

## CHAPTER 14

# ASSURING INDIVIDUAL RIGHTS

If you like to watch police shows on television, you probably know what it means when one officer says to another, “Read them their rights.” At that point, the officer explains to the criminal suspects a list of constitutional rights that protect people accused of crimes. These include, for example, the right to remain silent and the right to be represented by a lawyer.

The Constitution requires government to follow certain procedures—such as reading rights to a suspect—and to pass fair laws in order to assure the protection of many civil liberties. These liberties include freedom from unreasonable police action, the right to privacy, and fair treatment when accused of crimes.



### Government Notebook

When do you think police may search people, their cars, or their homes? When may school officials search students or their lockers? Write your answers in your Government Notebook.





## SECTION 1

# PROTECTING INDIVIDUAL LIBERTIES

### Political Dictionary



due process  
procedural due process  
substantive due process  
police power  
search warrant  
probable cause  
exclusionary rule

### Objectives

- ★ What does the term *due process* mean?
- ★ How is procedural due process different from substantive due process?
- ★ How do the Fourth Amendment and due process protect people's security against unreasonable state action?
- ★ How does the Bill of Rights protect people's privacy?

As noted in Chapter 13, the First Amendment secures many of the fundamental freedoms that people living in the United States enjoy. Additional individual liberties are protected by other constitutional amendments. The Fifth Amendment, for example, is vital to securing citizens' basic liberties. It states that the federal government may not take away anyone's "life, liberty, or property, without due process of law." **Due process** refers to government's duty to follow fair procedures set by law when carrying out government functions.

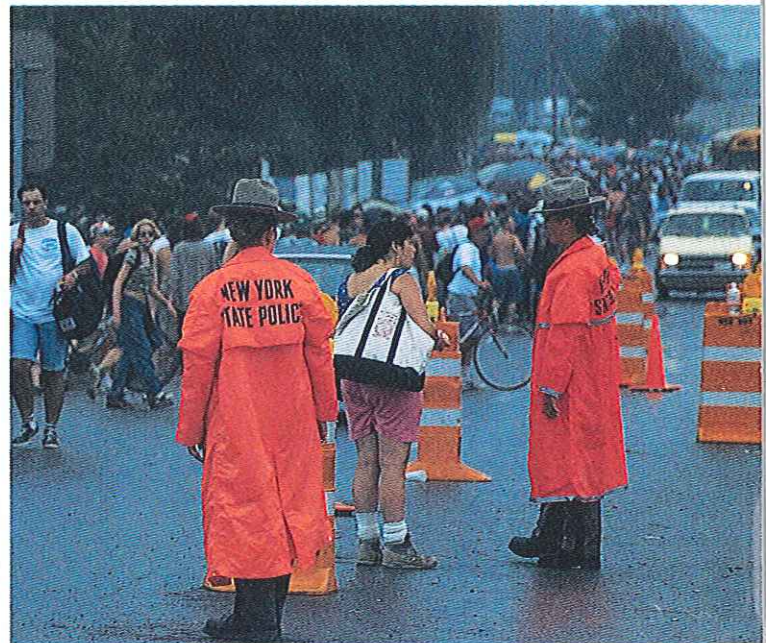
## Due Process of Law

How do the courts decide whether the government has acted with due process? The courts have recognized that the concept of due process can be

broken down into two parts: procedural due process and substantive due process. The courts use both of these aspects of due process to determine whether government uses its police power reasonably.

**Procedural Due Process** According to the concept of **procedural due process**, government must apply a law fairly and act according to procedures and rules set by that law. As noted in Chapter 13, time, place, and manner regulations guide the holding of parades. These rules help government protect public safety and manage the use of public streets. A government that does not carry out these rules fairly and according to law has not acted with due process.

For example, suppose a group named Save Our City asks for a permit to hold a demonstration. The group wants to protest the city's lax pollution control laws. City officials, however, refuse to give the group a permit unless it agrees to hold its demonstration at 6:00 A.M. outside of the city limits—ensuring that few people will see the group's efforts. Save Our City responds by taking the city to court. The group argues that city



**POLITICAL PROCESSES** Part of the responsibility of government is to carry out rules fairly and to keep the peace. Government must, however, practice procedural due process in performing these roles. How may government officials use their power to restrict people's freedom of speech and assembly?



officials have unfairly and unreasonably used their authority to restrict the group members' freedom of speech and assembly.

In this case, the court must determine whether or not city officials have unfairly used the law's procedures, perhaps to keep critics of the city's pollution laws from being heard. If the city officials have unfairly administered the law, then they have not acted with procedural due process.

**Substantive Due Process** The court also may consider whether the city's time, place, and manner regulations are fair and reasonable in the first place. In doing so, the court is applying a second aspect of due process, referred to as **substantive due process**. Applying substantive due process involves considering whether or not a law is fair and reasonable and whether or not it unjustly restricts constitutional freedoms.

Applying substantive due process to the Save Our City case means asking whether government should be involved at all in deciding how groups conduct demonstrations. As noted in Chapter 5, government does have good reasons for establishing time, place, and manner regulations—for example, the management of traffic flow and the protection of public safety. Therefore, the court would likely rule that the law on giving out parade permits has met the standard of substantive due process. Nevertheless, city officials still must observe procedural due process by applying the law fairly and reasonably.

## Due Process and the States

Originally, the Fifth Amendment's Due Process Clause and the rest of the Bill of Rights protected people from federal government actions only. The framers assumed that bills of rights in state constitutions would ensure that state governments did not violate people's rights.

Just after the Civil War, however, the Fifth Amendment's protections were extended to state actions by the Fourteenth Amendment. This amendment sought to ensure the rights of freed slaves by granting

them—as well as everyone else born or naturalized in the United States—U.S. citizenship and hence the right of due process. Anticipating that the southern states might refuse to recognize that African Americans had the right to due process, Congress added a provision declaring the states may not “deprive any person of life, liberty, or property, without due process of law.”

