How Do Due Process Protections for the Accused Protect Us All?

Overview
Throughout history, many governments’ treatment of the accused has served as a hallmark of tyranny and unlimited government. While British subjects were some of the freest people on earth in the 1700s, American colonists experienced a variety of legal abuses at the hands of the mother country and found themselves outside of many common protections afforded to English citizens. The Founders paid close attention to the rights of the accused because they realized that this was one group of people who particularly needed protection from government. Nearly half of the Bill of Rights involves some aspect of these fundamental protections. Numerous “checks” within legal processes help ensure the system is as free of bias as possible, and protect individuals from the potentially overwhelming power and resources of government. Understanding how the Fourth, Fifth, Sixth, and Eighth Amendments operate to guarantee such protection and how they work to both ensure individual liberty and limit government power, is vital to maintaining free citizenship.

Recommended Time
One 45-minute class period

Objectives
Students will:
- Understand why criminal procedure protections came to be included in the Bill of Rights.
- Identify ways in which these protections serve to ensure liberty and limit government.
- Understand and articulate specific protections found in the Fourth, Fifth, Sixth, and Eighth Amendments.
- Evaluate Supreme Court rulings concerning the Eighth Amendment’s Cruel and Unusual Punishment Clause.

Materials
Background Essay
Handout A: Criminal Procedure Protections
Handout B: Defining Cruel and Unusual
Handout C: Cruel and Unusual?
Answer Key

These instructional materials are in draft form for pilot testing.
Lesson Plan

**Background/Homework [20 minutes the day before]**

A. Have students read the **Background Essay: How Do Due Process Protections for the Accused Protect Us All?** Instruct students to answer the questions at the end of the Background Essay.

**Warm-up [5 minutes]**

A. Point students back to the bullet-pointed descriptors of a society without criminal procedure protections, contained in the very beginning of the **Background Essay**.

B. Conduct a brief class discussion, considering the following questions:
   - If you lived in such a society, would you be free? Why or why not?
   - Would the government have any limitations on its powers if society looked like this? Why or why not?
   - What types of governments/nations/societies around the world still look like this?

**Activity I [20 minutes]**

A. Distribute **Handout A: Criminal Procedure Protections** and a copy of the Bill of Rights. Put students into groups of 4.

B. Assign one amendment - Fourth, Fifth, Sixth, or Eighth - to each group. Have groups complete the portion of **Handout A** that is applicable to their assigned amendment only. Instruct students to discuss each element/clause of their amendment, and arrive at an agreed upon interpretation for each clause.

C. Have one group who read the Fourth Amendment explain their interpretations. If there is a second group who worked with the Fourth Amendment, have them share their interpretations only if they feel their interpretations are substantially different from the ones just presented. Compare student responses to the answer key and clarify any misunderstandings.

D. Repeat procedure for the Fifth, Sixth, and Eighth Amendments, in each case making sure that each element of the amendment is identified and its meaning clarified.
Activity II [20 minutes]

A. Have students get out Handout B: Defining Cruel and Unusual and put students into groups of five.

B. Instruct students to spend a few minutes sharing their individual thoughts/ideas about Handout B. Explain that they are now acting, in their groups, as the Supreme Court. Have them construct a one-sentence, group definition of cruel and unusual that they can apply to Eighth Amendment scenarios. Walk around to the room, visiting groups, to keep their discussion focused and assist them in coming to a group definition for Handout B.

C. Distribute Handout C: Cruel and Unusual? to all students. Instruct groups to select one student in each group to read Scenario 1 aloud to his/her group, while the other students read along. Then, have students discuss and complete questions 1-3 for Scenario 1, deciding, as a Supreme Court, whether the punishment involved in Scenario 1 is cruel and unusual. In deciding, each group should carefully apply their definition of cruel and unusual as written in Handout B, and should vote, just as the real Supreme Court would do to answer question 3 (3 students agreeing constitutes a majority of the group, and thus is their ruling). Have students individually answer question 4 and briefly discuss with their group if anything would have changed their view.

D. Have students continue the process for Scenarios 2 and 3.

E. Wrap up by conducting a class discussion to answer the following questions:
   - How do several Bill of Rights amendments protect due process?
   - How does due process itself protect our liberty?
   - How should “cruel and unusual” be defined?
   - Why should law abiding citizens care about protections for criminals?

