UNIT 5

Liberty and Justice for All

Participating IN GOVERNMENT

Speaking Out for Justice *Providing equal treatment for all is a main goal of the American system of justice. Study a few selected cases that are being tried in your local or state courts. After a thoughtful review of a case, write a summary of what you think the decision in the case should be. Then, after the case has been decided, compare the results to your summary. Did you agree with the court?*

CONTENTS

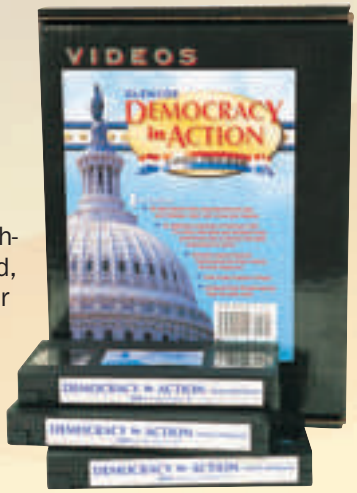
The Statue of Liberty stands on Liberty Island in New York Harbor.

Electronic Field Trip

Ellis Island

Take a virtual tour of Ellis Island in New York City and see America as thousands of immigrants have seen it for the first time.

Glencoe's Democracy in Action Video Program



Before the turn of the century, the United States experienced a flood of new immigrants from all over the world. The **Democracy in Action** video program "Ellis Island" presents a photographic documentary of Ellis Island, including narratives of former immigrants' initial experiences upon arriving in America.

As you view the video program, try to picture yourself adjusting to the language, customs, laws, freedom, and responsibilities of citizenship in a new country.

Hands-On Activity

Research your own family genealogy as far back as possible. Begin by talking with family members about the ancestors they remember or have heard about. Review photo albums and other family records. Research local offices such as your city hall to find birth, marriage, or death certificates of relatives. Use a computer program to map out your family tree.

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Chapter 13

Constitutional Freedoms

Why It's Important

Interpreting the First Amendment

What are the limits to freedom of speech? Can your school offer a course on religious literature? This chapter will explain your rights and limits to freedom of religion, freedom of speech, freedom of the press, freedom of assembly, and freedom of petition.

To learn more about protecting your constitutional freedoms, view the ***Democracy in Action*** Chapter 13 video lesson:

Protecting Basic Freedoms

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GOVERNMENT Online

Chapter Overview Visit the *United States Government: Democracy in Action* Web site at gov.glencoe.com and click on ***Chapter 13—Overview*** to preview chapter information.

Section 1

Constitutional Rights

Reader's Guide

Key Terms
human rights, incorporation

Find Out
- How did the Supreme Court extend many rights mentioned in the first 10 amendments to the Constitution?
- Why is the Constitution of the United States considered to be a living document?

Understanding Concepts
Civic Participation What general assumptions about its citizens does a democratic government make?

COVER STORY

Censorship Stirs Storm

SNOHOMISH, WASHINGTON, DECEMBER 23, 1996

Student journalist at work

The refusal of high school officials to allow the student newspaper to cover the firing of a vice-principal has renewed debate over school censorship. Although the Supreme Court's 1988 decision in *Hazelwood School District* v. *Kuhlmeier* expanded the power of school officials to censor student publications, it has been criticized as too limiting of students' First Amendment freedoms. "How can they teach real journalism if students aren't even able to exercise their responsibilities?" says the paper's editor about the Washington controversy. "It's supposed to be the student's voice, not the administrator's voice."

All Americans have basic rights. The belief in **human rights,** or fundamental freedoms, lies at the heart of the United States political system and enables citizens and noncitizens to worship as they wish, speak freely, and read and write what they choose.

The Constitution guarantees the rights of United States citizens. Along with the enjoyment of these rights, however, comes a responsibility to ensure their strength and endurance. As the Preamble to the Constitution states, "We, the people" adopted the Constitution, and in many ways, United States citizens remain the keepers of their own rights. Rights and responsibilities cannot be separated. As citizens, people share a common faith in the power they have to steer the course of government. Judge Learned Hand expressed this well when he said:

> "*Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it.*"
>
> —Judge Learned Hand

If people do not carry out their responsibilities as citizens, the whole society suffers.

Constitutional Rights

The Constitution of the United States guarantees basic rights in the **Bill of Rights,** composed of the first 10 amendments, and in several additional amendments. The Framers of the Constitution believed that people had rights simply because they were people. In the words of the Declaration of Independence, people "are endowed by their Creator with certain unalienable rights." The Constitution and the Bill of Rights inscribe into law those rights that really belong to everyone. The Bill of Rights, in particular, stands as a written

◀ Freedoms reflected at the newsstand

TIME For the Record

Arms War It's a long-standing debate. Gun-rights groups believe that the Second Amendment gives citizens the right to own and carry guns. Many gun-control advocates, however, say the amendment means only that a state has the right to keep an armed militia. A 1939 Supreme Court ruling says the amendment applies only to state militias, thus allowing the government to limit gun ownership and sales.

guarantee that government cannot abuse the rights of individuals.

The language of the Bill of Rights is very important, beginning with the words "Congress shall make no law. . . ." Today the Bill of Rights offers protection not only from congressional actions, but also from acts by state and local governments that may threaten people's basic rights.

The Bill of Rights was originally intended as a protection against the actions of the federal government. A process called **incorporation** extended the Bill of Rights to all levels of government. The Constitution drafted in 1787 did not include a bill of rights. Because most of the state constitutions of the time contained bills of rights, the Framers believed it unnecessary to include another such list of rights in the national Constitution.

Many state leaders, however, were suspicious of the new Constitution, and when it was submitted to the states for ratification, a number of states refused to approve it unless a bill of rights was added. When the first Congress met in 1789, James Madison introduced a series of amendments that became the Bill of Rights in 1791. These amendments placed certain limitations on the national government to prevent it from controlling the press, restricting speech, establishing or prohibiting religion, and limiting other areas of personal liberty. The Bill of Rights was not intended to limit state and local governments. An important Supreme Court case, *Barron* v. *Baltimore*[1] (1833), upheld this view. Chief Justice John Marshall, speaking for the Court, ruled that the first 10 amendments "contain no expression indicating an intention to apply them to the state governments."

GOVERNMENT Online

Student Web Activity Visit the *United States Government: Democracy in Action* Web site at **gov.glencoe.com** and click on ***Chapter 13—Student Web Activities*** for an activity about constitutional rights.

The Fourteenth Amendment As times changed, so did the Constitution. The addition of the Fourteenth Amendment in 1868 paved the way for a major expansion of individual rights. The **Fourteenth Amendment**[2] not only defined citizenship (a person born or naturalized in the United States is a citizen of the nation and of his or her state of residence), but it also laid the groundwork for making individual rights national. The amendment states in part:

> "*No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law. . . .*"
>
> —Fourteenth Amendment, 1868

The Supreme Court has interpreted the due process clause of the Fourteenth Amendment to apply the guarantees of the Bill of Rights to state and local governments. Over the years the Supreme Court has interpreted the word *liberty* in the amendment to include all freedoms the First Amendment guarantees. Thus, no state can deprive any person of freedom of speech, press, religion, or assembly because these freedoms are essential to a person's liberty.

The Supreme Court has also interpreted the words *due process* to include other protections

See the following footnoted materials in the ***Reference Handbook:***
1. *Barron* v. *Baltimore* case summary, page 754.
2. *The Constitution*, pages 774–799.

the Bill of Rights guarantees: protection from unreasonable search and seizure; the right of the accused to have a lawyer; and protection from cruel and unusual punishment. These rights have also been applied to the states through the Fourteenth Amendment.

The Supreme Court's interpretation of the Fourteenth Amendment nationalized the Bill of Rights. In the key case of *Gitlow* v. *New York*[1] (1925), the Supreme Court ruled that freedom of speech was a basic right that no state government could deny to any person. Since then almost all of the Bill of Rights has been incorporated. The only exceptions are the Second, Third, and Tenth Amendments, the excessive bails and fines prohibition of the Eighth Amendment, and two judicial procedures contained in the Fifth and Seventh Amendments. As a result, states are not required to use a grand jury to bring formal charges for serious crimes, nor are they required to have a trial by jury in civil cases involving more than $20.

Guaranteed Freedoms

Civil Rights Leader Dr. Martin Luther King, Jr., championed the cause of equal rights for all Americans. ***In what ways did the Fourteenth Amendment expand individual rights?***

The Importance of Incorporation The incorporation of the Bill of Rights has meant that United States citizens in every part of the country have the same basic rights. On the face of it, incorporation may not seem significant because state constitutions contain bills of rights. Yet in the past, state governments have ignored individual rights, denied voting rights to minority citizens, and practiced various forms of discrimination. As a result of incorporation, the Bill of Rights becomes a final safeguard when personal rights are threatened, proving that the Constitution is a living document.

In practice, **nationalization** means that citizens who believe that a state or local authority has denied them their basic rights may take their case to a federal court. If the decision of a lower federal court goes against them, they may pursue their claim all the way to the Supreme Court.

See the following footnoted materials in the ***Reference Handbook:***
1. *Gitlow* v. *New York* case summary, page 759.

Section 1 Assessment

Checking for Understanding

1. **Main Idea** Use a graphic organizer like the one below to show the effects of incorporation on the scope of the Bill of Rights.

Cause: incorporation of Bill of Rights	→	Effect:

2. **Define** human rights, incorporation.
3. **Identify** Bill of Rights, Fourteenth Amendment.
4. Analyze the impact of the incorporation of the Bill of Rights.
5. Cite the branch of government that has been primarily responsible for the incorporation of the Bill of Rights.

Critical Thinking

6. **Making Inferences** When it came time to submit the new Constitution to the states for ratification, why do you think state leaders insisted on a national Bill of Rights?

Concepts IN ACTION

Civic Participation Some people have argued that all Americans should be required to perform some type of compulsory service. Write an editorial for a newspaper either supporting or opposing the idea of compulsory service.

Section 2

Freedom of Religion

Reader's Guide

Key Terms

establishment clause, free exercise clause, parochial school, secular, abridge, precedent

Find Out

- What is the difference between the establishment clause and the free exercise clause of the First Amendment?
- Why did the Court allow state-supported bus transportation for parochial schools but ban their use for field trips?

Understanding Concepts

Cultural Pluralism How does the free exercise clause protect the diverse cultures and religious practices in the United States?