In the 1925 case of *Gitlow v. New York*, the Supreme Court issued the first in a series of rulings clearly stating that the freedoms in the Bill of Rights are protected from the actions of both the federal *and* state governments. The Court used as its justification the Due Process Clause of the Fourteenth Amendment.

*Gitlow* involved a man who had called for overthrowing the government. The Supreme Court upheld New York State's right to punish the man for breaking a law forbidding people from plotting such action. For the first time, however, the Court also ruled that, in general, the First Amendment does protect a person's right to free speech from being violated by the states. Following *Gitlow*, other Supreme Court rulings firmly established that the states must respect the fundamental freedoms guaranteed by the Bill of Rights.



**PUBLIC GOOD** Bailiffs of a superior court in Massachusetts escort a prisoner into a courtroom for his trial. How may the exercise of police power restrict some individual liberties?



## Government and History

### American Legal Traditions

You probably recall reading about certain court rulings in which judges helped justify their decisions by citing previous rulings. As noted in Chapter 12, judges often use this body of rulings to make decisions on situations for which no written laws exist. This so-called common law constitutes an important part of the legal systems not only in Great Britain but also in many of its former colonies, including Canada, Australia, and New Zealand. Common law also plays a significant role throughout all of the United States except Louisiana.

Because its early settlers were French, Louisiana's legal system developed from French civil law. The French civil law system, known as the Code Napoleon, developed during the early 1800s. At that time, French emperor Napoleon Bonaparte combined France's civil laws into one code that joined the traditional law of northern France, the Roman-influenced law of southern France, and newer ideas that had emerged during the French Revolution. By replacing France's regional statutes, the Code Napoleon became that country's first national body of law.

In England, common law evolved over centuries, beginning in the 1100s with the monarch's royal courts. Judges and lawyers recorded the cases at first in annual reports and later in ongoing records. New court decisions were then bound by those made previously. The decisions that were cited in new cases soon became known as common, because of their widespread impact. Thus, the English courts are called common-law courts.

Common-law courts were not the only source of justice available to citizens. English citizens also were able to petition the monarch for justice. If citizens felt that they would not receive a fair decision in a common-law court, for example, they might ask the monarch to intervene. He or she often assigned the job of hearing petitions to the lord chancellor, England's highest legal



*The use of common law to determine rulings on cases for which no written law exists was adopted by many of Great Britain's former colonies, including the United States.*

authority. Eventually, courts of equity were established in the 1300s to hear cases not addressed by common law. These courts, which chancellors administered, added flexibility to the common-law system.

Sometimes the two systems came into conflict, as when a chancellor declared a common-law ruling unfair or inappropriate and refused to enforce it. In an attempt to solve the problem, King James I declared that equity rule was superior to common law. However, equity and common law eventually merged in 1873 to form one legal system.

The system of common law was transported to the English colonies in America by the colonists and later spread to the individual states. Each state (except Louisiana) developed its own version of common law to deal with its own cases. Over time, however, much of what was once common law has been made into statutory law. Common law and equity law, which also came to America with the colonists, began to merge in most legal systems throughout the United States in 1848.

### What Do You Think?



1. Imagine that you are a lawyer preparing a court case. Why is knowledge of common law important to your preparation?
2. Should judges always consider previous rulings in deciding a court case? Why or why not?



In short, the due process clause limits the government's **police power**—or its authority to promote and to protect the health, safety, and welfare of the people. This power is exercised primarily by state and local governments.

Exercising police power, such as fighting crime, often restricts some individual liberties. To fight crime, police may, for example—if following proper procedures—enter homes or limit people's freedom by jailing them. To prevent abuse of police power, the Constitution requires government to act within the framework of the Bill of Rights.

## Protecting People from Government Intrusion

The Constitution further protects individual liberties by protecting people from government intrusion. The Fourth Amendment guarantees “the right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” In other words, government cannot use its police power in ways that unjustly subject citizens to government interference.



**PUBLIC GOOD** Police officers may search people's personal possessions, including their vehicles, if they have probable cause to do so. *Why are police not required to obtain a warrant to search a car?*

**Security at Home** The Fourth Amendment requires authorities to respect the security of private homes. This means, for example, that police must follow set rules in entering and searching homes and in seizing any contents for use as evidence in a criminal trial. One of these rules states that, except under certain circumstances, police cannot search a home without first obtaining a written order from a judge. This **search warrant** allows police to enter a home or other private property to search for specific items.

Before a judge will issue a search warrant, police must show that they have reasonable grounds, or **probable cause**, for requesting one. If, for example, a police officer sees someone deal drugs and then enter a certain home, or has information from a reliable source that the home contains illegal drugs, that officer has probable cause to request a warrant to search for illegal drugs.

Authorities do sometimes enter a private home without a warrant and seize items as evidence for a criminal case. In such instances, however, judges typically rule that the evidence is tainted, or illegally obtained. Under what is referred to as the **exclusionary rule**, tainted evidence—no matter how strong—is barred from use in court. In the 1961 case *Mapp v. Ohio*, the Supreme Court extended the exclusionary rule to state trials.

Since the early 1970s, however, the Supreme Court has identified some exceptions to the exclusionary rule. Tainted evidence may be used in a trial if, for example, a police officer, acting in “good faith,” obtained a search warrant that turns out to be invalid. The Court also has ruled that tainted evidence that could have been legally obtained anyway can be used in court.

In addition, the Court has ruled that police do not need to obtain search warrants in certain cases. For example, police do not need a warrant to search through garbage that people have placed outside their home



for trash collection. Police also may seize evidence that is “in plain view” even if it is not listed in the search warrant used to enter the home.

## C A S E S T U D Y

### Gun Control

**CONSTITUTIONAL GOVERNMENT** One of the most debated issues of constitutional interpretation involves the Second Amendment, which states that “a well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.” Some people believe that the amendment supports Americans’ right to own a gun or other firearm to protect themselves and their homes.

Others argue that firearms are dangerous and need to be restricted. About 38,000 Americans are killed by firearms each year, some 1,400 of them accidentally. The solution, many people believe, lies in gun control, or regulations on the ownership of firearms. Gun control supporters believe the Second Amendment’s purpose is to

allow citizens to bear arms only as part of a “well-regulated militia.” The debate over gun control remains heated.

