

Lesson 6: The Rights of the Accused Part II: The Fifth, Sixth, and Eighth Amendments

Lesson Abstract: This lesson continues to address the group of amendments that work within the criminal justice system to protect the rights of the accused. With a focus on the Fifth, Sixth, and Eighth Amendments, these include protection once an individual is in police “custody.” The Fifth Amendment guarantees indictment or charge by grand jury for certain federal crimes and protection from double jeopardy. It also provides due process of law for individuals, protection from self-incrimination, and the right to be paid fair compensation for any property taken by the government for public use. The Sixth Amendment guarantees a person accused of a crime the right to a “speedy and public trial, by an impartial jury.” It also contains assurances that accused persons will be informed of the charges against them, and have the rights to cross-examine witnesses and to have a lawyer to defend them. Finally, the Eighth Amendment prohibits government from instituting excessive fines and cruel and unusual punishments. In this lesson, students explore the Fifth, Sixth, and Eighth Amendments and the Exclusionary Rule through case summaries of the *Miranda v. Arizona* and *Mapp v. Ohio* decisions, data on capital punishment, as well as group discussions and analyses of several questionable constitutional situations.

Content Expectations: C2.2.5; C3.1.3; C3.2.1; C3.2.3; C3.4.4; C5.3.5; 5.3.7

Common Core State Standards for Literacy in History and Social Studies: RH.9-10.1, 2, 4, 8, 9, and 10; WHST.9-10. 4, 9, and 10

Key Concepts:

- adversarial system
- constitutional supremacy
- due process of law
- government (state) action
- individual rights
- judicial review
- precedent
- rule of law

Teacher Note: This lesson is a continuation of the rights of the accused from Lesson 5. It has four distinct parts: Fifth and Sixth Amendment Rights; The Exclusionary Rule; 8th Amendment Rights; and a conclusion. As a result it is recommended that this lesson be conducted over a few days, but the breakdown will vary depending on your class schedule.

Lesson Sequence:

1. Begin the lesson by explaining to the class they will be reviewing more rights of the accused using the Fifth and Sixth Amendments. Show a movie clip that demonstrates the Miranda warnings, “Julio Reads Himself His Miranda Rights,” located at <http://cli.ps/52ZW>. (**Teacher Note:** In order to view the clip, you must be logged into Facebook. If you do not have a Facebook account, the following link to a similar clip is available on YouTube: <http://www.youtube.com/watch?v=2QiFg7MJL3E>). These clips provide a Hollywood version of the

reading of the Miranda warnings. After the clip, solicit student responses to the following questions:

- Based on the clip, what are the four statements that make up the Miranda warnings or rights? (you have the right to remain silent; anything you say may be used against you in a court of law; you have the right to an attorney; if you cannot afford an attorney, you have the right to one appointed by the court.)
- This clip is from a movie. How might this scenario differ in real life?
- When do you think police need to give these warnings? (prior to custodial interrogations – meaning that the subject is in custody and the police want to question him/her).

As you discuss the clip, explain to the class that the requirement to review rights with a suspect in custody comes from the Supreme Court case *Miranda v. Arizona*.

2. Next, distribute the handout “***Miranda v. Arizona (1966)***” located in the *Supplemental Materials (Unit 5, Lesson 6)*. Explain to the students that the video clip was a satirical version of the *Miranda* warnings. Read the Miranda Warning aloud to the class and then allow enough time for the students to read through the case summary and the amendments. Then, have students re-write the two amendments in their own words in the space provided.
3. Display the document, “**Fifth and Sixth Amendments to the U.S. Constitution,**” located in the *Supplemental Materials (Unit 5, Lesson 6)* to the class. Engage in a brief Think Aloud for the class, explaining the text of each amendment to the class. Leave the document posted for student reference.
4. Divide students into groups of three students each and distribute the document “**Exploring the Rights of the Accused**” located in *the Supplemental Materials (Unit 5, Lesson 6)* to each group. Explain to students that each group member will be responsible for recording and reporting out on one of the questions on the document. Allow students a few minutes to divide up the responsibility for recording and reporting.
5. Reconvene the class and debrief the questions by sampling the responses of the groups. For each question above, use the following to guide the discussion:
 - A. *What are the rights of the accused contained in these amendments? Do we need both sets of rights? Why or why not?*

