What Rights Should the Accused Have?

Police file of Ernesto Miranda. The U.S. Supreme Court case *Miranda v. Arizona (1966)* had a significant impact on law enforcement and the rights of the accused.

(PHOTOS/ILLUSTRATIONS. ARIZONA DEPARTMENT OF LIBRARY ARCHIVES AND PUBLIC RECORDS, PHOENIX, AZ.)

**Supporting Questions- These are used to structure and develop the inquiry**

1. How are the rights of the accused defined by the U.S. Bill of Rights?
2. How has the Fourteenth Amendment expanded due process rights?
3. How does the law address the rights of victims?
## Overview - Rights of the Accused Inquiry

### What Rights Should the Accused Have?

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<th>VA SOL Content Standard</th>
<th>GOVT.11: The student will apply social science skills to understand civil liberties and civil rights</th>
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### Portrait of a Graduate

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<td>Creative and Critical Thinker</td>
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<td>Ethical and Global Citizen</td>
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### Introducing the Question

**HOOK:** Using the *Chicago Tribune* article, students will discuss how to minimize injustices within the justice system.

### Supporting Questions - These are Used to Structure and Develop the Inquiry

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<td>How has the Fourteenth Amendment expanded due process rights?</td>
<td>How does the law address the rights of victims?</td>
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**Formative Performance Task**

- Students complete a discussion of listed rights and analysis of Supreme Court decisions related to those rights. Students will read the Bill of Rights and decisions of Supreme Court cases which have further defined the rights of the accused found within the Bill of Rights and complete a chart summarizing their findings.

**Featured Sources**

- A. Bill of Rights
- B. *Miranda v. Arizona*
- C. *Mapp v. Ohio*
- D. *Gideon v. Wainwright*

**Formative Performance Task**

- Students will examine a variety of sources to define due process and create a web diagram explaining the significance of the 14th Amendment on the expansion of due process rights to the states.

**Featured Sources**

- A. Video: Due Process
- B. Video: 14th Amendment
- C. 14th Amendment

**Formative Performance Task**

- Students will examine the rights of victims and debate the balance between the rights of victims and the rights of the accused. Students will formulate a response to the question using evidence to support their claim.

**Featured Sources**

- A. Victims’ Rights reading
- B. Victims vs. Suspects article

### Summative Performance Task

**ARGUMENT** Write an editorial that addresses the compelling question, using specific claims and relevant evidence.

**EXTENSION:** Create a visual diagram/graphic organizer that outlines the rights of the accused.

### Taking Informed Action

Taking informed action can be related to the summative assessment. Teachers may opt to assign students one task or have students choose a method by which to take informed action. These include informing fellow citizens about their rights, lobbying for rights of competing groups, collecting primary evidence from stakeholders and sending their letter to the editor, evaluate the rights of the accused in multiple nations.
Optional Background Resources


- Chapter 20, Section 1: Due Process of Law
- Chapter 20, Section 2: Freedom and Security of the Person
- Chapter 20, Section 3: Rights of the Accused
- Chapter 20, Section 4: Punishment
- Chapter 21, Section 2: Equality Before the Law

FCPS Library Databases:


Websites:

- [www.supremecourtus.gov](http://www.supremecourtus.gov)
- [www.findlaw.com/casecode/supreme.html](http://www.findlaw.com/casecode/supreme.html)
- [www.law.cornell.edu](http://www.law.cornell.edu)
- [www.usdoj.gov](http://www.usdoj.gov)

General Types of Supports

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Introducing the Compelling Question – The Hook (20 - 30 minutes)

<table>
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<tr>
<th>Compelling Question</th>
<th>What Rights Should the Accused Have?</th>
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INSTRUCTIONS/PROCESS FOR INTRODUCING THE COMPELLING QUESTION:

“What Rights Should the Accused Have?” asks students to examine the legal guidelines to protect the accused and evaluate the effectiveness of those guidelines. To help get students warmed up for the inquiry, it will be important to have them start thinking about the concept of the justice system and its accomplishments and drawbacks.

1. Students read “Cook County Judge Overturns Murder, Attempted Rape Convictions” (may assign article for homework prior to class to conserve time).
2. In small groups (3-4 students), discuss the questions that follow.
3. As a class, generate a list of the rights of the accused (on the board, an overhead, google doc, etc.) This list will be revisited later in the lesson.

Cook County judge overturns murder, attempted rape convictions

Daniel Andersen was convicted of killing Cathy Trunko. A judge vacated his convictions July 20, 2015, eight years after Andersen was released from prison.

(Provided by police)
New trial ordered for man who spent more than 27 years in prison for murder.

Daniel Andersen wrapped an arm around his attorney, wiped tears from his eyes and struggled to maintain his composure Monday after a Cook County judge vacated his convictions for the 1980 murder and attempted rape of a childhood friend.

"Oh, my God!" Andersen, 55, said as he embraced Sheila Murphy, his attorney at his original trial who later became a judge. Murphy held his hand and led him from the courtroom. Family members then got their chance to hug him.

The ruling comes eight years after Andersen was freed after spending more than 27 years in prison for the murder of Cathy Trunko, a childhood friend who wanted to become an elementary school teacher. Trunko, 20, was stabbed in the chest three times and left to die on the sidewalk three blocks from her home in the Back of the Yards neighborhood.

Two days later, a bloody knife was found about a block away. After a drunken Andersen, then 19, was arrested later that month for disorderly conduct, he allegedly confessed to the murder after spending more than 16 hours in custody. He identified the knife in his confession as the murder weapon.

At trial, prosecutors said the blood type on the knife matched Trunko's. Andersen was convicted by a jury and sentenced to 55 years in prison.
But three decades later, advanced DNA testing found that neither Andersen's nor Trunko's blood was on the knife, meaning it wasn't the murder weapon after all. And DNA tests of Trunko's fingernail clippings revealed two male profiles — neither matched Andersen, however.

In his ruling, Judge Alfredo Maldonado ordered a new trial, calling the DNA evidence an "extraordinary compelling fact" and finding that a jury would likely return a different result if the case were retried.

A spokeswoman for the state's attorney's office said it is evaluating the ruling and hasn't yet decided whether to seek Andersen's retrial.

At trial, Andersen's lawyer had argued that the confession was coerced.

"I'm innocent; I didn't kill that girl," a Tribune account of his sentencing quoted Andersen as telling the judge.

