*What if…*

Barron from *Barron v. Baltimore* hosted a dinner party and invited two from column A and two from column B? What would the evening be like? What would they talk about? What would they eat…?! Create a comic strip answering these questions. Keep the following in mind:

1. Focus on selective incorporation based on the Due Process clause of the 14th Amendment
2. People like to talk about what they have in common…how they are connected to each other (ever heard of 6 degrees from Kevin Bacon?) Help the guests discover what they have in common with each other and their host
3. Your comic should not only discuss the connection between these cases (the guests) but also the significance of the cases (guests) themselves.
4. Be creative. Don’t stress out. This should be enjoyable!

|  |  |
| --- | --- |
| A | B |
| *-Gitlow v. New York*  *-Cantwell v. Connecticut*  *- Betts v. Brady*  *-Gideon v. Wainwright* | *- Wolf v. Colorado*  *-Texas v. Johnson*  *-Mapp v. Ohio*  *-Miranda v. Arizona* |

***Gitlow v. New York***

**Facts of the Case**

Gitlow, a socialist, was arrested for distributing copies of a "left-wing manifesto" that called for the establishment of socialism through strikes and class action of any form. Gitlow was convicted under a state criminal anarchy law, which punished advocating the overthrow of the government by force. At his trial, Gitlow argued that since there was no resulting action flowing from the manifesto's publication, the statute penalized utterances without propensity to incitement of concrete action. The New York courts had decided that anyone who advocated the doctrine of violent revolution violated the law.

**Question**

Is the New York law punishing advocacy to overthrow the government by force an unconstitutional violation of the free speech clause of the First Amendment?

**Conclusion**

Threshold issue: Does the First Amendment apply to the states? Yes, by virtue of the liberty protected by due process that no state shall deny (14th Amendment). On the merits, a state may forbid both speech and publication if they have a tendency to result in action dangerous to public security, even though such utterances create no clear and present danger. The rationale of the majority has sometimes been called the "dangerous tendency" test. The legislature may decide that an entire class of speech is so dangerous that it should be prohibited. Those legislative decisions will be upheld if not unreasonable, and the defendant will be punished even if her speech created no danger at all.

***Cantwell v. Connecticut***

**Facts of the Case**

Jesse Cantwell and his son were Jehovah's Witnesses; they were proselytizing[[1]](#footnote-1) a predominantly Catholic neighborhood in Connecticut. The Cantwells distributed religious materials by travelling door-to-door and by approaching people on the street. After voluntarily hearing an anti-Roman Catholic message on the Cantwells' portable phonograph, two pedestrians reacted angrily. The Cantwells were subsequently arrested for violating a local ordinance requiring a permit for solicitation and for inciting a breach of the peace.

**Question**

Did the solicitation statute or the "breach of the peace" ordinance violate the Cantwells' First Amendment free speech or free exercise rights?

**Conclusion**

Yes. In a unanimous decision, the Court held that while general regulations on solicitation were legitimate, restrictions based on religious grounds were not. Because the statute allowed local officials to determine which causes were religious and which ones were not, it violated the First and Fourteenth Amendments. The Court also held that while the maintenance of public order was a valid state interest, it could not be used to justify the suppression of "free communication of views." The Cantwells' message, while offensive to many, did not entail any threat of "bodily harm" and was protected religious speech.

***Betts v. Brady***

**Facts of the Case**

Betts was indicted for robbery in Maryland. An indigent[[2]](#footnote-2), he was unable to afford counsel and requested one be appointed for him. The judge in the case denied the request, and Betts subsequently pled not guilty while maintaining he had a right to counsel and arguing his own defense.

**Question**

Does denying a request for counsel for an indigent defendant violate the due process clause of the Fourteenth Amendment which embraces the defendant's right to counsel guaranteed by the Sixth Amendment?

**Conclusion**

No. The Court ruled that the previously discovered right to counsel provided by the Sixth Amendment does not compel states to provide counsel to any defendant. Justice Owen Roberts' opinion asserted that the right to counsel merely prevented the state from interfering in a defendant’s request for representation rather than requiring a state to offer counsel.

***Gideon v. Wainwright***

**Facts of the Case**

Gideon was charged in a Florida state court with a felony for breaking and entering. He lacked funds and was unable to hire a lawyer to prepare his defense. When he requested the court to appoint an attorney for him, the court refused, stating that it was only obligated to appoint counsel to indigent defendants in capital cases. Gideon defended himself in the trial; he was convicted by a jury and the court sentenced him to five years in a state prison.

**Question**

 Did the state court's failure to appoint counsel for Gideon violate his right to a fair trial and due process of law as protected by the Sixth and Fourteenth Amendments?

**Conclusion**

In a unanimous opinion, the Court held that Gideon had a right to be represented by a court-appointed attorney and, in doing so, overruled its 1942 decision of *Betts v. Brady*. In this case the Court found that the Sixth Amendment's guarantee of counsel was a fundamental right, essential to a fair trial, which should be made applicable to the states through the Due Process Clause of the Fourteenth Amendment. Justice Black called it an "obvious truth" that a fair trial for a poor defendant could not be guaranteed without the assistance of counsel. Those familiar with the American system of justice, commented Black, recognized that "lawyers in criminal courts are necessities, not luxuries."