For this question, be sure students identify each of the rights contained in each amendment. It is recommended that you display the text of both the Fifth and Sixth Amendments, which can be found in the *Supplemental Materials (Unit 5, Lesson 6)*. Highlight the particular rights on the display as students identify them. Students should recognize the right to remain silent (also referred to as “taking the Fifth”) and the right to an attorney.

B. *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 constitutional rights and societal values must be balanced against each other?*

Guide students to recognize the liberty interests at stake once an individual is taken “into custody.” If a person is not free to leave, the rights under the Fifth and Sixth Amendments are implicated. If a person could leave the conversation at any time, police are not required to give the Miranda warnings prior to asking questions. Ask students, how would they know if they are free to leave? What should they do to determine this? The critical point for students to understand is that the Miranda warnings apply once an individual is in police custody and being questioned. The liberty interests are balanced with society’s need in finding the truth.

C. The Fifth Amendment freedom from self-incrimination applies when one is “in custody.” The Court has defined “in custody” as an objective test: Would a reasonable person in the suspect’s shoes believe that they are free to leave? Consider a student pulled into a principal’s office for police questioning. Do you think that minors should be treated the same as adults for the Fifth Amendment protections to apply? Why or why not?

Guide students to recognize the distinction between the Fifth and Sixth Amendments. The 6th Amendment is clear-cut. Those protections attach when one is charged with a crime. However, when the protections of the Fifth Amendment attach is not as clear-cut. One must be “in custody” for the protections of the Fifth Amendment to apply. The Court has defined custody using an objective standard: Would a reasonable person in the suspect’s shoes believe that they are free to leave? This means that the decision as to whether the Fifth Amendment applies is very fact-dependent – a simple change in one fact like the age of the individual – may change the result of whether they would reasonably feel free to leave. Thus, a student who is being questioned by police in the principal’s office could make a strong argument that they were in custody (did not believe they were free to leave).

6. Conclude the discussion by clarifying the following points with students:

- The Fifth Amendment protects against coerced confessions (being compelled to testify against one’s self). The Supreme Court in *Miranda* held that the Fifth Amendment applies to “custodial interrogations.” Courts grapple with what is “custodial” and what constitutes an “interrogation.” If it is a custodial interrogation, then the Fifth Amendment requires that the individual in custody has a right to counsel (because of the coercive environment). Be sure to distinguish this right to counsel from the Sixth Amendment’s right to counsel discussed below.
- The Sixth Amendment right to the assistance of counsel applies to critical stages in adversarial criminal proceedings. Courts grapple with what constitutes a “critical” stage. Courts have ruled that the when the government initiates adversarial criminal proceedings, such as a formal charge, preliminary hearing, indictment, information, or arraignment, the right to counsel attaches. This Sixth Amendment right does not arise at the moment of arrest unless the government has already filed formal charges (but the Fifth Amendment right to counsel may apply).

7. **As an optional extension**, explain to the class that in recent Supreme Court cases, the requirements of Miranda Warnings have evolved. The following changes have been made:

- *Berghuis v. Thompkins (2010)* – Once a suspect initially waives his Miranda rights and interrogation begins, he or she must unambiguously invoke his right to remain silent before the police are required to end their questioning.
- *Florida v. Powell (2010)* - Law enforcement officers enjoy some latitude to communicate *Miranda* rights to suspects using different language, so long as the essential message of the warnings remains intact.
- *Maryland v. Shatzer (2010)* – A suspect who had previously invoked his Miranda rights must reassert his Miranda rights in response to a second round of interrogation because a substantial time (here at least 14 days) had elapsed during which the suspect had been released back to “normal life.” Here, “normal life” was back into the general prison population. In this case, the police had given his Miranda warnings the second time, but the suspect contended his first invocation of his Miranda rights meant that police could not question him again.