On Monday, Andersen said he was grateful that his parents were still alive to hear a judge throw out his conviction, calling it "overwhelming" and "amazing."

"I wanted justice ever since it happened," he said. "I'm amazed that I did get justice today — that the system, flawed as it may be ... worked."

Andersen was represented by attorneys from Northwestern University School of Law's Center on Wrongful Convictions of Youth after his cousin, a graduate of the law school, had brought the case to its attention.

"This is a good day, but this is also a tragedy," said Joshua Tepfer, one of Andersen's attorneys who is now at the Exoneration Project at the University of Chicago. "You can't forget the family who lost a victim and never got justice."

Murphy, Andersen's original trial attorney, said the case had haunted her for years.

"The sad thing is the killer is still out there," said Murphy, who expressed hope that Chicago police and prosecutors will use the DNA results to try to find Trunko's killer.
Andersen was released from prison in 2007 but has struggled to begin a new life, in part because he must register as a sex offender, a condition of his original conviction his attorneys hope to quickly remove.

He had opted for a jury trial three decades ago, convinced jurors would see he wasn't guilty. As a result, Andersen said he expected the worst when he walked into a courtroom Monday at the Leighton Criminal Court Building, where he had been convicted decades earlier.

Andersen said he felt sorry for Trunko's family, who "had closure all these years, and now that's been taken away from them."

Andersen, who lives in Decatur, said his long imprisonment has cost him dearly, most importantly the chance to have children of his own.

"Now I'm 55. It's not happening. I don't have kids," he said with a pained look. "It's heartbreaking."

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**Suggested Discussion Questions for Chicago Tribune article:**

- According to the article, why was Anderson’s conviction overturned?
- In what way(s) did the legal system fail from Anderson’s perspective?
- In what way(s) did the legal system fail from Trunko’s family’s perspective?
- What rights were Anderson entitled to once accused of the crime? What guarantees these rights? In what way(s) does this support the idea that people are “innocent until proven guilty”?
- Are there any other rights accused persons should be entitled to?
- What rights do victims have?
- How can the rights of the accused and the rights of victims be balanced? Should they be balanced?
- What contributes to wrongful convictions in the United States today? Can anything be done to address this? If so, what can be done?
Supporting Question 1 (approximately 75 minutes)

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B. *Miranda v. Arizona*  
C. *Mapp v. Ohio*  
D. *Gideon v. Wainwright* |

**Process and Formative Performance Task**

Describe the formative task here including a suggested instructional approach

1. In small groups, have students highlight the words in the Bill of Rights that provide rights to accused person.
2. As a class, adjust the list created in the hook. Add amendment numbers to the rights listed that are guaranteed by the Bill of Rights, and add any right (and amendment number) that was not previously listed. (There may be rights that don’t have a corresponding amendment number.)
3. Have students examine the 3 cases: *Miranda v. Arizona*, *Mapp v. Ohio*, and *Gideon v. Wainwright* to complete the chart found in Appendix A.
4. Teacher led discussion of findings as a class.
Featured Sources

**FEATURED SOURCE A**

**Bill of Rights**

**Amendment I**

Congress should not say that the nation has only one religion, or tell people they cannot practice a religion of their own choice; it should not tell people what to say or what to write in the press; it should not tell people they can get together to protest peacefully, and to write to the government to complain about a decision that has been made.

**Amendment II**

The right for the government to organize an army, and for individual citizens to own and use guns, should not be taken away.

**Amendment III**

No soldier, when there is peace, should live in a house without the owner saying it’s okay. If there is a war, then the soldier needs to follow the law about living in other people’s houses.

**Amendment IV**

Search warrants (specific permission) shall be necessary for any search of a person’s house or belongings. Officials must present good evidence as to why the warrant should be given.

**Amendment V**

The rights of a person accused of a crime must include an official statement about the crime, and a person may not be tried twice for the same specific criminal incident. All of the steps of the must be followed in order to punish a person or take away their property.

**Amendment VI**

A person accused of a crime has the rights to a fair trial by a jury, to question witnesses for or against him or her, and to be provided a lawyer if he or she cannot afford one.

**Amendment VII**

In civil suits (not criminal) that involve property more than twenty dollars, a jury trial may be requested.

**Amendment VIII**

Bail should never be set too high, and punishments should never be cruel and unusual.

**Amendment IX**

Any right not listed in the Bill of Rights is not necessarily denied to the people.

**Amendment X**

Any power not given to the United States or to the individual states is reserved for the people.
Ernesto Miranda was a poor man living in Phoenix, Arizona in 1963. A Phoenix woman was kidnapped and raped. She identified Miranda in a police lineup. Miranda was arrested, charged with the crimes, and questioned by the police for two hours. The police officers questioning him did not inform him of his Fifth Amendment right against self-incrimination or of his Sixth Amendment right to the assistance of an attorney. The Fifth Amendment states that no person “shall be compelled in any criminal case to be a witness against himself. . . .” The Sixth Amendment states that, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

As a result of the questioning, Miranda confessed in writing to the crimes. His statement also said that he was aware of his right against self-incrimination. During his trial, the prosecution used his confession to obtain a conviction, and he was sentenced to 20 to 30 years in prison on each count.

Miranda appealed his case to the Arizona Supreme Court. His attorney argued that his confession should have been excluded from trial because he had not been informed of his rights, nor had an attorney been present during his interrogation. The police officers involved admitted that they had not given Miranda any explanation of his rights. The state argued, however, that because Miranda had been convicted of a crime in the past, he must have been aware of his rights. The Arizona Supreme Court denied Miranda’s appeal and upheld his conviction.

The case comes down to this fundamental question: What is the role of the police in protecting the rights of the accused, as guaranteed by the Fifth and Sixth Amendments to the Constitution? The Supreme Court of the United States had made previous attempts to deal with these issues. The Court had already ruled that the Fifth Amendment protected individuals from being forced to confess. They had also held that persons accused of serious crimes have a fundamental right to an attorney, even if they cannot afford one. In 1964, after Miranda’s arrest, but before the Court heard his case, the Court ruled that when an accused person is denied the right to consult with his attorney, his or her Sixth Amendment right to the assistance of a lawyer is violated. But do the police have an obligation to ensure that the accused person is aware of these rights before they question that person?