In 1939 the Supreme Court ruled in *United States v. Miller* that the federal government could restrict the transportation of certain kinds of firearms, such as sawed-off shotguns and machine guns. In addition, the Court has allowed states to pass some gun control measures.

Several recent federal and state gun control measures have restricted the sale and ownership of firearms. In 1994 the federal government banned the sale of certain kinds of assault weapons. In 1993 Congress passed the fiercely debated Brady gun control law, which requires a five-day waiting period for buying handguns, and gives local authorities time to determine if a buyer has committed a felony and is thus prohibited from owning a firearm. Congress anticipated replacing the waiting period in five years with a computerized database that would allow authorities to check almost instantly if potential gun buyers have criminal records. In June 1997 the

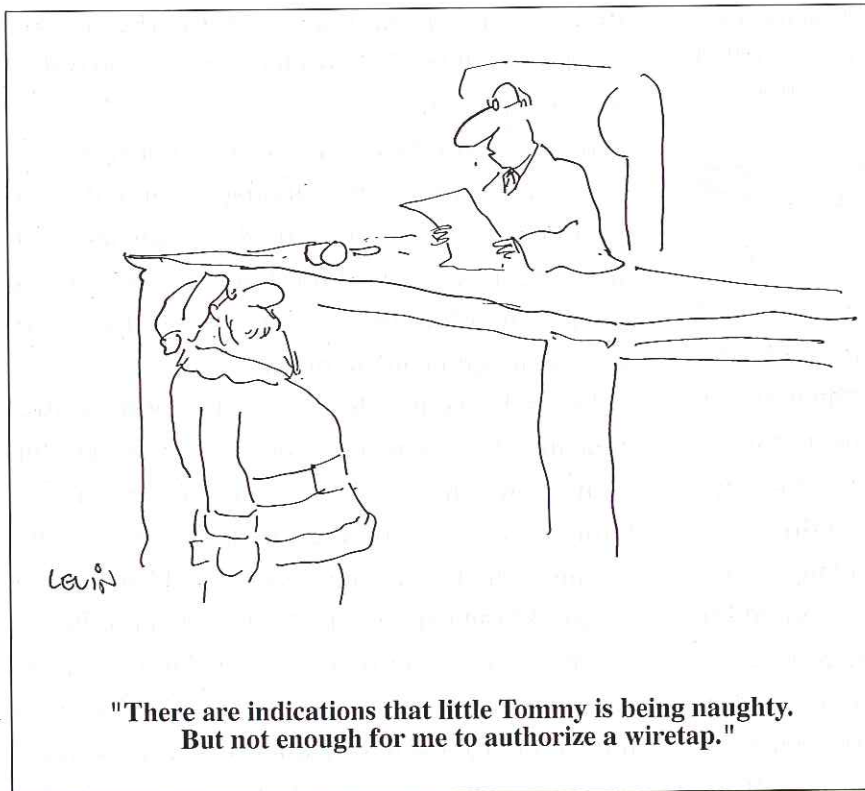
Supreme Court struck down the part of the Brady law that required local law enforcement officials to perform these checks, saying that Congress could not force the states to assist with the administration of federal programs.



**CONSTITUTIONAL GOVERNMENT** State and federal laws regulate the sale and ownership of firearms. How do some people use the Second Amendment to argue that government should not restrict citizens’ right to own firearms?

**Personal Security** The Fourth Amendment prevents police from conducting unreasonable searches of people and their possessions. The Supreme Court has ruled, for example, that police cannot stop people in public and search them unless the officers involved have reason to think that the suspects are armed or dangerous. On the other hand, the Court has allowed employers to require workers to submit to drug testing, considering it a reasonable way to protect public health and safety.





"There are indications that little Tommy is being naughty.  
But not enough for me to authorize a wiretap."

**PRINCIPLES OF DEMOCRACY** *Protections outlined by the Fourth Amendment limit the way in which government can intrude on individual liberties. What must police do in order to tap a telephone?*

The Supreme Court has allowed police greater leeway in conducting searches of people's personal possessions—including cars, boats, and other vehicles—than in searching homes. A police officer may, for example, search a car without a warrant if he or she has probable cause to believe it contains illegal drugs or weapons. The Court recognizes that because a car can be driven away, delaying a search until a warrant is obtained might give a suspect the opportunity to destroy or get rid of evidence.

Police also may stop drivers at random to check whether they are intoxicated. The Supreme Court has allowed such checkpoints because it considers their use a reasonable way to protect public safety from the dangers posed by drunk drivers.

**Security and Private Communication** Fourth Amendment protections have been extended to private communications between people. Listening to private conversations is considered a form of search and seizure. One way that police may "seize" private telephone conversations is through

the use of electronic devices known as wiretaps. Are there circumstances under which the use of these devices violates Fourth Amendment rights?

In 1928 the Supreme Court ruled that law enforcement authorities could use wiretaps to listen to private telephone conversations without search warrants. In that case, *Olmstead v. United States*, the Court stated that wiretapping was not a form of illegal search and seizure because it did not involve breaking into a private home.

Later, the increased number and sophistication of such devices led the Supreme Court to change direction on this issue. In 1967 the Court ruled that authorities cannot listen to private telephone conversations without first obtaining a warrant. In addition, Congress has passed laws against using electronic devices to listen to private conversations without a warrant.