These cases demonstrate how the Court continues to interpret the rights in the Bill of Rights. For additional cases, search “Miranda” on the SCOTUS Blog at <http://www.scotusblog.com/>.

8. Next, explain to the class that they will be analyzing situations to determine whether Fifth or Sixth Amendment rights apply. Distribute the handout “**Questionable Constitutional Situations**” located in the *Supplemental Materials (Unit 5, Lesson 6)*. Place students into the groups of six students each (combining two groups from Step 4 to form new groups) and explain to students that they will act as small panels of judges. Assign each group one of the scenarios on the handout and provide each group chart paper and markers. Allow each group about 3-5 minutes to review their assigned situation, discuss, and determine their ruling. Have the groups record their answer to the questions and their rationales on the chart paper and post them around the room.
9. Once all groups have recorded their rulings and posted their results, engage students in a carousel activity. Have the groups move about the classroom, reading each of the other teams’ rulings during a “read, reflect, and question-to-clarity time.” Allowing about 3-5 minutes for each rotation. At each station, the team reads the ruling, discusses it, and then poses questions concerning that ruling directly on the chart paper. Continue rotating until the groups have returned to their original work. Allow the teams an additional 3-5 minutes to reflect on the questions posed on their own poster, discuss with their group, and make any changes to their own ruling that they desire.
10. Reconvene the classroom and debrief the cases using the **Lesson 6 PowerPoint** (Unit 5, Lesson 6). Solicit comments from the students during the slideshow. The notes pages of the PowerPoint indicate the cases from which the scenarios have been derived.
11. **Teacher Note:** This portion of the lesson addresses the Exclusionary Rule. Begin this portion of the lesson by reminding students about the rights of the accused protected by the Fourth, Fifth, and Sixth Amendments. Have students write in their Citizenship Notebook in response to the following questions: What should happen when the rights of the accused are violated? How do we protect these rights once police have obtained evidence in violation of these constitutional protections?

12. Explain to students that the Supreme Court has faced this question. Distribute the handout on “**Mapp v. Ohio**” located in the *Supplemental Materials (Unit 5, Lesson 6)* and have students read the summary. Have students revisit the questions from Step 11 with a partner and then reflect on their previous Citizenship Notebook entry by responding to the following:

How does the decision in Mapp v. Ohio challenge, change, or extend your thinking about why and how the court balances individual liberty interests with society’s need in finding the truth?

Conclude this section of the lesson by explicitly instructing students that the Exclusionary Rule applies not only to physical evidence seized, but also to coerced confessions in violation of Miranda.

13. Distribute the handout “**Eighth Amendment – Cruel and Unusual Punishment**” located in the *Supplemental Materials (Unit 5, Lesson 6)* to students. Review the language at the top of the handout with the class and the meaning of each clause. Explain to the students that the death penalty has long been debated as a choice of punishment. The Supreme Court in *Furman v. Georgia*, (1972) deemed that arbitrary use of the death penalty was considered cruel and unusual, but the majority did not outlaw the practice.
14. Next, focus students’ attention on the chart at the bottom of the handout. Have students individually examine the information in the chart for a few minutes. Then, write the following question on the board and have students answer it in their Citizenship Notebook:

“Are any of these methods of execution cruel and unusual in your opinion? Explain.”

After allowing students a few minutes to answer the question, have them divide into pairs to compare their results. The pairs should discuss each of their answers and rationales. Reconvene the class to debrief the answers together.