In 1965, the Supreme Court of the United States agreed to hear Miranda’s case. At the same time, the Court agreed to hear three similar cases. The Court combined all the cases into one case. Since Miranda was listed first among the four cases considered by the Court, the decision came to be known by that name. The decision in *Miranda v. Arizona* was handed down in 1966.

**Questions to Consider (optional)**

1. **What rights of the accused does the Fifth Amendment protect? The Sixth Amendment?**
2. **If the police had informed Ernesto Miranda of these rights, do you think he might have done anything differently?**
3. **Individual rights must be balanced against the values of society at large. For instance, the right to free speech must be balanced against our desire for an orderly society. This is why demonstrations, while protected by the First Amendment, can have certain restrictions placed on them. In Miranda, what values or goals of society must be balanced against the right against self-incrimination and the right to counsel?**
4. **You are probably learning about the rights of the accused in a government or history class. Some would argue that it is the individual's responsibility to know what his or her rights are under the Constitution, and the government can assume that accused persons know their rights without
informing them after they are arrested. Do you think the government should have to inform each individual who is arrested of his or her rights? Why or why not?

Summary of the Decision:

In a 5-4 opinion, the Supreme Court ruled in favor of Miranda. The majority opinion, written by Chief Justice Earl Warren, concluded that defendants arrested under state law must be informed of their constitutional rights against self-incrimination and to representation by an attorney before being interrogated when in police custody. Justices Clark, Harlan, Stewart and White dissented.

In their majority opinion, the justices explained that the Fifth Amendment right against self-incrimination is fundamental to our system of justice, and is “one of our Nation’s most cherished principles.” This guarantee requires that only statements freely made by a defendant may be used in court. The justices described some of the techniques used by police officers in interrogations. They observed that “the modern practice of in-custody interrogation is psychologically rather than physically oriented,” and cited the advantage police officers hold in custodial interrogations (interrogations that take place while the subject is in police custody). Because of these advantages, they concluded that “the very fact of custodial interrogation exacts a heavy toll on individual liberty, and trades on the weakness of individuals.”

The Court ruled that in order to reconcile the necessary practice of custodial interrogations with the guarantees of the Fifth Amendment, police must ensure that defendants are aware of their rights before they are interrogated in custody. Because the right against self-incrimination is so important to our system of justice, a case by case determination made by police officers of whether each defendant understands his or her rights is not sufficient. Before interrogating defendants in police custody, they must be warned 1) that they have the right to remain silent 2) that anything they say may be used against them in court, 3) that they have the right to an attorney, either retained by them or appointed by the court, and 4) that they may waive these rights, but they retain the right to ask for an attorney any time during the interrogation, at which point the interrogation can only continue in the presence of a lawyer.

The Supreme Court reasoned that because the right against self-incrimination is so fundamental, and because it is so simple to inform defendants of their rights, any statements made by defendants during a custodial interrogation in which the defendant has not been read his “Miranda rights” are inadmissible in both state and federal courts.

Justice Harlan wrote the main dissent. He argued that the newly created rules did not protect against police brutality, coercion or other abuses of authority during custodial interrogations because officers willing to use such illegal tactics and deny their use in court were “equally able and destined to lie as skillfully about warnings and waivers.” Instead, he predicted that the new requirements would impair and substantially frustrate police officers in the use of techniques that had long been considered appropriate and even necessary, thus reducing the number of confessions police would be able to obtain. He concluded that the harmful effects of crime on society were “too great to call the new rules anything but a hazardous experimentation.”
Suspicious that Dollree Mapp might be hiding a person suspected in a bombing, the police went to her home in Cleveland, Ohio. They knocked on her door and demanded entrance. On the advice of her lawyer, Mapp refused to let them in because they did not have a warrant.

After observing her house for several hours and recruiting more officers to the scene, the police forced their way into Mapp's house. When Mapp confronted them and demanded to see their search warrant, one of the officers held up a piece of paper. He claimed it was the search warrant. Mapp grabbed the paper but an officer recovered it and handcuffed Mapp. The police dragged her upstairs and searched her bedroom. Finding nothing there they went to other rooms in the house, including the basement.

As a result of their search of the basement, the police found a trunk containing pornographic books, pictures, and photographs. They arrested Mapp and charged her with violating an Ohio law against the possession of obscene materials. At the trial the police officers did not show Mapp and her attorney the alleged search warrant or explain why they refused to do so. Nevertheless, the court found Mapp guilty and sentenced her to jail.

Mapp and her attorney appealed the case to the Supreme Court of Ohio. Mapp's attorney argued that because the police had no warrant, their search of her basement was illegal. Because the search was illegal, he said, the evidence gained from the search was also illegal. Illegal evidence should not have been allowed in Mapp's trial. In the ruling, the Court disagreed and said that because the evidence was taken peacefully from the trunk, rather than by force from Mapp, it was legal. As a result, Mapp's appeal was denied and her conviction upheld.

Mapp then appealed her case to the Supreme Court of the United States. The case came down to this fundamental question: is evidence obtained through a search that violates the Fourth Amendment admissible in state courts? The Fourth Amendment states "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause . . . and particularly describing the place to be searched, and the persons or things to be seized." The Fourth Amendment, however, does not define when a search or seizure becomes "unreasonable". It also does not explain how evidence obtained from an "unreasonable" search should be treated.

Mapp's case was not the first case to ask this kind of question. In several rulings over the hundred years leading up to Mapp the Supreme Court of the United States had tried to answer questions about what, exactly, the Fourth Amendment means. They had agreed that neither federal nor state officials could conduct "unreasonable searches". Furthermore, in Weeks v. United States, they had determined that federal officials could not use evidence obtained in such searches at trial. However, they had not ruled on whether states could use illegally seized evidence to convict a criminal. Some states, including Ohio, felt that they should be able to make their own determination regarding this issue. Doing so would be consistent with historical tradition—states had always supervised the operation of their criminal justice systems.

In 1960 the Supreme Court of the United States agreed to hear Mapp's case and determine whether the Fourth and Fourteenth Amendments, which said the Fourth Amendment applies to the states, prohibited state officials from using evidence obtained in an unreasonable search. The decision in Mapp v. Ohio was handed down in 1961.
Questions to Consider (optional)

1. In your opinion, was Mapp right to not let the police enter her house? Explain your reasoning.

2. The Fourth Amendment states "The right of the people to be secure . . . against unreasonable searches and seizures shall not be violated . . . ." Pretend that you were a justice for the Supreme Court of Ohio. What, if anything, would you find unreasonable in the search of Mapp's house? Explain.