COVER STORY

Hutchinson Banished

BOSTON, MASSACHUSETTS, NOVEMBER 1637

Anne Hutchinson

The Massachusetts General Court has found Anne Hutchinson guilty of contradicting the teachings of local ministers and has ordered her banished from the colony. Puritan leaders accused Hutchinson, who had been holding religious meetings in her home twice a week, of undermining their authority as interpreters of scripture. During her trial they established that her beliefs differed from the church's position on salvation. Hutchinson plans to settle in Rhode Island, a colony founded by Roger Williams after he was banished last year for similar religious offenses. Some of Hutchinson's supporters are expected to accompany her.

Religion has always been and is today a significant aspect of American life. More than 90 percent of Americans identify with a religion. Although religious tolerance developed slowly in the American colonies, by the time of the Constitution the nation incorporated guarantees of religious freedom in the First Amendment.[1] The first clause of the amendment, known as the **establishment clause,** states that "Congress shall make no law respecting an establishment of religion." The second clause, labeled the **free exercise clause,** prohibits government from unduly interfering with the free exercise of religion. The meaning of these clauses may seem clear, but their interpretation has led to a continuing debate in American politics.

The Establishment Clause

In 1801, Baptists in Connecticut—a state where the Congregational Church was the official church—wrote to Thomas Jefferson asking his views about religious liberty. Jefferson wrote back strongly supporting the First Amendment. He stated that by passing the First Amendment, Americans had "declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between Church and State."

The phrase "wall of separation" that Jefferson used is not in the Constitution. He appears to have used the phrase to stress that the government should not establish an official church or restrict worship. Over time, the idea of a "wall of separation" has been expanded and become very controversial. How high does the "wall of separation" go? Does it mean that the state and any church or religious group should have no contact with each other?

See the following footnoted materials in the ***Reference Handbook:***
1. *The Constitution*, pages 774–799.

Religion in Public Life In practice, religion has long been part of public life in the United States. Although Article VI of the Constitution bans any religious qualification to hold public office, most government officials take their oaths of office in the name of God. Since 1864 most of the nation's coins have carried the motto "In God We Trust." The Pledge of Allegiance contains the phrase "one nation under God." Many public meetings, including daily sessions of Congress and most state legislatures, open with a prayer.

Government actually encourages religion in some ways. For example, chaplains serve with each branch of the armed forces. Most church property and contributions to religious groups are tax-exempt.

Attempting to define the proper distance between the church and state often results in controversy. Under the Constitution the task of resolving these controversies falls on the Supreme Court. Although the Supreme Court had ruled on several religious freedom cases, it did not hear one based on the establishment clause until *Everson* v. *Board of Education* (1947). Since the *Everson* decision, the Court has ruled many more times on the establishment clause. Most of these cases have involved some aspect of religion and education.

Landmark Cases

Everson* v. *Board of Education This case involved a challenge to a New Jersey law allowing the state to pay for busing students to **parochial schools,** schools operated by a church or religious group. The law's critics contended that the law amounted to state support of a religion, in violation of the establishment clause. Writing the Court's decision, Justice Hugo H. Black defined the establishment clause:

> "*Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. . . .*"
>
> —Justice Hugo L. Black, 1947

The Court ruled, however, that the New Jersey law was constitutional. In making the decision, the Court determined that the law benefited students rather than aided a religion directly.

Although this 1947 decision still guides the Court, the *Everson* case illustrated uncertainty over just how high Jefferson's "wall of separation" should be. That uncertainty continues today both in the Court and among the American people.

Constitutional Interpretations

The Establishment Clause An army chaplain leads soldiers in voluntary prayer during the Persian Gulf War. ***Why would this military service not be considered a violation of the establishment clause?***

The motto "In God We Trust" first appeared on U.S. coins in 1864.

Separation of Church and State

Constitutional Principles The Constitution lays down the principle of church-state separation, so the teaching of religion to students has always been controversial. Yet the House of Representatives opens every session with a prayer. ***Does a constitutional conflict exist in this instance? Explain.***

State Aid to Parochial Schools

Some of the most controversial debates over church-state relations have focused on the kinds of aid government can give church-related schools. Since the *Everson* decision, more than two-thirds of the states have given parochial schools aid ranging from driver education to free lunches for students. The Court continues to hear cases arising from these programs, finding some constitutional and others not.

For example, in *Board of Education* v. *Allen*[1] (1968) the Court upheld state programs to provide **secular,** or nonreligious, textbooks to parochial schools. Although the *Everson* decision permitted state-supported bus transportation to and from school, *Wolman* v. *Walter*[2] (1977) banned its use for field trips.

Why are some forms of aid constitutional and others not? The answer is in the so-called *Lemon* test. Since the 1971 case of *Lemon* v. *Kurtzman,*[3] the Court has used a three-part test to decide whether such aid violates the establishment clause. To be constitutional, state aid to church schools must: (l) have a clear secular, nonreligious purpose; (2) in its main effect neither advance nor inhibit religion; and (3) avoid "excessive government entanglement with religion."

In *Levitt* v. *Committee for Public Education*[4] (1973), for example, the Court voided a New York plan to help pay for parochial schools developing testing programs. In *Committee for Public Education* v. *Regan*[5] (1980) the Court permitted New York State to pay parochial schools to administer and grade tests. In the 1980 case the state's department of education prepared the tests. In the 1973 case the tests were teacher-prepared, which the Court considered part of religious instruction.

In *Mueller* v. *Allen*[6] (1983) the Court upheld a Minnesota law allowing parents to deduct tuition, textbooks, and transportation to and from school from their state income tax. Public schools charge little or nothing for these items, because taxes pay for them. Parents whose children attend parochial schools benefited from the deduction. Because the law permitted parents of all students to take the deduction, it passed the Court's three-part test.

In *Mitchell* v. *Helms*[7] (2000) the Court ruled that taxpayer funds could be used to provide religious schools with computers, library books, projectors, televisions, and similar equipment as long as they are not used for religious purposes. This continued the Court's recent pattern of expanding government aid for parochial schools.

See the following footnoted materials in the ***Reference Handbook:***
1. *Board of Education* v. *Allen* case summary, page 755.
2. *Wolman* v. *Walter* case summary, page 768.
3. *Lemon* v. *Kurtzman* case summary, page 761.
4. *Levitt* v. *Committee for Public Education* case summary, page 761.
5. *Committee for Public Education* v. *Regan* case summary, page 756.
6. *Mueller* v. *Allen* case summary, page 762.
7. *Mitchell* v. *Helms* case summary, page 762.

Conflicts over state aid to church schools are not confined to Christian schools. The Court ruled in *Kiryas Joel* v. *Grumet*[1] (1994) that New York State could not create a public school district solely for the benefit of a community of Hasidic Jews.

Release Time for Students Can public schools release students from school to attend classes in religious instruction? The Court first dealt with this question in *McCollum* v. *Board of Education*[2] (1948). The public schools in Champaign, Illinois, had a program in which religion teachers came into the schools once a week and gave instruction to students who desired it. The Court declared this program unconstitutional because school classrooms—tax-supported public facilities—were being used for religious purposes. Justice Black wrote that the program used tax-supported public schools "to aid religious groups to spread their faith."

Four years later in *Zorach* v. *Clauson,*[3] however, the Court accepted a New York City program that allowed religious instruction during the school day but away from the public schools. The Court ruled a release-time program of religious instruction was constitutional if carried on in private rather than public facilities.

Landmark Cases

Engel* v. *Vitale In 1962 and 1963 the Court handed down three controversial decisions affecting prayer and Bible reading in public schools. The first was *Engel* v. *Vitale,* a school prayer case that began in New York State. The New York Board of Regents composed a nondenominational prayer that it urged schools to use: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our country." In New Hyde Park, parents of 10 students challenged the prayer in court. In 1962 the Court declared the regents' prayer unconstitutional, interpreting the First Amendment to mean the following:

> "*In this country it is no part of the business of government to compose official prayers for any group of the American people to recite as part of a religious program carried on by government.*"
>
> —Justice Hugo H. Black, 1962

In his lone dissent from the *Engel* decision, Justice Potter Stewart argued that the New York prayer was no different from other state-approved religious expression, such as referring to God in the Pledge of Allegiance.

Other School Prayer Cases In 1963 the Court combined a Pennsylvania case—*Abington School District* v. *Schempp*[4]—and one from Maryland—*Murray* v. *Curlett*—for another major decision on school prayer. In these cases the Court banned school-sponsored Bible reading and recitation of the Lord's Prayer in public schools. Because tax-paid teachers conducted the activities in public buildings, the Court reasoned that these acts violated the First Amendment.

In 1985 the Court struck down an Alabama law requiring teachers to observe a moment of silence for "meditation or voluntary prayer" at the start of each school day. The Court ruled that the law's reference to prayer made it an unconstitutional endorsement of religion. In 1992 the Court also prohibited clergy-led prayers at public school graduations.

Then, in *Santa Fe Independent School District* v. *Doe*[5] (2000), the Supreme Court ruled that public school districts cannot let students lead stadium crowds in prayer before football games. According to Justice John Paul Stevens, such prayers "over the school's public address system by a speaker representing the student body" violated the separation of government and religion required by the First Amendment.

Public reaction to the Court's rulings has been divided and heated. Although many people support the Court's stance, others have bitterly protested. About half the states have passed moment-of-silence laws that make no mention of prayer. Congress has considered several constitutional amendments to overturn these Court decisions, but has not yet produced the two-thirds majority needed to propose an amendment.

See the following footnoted materials in the ***Reference Handbook:***
1. *Kiryas Joel* v. *Grumet* case summary, page 760.
2. *McCollum* v. *Board of Education* case summary, page 761.
3. *Zorach* v. *Clauson* case summary, page 768.
4. *Abington School District* v. *Schempp* case summary, page 754.
5. *Santa Fe Independent School District* v. *Doe* case summary, page 765.

Practicing Religion A San Marcos, Texas high school football team voluntarily prays before a game. ***On what grounds does the Supreme Court reject schools conducting mandatory prayers?***

Equal Access Act An exception to the Court's imposed limits on prayer in public schools is the Equal Access Act passed by Congress in 1984. The Act allows public high schools receiving federal funds to permit student religious groups to hold meetings in the school. The bill's sponsors made it clear that they intended to provide opportunity for student prayer groups in public schools, a position that had overwhelming support in both houses of Congress.

