COMPONENTS OF A CONSTITUTIONAL CONVERSATION

1. Building a historical foundation through storytelling

2. Learning how to interpret the Constitution like a constitutional lawyer

3. Developing the skills of civil dialogue and reflection
CONSTITUTIONAL CONVERSATIONS AND CIVIL DIALOGUE

THE CONSTITUTION
• The Preamble

**Articles I through III:** Basic structure of the national government:

• **Article I:** establishes the national government’s legislative branch—Congress.
• **Article II:** establishes the national government’s executive branch—headed by a single president.
• **Article III:** establishes the national government’s judicial branch—the federal judiciary.
• **Article IV**: addresses the relationship between the states and their citizens, how to handle the admission of new states, and how to govern federal territories. (It also includes the infamous Fugitive Slave Clause.)
• **Article V**: sets out the process for amending the Constitution.
• **Article VI**: establishes the supremacy of national law over the laws of the states and it bans religious tests for national office.
• **Article VII**: sets out the process for ratifying the Constitution.
The Amendments

Bill of Rights: The first 10 amendments protect free speech, a free press, religious freedom, and the right to a jury trial—among many other rights.

Reconstruction Amendments:

• 13th Amendment: abolished slavery.
• 14th Amendment: wrote the Declaration of Independence’s promise of freedom and equality into the Constitution.
• 15th Amendment: promised to end racial discrimination in voting.

The remaining amendments altered the Constitution in ways both big and small. To give just one example, the 19th Amendment protected women against discrimination at the ballot box.
Discussion Question:

WHAT DO YOU THINK ARE SOME OF THE MOST IMPORTANT IDEAS AND PRINCIPLES ENSRHINED IN THE CONSTITUTION? WHY?
THINK LIKE A CONSTITUTIONAL LAWYER

The key is to try to separate your political views (what should be done—a policy question) from your constitutional views (what can be done—a constitutional question).

• **Policy question:** Should a public school principal search a student’s locker?

• **Constitutional question:** Does the Fourth Amendment restrict the power of a government employee—like a public school principal—from searching a student’s locker?
• **Text**: The interpreter looks to the meaning of the Constitution’s words, relying on common understandings of what the words meant at the time that the language was added to the Constitution.

• **History**: With this form of argument, the interpreter looks to the historical context of when the Constitution’s text was drafted and ratified to shed light on its meaning.

• **Structure**: With this form of argument, the interpreter reads the Constitution holistically and tries to derive any structural principles embodied in its text.

• **Doctrine**: With this form of argument, the interpreter applies precedents established in earlier cases to new cases.

• **Prudence** (or Consequences): With this form of argument, the interpreter seeks to balance the costs and benefits of a particular ruling, including its consequences and any limits to a court’s power or competence in a particular constitutional area.

• **Ethos**: With this form of argument, the interpreter looks to the American ethos—the nation’s traditions, its laws, and its practices—to decide constitutional issues.
TIPS FOR ENGAGING IN CONSTITUTIONAL CONVERSATIONS

• **First:** Be sure that you’re asking constitutional questions, not policy questions.

• **Second:** Try to steer clear of “yes or no” questions. They rarely move the conversation forward.

• **Third:** Whenever possible, incorporate scholarly work into your answers. Scholarly evidence can help support your point. So, do your research. Take notes. And highlight information as you read through the materials.
Applying the skills that we just learned, how do we analyze the case *Brown v. Board of Education* like a constitutional lawyer? What are the different constitutional arguments that you might make in the case?
CONSTITUTIONAL CONVERSATIONS AND CIVIL DIALOGUE

ARGUMENTS AT THE SUPREME COURT
JUSTICE STEPHEN BREYER

CONSTITUTIONAL CONVERSATIONS AND CIVIL DIALOGUE
The justices don’t shout at each other. They aren’t rude to one another. And they don’t put each other down.
Their conversations are civil, polite, and professional. And they listen to one another—even though they might strongly disagree.
Advice for an argument: Stay calm and listen to others.