Homework and Extension Options

A. Have students locate one local or national news article about an individual who is accused of committing a crime (students should use a newspaper or news-station website for local stories; or http://www.billofrightsinstitute.org for daily headlines of national stories). Students should cut out or print the news article, and submit a 2-paragraph response on the following: a) a brief summary of the individual involved, the crime he/she is accused of committing, and any other pertinent details; b) identification/explanation of particular elements of the Bill of Rights that are evident in the article (mentions of a search, representation by an attorney, trial, punishment, etc.). In doing so, students should make specific reference to the amendment(s) that are evident.
B. Have students visually depict the WHY and the HOW of Due Process. The Fourth, Fifth, Sixth and Eighth Amendments trace the criminal procedure process in order, from the initial search/seizure/questioning, to trial, to punishment. Have students create a collage using images found online tracing this process (an image of a search warrant, for example). Students can do a posterboard, or an electronic collage/presentation through Prezi or Glogster. Images should illustrate a variety - but not necessarily all - of the protections, with a brief statement below each of what particular right is illustrated and the amendment that protects it. Students should title their presentations with a statement or slogan about WHY the constitutional principle of due process is important. (e.g. “Protecting the accused protects us all.”)

C. Invite your School Resource Officer (or a local police officer, if your school does not have one assigned) to speak to your class. Prior to his/her visit, brainstorm with students a list of questions to ask, centering on how he/she follows and upholds the protections of the Fourth, Fifth, Sixth, and Eighth Amendments in the course of their job enforcing the law and dealing with suspected criminals. Ask the officer to share police department policies relating to these protections, real scenarios they’ve encountered, etc.

D. As of 2013, 33 states and the federal government have the death penalty as an option for particular violent crimes. Utilizing the “State by State” section of the Resources tab at http://www.deathpenaltyinfo.org, have students do research to answer the following questions:
   - Does your state allow the death penalty? If so, for which crimes? If not, when was it abolished?
   - Do you agree with your state’s position on the death penalty? What do you believe about the death penalty itself? Is it cruel and unusual? Or is it appropriate punishment in certain circumstances? Explain your position thoroughly using the Constitution, legal precedent, facts, and figures.
Background Essay:

How Do Due Process Protections for the Accused Protect Us All?

Imagine living a society in which your government can do the following things to you:

- demand to enter your home for no particular reason and forcibly enter if you object
- ignore your demands to know why your home or property is being searched
- bring you up on charges that you’re not even aware of, and force you to confess your guilt
- find you guilty in secret a very long time after your arrest
- keep putting you on trial over and over until a jury decides you are guilty

If you lived in such a society, would you be free? If government could do these kinds of things, would there be any real limit on its powers?

Why Did the Founders Include So Many Provisions Regarding the Rights of the Accused?

People are often surprised to find how much of the Bill of Rights involves protections for those who have been accused of a crime. Four amendments in the Bill of Rights deal with some aspect of criminal procedure – the Fourth, Fifth, Sixth, and Eighth Amendments. History and experience told the Founders that if there were not specific protections provided for citizens who commit crimes, and corresponding rules for the government to follow, then citizens could not live freely and the government would have unlimited power. The traditional principle was that it was better for guilty people to go free than for the judicial system to condemn even one innocent person.

Gathering Evidence: What Does the Fourth Amendment Protect?

One of the most common violations that the American colonists experienced at the hands of the British was the use of “general” search warrants. These warrants were easy to get and did not list a particular person or place to be searched. Any official who held a general warrant could search for anything they pleased, and British officers often used these warrants to harass colonists. The Founders sought to eliminate this type of tyranny with the Fourth Amendment. It requires that warrants be issued only when probable cause supports it, and that the warrant must state the particular person and place to be searched. It also requires that the warrant specifically list the items that officials may search for and seize. The Fourth Amendment demands that government officials go beyond simple suspicion and balance citizen rights with proper enforcement of laws.
Government Power: What Does the Fifth Amendment Protect?
The Fifth Amendment contains a variety of protections for individuals after a search has been conducted or an arrest has been made. One of the most important safeguards in the Fifth is protection from self-incrimination. Also known as the right to remain silent, this protection prevents the government from forcing an individual to offer up evidence against himself. A person may refuse to answer police questions that might make them seem guilty, and, at trial, they cannot be required to take the stand and testify under oath.

The Fifth Amendment also provides a guarantee that the government cannot endlessly try an accused individual. Without a ban on double jeopardy (as it is also known), the government could just keep trying an individual over and over using its vast resources until it got the guilty verdict it wanted.