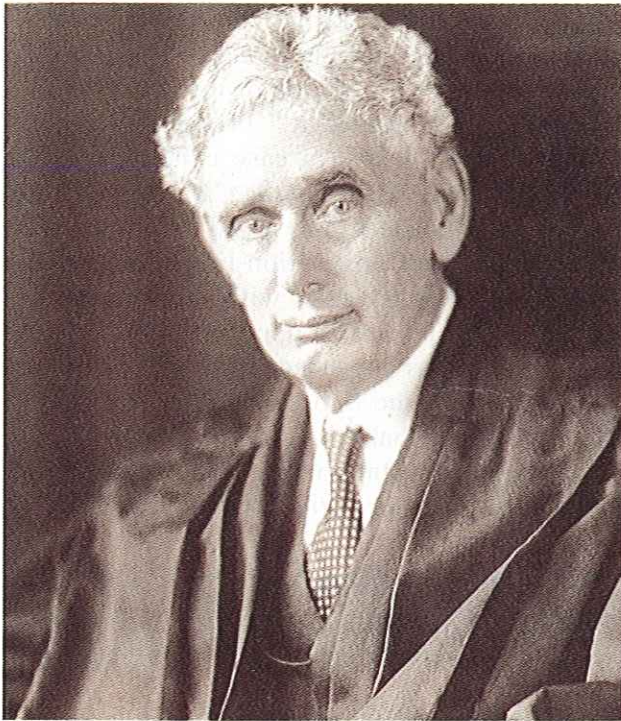
**Student Rights** Fewer restrictions apply to authorities searching students or their possessions. In 1985, for example, the Supreme Court ruled that school officials did not need a warrant to search students' possessions. The case of *New Jersey v. T.L.O.* involved a 14-year-old New Jersey student who school officials believed had broken school rules on smoking. An official searched the student's purse and found marijuana, along with evidence indicating that she had smoked and sold some of it.

The Supreme Court ruled that school officials had acted properly to guard students' health and safety and to keep order. To conduct searches of students or their possessions the Court said, school officials need only "reasonable" grounds to suspect a student has broken the law or school rules.

## Protecting the Right to Privacy

The Constitution does not specifically address the issue of privacy. The courts, however, have determined that the Bill of Rights provides a right of privacy against the government's police power. In





**CONSTITUTIONAL GOVERNMENT** Supreme Court justice Louis Brandeis argued that the Court should not allow the government to wiretap people's telephones without a warrant. What is the current Court ruling on this issue?

1928 Supreme Court justice Louis Brandeis, writing for the minority, argued that the Court was wrong to allow government to wiretap telephones without a warrant. The framers, Brandeis

wrote, "sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations." In doing so, he said, the framers recognized the people's "right to be let alone—the most comprehensive of rights and the right most valued by civilized men."

Some 37 years later, in the *Griswold v. Connecticut* case, the Supreme Court agreed with Brandeis's view by ruling that the Constitution does guarantee a right of privacy. The 1965 case involved a state law that prohibited the use and promotion of birth control devices. The Court said that such laws violated a married couple's "zone of privacy created by several fundamental constitutional guarantees."

Some judges and constitutional scholars argue that the right to privacy does not exist because it is not specifically mentioned in the Constitution. These opposing views about the right to privacy have played a leading role in the bitter controversy over abortion. In 1973 the Supreme Court ruled in *Roe v. Wade* that laws restricting a woman's freedom to have an abortion in the first three months of pregnancy violate her right to privacy. Many people strongly oppose the Court's ruling in *Roe* and argue that government should ban abortion.

Over time the Court has revisited the abortion issue, and since 1989 has allowed state governments to place certain restrictions on the right to have an abortion. One such restriction prevents unmarried females under the age of 18 from having an abortion without the approval of their parents or a judge.

## SECTION 1

## REVIEW

1. Define the following terms: due process, procedural due process, substantive due process, police power, search warrant, probable cause, exclusionary rule.
2. How do procedural and substantive due process affect government in establishing time, place, and manner regulations?
3. How does the Fourth Amendment protect "the right of the people to be secure in their persons, houses, papers, and effects"?
4. How did the 1965 case of *Griswold v. Connecticut* affect the right to privacy?

### 5. Thinking and Writing Critically

Government uses its police power to promote and to protect the health, safety, and welfare of the public. How do schools use rules to achieve these same goals for students? Be sure to include examples of such rules.

### 6. Applying **CONSTITUTIONAL GOVERNMENT**

As you have read, the right to privacy is not specifically guaranteed in the Constitution. Do you think that it should be? Can officials search lockers at any time in your school? What sorts of rights to privacy should students have, if any? Explain your answers.



## SECTION 2

# RIGHTS OF THE ACCUSED

### Political Dictionary

presentment  
Miranda Rule



### Objectives

- ★ How does the Constitution protect the right of *habeas corpus* and protect against bills of attainder and *ex post facto* laws?
- ★ How do requirements for bringing charges before grand juries protect the rights of people accused of crimes?
- ★ How does the Fifth Amendment protect against self-incrimination?

As you have learned, the government uses its police power to prevent crime and to arrest people who break the law. Even though these actions are needed to protect the public, the use of police power must not violate the constitutional rights of people who are accused of crimes. Upholding accused people's rights may make it harder at times for government to bring about justice. These rights, however, reflect the framers' desire to protect innocent people from being wrongly convicted of crimes.

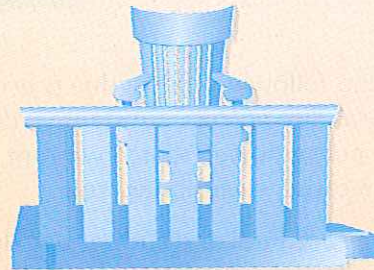
## Writ of Habeas Corpus

The Constitution states that authorities cannot hold a person in jail without showing good reasons for doing so. Specifically, accused people have a right to a writ of *habeas corpus*. As noted in Chapter 5, this writ is a court order that requires police to bring a person accused of a crime to court and to show good reasons for keeping him or her in jail. (*Habeas corpus* is a Latin term meaning "you have the body.") The right to a writ of *habeas corpus* is guaranteed by Article I, Section 9, of the Constitution.