3. The Supreme Court of the United States has to balance the protection of the rights of individuals against the protection of society. If the police had not searched Mapp's house they would never have found the pornography. With this in mind, do you think the rights of Mapp or society should have been more important? Explain.

Summary of the Decision:

In a 5–3 decision,* the Court ruled in favor of Mapp. The majority opinion, written by Justice Clark, applied the exclusionary rule to the states. That rule requires courts to exclude from criminal trials evidence that was obtained in violation of the constitution’s ban on unreasonable searches and arrests. Justice Harlan wrote a dissenting opinion. The majority opinion was based on several earlier decisions that had begun the process of applying federal constitutional protections to state criminal justice systems.

In one of those earlier decisions, the Supreme Court had ruled that the states must be bound by the Fourth Amendment because its guarantees were part of the “due process of law” required of states by the Fourteenth Amendment. That decision essentially required the Fourth Amendment’s provisions, which previously had only applied to the federal government, to apply to the states as well. The justices ruled that since the guarantees of the Fourth Amendment applied to both the federal and state governments, they should be enforced the same way in both federal and state courts. Evidence obtained unlawfully is not admissible in federal court, so it should not be admissible in state courts either.

The justices reasoned that requiring states to obey to the exclusionary rule created “no war between the Constitution and common sense.” They responded to the argument that the exclusionary rule would make it possible for criminals to go free due to police error by pointing out that “the criminal goes free, if he must, but it is the law that sets him free.” The justices stated that the exclusionary rule was necessary to make state authorities abide by the requirements of the Fourth Amendment, for “nothing can destroy a government more quickly than its failure to observe its own laws.” Thus, the Court decided that “the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments.”

In his dissent, Justice Harlan argued that the majority had confronted the wrong issue in its decision. Because Ms. Mapp was convicted under an Ohio statute criminalizing the possession of obscene material, Justice Harlan believed that the “new and pivotal issue” was whether this statute “is consistent with the rights of free thought and expression assured against state action by the Fourteenth Amendment.” Thus, he concluded that the majority had ignored the principles of judicial restraint and stare decisis, and had “reached out” to consider the exclusionary rule issue. According to Justice Harlan, this was a First Amendment case and not an appropriate case for extending the Fourth Amendment’s exclusionary rule to the states. He also concluded that it was wrong to impose the exclusionary rule, designed for the federal criminal process, on the states which, in his view, bore quite different responsibilities in this area of law.

*Justice Stewart wrote a separate opinion that did not address the issue of the exclusionary rule. He voted to reverse Mapp’s conviction solely on First Amendment grounds.
FEATURED SOURCE D

Taken from:
http://landmarkcases.org/en/landmark/cases/gideon_v_wainwright

Between midnight and 8:00 a.m. on June 3, 1961, a burglary occurred at the Bay Harbor Pool Room in Panama City, Florida. In the course of the burglary, a window was smashed and the cigarette machine and jukebox were broken into. A witness claimed to have seen Clarence Earl Gideon in the poolroom early that morning. When Gideon was found nearby with a pint of wine and some change in his pockets, the police arrested him. They charged him with breaking and entering.

Gideon was a semi-literate drifter who could not afford a lawyer. When he appeared at the Florida Circuit Court for trial, he asked the judge to appoint one for him. Gideon argued that the Court should do so because the Sixth Amendment says that everyone is entitled to a lawyer. The judge denied his request, claiming that the state doesn't have to provide a poor person with a lawyer unless "special circumstances" exist. Gideon was left to represent himself. He had been arrested many times before, so he understood some of the legal procedures. However, he did a poor job of defending himself. For instance, his choice of witnesses was unusual—he called the police officers who arrested him to testify on his behalf. He lacked skill in questioning witnesses, which made it difficult for him to present his case.

Gideon was found guilty of breaking and entering and petty larceny, which is a felony in Florida. He was sentenced to five years in a Florida state prison. While there, he began studying law in the prison library. Gideon's study of the law reaffirmed his belief that the Circuit Court's refusal to appoint counsel for him constituted a denial of his rights. With that in mind, he filed a petition with the Supreme Court of Florida for habeas corpus, which is an order to free him because he had been illegally imprisoned. That petition was rejected, but Gideon persevered. From his prison cell, he handwrote a petition asking the Supreme Court of United States to hear his case. The Court allowed him to file it in forma pauperis, or free of charge. After reading the petition, they agreed to hear his case.

When the Supreme Court of the United States agrees to hear a case, it does so because the case "presents questions whose resolution will have an immediate importance far beyond the particular facts and parties involved" (Lewis 25). The justices were interested not simply with the merits of Gideon's case, but with the larger issue of whether poor people charged with noncapital offenses are entitled to a free lawyer in state criminal trials. In a 1942 case, Betts v. Brady, the Court had ruled that in state criminal trials, the state must supply an indigent defendant with a lawyer only if special circumstances exist. These special circumstances include complex charges, incompetence, and illiteracy on the part of the defendant. Gideon did not claim any of these special circumstances, so for the Court to rule in his behalf, they would need to overturn Betts v. Brady. The Supreme Court of the United States asked both sides to present arguments on the issue of "Should Betts v. Brady be overturned"?


Questions to Consider (optional)

1. What were the charges against Gideon?
2. Did Gideon seem to be capable of defending himself? Could a lawyer have helped him? If so, how?
3. What was unique about the petition that Gideon filed with the Supreme Court of the United States?
4. Why did the Supreme Court of the United States agree to hear Gideon's case?
Summary of the Decision:

The Supreme Court ruled in favor of Gideon in a unanimous decision. Justice Black wrote the opinion for the Court, which ruled that the right to the assistance of counsel in felony criminal cases is a fundamental right, and thus must be required in state courts as well as federal courts. Justices Harlan and Clark wrote concurring opinions.

The Court rejected part of their prior decision in Betts v. Brady (1942). In that case, the justices had ruled that indigent defendants need only be provided with a lawyer under special circumstances. The decision accepted the portion of the Court’s ruling in Betts which stated that the parts of the Bill of Rights that are “fundamental and essential to a fair trial” are made binding on the states by the Due Process clause of the Fourteenth Amendment. They specifically noted, however, that “the Court in Betts was wrong … in concluding that the Sixth Amendment’s guarantee of counsel was not one of these fundamental rights.”