Determining Guilt or Innocence: What Does the Sixth Amendment Protect?
The Sixth Amendment guarantees a jury trial for all individuals accused of a criminal offense. Trials must be speedy, public, and occur in the location where the alleged crime took place. It also requires that citizen juries, not a judge, determine the guilt or innocence of the accused. (This protection is also in the body of the Constitution.) Accused individuals have a right to know the specific crime(s) for which they are being tried, to examine all evidence the government has against them, to confront their accuser(s), to call witnesses in their defense, and to have a lawyer to assist in their defense. The Sixth Amendment is vital to liberty, and it is crucial in protecting individuals from the overwhelming power and resources of the government.

Guilty: What Does the 8th Amendment Protect?
The Founders recognized that individual rights do not end when someone is found guilty, even of a hideous crime. The Eighth Amendment requires that fines and penalties for guilty persons not be excessive. Most people understand this as the principle that the punishment must fit the crime. While the Bill of Rights does not specify what is “excessive,” the Supreme Court has defined it as one that is extremely out of balance with the offenses committed (United States v. Bajakajian, 1988).

Perhaps more challenging to define is the Eighth Amendment’s requirement that no “cruel and unusual punishments” be imposed upon guilty individuals. Generally, this protection was meant to prevent punishments such as drawing and quartering, whipping, or other methods common throughout history. What constitutes “cruel and unusual” punishment is often hotly debated.

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Criminal Procedure Protections and You
Most citizens are law-abiding. But the principle of due process does not protect just those people who find themselves on the wrong side of the law. It is important for us all. The Founders wrote the Constitution to “establish justice” and “to secure the blessings of liberty” for themselves and future generations. A big part of that was protecting minorities (including suspected criminals who are often disliked) from the “tyranny of the majority.” The protections of the Fourth, Fifth, Sixth, and Eighth Amendments all help strike the balance between individual rights and the powers of government.

Comprehension and Critical Thinking Questions

1. What amendments contained in the Bill of Rights address protections for the accused? Why were they included by the Founders in the Bill of Rights?
2. What specific protections for the accused are contained in the Fourth Amendment? In the Fifth Amendment?
3. In what ways does the Sixth Amendment protect an accused individual after he has been charged with a crime?
4. Consider the following quote from the 1961 Supreme Court case of Mapp v. Ohio, which held that evidence obtained in violation of the Constitution could not be used against defendants at trial:

“The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.”

How does this quote illustrate the importance of criminal procedure protections? Do you think the Founders would agree with this statement? Why or why not? (2-3 sentences)

5. Imagine you were talking to someone who said that she didn’t worry about protecting the rights of the accused because she never planned to commit a crime. How would you respond?
### Handout A: Criminal Procedure Protections

Directions: Using a copy of the Bill of Rights, complete the chart of due process protections for accused persons in the Fourth, Fifth, Sixth, and Eighth Amendments. Several are completed for you.

<table>
<thead>
<tr>
<th>Fourth Amendment</th>
<th>Interpretation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. “the right of the people to be secure . . against unreasonable searches and seizures, Shall not be violated . .”</td>
<td>1. People and their homes, possessions, etc., cannot be searched or taken without reason.</td>
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<td>2.</td>
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<td>3.</td>
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<table>
<thead>
<tr>
<th>Fifth Amendment</th>
<th>Interpretation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. “No person shall be held to answer for a capital...crime unless on a presentment or indictment of by a Grand Jury”</td>
<td>1. People suspected of very serious crimes must be indicted [formally accused] by a Grand Jury.</td>
</tr>
<tr>
<td>2. “nor shall any person be subject for the same offense to be twice put in jeopardy of life and limb....</td>
<td>2.</td>
</tr>
<tr>
<td>3.</td>
<td>3.</td>
</tr>
<tr>
<td>4.</td>
<td>4.</td>
</tr>
<tr>
<td>Sixth Amendment</td>
<td>Interpretation</td>
</tr>
<tr>
<td>----------------</td>
<td>----------------</td>
</tr>
<tr>
<td>1. “the accused shall enjoy the right to a speedy and public trial, by an impartial jury.”</td>
<td>1.</td>
</tr>
<tr>
<td>2. “[the accused shall] be informed of the nature and cause of the accusation.”</td>
<td>2. People must be told what crime they are accused of committing.</td>
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<td>3.</td>
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<table>
<thead>
<tr>
<th>Eighth Amendment</th>
<th>Interpretation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Excessive bail shall not be imposed.</td>
<td>1.</td>
</tr>
<tr>
<td>2.</td>
<td>2.</td>
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<td>3.</td>
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</table>
Handout B: Defining Cruel and Unusual

Directions: Pretend that your group is the Supreme Court. As the Justices, your job is to not only interpret the words of the Constitution, but apply your interpretation to cases and situations that affect the lives of millions of people. Taking what you know about the Constitution into account, think about how you would interpret the ban on “cruel and unusual” in deciding the constitutionality of government action. Discuss the guiding questions below.