The Court ruled the law constitutional in 1990. The case arose from the request of students at Westside High School in Omaha, Nebraska, to form a club for Bible reading and prayer. Student organizers said that membership would be completely voluntary and that it would be open to students of any religion. When school officials refused to let the group meet in the school like other school clubs, the students sued. In *Westside Community Schools* v. *Mergens*[1] (1990) the Court ruled as follows:

> *"Although a school may not itself lead or direct a religious club, a school that permits a student-initiated and student-led religious club to meet after school, just as it permits any other student group to do, does not convey the message of state approval or endorsement of that particular religion."*
> —Justice Sandra Day O'Connor, 1990

Teaching the Theory of Evolution The Supreme Court also has applied the establishment clause to classroom instruction. In *Epperson* v. *Arkansas*[2] (1968) the justices voided an Arkansas law that banned teaching evolution in public schools. The Court ruled that "the state has no legitimate interest in protecting any or all religions from views distasteful to them."

Some state legislatures passed laws that required teaching the Bible's account of creation with evolution as an alternative point of view. In 1987, however, the Court struck down these laws. In *Edwards* v. *Aguillard*[3] the Court ruled that a law requiring the teaching of creationism violated the establishment clause because its primary purpose was "to endorse a particular religious doctrine."

Other Establishment Issues Not all establishment clause issues concern education. For example, the Supreme Court has also applied the separation of church and state to public Christmas displays, which have caused controversy in some communities. In *Lynch* v. *Donnelly*[4] (1984) the Court allowed the city of Pawtucket, Rhode Island, to display a Nativity scene with secular items such as a Christmas tree and a sleigh and reindeer. In 1989 the Court ruled that a publicly funded Nativity scene by itself violated the Constitution, in *County of Allegheny* v. *ACLU*.[5] The justices upheld placing a menorah—a candelabrum with seven or nine candles that is used in Jewish worship—alongside a Christmas tree at city hall the same year, however.

See the following footnoted materials in the ***Reference Handbook:***
1. *Westside Community Schools* v. *Mergens* case summary, page 767.
2. *Epperson* v. *Arkansas* case summary, page 757.
3. *Edwards* v. *Aguillard* case summary, page 757.
4. *Lynch* v. *Donnelly* case summary, page 761.
5. *County of Allegheny* v. *ACLU* case summary, page 754.

The Court has also ruled that its ban on school prayer does not extend to government meetings. In *Marsh* v. *Chambers*[1] (1983) the justices noted that prayers have been offered in legislatures since colonial times, and that, unlike students, legislators are not "susceptible to religious indoctrination." Therefore, the establishment clause is not violated by such prayers.

The Free Exercise Clause

In addition to banning an established church, the First Amendment forbids laws "prohibiting the free exercise of religion." But in interpreting this free exercise clause, the Supreme Court makes an important distinction between belief and practice. The court has ruled that the right to religious belief is absolute. It has applied some restrictions, however, to the practice of those beliefs.

Religious Practice May Be Limited The Supreme Court has never permitted religious freedom to justify any behavior, particularly when religious practices conflict with criminal laws. The Court first dealt with this issue in the case of *Reynolds* v. *United States*[2] (1879). George Reynolds, a Mormon who lived in Utah, had two wives and was convicted of polygamy. Reynolds's religion permitted polygamy, but federal law prohibited it. He appealed his conviction to the Supreme Court, claiming that the law **abridged,** or limited, freedom of religion. The Court, however, upheld his conviction. The *Reynolds* case established that people are not free to worship in ways that violate laws protecting the health, safety, or morals of the community.

Over the years the Supreme Court has consistently followed this principle, upholding a variety of restrictive laws. For example, in *Jacobson* v. *Massachusetts*[3] (1905) the Court upheld compulsory vaccination laws for students, even though some religions prohibit it. In *Oregon* v. *Smith*[4] (1990) the Court denied unemployment benefits to a worker fired for using drugs as part of a religious ceremony.

In 1993 Congress passed and President Bill Clinton signed the Religious Freedom Restoration Act. This law was designed to overturn the principle the Court set forth in the *Smith* case. The act states that people have the right to perform their religious rituals unless those rituals are prohibited by a law that is narrowly tailored and is the "least restrictive means of furthering a compelling [state] interest." The act says Congress has the power to set aside state laws that violate this principle. The act did not survive long. In June 1997 the Court ruled in *City of Boerne, Texas* v. *Flores*[5] that the act was unconstitutional on several grounds.

While government may limit some religious practices, the Court also has ruled that a number of other restrictions violate the free exercise clause. For example, in *Wisconsin* v. *Yoder*[6] (1972), the Court decided that the state could not require Amish parents to send their children to public school beyond the eighth grade. To do so, the Court ruled, would violate long-held Amish religious beliefs that were "intimately related to daily living" and would present "a very real threat of undermining the Amish community."

Landmark Cases

The Flag Salute Cases Two of the most-discussed free exercise cases concerned whether children could be forced to salute the American flag. The first case began in 1936 when Lillian and William Gobitis, ages 10 and 12, were expelled from school for refusing to salute the flag. As Jehovah's Witnesses, the children and their parents believed saluting the flag violated the Christian commandment against bowing down to any graven image. In *Minersville School District* v. *Gobitis* (1940) the Court upheld the school regulation. The flag was a patriotic symbol, the Court ruled, and requiring the salute did not infringe on religious freedom.

After the *Gobitis* decision, the West Virginia legislature passed an act requiring public schools in the state to conduct classes in civics, history, and the federal and state constitutions. The State Board of Education followed this legislation by directing that all students and teachers in West Virginia's public schools salute the flag and recite the Pledge of Allegiance as part of regular school activities.

See the following footnoted materials in the ***Reference Handbook:***
1. *Marsh* v. *Chambers* case summary, page 761.
2. *Reynolds* v. *United States* case summary, page 764.
3. *Jacobson* v. *Massachusetts* case summary, page 760.
4. *Oregon* v. *Smith* case summary, page 763.
5. *City of Boerne, Texas* v. *Flores* case summary, page 756.
6. *Wisconsin* v. *Yoder* case summary, page 768.

Defending Beliefs

Interpreting the First Amendment Nine-year-old Jana Gobitis, with her hands at her sides, refuses to salute the flag in her third-grade classroom in 1965. Unlike her father, William, Jana never faced expulsion from school for her beliefs. ***How did the Supreme Court, in 1943, change its interpretation of the First Amendment right of free exercise of religion?***

Failure to comply with this requirement constituted insubordination for which a student was to be expelled from school and treated as a delinquent. In addition, the parents of students who failed to comply were liable to prosecution and a penalty of 30 days in jail and a $50 fine.

When a member of Jehovah's Witnesses appealed the state's requirement, the Court overruled the *Gobitis* decision and held such laws to be an unconstitutional interference with the free exercise of religion. The Court concluded in *West Virginia State Board of Education* v. *Barnette* (1943) that patriotism could be achieved without forcing people to violate their religious beliefs:

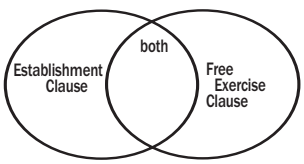
> "*To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds.*"
>
> —Justice Robert Jackson, 1943

The flag salute cases illustrate how the Supreme Court can change its interpretation of the Constitution. The Court usually follows **precedent,** decisions made on the same issue in earlier cases. As one justice put it, however, "when convinced of former error, this Court has never felt constrained to follow precedent."

Section 2 Assessment

Checking for Understanding

1. **Main Idea** Use a Venn diagram like the one to the right to show the difference between the establishment clause and the free exercise clause of the First Amendment and what they have in common.



2. **Define** establishment clause, free exercise clause, parochial school, secular, abridge, precedent.
3. **Identify** Equal Access Act.
4. What three-part test does the Supreme Court use to determine if government aid to parochial education is constitutional?

Critical Thinking

5. **Recognizing Ideologies** Do you think that prayer in public schools is permitted or disallowed by the establishment clause and/or the free exercise clause of the First Amendment? Explain your answer.

Concepts IN ACTION

Cultural Pluralism Study the free exercise and establishment clauses. Take a position on the following: Government buildings should be allowed to place the motto "In God We Trust" in public view. Outline the reasons for your position, then create a banner or poster stating your position.

Supreme Court Cases to Debate

Clark v. *Community for Creative Non-Violence*, 1984

Political demonstrations often bring the government's need to maintain order in conflict with the rights of free speech and free assembly. Does the Constitution give groups the right to camp in parks to promote political ideas? The Court dealt with this issue in Clark *v.* Community for Creative Non-Violence.

Lafayette Park statue

Background of the Case

In 1982 a group, the Community for Creative Non-Violence (CCNV), applied to the National Park Service (NPS) for a permit to conduct round-the-clock demonstrations in Lafayette Park and the Mall in Washington, D.C. The CCNV wanted to set up 60 large tents for overnight camping in both parks to call attention to the problems of the homeless. The NPS issued the permit but refused to allow the CCNV to sleep overnight in tents. Camping in national parks is permitted only in campgrounds designated for that purpose, and no such campgrounds had ever been set up in either Lafayette Park or the Mall. The CCNV filed suit claiming a violation of their First Amendment rights. A district court ruled in favor of the NPS; the court of appeals then ruled for the CCNV.

The Constitutional Issue

The Court stated, "The issue in this case is whether a National Park Service regulation prohibiting camping in certain parks violates the First Amendment when applied to prohibit demonstrators from sleeping in Lafayette Park and the Mall." The CCNV argued that sleeping in the tents was essential to convey to people "the central reality of homelessness." Further, the group explained that it would be impossible to get the poor and homeless to participate without the incentive of sleeping space and a hot meal. The CCNV also claimed that while the camping might interfere in some ways with use of the parks by others, the NPS did not have a truly substantial governmental interest in banning camping.

The NPS countered that the regulation against sleeping except in designated campsites was "content neutral;" it was not targeted against the CCNV's message about the homeless. Further, the government did have a substantial interest in keeping the parks attractive and readily available to the millions who wanted to enjoy them. If non-demonstrators were not allowed to camp in the two parks, demonstrators should not be treated any differently, especially since there were other ways to get their political message across to the public.

Debating the Case

Questions to Consider

1. What governmental interest was involved in this case?
2. Was the regulation intended to suppress the CCNV's message about the homeless?
3. What could be the far-reaching consequence of allowing the CCNV to camp in the parks?

You Be the Judge

In your opinion, did the NPS regulation violate the First Amendment? Was a substantial governmental interest served by banning camping as part of the CCNV's demonstration? Did the CCNV have other ways to use the parks to communicate a message about the problems of the homeless?