The Constitution allows the federal government to suspend the right to *habeas corpus* only "when in cases of rebellion or invasion the public safety may require it." President Abraham Lincoln believed such a case existed when he suspended the right during the Civil War. Lincoln took it upon himself to suspend *habeas corpus*, even though the Constitution lists that power in Article I, which deals with the powers of Congress. Despite some opposition to Lincoln's action, Congress approved it in an 1863 law. In 1866, however, the Supreme Court ruled in *Ex parte Milligan* that Lincoln and Congress had acted improperly and that neither had the power to suspend *habeas corpus* in areas that were not

### Constitutional Protections for Those Accused of Crimes

- 1. Writ of *habeas corpus*** Police must appear in court with the accused and show good reason to keep him or her in jail.
- 2. Bill of attainder** The government may not pass laws directed at specific individuals.
- 3. *Ex post facto* laws** The government may not pass laws that punish people for actions that were legal when they took place.
- 4. Grand jury** A person accused of a federal crime must be brought before a panel of citizens who decide if the government has enough evidence to try him or her on formal charges.
- 5. Self-incrimination** An accused person cannot be forced to provide evidence to support a criminal charge against himself or herself.



*The Constitution outlines specific protections for people accused of crimes. These protections make it more difficult for the government to wrongly convict innocent people. Why is it important that accused people be protected against self-incrimination?*



in open rebellion and in which civilian courts still functioned.

## Bills of Attainder

As noted in Chapter 5, the Constitution also states in Article I, Sections 9 and 10, that neither Congress nor a state government can pass bills of attainder, or laws that are directed against a specific person. The Supreme Court has ruled that a law can be considered a bill of attainder even if it prescribes a form of punishment other than imprisonment. In the 1946 case *United States v. Lovett*, the Court overturned a congressional act that prohibited three specified federal government employees from collecting a salary. The men had been suspected of having political beliefs that many people considered harmful to the United States. The Court ruled that the law punished the men by withholding their salaries even though they had not been found guilty of a crime. The law was thus found to be an unconstitutional bill of attainder.

## Ex Post Facto Laws

The Constitution also prohibits authorities from punishing people for actions that were legal at the time they took place. As noted in Chapter 5, the Constitution states in Article I, Sections 9 and 10, that the federal and state governments cannot pass *ex post facto* laws, or laws that apply to actions that took place before those laws were passed. For example, government may not pass a law today that outlaws buying foreign automobiles and then punish people who bought a foreign car yesterday. The prohibition against *ex post facto* laws applies only to laws that may impose punishment or other penalties.

## Grand Juries

The Fifth Amendment protects the rights of all people accused of federal crimes by requiring that their case be brought before a grand jury. As noted in Chapter 12, a grand jury is a panel of citizens who decide if the government has enough evidence to try an accused person.

In a grand jury proceeding the attorney for the government presents its case against the accused. If the grand jury agrees that the government has enough evidence to support its case, it may return

a “true bill of indictment” that calls for a trial. If the government’s evidence does not satisfy the grand jury, the accused person is not sent to trial and can no longer be kept in police custody.

Less often, a grand jury will decide to conduct its own investigation rather than accept evidence from a government attorney. If the grand jury believes its own investigation has found sufficient information to send an accused person to trial, it may issue a **presentment**, or formal report authorizing a trial.

The Fifth Amendment’s requirement for a grand jury applies only in federal cases, although some states do have their own grand juries to consider cases against people accused of state crimes. In other state cases, however, no grand jury is convened. Lawyers for the state simply bring formal charges in what is called an information. As noted in Chapter 12, an information is an affidavit, or sworn statement, in which the state’s lawyer declares that there is sufficient evidence against the accused to justify trying the case.

## Self-Incrimination

The Fifth Amendment also protects against self-incrimination, stating that people accused of crimes cannot be forced to provide evidence against themselves. Thus, accused people may legally refuse to testify at their own trials if such testimony might incriminate them. They also cannot be forced to incriminate themselves when being questioned by law enforcement officials. The 1936 case *Brown v. Mississippi*, for example, involved an incident in which police had tortured a suspect to force a confession. The Supreme Court ruling in the case stated that police may not physically force a criminal suspect to confess to a crime. Other cases have established that police may not threaten people or use other methods to force them to incriminate themselves.

The Supreme Court also has ruled that police must inform criminal suspects of their right to refuse to answer questions. This requirement—known as the **Miranda Rule**—stems from the 1966 case *Miranda v. Arizona*. The case involved Ernesto Miranda, who, after two hours of police questioning, confessed to kidnapping and raping a woman. The Court ruled that his confession could not be used in a trial because the police had not effectively advised him of his rights to remain silent and to consult with a lawyer. The Court also determined



## Miranda Rights

Before asking you any questions, it is my duty to advise you of your rights:

1. You have the right to remain silent.
2. If you choose to speak, anything you say may be used against you in a court of law or other proceeding.
3. You have the right to speak with an attorney before answering any questions, and you may have an attorney present with you during questioning.
4. If you cannot afford an attorney and you want one, an attorney will be provided for you free of charge.
5. Do you understand what I have told you?
6. You may also waive the right to counsel and your right to remain silent, and you may answer any question or make any statement you wish. If you decide to answer questions, you may stop at any time to consult with an attorney.

**PUBLIC GOOD** *Criminal suspects who are arrested must be informed of their Miranda rights before police may question them. Why do you think the Supreme Court believed that suspects should be informed of their right to an attorney?*

that police should have informed Miranda that a lawyer would be provided for him if he could not

afford one and that anything he said could be used against him in court.

Today police across the country inform criminal suspects of their “Miranda rights” before questioning them. Suspects, however, may decide to give up these rights and answer police questions. The statements that criminal suspects then freely make, even confessions, may be used against them in court.

Critics of the Miranda Rule have argued that the requirement ties the hands of police officers by making it harder for them to carry out their duties. These critics also argue that some people who are guilty of crimes are released from jail simply because a police officer did not properly inform the accused person of his or her rights to silence and to a lawyer.

Supporters of the Miranda Rule, however, say that it protects innocent people from being tricked or brutally forced into confessing to crimes they did not commit. Although over time the Supreme Court has allowed some exceptions to the Miranda Rule, the Court has generally supported the principle that accused people cannot be guaranteed their rights without being informed of them by police.

Note that protections against self-incrimination do not allow criminal suspects to refuse to be fingerprinted and photographed, to participate in a police lineup, or to submit to blood and other tests commonly used in an investigation. These are all considered proper parts of the evidence-gathering process.