The Court said that the best proof that the right to counsel was fundamental and essential was that “[g]overnments … spend vast sums of money to … try defendants accused of crime … Similarly, there are few defendants charged with crime[s]… who fail to hire the best lawyers they can get to prepare and present their defenses.” This indicated that both the government and defendants considered the aid of a lawyer in criminal cases absolutely necessary. In addition, the opinion noted that the Constitution places great emphasis on procedural safeguards designed to guarantee that defendants get fair trials. According to the opinion, “this noble idea cannot be realized if the poor man charged with a crime has to face his accusers without a lawyer to assist him.” The Court concluded that the Sixth Amendment guarantee of a right to counsel was fundamental and essential to a fair trial in both state and federal criminal justice systems. In all felony criminal cases, states must provide lawyers for indigent defendants.

In his concurring opinion in Gideon, Justice Clark agreed that Betts v. Brady should be overturned, and that the Sixth Amendment must be interpreted to require states to provide counsel for criminal defendants. Under Betts, states were only required to provide lawyers for criminal defendants under special circumstances, which included capital cases. Justice Clark noted that the Constitution does not make any distinction between capital and noncapital cases, but requires procedural protections for defendants meeting the standard of due process of law in both situations. The procedural protections required therefore should not be different depending on whether the defendant was charged with a capital crime or a noncapital crime, according to Justice Clark.

In his concurring opinion, Justice Harlan also agreed that the right to counsel in criminal cases is a fundamental and essential right. He explained that Betts v. Brady mandated that there must be special circumstances present, such as complex charges, incompetence or illiteracy of defendants, or the possibility of the death penalty as a sentence, to require states to provide criminal defendants with counsel. He then argued that “the mere existence of a serious criminal charge constituted in itself special circumstances.” Since, according to Justice Harlan, all felony criminal trials involved special circumstances, states should be required to provide lawyers for indigent defendants.

Additional Support/Scaffolds/Extensions

For additional support: Group students and have each group examine 1 of the applicable cases and present their findings (like a jigsaw) for the rest of the class.

For additional support: Case information is available in several reading levels (found at http://www.streetlaw.org/en/landmark/home). Each source contained within this lesson is at the middle reading level.

Extension: Have students locate an additional case in which the Supreme Court has further defined or applied the rights of the accused found within the Bill of Rights. Possible resources for students include:

- www.findlaw.com/casecode/supreme.html
- http://library.cqpress.com/scc/
- http://databases.abc-clio.com/Multi/
- www.law.cornell.edu
### Supporting Question 2 (approximately 60 minutes)

<table>
<thead>
<tr>
<th>Supporting Question</th>
<th>How has the Fourteenth Amendment expanded due process rights?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formative Performance Task</td>
<td>Students will examine a variety of sources to define due process and create a web diagram explaining the significance of the 14(^{th}) Amendment on the expansion of due process rights to the states.</td>
</tr>
</tbody>
</table>
| Featured Source(s) | Source A: Due Process of Law, Crash Course Government and Politics #28 [https://www.youtube.com/watch?v=UyHWRXAAgmQ](https://www.youtube.com/watch?v=UyHWRXAAgmQ)  
Source B: What is the 14\(^{th}\) Amendment “Due Process Clause” [https://www.youtube.com/watch?v=kmbpyerUxe4](https://www.youtube.com/watch?v=kmbpyerUxe4)  
Source C: 14\(^{th}\) Amendment: [https://www.law.cornell.edu/constitution/amendmentxiv](https://www.law.cornell.edu/constitution/amendmentxiv) |

### Process and Formative Performance Task

1. Write on the board the following 3 questions:
   a. What is due process?
   b. What examples of due process were evident?
   c. What role does the 14\(^{th}\) Amendment play in due process?
2. Ask students to discuss with a partner what they believe the answer to the posted questions a (what is due process) is and record their definition of due process.
3. As a class, view Source A: Due Process of Law, Crash Course Government and Politics #28 [https://www.youtube.com/watch?v=UyHWRXAAgmQ](https://www.youtube.com/watch?v=UyHWRXAAgmQ) After viewing, students should revise their definition of due process (answer to question 1 above) as needed.
4. As a class, Source B: What is the 14\(^{th}\) Amendment “Due Process Clause” [https://www.youtube.com/watch?v=kmbpyerUxe4](https://www.youtube.com/watch?v=kmbpyerUxe4) Have students create a list of rights that are covered by due process rights as the examples that were evident.
5. Next provide students a copy of the fourteenth amendment. With their partners, students should read the 14\(^{th}\) Amendment and underline/highlight the parts of the 14\(^{th}\) Amendment that they think were responsible for expanded due process rights. Then discuss their findings as a class.
6. Have students (continuing to work with their partners) create a web diagram, with due process at the center. Students should include on their web a definition of due process, examples of due process rights and the role of the 14\(^{th}\) Amendment in due process. Students should then share and explain their diagrams to the class.

### Featured Sources:

**FEATURED SOURCE A**

Due Process of Law, Crash Course Government and Politics #28 (8:28)  
[https://www.youtube.com/watch?v=UyHWRXAAgmQ](https://www.youtube.com/watch?v=UyHWRXAAgmQ)

**FEATURED SOURCE B**

The 14\(^{th}\) Amendment “Due Process Clause” (2:50)  
[https://www.youtube.com/watch?v=kmbpyerUxe4](https://www.youtube.com/watch?v=kmbpyerUxe4)
Featured Source C

The 14th Amendment https://www.law.cornell.edu/constitution/amendmentxiv

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.
Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Additional Support/Scaffolds/Extensions

For additional support: Provide students more guided questions to answer while viewing the video clips.

Extension: Have students find and share examples of historical and modern cases involving due process.