Section 3

Freedom of Speech

Reader's Guide

Key Terms

pure speech, symbolic speech, seditious speech, defamatory speech, slander, libel

Find Out

- How has the Supreme Court applied the principles of "clear and present danger" and the bad tendency doctrine in determining free speech?
- What speech is protected by the First Amendment, and what speech is not protected?

Understanding Concepts

Civil Liberties What is the intent of the preferred position doctrine?

COVER STORY

License Plates OK

BALTIMORE, MARYLAND, FEBRUARY 26, 1997

A federal judge has ruled that the First Amendment does not allow the government to ban license plates that showcase the Confederate flag. In recent years Maryland has issued special plates to over 300 groups, including the Sons of Confederate Veterans who petitioned for the Confederate flag plates. The group sued when the state recalled the plates after complaints that the flag's ties to slavery made them offensive. "The Court just made it real clear you can't discriminate against this group because of its political viewpoint," an attorney for the group noted. "The government cannot pick and choose the viewpoint it finds to be correct."

A Maryland license plate

Democratic government requires that every person have the right to speak freely. Most people agree in principle with the right of free speech. Everyone wants it for themselves, but they are sometimes tempted to deny it to others whose beliefs differ greatly from their own. The First Amendment exists to protect ideas that may be unpopular or differ from the majority. Popular ideas usually need little protection, but those who support democracy cherish diversity of opinion.

Types of Speech

What exactly is speech? Clearly, talking with neighbors or addressing the senior class in a school assembly is speech. Are students who wear black armbands to protest a school policy engaging in an act of "speech" that the First Amendment protects? Is demonstrating in front of a government building to protest a new law a form of speech? To answer such questions, the Supreme Court has distinguished two general categories of speech that the First Amendment protects.

The verbal expression of thought and opinion before an audience that has chosen to listen, or **pure speech**, is the most common form of speech. Pure speech may be delivered calmly in the privacy of one's home or passionately in front of a crowd. Because pure speech relies only on the power of words to communicate ideas, the Supreme Court traditionally has provided the strongest protection of pure speech against government control.

Symbolic speech (sometimes called expressive conduct) involves using actions and symbols, in addition to or instead of words, to express opinions. During the Vietnam War, for example, protestors burned their draft cards to express their opposition to the war. Other protestors have burned the American flag to express their displeasure with the government. Because symbolic speech involves actions, it

may be subject to government restrictions that do not apply to pure speech. For example, the Supreme Court has ruled that the First Amendment does not permit expressive conduct that endangers public safety.

The Supreme Court has generally followed a three-part test when reviewing cases involving expressive conduct. This test was established in 1968 in the case of *United States* v. *O'Brien,*[1] when the government upheld the arrest of four men who burned their draft cards to protest the Vietnam War. In that case the Court ruled that a government can regulate or forbid expressive conduct if the regulation (1) falls within the constitutional power of government, (2) is narrowly drawn to further a substantial government interest that is unrelated to the suppression of free speech, and (3) leaves open ample alternative channels of communication.

Since the *O'Brien* decision the Court has said the First Amendment protected the right to wear black armbands in high schools to protest the Vietnam War (*Tinker* v. *Des Moines School District,*[2] 1969). In 1989 in *Texas* v. *Johnson*[3] it held flag burning was protected symbolic speech. The Court reaffirmed this position in *United States* v. *Eichman*[4] (1990), declaring the federal Flag Protection Act of 1989 unconstitutional. On the other side, in *Frisby* v. *Schultz*[5] (1988) the Court held a city may limit picketing in front of a private residence by protestors. In *Hill* v. *Colorado*[6] (2000) the Court also upheld a Colorado law that prohibits a person from approaching another person without that person's consent in order to speak or offer literature to that person within 100 feet of a health care facility. In these decisions the Court placed the government's interest in protecting the right to privacy ahead of the right of demonstrators to expressive conduct.

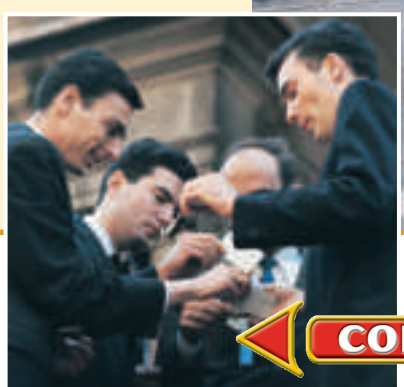
Regulating Speech

Because the rights of free speech must be balanced against the need to protect society, some restraints on speech exist. Congress and state legislatures, for example, have outlawed **seditious speech**—any speech urging resistance to lawful

See the following footnoted materials in the ***Reference Handbook:***
1. *United States* v. *O'Brien* case summary, page 767.
2. *Tinker* v. *Des Moines School District* case summary, page 766.
3. *Texas* v. *Johnson* case summary, page 765.
4. *United States* v. *Eichman* case summary, page 766.
5. *Frisby* v. *Schultz* case summary, page 758.
6. *Hill* v. *Colorado* case summary, page 759.

Symbolic Speech

Demonstrative Actions
During the Vietnam War, thousands of defiant young people challenged the idea that citizens have a military obligation to their country. Disabled former Marine Ron Kovic leads protesting Vietnam Veterans Against the War in Miami, Florida, in 1972. Other American men burned their draft cards in protest. ***What methods of symbolic speech are used today?***



authority or advocating the overthrow of the government. How far can government go in limiting free speech? When does speech lose the protection of the First Amendment? Different philosophies about the limits on free speech have emerged as the Supreme Court has wrestled with the issue of where to draw the line.

During the twentieth century the Court has developed three constitutional tests to establish limits on speech. These principles are not precisely defined but are general guidelines that the courts have used when deciding particular cases. They are: (1) the "clear and present danger" rule; (2) the bad tendency doctrine; and (3) the preferred position doctrine.

Justice Oliver Wendell Holmes, Jr.

> *"The question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. . . . When a nation is at war many things that might be said in time of peace . . . will not be endured [and] . . . no Court could regard them as protected by any constitutional right."*
>
> —Justice Oliver Wendell Holmes, Jr., 1919

Clear and Present Danger

When the speech in question clearly presents an immediate danger, the First Amendment does not protect it. If a conflict between free expression and the demands of public safety occurs, the judges frequently rely on the **"clear and present danger"** rule. Justice Oliver Wendell Holmes, Jr., developed the "clear and present danger" test in *Schenck* v. *United States* (1919).

Landmark Cases

Schenck* v. *United States Charles Schenck, the general secretary of the Socialist Party, was convicted of printing and distributing leaflets that urged draftees to obstruct the war effort during World War I. The government claimed his actions violated the Espionage Act of 1917 that made it a crime to "willfully utter, print, write, or publish any disloyal, profane, scurrilous or abusive language" about the government. Schenck argued that the First Amendment protected his actions.

The Supreme Court rejected Schenck's argument and upheld his conviction. Ordinarily the First Amendment would protect Schenck's "speech," the Court said. During wartime, however, his actions threatened the well-being of the nation:

The Bad Tendency Doctrine

Some Supreme Court justices considered the "clear and present danger" principle insufficient to protect the federal government's substantial interests. They moved to a standard which would restrict even more speech. Several years after the *Schenck* ruling, in the case of *Gitlow* v. *New York*[1] (1925), the Court held speech could be restricted even if it had only a tendency to lead to illegal action, establishing the **bad tendency doctrine.** This doctrine has not generally had the support of the Supreme Court itself since the 1920s. It still, however, reflects the views of many Americans. Supporters of this position acknowledge that it might occasionally lead to laws unnecessarily limiting speech. They believe, however, that society's need to maintain order more than balances any damages done to basic freedoms.

The Preferred Position Doctrine

First developed by the Court during the 1940s, the **preferred position doctrine** holds that First Amendment freedoms are more fundamental than other freedoms because they provide the basis of all liberties. Thus, First Amendment freedoms hold a preferred position over competing interests. Any law limiting these freedoms should be presumed unconstitutional unless the government can show it is absolutely necessary.

See the following footnoted materials in the ***Reference Handbook:***
1. *Gitlow* v. *New York* case summary, page 759.

Sedition Laws The Espionage Act of 1917 expired at the end of World War I. Later, in the 1940s and 1950s, Congress passed three sedition laws that applied in peacetime as well as during war. One of these, the Smith Act, made it a crime to advocate revolution. In *Dennis* v. *United States*[1] (1951) the Court applied the "clear and present danger" test to uphold the conviction of 11 Communist Party leaders under the act. In later cases, however, the Court sharply narrowed its definition of seditious speech.

In *Yates* v. *United States*[2] (1957) the Court overturned convictions of several other Communist Party members. It decided that merely expressing the opinion that the government should be overthrown cannot be illegal. Thus, the Court distinguished between urging people to believe in an action and urging them to take action.

In *Brandenburg* v. *Ohio*[3] (1969) the Court further narrowed its definition of seditious speech. When Clarence Brandenburg, a Ku Klux Klan leader, refused a police order to end a rally and cross burning, he was arrested. The Court ruled in his favor, however, stating that advocating the use of force may not be forbidden "except where such advocacy is directed to inciting or producing imminent lawless action and is likely to produce such action." The First Amendment does not protect speech intended to advocate immediate and concrete acts of violence.

Other Speech Not Protected

Other forms of speech, less protected than so-called seditious speech, are not protected by the First Amendment. Defamatory speech and "fighting words" fall outside the First Amendment, as do some forms of student speech.

Defamatory Speech The First Amendment does not protect **defamatory speech,** or false speech that damages a person's good name, character, or reputation. Defamatory speech falls into two categories. **Slander** is spoken; **libel** is written. Thus, someone may be sued in a civil court and ordered to pay damages for making false, damaging statements about someone else.

The Court has limited the right of public officials, however, to recover damages for defamation. In *New York Times Co.* v. *Sullivan*[4] (1964) the Court determined that even if a newspaper story about an Alabama police commissioner was false, it was protected speech unless the statement was made with the knowledge that it was false, or with reckless disregard of whether it was false or not.

The Court allowed some defamatory speech about public officials for fear that criticism of government, a basic constitutional right, might be silenced if individuals could be sued for their statements. In later years the justices have extended

See the following footnoted materials in the ***Reference Handbook:***
1. *Dennis* v. *United States* case summary, page 757.
2. *Yates* v. *United States* case summary, page 768.
3. *Brandenburg* v. *Ohio* case summary, page 755.
4. *New York Times Co.* v. *Sullivan* case summary, page 762.

