

LESSON FOUR: STUDENT WORKSHEET

LESSONS FACTS/TERMS/CONCEPTS:

Fifth Amendment; 14th Amendment; Procedural Due Process; Substantive Due Process; Fundamental Rights; Right to Privacy; Life, Liberty or Property; *Goss v. Lopez*; *Roe v. Wade*; *Griswold v. Connecticut*; Right to Notice; Right to Hearing/Contest Charges; Private v. Public; National v. State Governments; In-School v. Out-of-School Suspensions; *Infer; Laney v. Farley*; Nomination of Judges.

DUE PROCESS CLAUSES:

The Fifth Amendment: "No person shall... be deprived of life, liberty, or property, without due process of the law"

The 14th Amendment: "No State shall... deprive any person of life, liberty, or property, without due process of law"

TWO TYPES OF DUE PROCESS:

1) **Procedural Due Process** -- The protections provided to those accused of a crime or other offense are procedural due process. At a minimum, it means the accused is to be provided notice of the charges and a right to contest or challenge them. The amount of procedural due process to be provided depends on the seriousness of the offense (the degree to which "life, liberty, or property" may be denied if the accused is found guilty). More due process (hearings, right to appeal, etc.) is required for someone accused of murder than for a minor offense such as jaywalking.

2) **Substantive Due Process** -- The U.S. Supreme Court has determined that there are some individual rights that are not specifically identified/referenced in the Constitution, but exist as **fundamental rights** because they can be inferred from other rights stated in the Constitution. One example is the "**right to privacy**." In *Griswold v. Connecticut* (1965) the Court held that state laws that ban the sale of contraceptive devices violate this right, and in *Roe v. Wade* (1973) the Court held that state laws that ban all abortions violate this right.

SCHOOL SUSPENSION CASE:

Ann Instigator and Billy Bystander, students at George Washington High School, are in the school cafeteria when there is a disturbance. Food is thrown, students start fighting, and school property is ultimately damaged before the situation is brought to an end by some teachers. Following the incident several students, including Ann and Billy, are taken to the principal's office by one of the teachers on lunch duty. The teacher informs the principal that the students, including Ann and Billy, were involved in the disturbance. The principal suspends all of the students for ten days. Ann was in fact involved in a small part of the disturbance, but Billy was not involved at all. The students were not permitted to explain this to the principal. The students sued, challenging their suspension and claiming that their due process rights were violated because they were not given a chance to present their side of the situation. The school argued that it must have broad authority over student behavior and that it would be too much of a burden to require a hearing each time a student is suspended.

LESSON FOUR: OPTIONAL STUDENT ACTIVITIES

ROE V. WADE:

The Supreme Court's holding that there are certain "fundamental rights" that are not specifically set forth in the Constitution (such as freedom of speech) but nevertheless are granted protection as if they were, is controversial. In fact, much of the debate between the political left and right has been over such rulings, particularly the 1973 *Roe v. Wade* decision that ruled that certain state laws prohibiting abortion violated the "fundamental right" of a woman's right to privacy. While many people support the Court's decision, many would like to see the decision overruled or restricted.

Research the *Roe* decision, and state whether you agree or disagree with the Court's ruling.

Research the major Supreme Court rulings on abortion since *Roe* and state whether you agree or disagree, including the Court's recent ruling in *Gonzales v. Carhart* (2007) that allowed a federal ban on partial birth abortion. Do you believe there is a fundamental right to privacy? If so, do you believe it includes the right to an abortion?

PROCEDURAL DUE PROCESS IN THE NEWS: ESSAY

In June of 2008, the Supreme Court ruled that foreign terrorism suspects held at the U.S. prison at Guantánamo Bay in Cuba have the right to challenge their imprisonment in civilian (non-military) courts (*Boumediene v. Bush*). The Court ruled in 2004 that a U.S. citizen captured in Afghanistan during a military conflict with the Taliban was entitled to a hearing in court, reasoning that although Congress authorized the detention (imprisonment) of combatants in the circumstances alleged in this case, due process demands that a citizen held in the United States as an enemy combatant be given the opportunity to present his case at a hearing to challenge his confinement (*Hamdi v. Rumsfeld*). Do you think there should be a difference made between U.S. citizens' and non-citizens' rights to challenge their imprisonment by U.S. agencies? Should it make a difference whether they are accused of terrorist activities during a time of war? What interests do you think should be balanced when determining what sort of process detainees have a right to? Others have said that civil liberties such as due process rights are even more important during times of war – do you agree? Why or why not?

SUBSTANTIVE DUE PROCESS: ESSAY

In *Meyer v. Nebraska* (1923), the Supreme Court wrote that liberty "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

State whether you agree or disagree with this statement and why. Consider the balance courts try to reach between individual rights, the rights of others, and the responsibility of the law to govern society and provide order. If too many activities are considered fundamental and constitutionally protected, where should the law draw the line between protected activities and actions that should be made illegal?

What other controversial "hot button" topics related to individual liberty are currently being debated in society today? Do you feel they should be included with this list from *Meyer*? Why or why not?