Extension: Students can explore the differences between substantive and procedural due process.
Supporting Question 3 (approximately 45 minutes)

<table>
<thead>
<tr>
<th>Supporting Question</th>
<th>Formative Performance Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>How does the law address the rights of victims?</td>
<td>Students will examine the rights of victims and debate the balance between the rights of victims and the rights of the accused. Students will formulate a response to the question using evidence to support their claim.</td>
</tr>
</tbody>
</table>

Featured Source(s)

<table>
<thead>
<tr>
<th>Source</th>
<th>Description</th>
</tr>
</thead>
</table>

Process and Formative Performance Task

1. Now that students have identified rights afforded to accused persons, open a brief discussion about the victims of crimes. What rights should victims have? Should rights of the accused or rights of victims be given the priority?
2. In groups, have students read the excerpt from victimsofcrime.org (Source A). Using this source, students should list the rights afforded to victims of crimes in most states.
3. Divide the class into 2 sides for a debate about rights in criminal cases. One side should argue that the rights of victims take priority, while the other side should argue that the rights of the accused take priority. Students should read “Victims vs. Suspects” (Source B) with their groups to gather further information/arguments about the issue. Questions to facilitate the debate may include:
   a. What leads to greater damage (to the individual or society)- failure to uphold the rights of the accused or failure to uphold rights of victims?
   b. Isn’t our legal system normed with the idea that it’s better for 99 guilty men to go free than for 1 innocent man to be convicted? Does this imply that the rights of the accused should take priority in all criminal proceedings?
   c. Provide some examples from history or pop culture which illustrate the need for upholding the rights of victims.
4. After concluding the debate, ask students to write a single paragraph reflection, answering the questions: Which should take priority: rights of victims or rights of the accused? Why?

Featured Sources:

FEATURED SOURCE A

What Are Victims' Rights?

All states and the federal government have passed laws to establish a set of victims’ rights. In general, these laws require that victims have certain information, protections, and a limited role in the criminal justice process. Victims’ rights depend on the laws of the jurisdiction where the crime is investigated and prosecuted: state, federal or tribal government, or military installation.

Who May Exercise Victims' Rights?

A victim is usually defined as a person who has been directly harmed by a crime that was committed by another person. In some states, victims’ rights apply only to victims of felonies (more serious crimes) while other states also grant legal rights to victims of misdemeanors (less serious crimes). Some states allow a family member of a homicide victim or the parent or guardian of a minor, incompetent person, or person with a disability to exercise these rights on behalf of the victims.

Overview of Victims' Rights

Below is a list of basic victims’ rights provided by law in most jurisdictions. These rights vary, depending on federal, state, or tribal law.

1. **Right to Be Treated with Dignity, Respect, and Sensitivity**
   
   Victims generally have the right to be treated with courtesy, fairness, and care by law enforcement and other officials throughout the entire criminal justice process. This right is included in the constitutions of most states that have victims’ rights amendments and in the statutes of more than half the states.2 Victim impact statements allow crime victims, during the decision-making process on sentencing or parole, to describe to the court or parole board the impact of the crime on their lives. The victim impact statement may include a description of psychological, financial, physical, or emotional harm the victim experienced as a result of the crime. A judge may use information from these statements to help determine an offender's sentence; a parole board may use such information to help decide whether to grant a parole and what conditions to impose in releasing an offender. Many victims have reported that making victim impact statements improved their satisfaction with the criminal justice process and helped them recover from the crime.

   In some states, the prosecutor is required to confer with the victim before making important decisions. In all states, however, the prosecutor (and not the victim) makes decisions about the case.

2. **Right to Be Informed**
   
   The purpose of this right is to make sure that victims have the information they need to exercise their rights and to seek services and resources that are available to them. Victims generally have the right to receive information about victims’ rights, victim compensation (see “Right to Apply for Compensation,” below), available services and resources, how to contact criminal justice officials, and what to expect in the criminal justice system. Victims also usually have the right to receive notification of important events in their cases. Although state laws vary, most states require that victims receive notice of the following events:
the arrest and arraignment of the offender
bail proceedings
pretrial proceedings
dismissal of charges
plea negotiations
trial
sentencing
appeals
probation or parole hearings
release or escape of the offender

States have different ways of providing such information to victims. Usually, information about court
proceedings is mailed to the victim. Some states have an automated victim notification system that
automatically calls or e-mails the victim with updates on the status of the offender, while others require the
victim to telephone the authorities to receive such updates.

3. Right to Protection

In many states, victims have the right to protection from threats, intimidation, or retaliation during criminal
proceedings. Depending on the jurisdiction, victims may receive the following types of protection:

- police escorts
- witness protection programs
- relocation
- restraining orders

Some states also have laws to protect the employment of victims who are attending criminal proceedings (see
"Right to Attend Criminal Proceedings," above).

4. Right to Apply for Compensation

All states provide [crime victim compensation](#) to reimburse victims of violent crime for some of the out-of-pocket
expenses that resulted from the crime. The purpose of compensation is to recognize victims' financial losses
and to help them recover some of these costs. All states have a cap on the total compensation award for each
crime, and not all crime-related expenses are covered. To be eligible for compensation, victims must submit an
application, usually within a certain period of time, and show that the losses they are claiming occurred through
no fault of their own. Some types of losses that are usually covered include:

- medical and counseling expenses
- lost wages
- funeral expenses

Compensation programs seldom cover property loss or pain and suffering. Also, victim compensation is a
payer of last resort; compensation programs will not cover expenses that can be paid by some other program,
such as health insurance or workman's compensation.
5. **Right to Restitution from the Offender**
   In many states, victims of crime have the right to restitution, which means the offender must pay to repair some of the damage that resulted from the crime. The purpose of this right is to hold offenders directly responsible to victims for the financial harm they caused. The court orders the offender to pay a specific amount of restitution either in a lump sum or a series of payments. Some types of losses covered by restitution include:
   - lost wages
   - property loss
   - insurance deductibles

6. **Right to Prompt Return of Personal Property**
   Crime investigators must often seize some of the victim's property as evidence for a criminal case. In most states, authorities must return such property to the victim when it is no longer needed. To speed up the return of property, some states allow law enforcement to use photographs of the item, rather than the item itself, as evidence. The prompt return of personal property reduces inconvenience to victims and helps restore their sense of security.

7. **Right to a Speedy Trial**
8. **Right to Enforcement of Victims' Rights**
   To be meaningful, legal rights must be enforced. States are beginning to pass laws to enforce victims' rights, and several states have created offices to receive and investigate reports of violations of victims' rights. Other states have laws that permit victims to assert their rights in court.

**Resources**

- A useful information source is VictimLaw, a comprehensive online database on state laws affecting victims.
- For a directory of state crime victim compensation Programs, visit the National Association of Crime Victim Compensation Boards.