Petitioning for Change

Active Free Speech One way citizens can freely express opinions is by signing petitions concerning public issues they want addressed. ***What did the Supreme Court say about free speech, such as petitioning, in the preferred position doctrine?***

this protection to statements about public figures in general. Political candidates are included, of course, but so are professional entertainers and athletes, and even private citizens who become newsworthy. In *Hustler Magazine* v. *Falwell*[1] (1988), for example, the Court ruled that Reverend Jerry Falwell, a well-known conservative minister, could not collect damages for words that might intentionally inflict emotional distress.

"Fighting Words" In 1942 the Supreme Court ruled that words that are so insulting that they provoke immediate violence do not constitute protected speech. The Court upheld a state law that prohibited any person from speaking "any offensive, derisive, or annoying word to any other person who is lawfully in any street or public place." In *Chaplinsky* v. *New Hampshire*[2] (1942) the Court held that:

> *"There are certain well-defined and narrowly limited classes of speech, the prevention of which has never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace."*
>
> —Justice Frank Murphy, 1942

Student Speech The Court has limited student speech as well. In the 1969 *Tinker* case, the Supreme Court made it clear that students do not give up all their rights to free speech while in high school. Two Court decisions, however, have greatly narrowed students' First Amendment rights while expanding the authority of school officials.

In *Bethel School District* v. *Fraser*[3] (1986), the Court ruled the First Amendment does not prevent officials from suspending students for lewd or indecent speech at school events, even though the same speech would be protected outside the school building. The Court held that school officials can decide "what manner of speech in the classroom or in school assembly is appropriate."

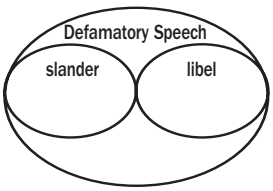
Two years later, in *Hazelwood School District* v. *Kuhlmeier*[4] (1988), the Court held that school officials have sweeping authority to regulate student speech in school-sponsored newspapers, theatrical productions, and other activities. Justice Byron White drew a distinction between "a student's personal expression," which the First Amendment protects, and speech that occurs "as part of the school curriculum."

See the following footnoted materials in the ***Reference Handbook:***
1. *Hustler Magazine* v. *Falwell* case summary, page 759.
2. *Chaplinsky* v. *New Hampshire* case summary, page 756.
3. *Bethel School District* v. *Fraser* case summary, page 755.
4. *Hazelwood School District* v. *Kuhlmeier* case summary, page 759.

Section 3 Assessment

Checking for Understanding

1. **Main Idea** Use a Venn diagram like the one shown here to explain the difference between slander and libel.



2. **Define** pure speech, symbolic speech, seditious speech, defamatory speech, slander, libel.
3. **Identify** "clear and present danger."
4. What three tests does the Supreme Court use to set limits on free speech?
5. What types of speech does the First Amendment not protect?

Critical Thinking

6. **Making Comparisons** How does freedom of speech in the United States differ in wartime and in peacetime? Refer to Supreme Court decisions in your answer.

Concepts IN ACTION

Civil Liberties The Supreme Court has held that First Amendment freedoms are more fundamental than others. Read a Court decision in this chapter and create a political cartoon supporting or opposing the Court's view. Post your cartoon on a bulletin board and challenge other students to guess the case that it identifies.

Section 4

Freedom of the Press

Reader's Guide

Key Terms

prior restraint, sequester, gag order, shield laws

Find Out

- What is the Supreme Court's opinion on prior restraint?
- How has the Supreme Court ruled when the presence of the media could affect a court trial?

Understanding Concepts

Civil Liberties Some people perceive an adversarial relationship between the government and the press. Is this so? Why or why not?

COVER STORY

Judge Controls Courtroom

TERRE HAUTE, INDIANA, JUNE 11, 2001

Timothy McVeigh was executed today for the 1995 bombing of the Oklahoma City federal building that killed 168 people. During the trial, Judge Richard P. Matsch was determined to maintain control and not let it turn into a media event. He issued a gag order for both prosecuting and defense lawyers, refused permission for the trial to be played on closed circuit television, and rejected a media plea to remove a screen that concealed jurors from spectators. Journalists claimed the gag order violated their First Amendment rights. Judge Matsch stood firm and refused to remove the nondisclosure order.

Weighing justice and freedom of the press

At times, the right of the press to gather and publish information conflicts with other important rights. Judge Richard Matsch's rulings in the 1997 Timothy McVeigh terrorist case were a very high-profile example of such conflict. Most of the time freedom of the press is protected because it is closely related to freedom of speech. It moves free speech one step further by allowing opinions to be written and circulated or broadcast. In today's world the press includes magazines, radio, and television along with newspapers because of their roles in spreading news and opinions.

Prior Restraint Forbidden

In many nations **prior restraint**—censorship of information before it is published—is a common way for government to control information and limit freedom. In the United States, however, the Supreme Court has ruled that the press may be censored in advance only in cases relating directly to national security. Two Court decisions illustrate this principle.

Landmark Cases

Near* v. *Minnesota This 1931 case concerned a Minnesota law prohibiting the publication of any "malicious, scandalous, or defamatory" newspapers or magazines. An acid-tongued editor of a Minneapolis paper had called local officials "gangsters" and "grafters." Acting under the Minnesota law, local officials obtained a court injunction to halt publication.

By a 5-to-4 vote, the Supreme Court lifted the injunction. The Court ruled the Minnesota law unconstitutional because it involved prior restraint. For years the *Near* case defined the Supreme Court's position on censorship. The Court stressed that a free press means freedom from government censorship.

New York Times Co. v. *United States*

The Supreme Court reaffirmed its position in *New York Times Co.* v. *United States* (1971)—widely known as the Pentagon Papers case. In 1971 a former Pentagon employee leaked to the *New York Times* a secret government report outlining the history of United States involvement in the Vietnam War. This report, which became known as the Pentagon Papers, contained hundreds of government documents, many of them secret cables, memos, and plans.

Realizing the Pentagon Papers showed that former government officials had lied to the American people about the war, the *New York Times* began to publish parts of the report. The government tried to stop further publication of the papers, arguing that national security would be endangered and that the documents had been stolen from the Defense Department.

A divided Court rejected the government's claims. The Court ruled that stopping publication would be prior restraint. One justice, Justice William O. Douglas, noted that "the dominant purpose of the First Amendment was to prohibit the widespread practice of governmental suppression of embarrassing information." Justice Hugo L. Black added:

> *"The press [is] to serve the governed and not the governors. . . . The press was protected so that it could bare the secrets of government and inform the people."*
>
> —Justice Hugo L. Black, 1971

Fair Trials and Free Press

In recent years the First Amendment right of a free press and the Sixth Amendment right to a fair trial have sometimes conflicted. Does the press have the right to publish information that might influence the outcome of a trial? Can courts issue orders that limit news gathering in order to increase the chances of a fair trial and to protect the validity of a jury's deliberations? Do reporters have the right to withhold sources of information that may be important to a trial?

National Security vs. Free Press

The Court's decision in *New York Times Co.* v. *United States* affected newspapers nationwide. Here the first edition of *The Washington Post* rolls off the presses immediately after the Court's decision on June 30, 1971.

Defense Department official Daniel Ellsberg (right) leaked the Pentagon Papers to the *New York Times.* The *Times* began publishing the papers on June 13, 1971. On June 15, the government halted publication of the papers. With uncharacteristic speed the case reached the Supreme Court—within the next 10 days.

Responsibility of the Press ***In your opinion, was national security threatened by publication of the Pentagon Papers? Explain.***

Landmark Cases

Sheppard* v. *Maxwell Pretrial and courtroom publicity and news stories about the crime can make it difficult to secure a jury capable of fairly deciding the case. In *Sheppard* v. *Maxwell* (1966) the Supreme Court overturned the 1954 conviction of Samuel H. Sheppard, for just such reasons.

A prominent Cleveland physician, Sheppard was convicted of killing his wife. The case had attracted sensational press coverage. Pretrial news reports practically called Sheppard guilty. During the trial reporters interviewed witnesses and published information damaging to Sheppard.

The Supreme Court ruled that press coverage had interfered with Sheppard's right to a fair trial. Sheppard was later found not guilty. In the *Sheppard* decision, the Court described several measures judges might take to restrain press coverage of a trial. These included: (1) moving the trial to reduce pretrial publicity; (2) limiting the number of reporters in the courtroom; (3) placing controls on reporters' conduct in the courtroom; (4) isolating witnesses and jurors from the press; and (5) having the jury **sequestered,** or kept isolated, until the trial is over.

A Free but Restricted Press

Justice and the Media Press coverage of certain trials is limited by order of the judge. Here members of the press, barred from the courtroom, wait for a chance to interview participants in order to report on court happenings. ***Why would a judge bar the press from a courtroom or have a jury sequestered?***

Gag Orders Unconstitutional

After the *Sheppard* case, a number of trial judges began to use so-called gag orders to restrain the press. A **gag order** is an order by a judge barring the press from publishing certain types of information about a pending court case.

In October 1975 a man killed six members of a Nebraska family. Details of the crime were so sensational that a local judge prohibited news stories about a pretrial hearing. The gag order was challenged and eventually came to the Supreme Court as *Nebraska Press Association* v. *Stuart*[1] (1976). The Court ruled that the Nebraska gag order was too vague and overbroad to satisfy the First Amendment.

Press Access to Trials

In the *Nebraska* case, reporters were permitted in court, even though the trial judge forbade the press to report on the proceedings. In *Gannett Co., Inc.* v. *DePasquale*[2] (1979) the Supreme Court ruled that the public and press could be barred from certain pretrial hearings if the trial judge found a "reasonable probability" that publicity would harm the defendant's right to a fair trial. Since then, the Court has modified the *Gannett* decision, limiting the exclusion of the press only to pretrial hearings dealing with suppression of evidence. In *Richmond Newspapers, Inc.* v. *Virginia*[3] (1980) and later cases, the Court ruled that trials, jury selections, and preliminary hearings must be open to the press and the public except under limited circumstances.

See the following footnoted materials in the ***Reference Handbook:***

1. *Nebraska Press Association* v. *Stuart* case summary, page 762.
2. *Gannett Co., Inc.* v. *DePasquale* case summary, page 758.
3. *Richmond Newspapers, Inc.* v. *Virginia* case summary, page 764.