Text of the Eighth Amendment:

“…nor cruel and unusual punishments inflicted.”

“Cruel:”

• How do you know if a punishment is cruel?
• Is a cruel punishment one that…
  o …causes lots of pain and suffering?
  o …is unnecessarily lengthy to carry out?
  o …involves other considerations that are not mentioned here?
• Does the type of crime committed, the characteristics of the accused, or the method of punishment matter to how you interpret this word?

“Unusual:”

• How do you know if a punishment is unusual?
• Where is the line drawn between “usual” and “unusual”? How uncommon does a punishment have to be to be called unusual?
• What comparisons should be used to determine what is unusual? State and federal laws and practices? International laws and practices?

Notes:
Handout C: Cruel and Unusual?

Directions: Read each of the three scenarios, and answer the questions that follow each.

Scenario 1
Christopher, a high school Junior who was within months of his 18th birthday, told two of his friends, aged 15 and 16, that he wanted to murder someone. He had a plan. Christopher would break into someone’s home, tie them up, and throw them off a nearby bridge. His two friends, while hesitant, decided to be a part of his plan when Christopher assured them they could “get away with it” because they were minors. The three boys met at 2:00am on the night of the murder, but Christopher’s 16 year old friend was nervous and backed out. Christopher and his 15 year old accomplice set out to commit their pre-planned crime.

The pair entered Shirley’s home through an open window, awakening her. She turned on a hallway light and called out “who’s there?” Christopher went down the hall and entered Shirley’s bedroom. He realized he recognized her from a car accident the two had been involved in, which he later admitted reinforced his decision to kill. The boys bound Shirley’s hands, covered her eyes with duct tape, and drove her to a nearby bridge. They tightened her bindings and threw her into the river below, where she drowned. Christopher was overheard bragging about the murder the next day at school, where police arrested him. He waived his rights to remain silent and to have an attorney present. Christopher then confessed to the murder and agreed to reenact the crime on videotape.

His first-degree murder trial occurred 9 months later, after he had turned 18. After hearing about the plan, Christopher’s bragging, and watching the videotaped reenactment, the jury quickly convicted him and recommended the death penalty. The judge agreed, and Christopher was sentenced to death.

1. What arguments would convince you that the punishment in this situation IS NOT cruel and unusual?
2. What arguments would convince you that the punishment in this situation IS cruel and unusual?
3. How would you rule in this case?
4. Is there anything about the details of this case that, if different, would change your ruling? Explain.
Scenario 2

Evan was a very troubled 14-year-old who had been in and out of foster care for years. His mother was addicted to drugs and alcohol, and he had been abused by his stepfather. Evan himself was a regular user of drugs and alcohol, and he had attempted suicide four times, the first attempt coming when he was only 6 years old.

One night Evan was at home with his two friends, Colby and Cole. The two friends came to make a drug deal with Evan’s mother, who sold them marijuana and gave them alcohol. All three boys left and went to Cole’s trailer, where they smoked their drugs and played drinking games. Eventually, Cole passed out. Evan decided to steal Cole’s wallet, grabbing it from the pocket of his passed out friend. Evan and Colby split the $300 between them. When Evan was trying to put the wallet back into Cole’s pocket, Cole woke up and grabbed Evan by the throat. Evan got hold of a nearby baseball bat and repeatedly hit Cole with it. After a number of hits, Evan placed a sheet over Cole’s head, said “I am God, I’ve come to take your life,” and hit Cole one more time. Evan and Colby then ran from Cole’s trailer, but quickly returned to cover up their crime. They lit two fires, burning the trailer and leaving Cole to die from trauma and smoke inhalation.

Alabama tried Evan as an adult, pointing to his mental maturity and his record of past crimes. He was charged with murder in the course of arson, a crime that carried a mandatory sentence of life without the possibility of parole. A jury convicted Evan, and he was sentenced to life in prison.