**FEATURED SOURCE B: “VICTIMS VERSUS SUSPECTS” BY WENDY KAMINER**

Taken from: [http://prospect.org/article/victims-versus-suspects](http://prospect.org/article/victims-versus-suspects)
In the 1960s, the Supreme Court recognized that people accused of crimes were imbued with constitutional rights, which the states were obliged to respect. In the course of a few years, the Warren Court applied the exclusionary rule to the states, prohibiting the introduction of evidence seized in violation of the Fourth Amendment; it fashioned the Miranda warnings to protect the Fifth Amendment right to remain silent and prevent coerced confessions; it required prosecutors to disclose exculpatory evidence; and it held that states must provide indigent defendants with lawyers at both the trial and appellate levels.

These rulings are commonly and stupidly derided for elevating legal technicalities over questions of guilt: With the exception of the exclusionary rule (which is quite flexible and all too easily avoided), these "technicalities" focus precisely on the question of guilt. Coerced confessions are inherently unreliable; prosecutorial misconduct, like failure to disclose evidence exonerating the defendant, leads to wrongful convictions, as does the denial of competent counsel to poor defendants.

But ensuring the integrity of the trial process has never been a high political priority. Legislators and judges intent on being perceived as "tough on crime" pass laws or issue rulings that increase the likelihood of conviction but not the reliability. Indeed, some rules, like those limiting federal appeals of state court convictions, facilitate unreliable convictions--convictions of innocent people or defendants whose guilt was never proven. Few voters seem to care. The reforms demanded by the Warren Court were undermined by Richard Nixon's law-and-order campaign of the late 1960s, the ongoing war on drugs, and a widespread tendency to presume the guilt of people prosecuted for crimes. In a different world, the Warren Court decisions could have inspired increased respect for the rights of criminal suspects; instead they helped spark a movement to create countervailing rights for crime victims.

In the past 30 years, the victims' rights movement has generated some welcome reforms, notably the extension of services to crime victims in localities across the country and the renewed prosecutorial attention to victims' concerns. In addition, all the states have adopted legislation or constitutional amendments recognizing the interests of victims in criminal proceedings. Still, Congress is anxious to declare its allegiance to crime victims, partly to affirm its abhorrence of criminal suspects. So for several years the Senate has been threatening to pass the crime victims' rights amendment to the Constitution. It would give victims of violent crimes a right to be present at all public proceedings, a right to be heard regarding negotiated pleas and release from custody, a right to consideration of their interest in a trial "free from unreasonable delay," and a right to restitution from the convicted offender.

What's wrong with these rights? Putting principle aside, for the moment, consider the practicalities: Offering federal constitutional rights to crime victims will greatly complicate and impair prosecutions, which is why the victims' rights amendment has encountered opposition from some prosecutors (including a federal prosecutor in the Oklahoma City bombing case). Granting crime victims vaguely defined rights to speedy trials may pressure prosecutors into trying cases before they are ready; requiring victims to be present during all trial proceedings will often conflict with the need to sequester witnesses since the victims of crime often testify against their alleged attackers; mandating that victims be heard on plea negotiations may lead to delays and possibly more trials (and perhaps fewer convictions since delay often benefits the defendant). Problems like these will be exacerbated in cases involving multiple victims, with multiple prosecutorial agendas of their own. What's a prosecutor to do if one victim urges him to negotiate a plea and another demands that he proceed to trial?

The practical problems posed by the victims' rights amendment are, however, less daunting than its repressive ideology. When we identify and legally empower a victim before conviction, we assume that a crime has been committed, although that is sometimes disputed at trial (think of an acquaintance rape case); we also assume the veracity and reliability of the self-proclaimed victim. It's worth noting that the victims' rights amendment is opposed by many feminist advocates for battered women (including the NOW Legal Defense and Education Fund) because in cases involving domestic violence, the identity of the victim is not always clear. Women who strike back against their abusers are sometimes prosecuted and offered claims of self-defense: These women should not "lose their 'victim' status once they have defended their lives and become defendants," the National Clearinghouse for the Defense of Battered Women asserts. It argues that additional time, money, and energy devoted to helping crime victims should be used to increase support and services for victims outside the courtroom, not to invent questionable constitutional rights within it.

But victims' rights advocates tend to perceive the rights of defendants and the interests of victims as elements in a zero-sum game. Many don't simply want to increase victim services; they want to decrease defendants' rights and reorient criminal trials so that the victim, not the defendant, occupies center stage. "How might serious crimes ... be resolved differently if the victims, rather than the offenders, were the center of attention?" Judith Herman asked rhetorically in a recent issue of The American Prospect ["Just Dignity," January 31, 2000]. "What if the courtroom drama were a dialogue between the victim and the community about restitution rather than a duel between the prosecution and the defense about punishment?"
Questions like these presume the defendant's guilt. The prosecutor and defense are not engaged in a "duel about punishment"; they're engaged in a duel about guilt. Should we determine the restitution owed by the defendant to the victim before we have determined her guilt? What if the victim is lying or mistaken about the identity of the defendant? (Eyewitness identifications, for example, are notoriously unreliable.) What if police falsify evidence against the defendant; what if the prosecutor has concealed evidence of the defendant's innocence?

Defendants occupy the center of attention in criminal trials because they're the ones being prosecuted. The rights conferred upon criminal suspects are limitations on the power of the state to kill or imprison its citizens. The Bill of Rights reflects the founders' belief that government could not be trusted to exercise its police powers fairly. It reflects the understanding that power is easily abused and that individuals cannot protect themselves against the state without rights that prosecutors are required to respect.

Crime victims have a strong moral claim to be treated with respect and compassion, of course; but they should not be imbued with constitutional rights equivalent to the rights of defendants (their liberty and their lives are not at stake), and they should not expect their need to be "healed" or "made whole" by the trial to take precedence over the defendant's right to dispute allegations of guilt. Once guilt has been adjudicated, victims have an appropriate role in sentencing, but even then, courts concerned with equal justice have to guard against letting bias for or against the victim determine punishment. We should, for example, be wary of victim impact statements, which describe the effects of a crime on the victim or the victim's family. These statements can easily favor defendants whose victims lack family or friends to speak for them. The bias they introduce into the sentencing process is especially troubling in capital cases. Should killing a homeless, friendless person be less of a crime than killing someone well-loved by his family and community?