Framers Facing Tomorrow's World

The Constitution and Technology In this artist's rendering, Thomas Jefferson and James Madison ponder the technology of today. The Framers of our government could not have foreseen the complex issues that would accompany technological developments. ***Do you think the Constitution is equipped to resolve the technological issues of today?***

Protecting News Sources Many reporters argue they have the right to refuse to testify in order to protect confidential information and its source. But what if a reporter has information the defense or the government needs to prove its case? Can reporters refuse to surrender evidence? In three cases considered together in 1972, the Supreme Court said that reporters do not have such a right. The Court ruled the First Amendment does not give special privileges to news reporters. Reporters, the Court said, "like other citizens, [must] respond to relevant questions put to them in the course of a valid grand jury investigation or criminal trial." The Court added that any special exemptions must come from Congress and the states.

To date, 30 states have passed **shield laws**—laws that give reporters some means of protection against being forced to disclose confidential information or sources in state courts.

Free Press Issues

In writing the First Amendment, the Founders thought of the press as printed material—newspapers, books, and pamphlets. They could not foresee the growth of technology that has created new instruments of mass communication—and new issues regarding freedom of the press.

Radio and Television Because radio and broadcast television use public airwaves, they do not enjoy as much freedom as other press media. Stations must obtain a license from the **Federal Communications Commission (FCC),** a government agency that regulates their actions.

Although Congress has denied the FCC the right to censor programs before they are broadcast, the FCC can require that stations observe certain standards. In addition, it may punish stations that broadcast obscene or indecent language.

The growth of cable television has raised new questions. For example, to what extent do free speech guidelines apply to cable television? In *Turner Broadcasting System, Inc.* v. *FCC* [1] (1997) the Court ruled that cable television operators should have more First Amendment protection from government regulation than other broadcasters, but not as much as the publishers of newspapers and magazines. Cable operators, the Court said, are not entitled to maximum First Amendment protections because typically only one cable operator controls the video programming market in most communities.

Then in 2000, the Court struck down the part of the Telecommunications Act of 1996 that required cable television operators to block or limit transmission of sexually oriented programs to protect young viewers. In *United States* v. *Playboy*,[2] the Court decided that the cable operators' First Amendment rights were violated because the law was too restrictive.

See the following footnoted materials in the ***Reference Handbook:***
1. *Turner Broadcasting System, Inc.* v. *FCC* case summary, page 766.
2. *United States* v. *Playboy* case summary, page 767.

CONTENTS

Motion Pictures In *Burstyn* v. *Wilson*[1] (1952) the Court held that "liberty of expression by means of motion pictures is guaranteed by the First and Fourteenth amendments." The Court has also ruled, however, that movies may be treated differently than books or newspapers.

E-Mail and the Internet The Supreme Court has always given the highest level of free speech protection to print media. In *Reno* v. *American Civil Liberties Union*[2] (1997), the Court ruled that speech on the Internet was closer to print media than to broadcast media. It determined, therefore, that Internet speech deserves the same level of First Amendment protection. In the *Reno* decision, the Court declared unconstitutional a federal law against sending pornographic material online in a way available to children. The Court agreed that protecting children was important, but said, "The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship."

Obscenity The Supreme Court and most other courts have supported the principle that society has the right to protection from obscene speech, pictures, and written material. After many attempts to define obscenity, the Court finally ruled in *Miller* v. *California*[3] (1973) that, in effect, local communities should set their own standards for obscenity. In the *Miller* ruling the Court stated:

> *"It is neither realistic nor constitutionally sound to read the First Amendment as requiring that the people of Maine or Mississippi accept . . . conduct found tolerable in Las Vegas or New York."*

Since the *Miller* decision, however, the Court has stepped in to overrule specific acts by local authorities, making it clear there are limits on the right of communities to censor.

Advertising Advertising is considered "commercial speech"—speech that has a profit motive—and is given less protection under the First Amendment than purely political speech. In fact, advertisers have long faced strong government regulation and control. In the mid-1970s, however, the Supreme Court began to relax controls. In *Bigelow* v. *Virginia*[4] (1975) the justices permitted newspaper advertisements for abortion clinics. Since then the Court has voided laws that ban advertising medical prescription prices, legal services, and medical services. It has also limited regulation of billboards, "for sale" signs, and lawyers' advertisements.

See the following footnoted materials in the ***Reference Handbook:***
1. *Burstyn* v. *Wilson* case summary, page 756.
2. *Reno* v. *American Civil Liberties Union* case summary, page 764.
3. *Miller* v. *California* case summary, page 761.
4. *Bigelow* v. *Virginia* case summary, page 755.

Section 4 Assessment

Checking for Understanding

1. **Main Idea** Use a graphic organizer like the one shown to analyze the importance of the Supreme Court's ruling on the Communications Decency Act.

Communications Decency Act	
Issue at Stake	Court's Ruling

2. **Define** prior restraint, sequester, gag order, shield laws.
3. **Identify** Federal Communications Commission.
4. When can the government exercise prior restraint on the press?
5. What measures may a court take to restrain press coverage in the interest of a fair trial?

Critical Thinking

6. **Checking Consistency** Are there any circumstances under which reporters should be required to reveal or protect their confidential information or sources? Explain your answer.

Concepts IN ACTION

Civil Liberties The issue of freedom of the press traces back to the *New York* v. *John Peter Zenger* case. Research this case and explain how the results of this case relate to freedom of the press issues today. Present your findings in a comparison chart.

Section 5

Freedom of Assembly

Reader's Guide

Key Terms

picketing, Holocaust, heckler's veto

Find Out

- What are the limits on public assembly?
- What constitutional protections are applied to demonstrations by unpopular groups, or to those who might incite violence?

Understanding Concepts

Civil Liberties Why is freedom of assembly subject to greater regulation than freedom of speech?

COVER STORY

Mall Bans Teens

BLOOMINGTON, MINNESOTA, SEPTEMBER 20, 1996

America's largest mall today became one of the nation's first to restrict teenagers. The Mall of America has barred shoppers under age 16 on weekend nights unless they are with a parent or another adult who is older than 21. Mall officials accuse the teenagers of disturbing other shoppers. On some Saturday nights, 3,000 teens flood the mall, which they say is the coolest spot in the Twin Cities. Those interviewed say they will not be caught dead in the mall with their parents. The American Civil Liberties Union, which condemns the ban, will not challenge it, noting previous federal court rulings that First Amendment rights do not apply inside shopping malls.

Mall of America logo

The First Amendment may not guarantee teenagers the right to gather in a shopping mall, but it does guarantee "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Freedom of assembly applies not only to meetings in private homes but also to those in public places. It protects the right to make views known to public officials and others by such means as petitions, letters, lobbying, carrying signs in a parade, or marching.

Protecting Freedom of Assembly

Freedom of assembly is a right closely related to freedom of speech because most gatherings, no matter how large or small, involve some form of protected speech. Without this basic freedom, there would be no political parties and no interest groups to influence the actions of government.

Landmark Cases

DeJonge* v. *Oregon One of the Supreme Court's first major decisions on freedom of assembly came in 1937 in the case of *DeJonge* v. *Oregon*. Dirk DeJonge was convicted for conducting a public meeting sponsored by the Communist Party. He claimed he was innocent because he had not advocated any criminal behavior but had merely discussed issues of public concern. In voting unanimously to overturn DeJonge's conviction, the Court ruled Oregon's law unconstitutional. Chief Justice Charles Evans Hughes wrote that under the First Amendment "peaceable assembly for lawful discussion cannot be made a crime."

The *DeJonge* case established two legal principles. The Court determined that the

right of assembly was as important as the rights of free speech and free press. Also, the Court ruled that the due process clause of the Fourteenth Amendment protects freedom of assembly from state and local governments.

Assembly on Public Property Freedom of assembly includes the right to parade and demonstrate in public. Because these forms of assembly usually occur in parks, streets, or on sidewalks, it is very possible they could interfere with the rights of others to use the same facilities. Conflicts also arise when parades and demonstrations advocate unpopular causes. Demonstrations, in particular, have a high potential for violence because others, holding conflicting beliefs, often launch counter-demonstrations. The two sides may engage in heated verbal, and sometimes physical, clashes. For such reasons, parades and demonstrations generally are subject to greater government regulation than exercises of pure speech and other kinds of assembly.

Limits on Parades and Demonstrations

To provide for public order and safety, many states and cities require that groups wanting to parade or demonstrate first obtain a permit. The precedent for such regulation was set in *Cox* v. *New Hampshire*[1] (1941). Cox was one of several Jehovah's Witnesses convicted of violating a law requiring a parade permit. He challenged his conviction on the grounds that the permit law restricted his rights of free speech and assembly.

The Court voted to uphold the law, ruling that the law was not designed to silence unpopular ideas. Rather, the law was intended to ensure that parades would not interfere with other citizens using the streets. In part, the decision said:

> "*The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties.*"
> —Chief Justice Charles Evans Hughes, 1941

Additional Limits on Public Assembly

Other public facilities such as airports, libraries, courthouses, schools, and swimming pools also may be used for public demonstrations. Here again, however, the Court has set limits. For example, in *Adderly* v. *Florida*[2] (1966) the Court held that demonstrators could not enter the grounds of a county jail without permission. The Court ruled that, while the jail was public property, it was not generally open to public access. The state has the power, the Court reasoned, "to preserve the property under its control for the use to which it is lawfully dedicated."

Other restrictions on peaceable public assembly occur when the right of assembly clashes with the rights of other people. In *Cox* v. *Louisiana*[3] (1965) the Court upheld a law that banned demonstrations and parades near courthouses if

Freedom to Assemble

First Amendment Rights Demonstrators use their right to assemble, rallying against old-growth logging in California. ***Why is the right to assemble fundamental to democracy?***

See the following footnoted materials in the ***Reference Handbook:***
1. *Cox* v. *New Hampshire* case summary, page 756.
2. *Adderly* v. *Florida* case summary, page 754.
3. *Cox* v. *Louisiana* case summary, page 756.

THE LAW *and You*

How to Find a Supreme Court Decision

Supreme Court gavel

A law library or even the library in your local courthouse may have more than a thousand volumes containing law cases. How can you find information about a particular Supreme Court case? If you know the parties in a case, you can look in a "Digest" of cases. If you look up "Olmstead" for example, you will find "*Olmstead* v. *United States,* 277 U.S. 438." This means that the report of the Olmstead decision begins on page 438 of volume 277 of the *United States Reports.* These reports are published by the Government Printing Office several times each year and date back to the very first year of the Court's history. Possibly an easier way to locate a case is by using the Internet. A federal government home page will allow you to choose a Supreme Court Web site. From there it is simple to locate cases if you know the parties or even the approximate year the case was decided.