***Wolf v. Colorado***

**Facts of the Case**

 The Colorado Supreme Court upheld a number of convictions in which evidence was admitted that would have been inadmissible[[3]](#footnote-3) in a prosecution for violation of a federal law in a federal court.

**Question**

Were the states required to exclude illegally seized evidence from trial under the Fourth and Fourteenth Amendments?

**Conclusion**

In a 6-to-3 decision, the Court held that the Fourteenth Amendment did not subject criminal justice in the states to specific limitations and that illegally obtained evidence did not have to be excluded from trials in all cases. The Court reasoned that while the exclusion of evidence may have been an effective way to deter unreasonable searches, other methods could be equally effective and would not fall below the minimal standards assured by the Due Process Clause. Civil remedies, such as "the internal discipline of the police, under the eyes of an alert public opinion," were sufficient.

***Texas v. Johnson***

**Facts of the Case**

In 1984, in front of the Dallas City Hall, Gregory Lee Johnson burned an American flag as a means of protest against Reagan administration policies. Johnson was tried and convicted under a Texas law outlawing flag desecration. He was sentenced to one year in jail and assessed a $2,000 fine. After the Texas Court of Criminal Appeals reversed the conviction, the case went to the Supreme Court.

**Question**

Is the desecration of an American flag, by burning or otherwise, a form of speech that is protected under the First Amendment?

**Conclusion**

Yes. In a 5-to-4 decision, the Court held that Johnson's burning of a flag was protected expression under the First Amendment. The Court found that Johnson's actions fell into the category of expressive conduct and had a distinctively political nature. The fact that an audience takes offense to certain ideas or expression, the Court found, does not justify prohibitions of speech. The Court also held that state officials did not have the authority to designate symbols to be used to communicate only limited sets of messages, noting that "[i]f there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

***Mapp v. Ohio***

**Facts of the Case**

Dollree Mapp was convicted of possessing obscene materials after an admittedly illegal police search of her home for a fugitive. She appealed her conviction on the basis of freedom of expression.

**Question**

Were the confiscated materials protected by the First Amendment? (May evidence obtained through a search in violation of the Fourth Amendment be admitted in a state criminal proceeding?)

**Conclusion**

Yes. The Court brushed aside the First Amendment issue and declared that "all evidence obtained by searches and seizures in violation of the Constitution is, by [the Fourth Amendment], inadmissible in a state court." Mapp had been convicted on the basis of illegally obtained evidence. This was an historic -- and controversial -- decision. It placed the requirement of excluding illegally obtained evidence from court at all levels of the government. The decision launched the Court on a troubled course of determining how and when to apply the exclusionary rule.

***Miranda v. Arizona***

**Facts of the Case**

The Court was called upon to consider the constitutionality of a number of instances, ruled on jointly, in which defendants were questioned "while in custody or otherwise deprived of [their] freedom in any significant way." In *Vignera v. New York*, the petitioner was questioned by police, made oral admissions, and signed an inculpatory[[4]](#footnote-4) statement all without being notified of his right to counsel. Similarly, in *Westover v. United States*, the petitioner was arrested by the FBI, interrogated, and made to sign statements without being notified of his right to counsel. Lastly, in *California v. Stewart*, local police held and interrogated the defendant for five days without notification of his right to counsel. In all these cases, suspects were questioned by police officers, detectives, or prosecuting attorneys in rooms that cut them off from the outside world. In none of the cases were suspects given warnings of their rights at the outset of their interrogation.

**Question**

Does the police practice of interrogating individuals without notifying them of their right to counsel and their protection against self-incrimination violate the Fifth Amendment?

**Conclusion**

Yes. The Court held that prosecutors could not use statements stemming from custodial interrogation[[5]](#footnote-5) of defendants unless they demonstrated the use of procedural safeguards "effective to secure the privilege against self- incrimination." The Court noted that "the modern practice of in-custody interrogation is psychologically rather than physically oriented" and that "the blood of the accused is not the only hallmark of an unconstitutional inquisition." The Court specifically outlined the necessary aspects of police warnings to suspects, including warnings of the right to remain silent and the right to have counsel present during interrogations.

**For each case answer the following questions:**

1. **Is this selective incorporation? If yes explain. If no…explain.**
2. **What was the rationale for the decision of each case (please be specific)?**

*Gitlow v. New York*

1)

2)

*Cantwell v. Connecticut*

1)

2)

*Betts v. Brady*

1)

2)

*Gideon v. Wainwright*

1)

2)

*Wolf v. Colorado*

1)

2)

*Texas v. Johnson*

1)

2)

*Mapp v. Ohio*

1)

2)

*Miranda v. Arizona*

1)

2)

1. To attempt to get others to convert to your faith [↑](#footnote-ref-1)
2. Poor. In need [↑](#footnote-ref-2)
3. Not allowed [↑](#footnote-ref-3)
4. Incriminating [↑](#footnote-ref-4)
5. A situation whereby a suspect’s freedom of movement is restrained even if they are not under arrest [↑](#footnote-ref-5)