## SECTION 2

## REVIEW

1. Define the following terms: presentment, Miranda Rule.
2. What does the right of *habeas corpus* protect? How do prohibitions against bills of attainder and *ex post facto* laws help ensure that government passes fair laws?
3. What must the government prove when taking a case before a grand jury?
4. What are the Miranda rights of people accused of crimes in the United States? What methods of gathering evidence do not violate the constitutional protection against self-incrimination?

### 5. Thinking and Writing Critically

You may have heard of accused people who “plead the Fifth.” This phrase indicates that they are using their Fifth Amendment right to refuse to respond to questions whose answers might incriminate them. Why should people not assume that pleading the Fifth is an admission of guilt?

### 6. Applying **CONSTITUTIONAL GOVERNMENT**

Examine the chart above that lists the Miranda rights of the accused. Why is it important that certain rights be extended to people accused of crimes?



## SECTION 3

# ENSURING FAIR TRIALS AND PUNISHMENTS

### Political Dictionary



change of venue  
bench trial  
double jeopardy

### Objectives

- ★ Which amendments of the Bill of Rights help guarantee the right to a fair trial?
- ★ In what ways does the Bill of Rights protect convicted criminals from excessive punishments?

As noted in Section 2, the Constitution requires government to respect the rights of the accused during investigations. Similarly, government must respect a person's right to a fair trial and must act fairly when punishing people convicted of crimes.

## The Right to a Fair Trial

What provisions of the Constitution regarding a fair trial must the government respect? The Fifth, Sixth, Seventh, and Eighth Amendments together establish the following: the right to a speedy and public trial, the right to trial by jury, the right to an adequate defense, and restrictions on trying a person twice for the same crime.

**Speedy Trial** The Sixth Amendment guarantees the right to a speedy trial. This means that the period of time between the filing of formal charges and the start of a trial must be reasonable. Starting a trial as soon as possible keeps an accused person who cannot or will not post bail from being held in jail for an unnecessarily long period of time. Speedy trials also reduce the

chance that evidence may be lost and that witnesses may forget what they saw or heard.

Sometimes long delays are unavoidable, however. In some cases the accused person's attorney may ask for a delay to prepare a more thorough defense. Sometimes a court already has a full docket, or schedule, which delays starting a trial.

As noted in Chapter 12, judges may allow an accused person to be released on bail while awaiting trial, and the Eighth Amendment keeps judges from setting excessive bails. Defining *excessive* is difficult. In general, the courts have said that an excessive bail is one greater than is necessary to assure the appearance of the accused person in court. After the trial begins, the bail money is returned.

**Public Trial** The Sixth Amendment also guarantees the right to a public trial. Public trials help prevent abuses of the law by allowing the public to witness, or check on, the proceedings. Even though judges may keep some people out of the courtroom to maintain order and to ensure that witnesses and the jury are not influenced unfairly, they may not keep members of the general public from attending the trial.



**CONSTITUTIONAL GOVERNMENT** *In accordance with the protections specified in the Sixth Amendment, members of the general public are allowed to attend trials. How do public trials help prevent abuses of the law?*



Public trials also function as a kind of laboratory for citizens to see how the justice system works. Indeed, much of the media use this argument to justify their presence in the courtroom.

A current debate involving the media centers on whether or not the courts should allow trials to be televised. Federal court proceedings are not televised, but television cameras are allowed in courtrooms in 47 states. One of the most famous televised trials took place in 1995, when a California jury found former football star O. J. Simpson not guilty of murder charges. Millions of people watched the trial on cable and broadcast television.

The extensive and sensational media coverage of the Simpson trial spurred the debate over television cameras in the courtroom. Journalists argued that the public had a right to view the court proceedings. Opponents argued that allowing the media into the courtroom enabled reporters to sensationalize the case and influenced the conduct of the trial. To prevent the trial's massive media coverage from influencing members of the jury, the judge ordered that jury members be sequestered in a hotel when they were not in the courtroom. For these reasons, many people argued that television cameras should be kept out of courtrooms in the future.



**PUBLIC GOOD** News media outside the Los Angeles courthouse await the reading of the verdict at the O. J. Simpson trial. How did the media coverage of the Simpson trial change the way that many people feel about having television cameras in a courtroom?

## Comparing

## Governments

### The Right to a Speedy Trial

Imagine spending eight long months in prison while waiting to stand trial for a crime you did not commit. Fortunately, the U.S. Constitution is designed to protect people from such an ordeal. In France, however, where the right to a speedy trial is not constitutionally guaranteed, prisoners endure an average of nearly eight months behind bars while awaiting trial.

For serious crimes, officials can hold a suspect for an unlimited period if he or she is considered a flight risk or a threat of some kind. With 40 percent of its 55,000 prisoners currently awaiting trial, France has one of the highest rates of pretrial imprisonment in Europe.

**Trial by Jury** As you have learned, the Constitution prevents the government from finding someone guilty of a crime without due process of law. One element of due process is the right to a trial by an impartial jury. The Sixth Amendment and Seventh Amendment—as well as Article III, Section 2, of the Constitution—all guarantee the right to a trial by jury.

As noted in Chapter 12, a trial jury, or petit jury, usually is made up of 12 people. The trial must be held in the district in which the crime was committed, and the panel of jurors must represent a fair cross-section of the community. To make sure that juries are representative, jurors are chosen at random from lists of registered voters or other such official lists. The Supreme Court has ruled that people cannot be kept off a jury based on their race, sex, economic status, national origin, or religion.

Accused people who believe that they cannot receive a fair trial in the community where the crime took place may ask for a **change of venue**, or that their trial be moved to another location. For example, a trial might be moved if media coverage of the crime has biased potential local jurors against the defendant. Such an instance occurred with the trial of Timothy McVeigh, who was accused of bombing a government building in



Oklahoma City. McVeigh's trial was moved to Denver, Colorado.

Federal cases must be decided by unanimous verdicts. A few states, however, allow most criminal cases to be decided by less than a unanimous vote of jurors. In cases involving disputes over civil laws, many states allow jurors to reach a verdict with a less-than-unanimous vote, usually two thirds or three fourths.