Participating IN GOVERNMENT ACTIVITY

Research a Case Choose an interesting case from this chapter and research it. Take notes and prepare to share what you find with the class.

they could interfere with trials. In *Grayned* v. *City of Rockford*[1] (1972) the justices upheld a ban on demonstrations near schools that were intended to disrupt classes.

Other Supreme Court decisions, however, require that restrictions on freedom of assembly be precisely worded and apply evenly to all groups. In *Police Department of Chicago* v. *Mosley*[2] (1972), the Court voided a city law that banned all demonstrations near school buildings except in the case of picketing—patrolling an establishment to convince workers and the public not to enter it—by labor unions.

Assembly and Property Rights The right to assemble does not allow a group to convert private property to its own use, even if the property is open to the public. In *Lloyd Corporation* v. *Tanner*[3] (1972) the Court ruled that a group protesting the Vietnam War did not have the right to gather in a shopping mall.

In recent years some right-to-life groups demonstrating outside private abortion clinics blocked the entrances. The Court appeared unwilling to protect this type of assembly. In *New York State NOW* v. *Terry* (1990) and *Hirsch* v. *Atlanta* (1990), the justices refused to hear appeals of bans on such demonstrations. In 1993, however, the Court ruled that an 1871 civil rights law could not be applied against these demonstrators. In the 1997 case of *Schenck* v. *Pro-Choice Network of Western New York,*[4] the Court upheld parts of an injunction that created a fixed buffer zone around abortion clinics. At the same time the Court struck down "floating buffer zone" laws that attempted to keep a few feet of distance between a demonstrator and a moving person who may be approaching a clinic.

Public Assembly and Disorder

A basic principle of democracy is that people have the right to assemble regardless of the views they hold. Police, however, sometimes have difficulty protecting this principle when public assemblies threaten public safety.

See the following footnoted materials in the ***Reference Handbook:***

1. *Grayned* v. *City of Rockford* case summary, page 759.
2. *Police Department of Chicago* v. *Mosley* case summary, page 763.
3. *Lloyd Corporation* v. *Tanner* case summary, page 761.
4. *Schenck* v. *Pro-Choice Network of Western New York* case summary, page 765.

The Nazis in Skokie In 1977 the American Nazi Party, a small group patterned after Adolf Hitler's German Nazi Party, announced plans to hold a rally in Skokie, Illinois, a largely Jewish suburb of Chicago. Skokie residents were outraged. Many were survivors of the **Holocaust**, the mass extermination of Jews and other groups by the Nazis during World War II. Others were relatives of the 6 million Jews killed in the Nazi death camps.

Skokie officials, citizens, and many others argued that the Nazis should not be allowed to march. They claimed that the march would cause great pain to residents and would attract a counter-demonstration.

To prevent the march, the city required the Nazis to post a $300,000 bond to get a parade permit. The Nazis claimed the high bond interfered with their freedoms of speech and assembly. A federal appeals court ruled that no community could use parade permits to interfere with free speech and assembly.

The Skokie case illustrates a free speech and assembly problem some scholars have called the **heckler's veto.** The public vetoes the free speech and assembly rights of unpopular groups by claiming demonstrations will result in violence. Such claims may be effective because government officials will almost always find it easier to curb unpopular demonstrations than to take measures to prevent violence.

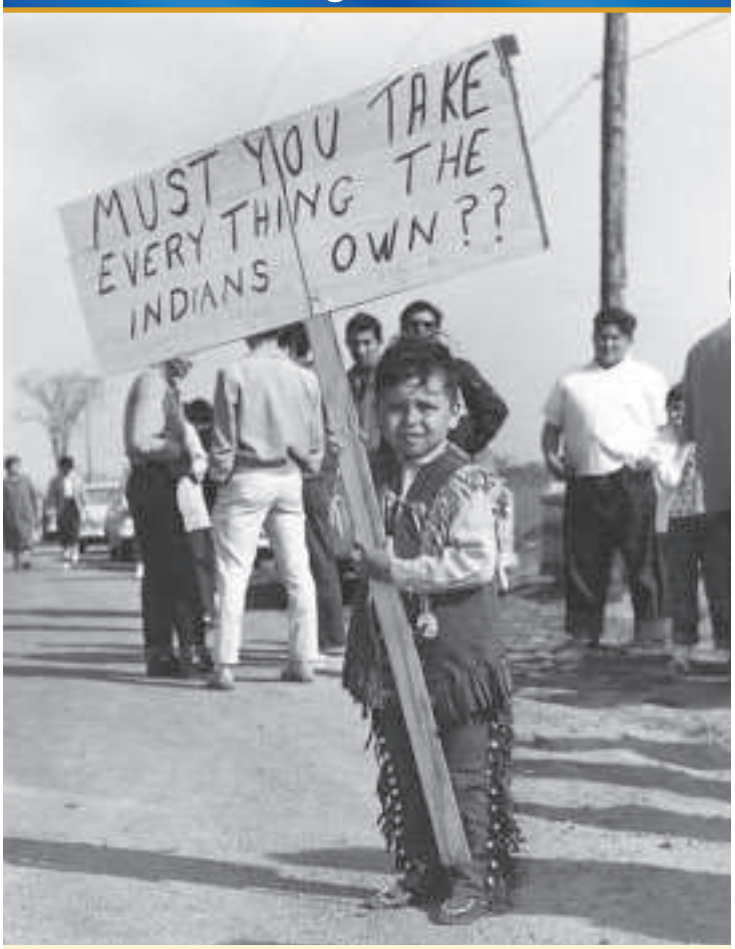
This dilemma leads to two related questions. Does the Constitution require the police to protect unpopular groups when their demonstrations incite violence? May the police order demonstrators to disperse in the interest of public peace and safety?

Landmark Cases

Feiner* v. *New York In 1950, speaking on a sidewalk in Syracuse, New York, Irving Feiner verbally attacked President Truman, the American Legion, and the mayor of Syracuse. He also urged African Americans to fight for civil rights. As Feiner spoke, a larger and larger crowd gathered. When the crowd grew hostile, someone called the police. When two officers arrived to investigate, an angry man in the audience told them that if they did not stop Feiner, he would. The police asked Feiner to stop speaking. When Feiner refused, the police arrested him, and he was convicted of disturbing the peace.

The Supreme Court upheld Feiner's conviction, ruling that the police had not acted to suppress speech but to preserve public order. Chief

Demonstrating for Civil Liberties



Freedom of Assembly Randy Wegerski, a 4-year-old Tuscarora Native American, joins a picket line in 1958. The protestors gathered to block a state survey of reservation land that had been seized for a power project. ***Do you think government officials should be able to limit demonstrations that interfere in government work?***

Demonstrators and Police Clash

Voices of Protest As a wave of civil rights activity swept across the nation in the 1960s, some government officials and police attempted to preserve laws that held segregation in place by attempting to restrict demonstrations. Police in Birmingham, Alabama, used high-pressure water hoses against marchers in the spring of 1963. ***Why do you think police presence was so great during the civil rights protests of the 1960s?***

Justice Fred M. Vinson spoke for the majority of the Court. He wrote:

> *"It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of argument and undertakes incitement to riot, they are powerless to prevent a breach of the peace."*
>
> —Chief Justice Fred M. Vinson, 1951

Gregory* v. *City of Chicago The *Feiner* case stands as a precedent that the police may disperse a demonstration in order to keep the peace. Since then, however, the Court has overturned the convictions of people whose only offense has been to demonstrate peacefully in support of unpopular causes. The case of *Gregory* v. *City of Chicago* (1969) is a good example of the Court's thinking on this matter.

Dick Gregory, an entertainer and African American activist, led a group of marchers from the city hall in downtown Chicago to the mayor's home. Calling city hall a "snake pit" and the mayor "the snake," the demonstrators began parading around the block demanding the ouster of the school superintendent for failing to desegregate schools. About 180 police officers were on hand to provide protection.

A crowd of 1,000 or more hostile onlookers from the all-white neighborhood gathered. They began to heckle and throw rocks and eggs at the marchers.

At 8:30 in the evening, the marchers stopped singing and chanting and paraded quietly. The crowd continued to heckle them. By 9:30 the police concluded that violence was imminent and ordered the demonstrators to disperse. When Gregory and the others refused, they were arrested. Five, including Gregory, were later convicted of disorderly conduct.

In a departure from the *Feiner* case, the Supreme Court overturned the conviction of Gregory and the marchers. The Court ruled that the demonstrators had been peaceful and had done no more than exercise their First Amendment right of assembly and petition. Neighborhood residents, not the marchers, had caused the disorder. The Court concluded that such a march, "if peaceful and orderly, falls well within the sphere of conduct protected by the First Amendment."

Protection for Labor Picketing

Workers on strike or other demonstrators often organize picket lines. For many years the Supreme Court has debated how much protection the First Amendment gives picketers. Picketing conveys a message and is therefore a form of speech and assembly. But labor picketing, unlike most other kinds of demonstrations, tries to persuade customers and workers not to deal with a

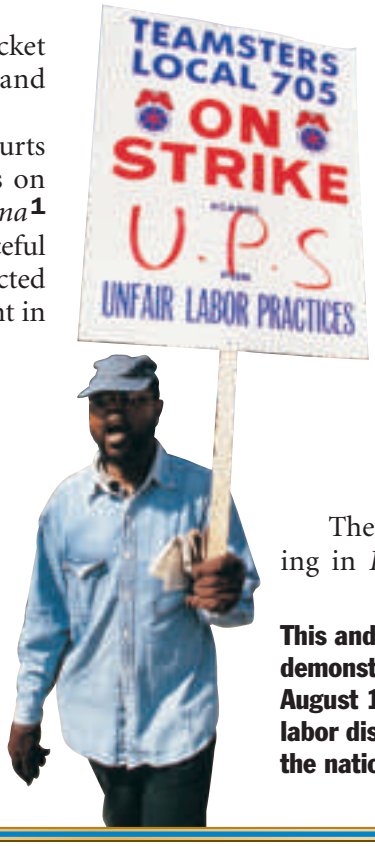
business. Many people will not cross a picket line, depriving a business of its workers and customers.

Through much of American history, courts have supported many kinds of restraints on labor picketing. Then, in *Thornhill* v. *Alabama*[1] (1940), the Supreme Court ruled that peaceful picketing was a form of free speech. It reflected the growing strength of the labor movement in American life.

In later decisions, however, the Court severely limited the position it took in *Thornhill.* In *Hughes* v. *Superior Court*[2] (1950) the Court refused to overturn a California court's ban on picketing at a supermarket to force it to hire African American workers. The Court wrote:

> *"While picketing is a mode of communication, it is inseparably something more and different. . . . The very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication."*
>
> —Justice Felix Frankfurter, 1950

The Court further limited picketing in *International Brotherhood of*



This and other protestors demonstrated during the August 1997 Teamsters–UPS labor dispute which crippled the nation for 15 days.