1. What arguments would convince you that the punishment in this situation IS NOT cruel and unusual?
2. What arguments would convince you that the punishment in this situation IS cruel and unusual?
3. How would you rule in this case?
4. Is there anything about the details of this case that, if different, would change your ruling? Explain.
Scenario 3

The death penalty has been available as a punishment for certain crimes in most American states since before the Founding era. Methods of carrying out the death penalty, though, have changed over the years in an effort to make the process more humane. Plenty of Americans disagree entirely with the death penalty, however, arguing that it is outside the powers of properly limited government, or that it is a moral, religious and social wrong no matter how it is carried out.

By the mid-1800s, hanging was the nearly universal method of execution throughout the country. In 1888, New York’s Governor commissioned a study to determine the most humane method of executing dangerous criminals. The committee’s answer was the electric chair, which the state legislature adopted. The electric chair became the preferred method of execution for the vast majority of states for the next 100 years. But there were growing concerns about the pain and suffering caused by the electric chair. In response, Oklahoma became the first state to seek a different method. Upon the advice of the head of anesthesiology at the University of Oklahoma’s College of Medicine, it replaced the electric chair with lethal injection. Lethal injection is now the primary way condemned prisoners are put to death in the United States.

Kentucky uses lethal injection. Medical personnel are responsible for setting up the IVs, drugs and dosages. The prison warden typically conducts the execution from a separate room with doctors overseeing the process for any signs of trouble. In some instances it is difficult for the prison warden to find a doctor willing to oversee the execution. This is because they are sworn to abide by the Hippocratic Oath, which commands each doctor to “do no harm.”

Two Kentucky death row inmates, both sentenced to death for their role in a double homicide, contend that the lethal injection process itself is cruel and unusual. They argue it can lead to pain, torture, suffering and an unnecessarily long death if it is not carried out with exact timing, dosages, and medical expertise.

1. What arguments would convince you that the punishment in this situation IS NOT cruel and unusual?
2. What arguments would convince you that the punishment in this situation IS cruel and unusual?
3. How would you rule in this case?
4. Is there anything about the details of this case that, if different, would change your ruling? Explain.

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Answer Key

**Background Essay: What Are the Rights of the Accused, And How Do They Serve to Limit Government?**

1. The Fourth, Fifth, Sixth, and Eighth Amendments of the Bill of Rights address a variety of protections for the accused. These were included in the Bill of Rights by the Founders because they knew, from experience, that if specific safeguards were not in place for those who commit crimes, the government could exercise unlimited power and liberty would be endangered.

2. Fourth Amendment: no unreasonable searches and seizures by government without a warrant; warrant only issued upon probable cause; warrant must be specific to who will be searched, the place to be searched, and the items to be searched/seized. Fifth Amendment: the accused cannot be forced by government to self-incriminate (right to remain silent); no double jeopardy/cannot be tried for the same crime twice.

3. The Sixth Amendment protects the accused after having been charged with a crime in the following ways: a speedy and public trial by a citizen jury; trial must occur where the alleged crime was committed; know the specific crimes/accusations/evidence; confront accuser; call witnesses in defense; right to a lawyer.

4. Answers will vary, but students should point out that the protections of the Fourth, Fifth, Sixth, and Eighth Amendments require government to follow the rule of law as well; if government is not bound by law, the principle of due process is no more; the government cannot commit crimes or disregard its own rules while trying to enforce laws.

5. Answers will vary, but students should explain the principle that justice and due process require that the rights of all individuals – even those who are ostracized as suspected criminals – are likely to be protected and laws be enforced equally.

**Handout A: Criminal Procedure Protections**

Fourth Amendment: 2. “No warrants shall issue, but upon probable cause.” Police must show probable cause to a judge in order to get a search warrant.

3. “...describing the place to be searched and the persons or things to be seized.” The warrant must name the place or person that police will search, as well as what they are looking for.

Fifth Amendment: 2. People may not be put on trial more than once for the same crime; 3. “No person ... shall be compelled to be a witness against himself.” People do not have to give evidence that may make them appear guilty; 4. “No person shall be deprived of life, liberty or property without due process of law.” If the government wants to take away someone’s life, liberty, or property, it must follow duly-enacted laws and apply them in the same way to everyone.
Sixth Amendment: 1. “The accused shall enjoy the right to a speedy and public trial by an impartial jury.” People accused of crimes have the right to a trial by jury in a timely and open manner; 3. “To be confronted with witnesses against him.” Defendants have the right to know who the witnesses are against them and to ask them questions; 4. “…to have compulsory process for obtaining witnesses in his favor…” Defendants have the right to legally demand witnesses who might help their case to testify at their trials; 5. “…and to have the assistance of counsel for his defense.” Defendants have the right to a lawyer to help defend them.