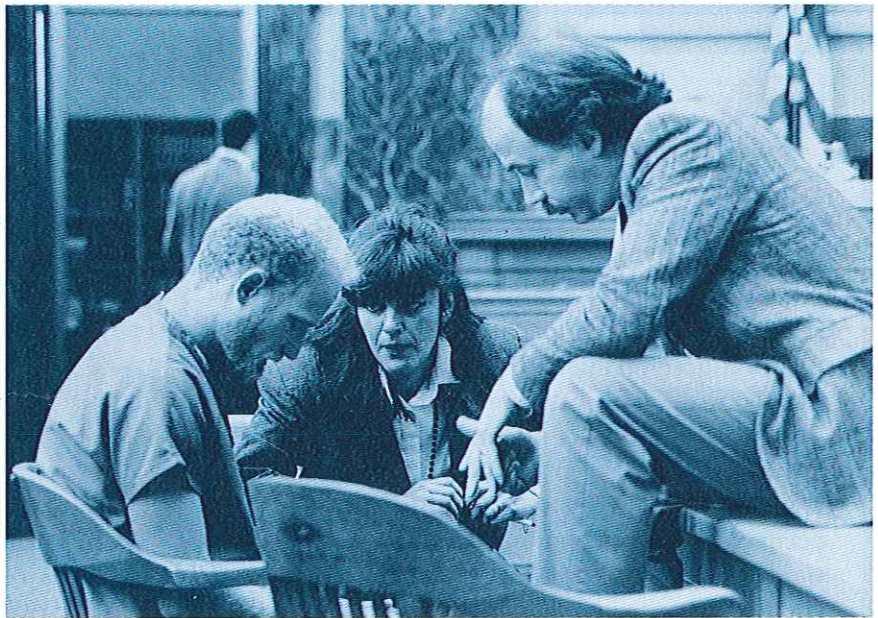
An accused person may give up the right to a trial by jury in favor of a **bench trial**, in which a judge decides the case. Judges, however, may refuse to grant requests for a bench trial.

**Adequate Defense** The Sixth Amendment guarantees defendants the right to an adequate defense. This means that people accused of crimes have the right to

- ★ be informed of the charges against them,
- ★ question witnesses against them in court,
- ★ present their own witnesses in court, and
- ★ be represented by counsel—a lawyer.

In 1932 the Supreme Court ruled that the last right listed—the right to counsel—was so critical that in cases involving capital offenses, or crimes punishable by death, the government must appoint lawyers for people who cannot afford them. The Court said that without a lawyer, even an innocent person “faces the danger of conviction because he does not know how to establish his innocence.” In 1938 the Supreme Court ruled that in all federal cases, the government must provide a lawyer for people who cannot afford to hire one.

Then, in the 1963 case *Gideon v. Wainwright*, the Supreme Court issued a landmark ruling regarding the right to counsel in state courts. The case involved a man named Clarence Gideon, who had been convicted in a Florida court of breaking into a pool hall with the intent to commit a misdemeanor. At his trial, Gideon claimed that he was too poor to afford an attorney and requested that one be provided. The judge refused, and Gideon was convicted.



**CONSTITUTIONAL GOVERNMENT** *People accused of a crime have the right to be represented by a lawyer: What did the Supreme Court say in *Gideon v. Wainwright* about this right?*

While serving a five-year sentence in a Florida state prison, Gideon mailed a petition about his case, written on borrowed paper, to the Supreme Court. The Supreme Court agreed to hear his case, and there Gideon argued that the state of Florida had violated his Sixth Amendment right to counsel by not providing him with a lawyer.

The Supreme Court agreed. Speaking for the Court, Justice Hugo Black wrote that “any person [hauled] into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.” The Court ruled that in federal and state criminal cases involving serious crimes, the court must appoint a lawyer to represent an accused person who cannot afford one. Gideon later was found not guilty in a new trial in which he was represented by a state-appointed lawyer.

In 1972 the Supreme Court extended the right to counsel even further. It ruled that an accused person cannot be sent to jail for any offense unless he or she has either been represented by counsel or voluntarily given up that right. This ruling covers all cases that could involve imprisonment, no matter how minor the crime.

**Double Jeopardy** The Fifth Amendment provides protection against **double jeopardy**, or



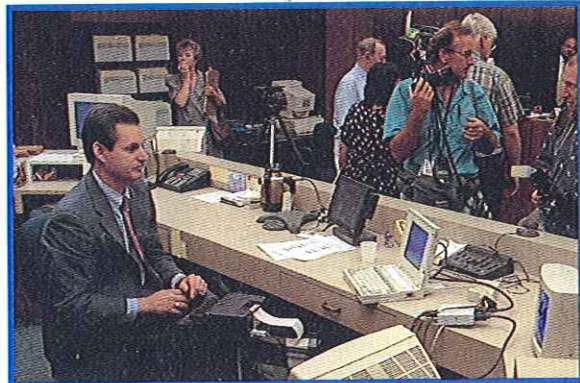
# Careers in Government



## Court Reporter

No television courtroom drama would be complete without the prominently placed court reporter, whose fast-paced typing provides a constant accompaniment to the court proceedings. In real life as well, the court reporter—like the judge and jury—is a standard fixture in the U.S. courtroom. The job of the court reporter, or court stenographer, is to record the court's proceedings word for word, usually using abbreviations and other shorthand techniques. As the court reporter types, the steno machine—which allows words to be typed with only one stroke rather than several—spits out a steady stream of symbol-covered paper that resembles cash register tape.

By the end of the much-publicized O. J. Simpson trial, two court reporters—now almost celebrities as well—typed an estimated 3 million words, or 30,000 pages, of court transcripts. Today's court reporters take advantage of the latest technology. Keyboards are often linked to a computer system that gives judges and lawyers an immediate transcript of the proceedings, and allows the court reporter to communicate with them without interrupting the trial.



*Court reporters use abbreviations and other shorthand techniques to record court proceedings.*

Simpson-trial court reporter Christine Olson became interested in court reporting as a high school senior. "I could type 100 words a minute on a manual typewriter," she says with pride. According to Olson, studying piano as a child helped give her the dexterity needed to become a master of the keyboard.