15. Distribute the handout, “**Forbidden Punishment**,” located in the *Supplemental Materials (Unit 5, Lesson 6)* to each student. Divide the class into seven groups and assign each group one of the cases on the handout. Instruct the groups to read and discuss their assigned case summary, identifying the pros and cons of the Court’s decision on society. Allow about 5-7 minutes for the groups to discuss their assigned summary.
16. Engage students in a class discussion about cruel and unusual punishment. Have each group report out the pros and cons on society of their assigned decision. The other students should record this information on the handout. Discuss the cases with the class, pausing after each to allow students to think and record their own opinion of the decision in the space provided on the handout. Wrap up the discussion by asking students to respond to the following questions: On the issue of cruel and unusual punishment, do you tend to agree or disagree with these decisions of the Supreme Court? Explain using your opinions of the above cases as evidence. Why might this be so?

Push students to analyze the handout for evidence to support their answers. Elicit students’ responses. Be sure to point out to the class that the make-up of the court (the justices) was not

static. Use the dates of the cases to make the point that the justices changed over time (cases range from 1962 – 2011; none of the justices in 2011 were on the Court in 1962). Also note that some justices in the majority on some decisions did not agree with the majority of the court on other cases (e.g., Chief Justice Roberts was in the majority in *Graham v. Florida*, but in the minority in *Brown v. Plata* and *Kennedy v. Louisiana*).

17. Conclude this portion of the lesson by having students answer question 8 on the handout: *What factors make it difficult to decide whether a punishment is “cruel and unusual?”* After students record their answers, you may want to discuss the question with the class. Be sure to point out that people may agree on constitutional principles and fundamental values in the abstract, yet disagree over their meaning while applied to specific situations. Also use this discussion as an opportunity to dispel students’ misconception that the law is black and white (straightforward), but nuanced and subject to the particular facts of a case.
18. Explain to students that the rights of the accused are considered procedural due process rights. In other words, government action cannot deprive a person of their rights or liberty without guaranteeing that some process must be followed. Miranda warnings, right to counsel, freedom from unreasonable searches and seizure, right to a public and speedy trial, and the prohibition against cruel and unusual punishments all require the police/government to follow certain procedures designed to promote fundamental fairness. So, if the government acts to take away life, liberty or property, the question is simply – “What process is due before the government can act to take away life, liberty or property?”
19. Display the “**Quote by Justice Arthur Goldberg in *Escobedo v. Illinois* (1964)**” located in the *Supplemental Materials (Unit 5, Lesson 6)* to the class. Have the students reflect on Justice Goldberg’s words. Explain to them that some criminals may escape justice because they have hidden their tracks well and the police cannot make a case. This is one of the prices we pay for a system that insists on due process. An occasional criminal may go free, but our goal is to ensure that no innocent person is wrongfully punished. The system is not perfect, but its ideals do in fact govern. Have students write reflectively in their Citizenship Notebook answering the question:

“Why are due process rights and the rights of the accused essential for our constitutional democracy?”

Assessment

Assessment may occur at various steps throughout the lesson. The group work in Step 4 may be assessed. Students could write responses to the PowerPoint “Questionable Constitutional Situations,” in Step 8. Students’ written responses in Steps 17 and to the prompt in Step 19 also may serve as assessments for this lesson.

Reference Section

Content Expectations

- C2.2.5:** Use examples to investigate why people may agree on constitutional principles and fundamental values in the abstract, yet disagree over their meaning while applied to specific situations.
- C3.1.3:** Analyze the purposes, organization, functions, and process of the judicial branch as enumerated in Article III of the Constitution.
- C3.2.1:** Explain how the principles of enumerated powers, federalism, separation of powers, bicameralism, checks and balances, republicanism, rule of law, individual rights, inalienable rights, separation of church and state, and popular sovereignty serve to limit the power of government.
- C3.2.3:** Identify specific provisions in the Constitution that limit the power of the federal government.
- C3.4.4:** Describe considerations and criteria that have been used to deny, limit, or extend protection of individual rights (e.g., clear and present danger, time, place, and manner restrictions on speech, compelling government interest, security, libel or slander, public safety, and equal opportunity).
- C5.3.5:** Explain considerations and criteria commonly used in determining what limits should be placed on specific rights.
- C5.3.7:** Using the 4th, 5th, 6th, 7th, and 8th Amendments, describe the rights of the accused and using case studies and examples explore the limit and scope of these rights.