Eighth Amendment: 1. Bail cannot be unreasonably high; 2. “…nor excessive fines imposed.” Bail cannot be unreasonable. 3. “…nor cruel and unusual punishments inflicted.” Punishments may not be brutal or bizarre.

Handout C: Cruel and Unusual?
Scenario 1
1. Answers will vary, but students may suggest: the murder was planned in advance; Christopher bragged about his role in it, both before and after; he is very close to 18 and his decisions show adult-like behavior. Some may also suggest that sentencing someone to death for intentionally causing the death of another is neither cruel nor unusual.
2. Answers will vary, but students may suggest: Christopher is a minor, and sentencing a minor to death is cruel and unusual; he showed child-like immaturity in bragging about it both before and after; he showed child-like immaturity in convincing other, even younger friends to go along with him. Some may also suggest that sentencing someone to death is always cruel and unusual, no matter the crime they commit.
3. Answers will vary as to each group’s ruling; accept reasoned answers. The U.S. Supreme Court, in Roper v. Simmons (2002), ruled that both American and international “standards of decency” have evolved so that executing individuals who were legally minors when their crime was committed is now both cruel and unusual. In its ruling, the Court cited that the vast majority of state legislatures have done away with the death penalty for minors, and that it is a disproportionate punishment for juveniles.
4. Answers will vary, but students may state the following factual changes might have made their ruling different: if Christopher had been an adult, not a minor; if the murder had not been planned in advance. Some may also voice continued opposition to the death penalty, no matter the circumstances.

Scenario 2
1. Answers will vary, but students may suggest: Evan intentionally caused the death of his friend Cole; they went back to the crime scene to cover up the evidence of their crime, showing adult-like behavior. Some may also suggest that a sentence of life in prison without parole for an extreme crime is neither cruel nor unusual.
2. Answers will vary, but students may suggest: Evan, while guilty of murder, did not originally set out or plan to murder Cole; that he is very clearly a minor at age 14, and exhibited a variety of child-like, immature actions throughout the scenario; that Evan had a long history

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of a troubled life that should be taken into consideration as mitigating factors. Some may also suggest that a sentence of life in prison without parole for someone so young is cruel and unusual.

3. Answers will vary as to each group’s ruling; accept all reasoned answers. The U.S. Supreme Court, in *Miller v. Alabama* (2012), ruled that children are constitutionally different than adults and should be treated differently when sentencing them for their crimes. While a life sentence for such a crime by an adult does not violate the Eighth Amendment, the Court ruled it is disproportionate for a child, amounting to cruel and unusual punishment.

4. Answers will vary, but students may state the following factual changes might have made their ruling different: if Evan had been an adult, not a minor; if the murder had been planned in advance; if Evan did not have a history of physical and/or drug/alcohol abuse.

Scenario 3

1. Answers will vary, but students may suggest: careful medical considerations have been taken to ensure the condemned do not suffer; the method is quick and painless, particularly in comparison to past methods of execution; medical personnel who are trained in the administration of drugs are responsible for preparing the conditions of the execution. Some may also suggest that sentencing someone to death for intentionally causing the death of another is neither cruel nor unusual.

2. Answers will vary, but students may suggest: the process, if not followed exactly, can lead to prolonged suffering and death; the actual execution, while set up by medical personnel, is conducted by the warden, who is not himself trained in medicine and the administration of drugs. Some may also suggest that sentencing someone to death is always cruel and unusual, no matter how it is carried out.

3. Answers will vary as to each group’s ruling; accept all reasoned answers. The U.S. Supreme Court, in *Baze and Bowling v. Rees* (2008), ruled that Kentucky’s lethal injection process and procedures similar to it in other states, did not amount to cruel and unusual punishment. The Court noted a lack of evidence supporting the claim that even an incorrect administration of drugs would lead to unconstitutional pain and/or suffering. The Court did suggest, however, that a state may violate the Eighth Amendment if it continued to use method(s) that have been shown to produce needless pain or suffering and/or an unnecessarily prolonged process of death.

4. Answers will vary, but students may state the following factual changes might have made their ruling different: if it can be shown that the lethal injection process does indeed cause pain and suffering, and/or needlessly prolongs the execution if not carried out in an exact medical manner; if there have been a number of “botched” lethal injection procedures, as has been the case for the electric chair throughout history; if there is no doctor/medical personnel willing to oversee the execution.