See the following footnoted materials in the ***Reference Handbook:***
1. *Thornhill* v. *Alabama* case summary, page 766.
2. *Hughes* v. *Superior Court* case summary, page 759.

We the People
Making a Difference

Gladiola Campos

Union Summer logo

In 1996 Gladiola Campos joined 1,000 other college students and activists in a program called Union Summer. The program, which was sponsored by the AFL-CIO, was designed to strengthen the nation's labor movement by encouraging people to join unions and protest unfair labor practices. It was modeled after Freedom Summer, a similar program in 1964 in which students were bussed across the South to register African American voters.

Union Summer participants were paid $210 a week and traveled to various parts of the country to help draw attention to unfair labor practices. Students helped sewage-plant employees protesting in Denver, put pressure on a Washington store to stop selling clothing made in sweatshops, and picketed hotels in South Carolina for their unfair labor practices.

Campos, a University of Texas student, was sent to Los Angeles. One of her projects was distributing leaflets outside a hotel to urge people to boycott the establishment. The owners of the hotel had been blocking their employees' efforts to organize a union for three years. Many of the employees were Hispanic immigrants.

The union issue hits close to home with Campos. Her mother was a maintenance worker when she was growing up in El Paso, Texas. Before the hospital where her mother worked was unionized, Campos said her mother "had to work two jobs, and we couldn't afford health insurance." Campos thinks her summer experience was worthwhile. "I'm finally doing something instead of just talking," she said.

Teamsters, Local 695 v. *Vogt*[1] (1957). The Court upheld a Wisconsin law that prohibited picketing a business unless there was a labor dispute.

Freedom of Association

Does the First Amendment protect an individual's right to join an organization that the government considers subversive? In the *DeJonge* v. *Oregon*[2] (1937) case, the Supreme Court extended the right to freely assemble to protect the right of individuals to freedom of association—to join a political party, interest group, or other organization. Can the government restrict the right of assembly and association to protect national security?

Landmark Cases

Whitney* v. *California In 1927 the Supreme Court reviewed the case of Charlotte Anita Whitney, who had attended a convention where the Communist Labor Party was organized. Because the party advocated workers using violent means to take over control of property, Whitney was convicted of breaking a California law concerning violent actions. The prosecution successfully argued that membership in the party indicated that she had committed a crime. In *Whitney* v. *California* (1927) the Supreme Court decided that:

> *"Although the rights of free speech and assembly are fundamental, they are not absolute. Their exercise is subject to their restriction, if the particular restriction proposed is required in order to protect the state from destruction. . . . The necessity which is essential to a valid restriction does not exist unless speech would produce, or is intended to produce, a clear and imminent danger of some substantive evil which the state constitutionally may seek to prevent."*
>
> —Justice Louis Brandeis, 1927

The **clear and present danger doctrine** later became a major issue when the government began to arrest and convict accused subversives, primarily Communist Party members during the 1950s. The Alien Registration Act of 1940, known as the Smith Act, contained a section that made advocating forcible overthrow of any government in the United States illegal. The Supreme Court upheld convictions of 11 leaders of the American Communist Party under this act in *Dennis* v. *United States*[3] (1951). In later cases, however, the Court ruled that only actual preparations for the use of force against the government were punishable.

See the following footnoted materials in the ***Reference Handbook:***
1. *International Brotherhood of Teamsters, Local 695 v. Vogt* case summary, page 760.
2. *DeJonge* v. *Oregon* case summary, page 757.
3. *Dennis* v. *United States* case summary, page 757.

Section 5 Assessment

Checking for Understanding

1. **Main Idea** Use a graphic organizer like the one below to identify two reasons the right to assemble is important to preserve in a democracy and two reasons it can be limited.

To Preserve	To Limit

2. **Define** picketing, Holocaust, heckler's veto.
3. **Identify** clear and present danger doctrine.
4. What two principles were established by the DeJonge decision?

Critical Thinking

5. **Checking Consistency** Should more restrictions apply if a parade supports an unpopular cause? Support your answer.

Concepts IN ACTION

Civil Liberties Imagine that you are the mayor of a town where a citizen is planning a rally to protest the government's environmental policies. Write a letter to the city council explaining the constitutional issues and the public welfare concerns that they should consider before allowing the rally.

Skills

Study and Writing

Using Library Resources

Your teacher has assigned a major research report, so you go to the library. As you wander the aisles surrounded by books on every topic imaginable, you wonder: Where do I start my research? Which reference works should I use?

Learning the Skill

Libraries contain many reference works. Here are brief descriptions of important reference sources:

Reference Books Reference books include encyclopedias, biographical dictionaries, atlases, and almanacs.

- An encyclopedia is a set of books containing short articles on many subjects arranged alphabetically.
- A biographical dictionary includes brief biographies listed alphabetically by last names.
- An atlas is a collection of maps and charts for locating geographic features and places. An atlas can be general or thematic.
- An almanac is an annually updated reference that provides current statistics and historical information on a wide range of subjects.

Card Catalogs Every library has a card catalog, either on cards or computer or both, which lists every book in the library. Search for books by author, subject, or title. Computerized card catalogs will also advise you on the book's availability.

Periodical Guides A periodical guide is a set of books listing topics covered in magazines and newspaper articles.

Computer Databases Computer databases provide collections of information organized for rapid search and retrieval. For example, many libraries carry reference materials on CD-ROM.

Accessing library resources

Practicing the Skill

Decide which sources described in this skill you would use to answer each of these questions for a report on constitutional freedoms.

1. During which years did Justice Hugo H. Black serve on the Supreme Court?
2. What is the Equal Access Act?
3. How did the public react to the *Tinker* case?
4. Which films have been censored and why?

Application Activity

Using your library, research the following: Is the Federal Communications Commission involved with censorship? What standards does it apply to radio and television programs and why? Present the information you find to the class.

GO TO

The Glencoe Skillbuilder Interactive Workbook, Level 2 provides instruction and practice in key social studies skills.

Assessment and Activities

GOVERNMENT Online

Self-Check Quiz Visit the *United States Government: Democracy in Action* Web site at gov.glencoe.com and click on ***Chapter 13–Self-Check Quizzes*** to prepare for the chapter test.

Reviewing Key Terms

From the following list, choose the term that fits each situation described.

shield laws	heckler's veto
pure speech	seditious speech
prior restraint	picketing
libel	symbolic speech

1. Spectators threaten violence against an unpopular demonstration and, in order to keep peace, authorities break up the demonstration.
2. A government official tells a reporter that she cannot publish a story that might compromise national security.
3. A group burns an American flag to show its objection to a government policy.
4. A newspaper publishes an untrue story that damages the reputation of a local resident.
5. Animal rights activists parade outside a store that sells furs and attempt to convince customers not to enter the establishment.
6. An individual urges a group to fight the police rather than obey a police order to disperse.
7. A person stands in front of a group and states her opinion on an issue.
8. A reporter is protected against being forced to disclose a source of information in court.

Chapter Summary

The First Amendment Freedom of . . .

Religion The **establishment clause** prevents Congress from creating a state-sponsored religion. The **free exercise clause** prevents the government from impeding the religious beliefs of Americans—but not necessarily the way those beliefs are practiced.

Speech
Protected:
- pure speech
- symbolic speech (in most cases)

Not protected:
- seditious speech (treasonous speech)
- defamatory speech (slander and libel)
- "fighting words"

Press A free press is invaluable in a democracy to ensure that citizens remain well informed of government actions. In general, the press is regulated when reporting on matters of national security or to ensure a fair trial.

Assembly The right of assembly is closely related to the right of free speech. However, assembly in public areas must usually be cleared with a permit to ensure public safety.

Recalling Facts

1. List four freedoms the First Amendment protects.
2. List four examples of how religion remains part of government.
3. Identify kinds of speech the First Amendment protects and kinds it does not protect.
4. How might freedom of the press interfere with an individual's right to a fair trial?
5. Why may government require that groups first obtain permits to parade or demonstrate?

Understanding Concepts

1. **Civic Participation** Analyze the Supreme Court's decision in *Gitlow* v. *New York*. How did it support the intent of the Fourteenth Amendment to define citizenship and civic participation?
2. **Civil Liberties** Why did the court treat a Minneapolis newspaper differently than a Hazelwood school newspaper?

Critical Thinking

1. **Demonstrating Reasoned Judgment** Should the First Amendment protect those who publish stolen government documents? Explain.

2. **Recognizing Ideologies** The Court ruled out laws requiring the teaching of creationism, but not the teaching of creationism itself. Does teaching creationism in public schools serve to "endorse a particular religious doctrine"? Explain.
3. **Making Comparisons** Use a graphic organizer like the one below to compare the three tests for limiting seditious speech.

Limits on Seditious Speech		
relaxes limits	sets standard	toughens limits

Analyzing Primary Sources

Civil rights leader Malcolm X advocated a more directly confrontational approach to acquiring African American rights. In this 1964 speech, he discussed how African Americans would gain their full constitutional right to vote. Read the excerpt and answer the questions that follow.

"If we don't do something real soon, I think you'll have to agree that we're going to be forced either to use the ballot or the bullet. It's one or the other in 1964. It isn't that time is running out—time has run out! 1964 threatens to be the most explosive year America has ever witnessed. . . . We will work with anybody, anywhere, at any time, who is genuinely interested in tackling the problem head-on, nonviolently as long as the enemy is nonviolent, but violent when the enemy gets violent."

1. In this excerpt, is Malcolm X advocating the violent overthrow of the government? If so, is his right to say this protected by the constitutional right to free speech?
2. If Malcolm X's speech had led to a violent uprising or attempt to overthrow the government, would you consider him responsible? Would the Court?

Interpreting Political Cartoons Activity

1. Whom do you think the person in the cartoon is representing? Why?
2. What is this person doing?
3. What do his thoughts suggest about the nature of an individual's constitutional rights?

Applying Technology Skills

Using a Web Site Locate the Web site for the Journalism Education Association. Research the association's position on student press rights. Summarize and discuss these rights with your classmates.

Participating in State Government

Locate a copy of your state's constitution, particularly the Bill of Rights. Compare the rights guaranteed in the First Amendment of the U.S. Constitution with the rights protected by your state's Bill of Rights. Prepare a chart or graphic organizer that identifies the similarities and the differences between the two documents.