Victims' rights advocates generally view therapy for the victim as a primary form of justice, but in the criminal courts, the demands of therapy and justice conflict. Some crime victims, for example, may find cross-examination traumatic, but it is essential to the defense—and to the search for truth. The victim's credibility must be tested; inaccuracies or inconsistencies in her story must be revealed. Taking a cue from the therapeutic culture, victims' rights advocates tend to impute virtue to victimhood, but, of course, it is sometimes misplaced. Taking the presumption of innocence seriously means that we can never take an accusation at face value.

It's hard to argue with the desire to reform trials in order to help victims heal—unless you consider the consequences. Because the victims' rights amendment decreases the rights of defendants, it's not simply a grant of rights to crime victims; it's a grant of power to the state. Victims need and deserve services, but with nearly two million people already behind bars, the state needs no more power to imprison us.

Additional Support/Scaffolds/Extensions

Tips for conducting a successful classroom debate can be found at these sources:

- [http://www.theguardian.com/higher-education-network/teacher-blog/2012/jun/18/pupil-class-debate](http://www.theguardian.com/higher-education-network/teacher-blog/2012/jun/18/pupil-class-debate)

Additional Support: Provide a structured debate format.

Extension: Have students research the specific rights for victims laws in their state and/or county.
Summative Performance Task

<table>
<thead>
<tr>
<th>Summative Performance Task</th>
<th>ARGUMENT</th>
<th>Write an editorial that addresses the compelling question, using specific claims and relevant evidence.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>EXTENSION:</td>
<td>Create a visual diagram/graphic organizer that outlines the rights of the accused.</td>
</tr>
</tbody>
</table>

**Description**

In this task, students construct an extended, evidence-based letter to the editor responding to the prompt “What rights should the accused have?” Students have developed an understanding of the foundation for the rights of the accused, the ways in which the 14th Amendment and Supreme Court rulings have extended those rights and competing interests for the rights of the accused (namely the rights of victims). Students will be able to utilize their completed chart, list of rights and personal reflection to organize their ideas and determine their argument.

An option for a visual diagram/graphic organizer is provided below.

![Rights of the Accused Diagram](image-url)
<table>
<thead>
<tr>
<th></th>
<th>4</th>
<th>3</th>
<th>2</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Thesis</strong></td>
<td>Strongly and clearly states a personal opinion responding to the</td>
<td>Clearly states a personal opinion. Some references to the issue.</td>
<td>Personal opinion is not clearly stated. Little or no references</td>
<td>Personal opinion is not easily understood. Has no reference to</td>
</tr>
<tr>
<td></td>
<td>prompt and clearly identifies the issues regarding the rights of</td>
<td></td>
<td>to the issue.</td>
<td>the issue.</td>
</tr>
<tr>
<td></td>
<td>the accused.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Reasons</strong></td>
<td>Three or more excellent and clear points are made with good</td>
<td>Two points are made with good support or three points are made</td>
<td>Two or more points are made with minimal support.</td>
<td>Points made are not clear or supported.</td>
</tr>
<tr>
<td></td>
<td>support.</td>
<td>with minimal support.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Support</strong></td>
<td>Fact-based evidence is used to support all claims.</td>
<td>Fact-based evidence is used to support most claims.</td>
<td>Evidence is used inconsistently.</td>
<td>Evidence is absent or not fact-based.</td>
</tr>
<tr>
<td><strong>Conclusion</strong></td>
<td>Summarizes personal opinion in a strong concluding statement.</td>
<td>Summarizes personal opinion in a concluding statement.</td>
<td>Concluding statement is a weak summary of personal opinion.</td>
<td>Concluding statement makes no reference to personal opinion.</td>
</tr>
<tr>
<td><strong>Word Choice/Tone</strong></td>
<td>Choice of words that are clear, descriptive, and accurate.</td>
<td>Adequate choice of words that are clear and descriptive.</td>
<td>Choice of some words that are clear and descriptive. Lacks</td>
<td>Language and tone of letter is unclear and lacks description.</td>
</tr>
<tr>
<td></td>
<td>Maintains consistent persuasive tone throughout letter.</td>
<td>Demonstrates a persuasive tone in parts of the letter.</td>
<td>consistent persuasive tone.</td>
<td></td>
</tr>
<tr>
<td><strong>Mechanics and Grammar</strong></td>
<td>Contains few, if any punctuation, spelling or grammatical errors.</td>
<td>Contains several errors in punctuation, spelling, or grammar that do not interfere with meaning.</td>
<td>Contains many punctuation, spelling, and/or grammatical errors that interfere with meaning.</td>
<td>Contains many punctuation, spelling, and/or grammatical errors that make the piece illegible.</td>
</tr>
</tbody>
</table>
Taking Informed Action

<table>
<thead>
<tr>
<th>Taking Informed Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taking informed action can be related to the summative assessment. Teachers may opt to assign students one task or have students choose a method by which to take informed action. These include informing fellow citizens about their rights, lobbying for rights of competing groups, collecting primary evidence from stakeholders and sending their letter to the editor, evaluate the rights of the accused in multiple nations.</td>
</tr>
</tbody>
</table>

**NOTE TO TEACHER:** Taking informed action can manifest itself in a variety of forms and in a range of venues: Students may express action through discussions, debates, surveys, video productions, and the like; these actions may take place in the classroom, in the school, in the local community, across the state, and around the world.

**SAMPLE IDEAS FOR TAKING INFORMED ACTION:**

- Students could develop an info-graphic or video to inform fellow students of their due process rights as guaranteed by the amendments.
- Students could revise and mail their letters to the editor.
- Students could interview criminal attorneys or other stakeholders in the justice system (defendants, victims, judges, former jury members, etc.)
- Students could advocate for or against victims’ rights by contacting their legislators, joining the efforts of an organization dedicated to victims’ rights or launching a campaign to persuade others via social media.
- Students could research cases that challenged or further clarified rights of the accused.
Appendix A: Rights of the Accused in Supreme Court Decisions (student chart)

<table>
<thead>
<tr>
<th>Case Name and Overview</th>
<th>Right(s) in Question</th>
<th>Decision of the Supreme Court</th>
<th>Implication(s) on the Rights of the Accused</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Miranda v. Arizona</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Mapp v. Ohio</em></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><em>Gideon v. Wainwright</em></td>
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<td></td>
<td></td>
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</tbody>
</table>