conducted an illegal search. An FBI agent using the special glasses to look through everyone's clothes is searching everyone without probable cause or a warrant. The founding fathers wrote the Fourth Amendment to prohibit the government from conducting mass searches. There must be a reasonable belief that a law has been broken before the government can search you. In 2001 the Supreme Court ruled that thermal imaging devices could not be used to look into houses to determine if multiple heat lamps were being used to grow marijuana (*Kyllo v. U.S.*). The scenario might be even more intrusive than the situation in *Kyllo* because the government is looking under your clothes at your body.

Scenario # 9

Identify the Amendment: First Amendment (Free Exercise)

Answer the Question:

Not all religious practices are allowed by the government. Obviously, in an extreme case, if a religious group practices human sacrifice, the government can prohibit it. In *Reynolds v. U.S.* (1879) the Supreme Court did not accept a polygamist's argument that he was exercising his First Amendment right to exercise his religion when he wanted to stay married to two women. In *Oregon v. Smith* (1990), the Court determined that it was constitutional for Oregon to withhold unemployment benefits from state employees who were fired after they

admitted using peyote (a hallucinogenic plant) during their religious services. Congress did pass a law (Religious Freedom Restoration Act of 1993) that counteracted the Oregon v. Smith decision but it only applies to the Federal government, not the states.

The facts of the scenario are similar to Oregon v. Smith except in one important way. The substance being consumed is a legal substance - wine. Absent any criminal behavior (underage drinking, drinking and driving, fighting), the government cannot prohibit the Church from exercising its religious beliefs. Also, the church is respected and has been around for many decades. It was not created just so that people could party.

Scenario # 10

Identify the Amendment: *Fifth Amendment (Eminent Domain)*

Answer the Question:

The last clause of the Fifth Amendment describes eminent domain. The clause says that if the government takes part or all of your property, they have to pay you a fair price. Therefore, the County cannot take a piece of your friend's property (no matter how small) without paying him for it.