Common Core State Standards for Literacy in History and Social Studies

- RH.9-10.1:** Cite strong and thorough textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text.
- RH.9-10.2:** Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.
- RH.9-10.4:** Determine the meaning of words and phrases as they are used in a text, including vocabulary describing political, social, or economic aspects of history/social studies.
- RH.9-10.8:** Assess the extent to which the reasoning and evidence in a text support the author's claim.
- RH.9-10.9:** Compare and contrast treatments of the same topic in several primary and secondary sources.

RH.9-10.10: By the end of grade 10, read and comprehend history/social studies texts in the grades 9-10 text complexity band independently and proficiently.

WHST.9-10.4: Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.

WHST.9-10.9: Draw evidence from informational texts to support analysis, reflection, and research.

WHST.9-10.10: Write routinely over extended time frames (time for reflection and revision) and shorter time frames (a single sitting or a day or two) for a range of discipline-specific tasks, purposes, and audiences.

Resources

Equipment/Manipulative

Computer with Internet Access and Projector

Student Resource

Chase, Alycia and Jennifer Simone. *PowerPoint Lesson 5 (Unit 5, Lesson 6)*. Teacher-made materials. Oakland Schools. 2012.

-- -. *Supplemental Materials (Unit 5, Lesson 6)*. Teacher-made materials. Oakland Schools. 2012.

Eighth Amendment to the United States Constitution. Legal Information Institute. Cornell University Law School. 10 Jan. 2013 <http://www.law.cornell.edu/constitution/eighth_amendment>.

Fifth Amendment to the United States Constitution. Legal Information Institute. Cornell University Law School. 10 Jan. 2013 <http://www.law.cornell.edu/constitution/fifth_amendment>.

"Julio Reads Himself His Miranda Rights," from the Movie "Running Scared". Movieclip.com. 10 Jan. 2013 <<http://cli.ps/52ZW>>.

Miranda v. Arizona, 384 U.S. 436 (1966). The Oyez Project at IIT Chicago-Kent College of Law. 19 June 2012 <http://www.oyez.org/cases/1960-1969/1965/1965_759>.

Miranda Rights Origins. Youtube. 10 Jan. 2013 <<http://www.youtube.com/watch?v=2QiFg7MJL3E>>.

Sixth Amendment to the United States Constitution. Legal Information Institute. Cornell University Law School. 10 Jan. 2013 <http://www.law.cornell.edu/constitution/sixth_amendment>.

Teacher Resource

Barbeau, Rich. "Case Studies on the Sixth Amendment: The Right to Counsel." Civilly Speaking.org 10 Jan. 2013 <http://www.civillyspeaking.org/case_studies_sixth.pdf>.

Death Penalty Information Center. 10 Jan. 2013 <<http://www.deathpenaltyinfo.org/methods-execution>>.

Eighth Amendment to the U.S. Constitution. 10 Jan. 2013 <<http://law.jrank.org/pages/6368/Eighth-Amendment.html#ixzz1G9pwHwgl>>.

The Fifth Amendment. Revolutionary War and Beyond. 2008-2012. 10 Jan. 2013
<<http://www.revolutionary-war-and-beyond.com/5th-amendment.html#ixzz1xhl04Gi9>>.

Teaching Module: Fourth Amendment Lesson Plan. Band of Rights. 10 Jan. 2013 <http://www.band-of-rights.org/fourth_amendment_lesson_plan.pdf>.

“What Does That Mean?” *Our Courts.* I-Civics. 21st Century Civics. 10 Jan. 2013
<<http://static.icivics.org/sites/default/files/uploads/Interpreting-The-Constitution-Handouts.pdf>>.

SCOTUSblog. Supreme Court of the United States Blog. 10 Jan. 2013 <<http://www.scotusblog.com/>>.