Those interested in a court-reporting career should investigate degree programs offered at business colleges or community colleges. While an interest in law might make the job more appealing, manual dexterity and knowing how to type are essential.

being tried more than once for the same crime. If a person is found not guilty of a crime in a state court, for example, the state cannot put him or her on trial again for the same crime. Similarly, if the person is found guilty, the state may not put him or her on trial again in order to win a harsher punishment.

Double jeopardy does not include, however, situations in which a person breaks both a state and a federal law with the same act. This might happen, for example, in cases involving federal and state laws made to control the possession and use of illegal drugs. In addition, if a person breaks several state or several federal laws when committing a crime, he or she may be tried separately on each charge. For example, a person who breaks

into a home to steal a computer and then sets fire to the house may be tried separately for illegally entering the home, for stealing the computer, and for setting fire to the house.

Protections against double jeopardy also do not apply to cases in which a jury fails to deliver a verdict in the first trial. A person may be tried again in a second trial that is considered a continuation of the first trial.

## Providing for Fair Punishment

What happens to people who have been found guilty of crimes in fair trials? What protections does the Bill of Rights provide for convicted people? The Eighth Amendment protects people



convicted of crimes from “cruel and unusual punishment.” Defining what is cruel and unusual, however, is difficult. The debate over the death penalty, for instance, has been particularly fierce.

**Cruel and Unusual Punishment** Deciding which punishments are cruel and unusual is difficult for many reasons. Different people have varying opinions about what is cruel. Also, societal standards change over time. For example, do you think that whipping a convicted criminal is cruel? The Massachusetts officials who put such punishments into law during the 1700s certainly believed at the time that they were appropriate. Proposing such punishments today, however, likely would prompt an outcry, for most present-day Americans would consider them unusually harsh.

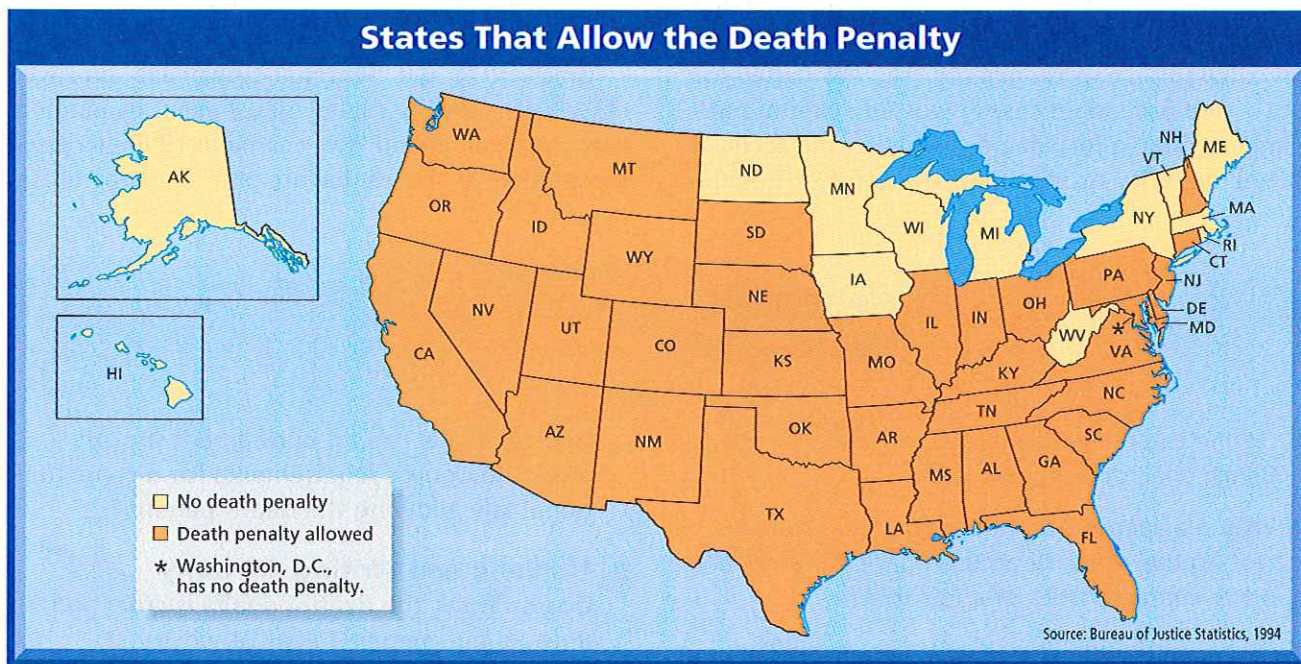
Just as the Supreme Court has established guidelines for dealing with other civil liberties issues, it has also set guidelines for applying the Eighth Amendment’s prohibition against cruel and unusual punishment. In the 1910 case *Weems v. United States*, for example, the Court ruled that a Coast Guard officer had been punished too harshly for stealing money. Using an

old law, a lower court had sentenced the officer to 15 years of hard labor in chains and fined him nearly seven times the amount of money he had stolen.

In overturning the sailor’s punishment, the Supreme Court argued that societal standards are critical in deciding what is cruel and unusual. The Eighth Amendment, the Court said, “is not fastened to the absolute but may acquire meaning as public opinion becomes enlightened by humane justice.”

Federal courts also have applied the Eighth Amendment in cases involving living conditions and overcrowding in prisons. In 1969, for example, a federal court found that parts of the Arkansas prison system violated the Eighth Amendment because of poor living conditions, including inadequate clothing and food for prisoners. In addition, during the early 1990s the federal courts oversaw more than 80 percent of federal prisons, in order to ensure that prisons met adequate standards for cell space, food, and clothing.

**Capital Punishment** As noted in Chapter 12, one of the most controversial issues involving the Eighth Amendment is capital punishment, or the



Since 1976 the Supreme Court has approved several laws that allow capital punishment. What 1972 Supreme Court case ruled that capital punishment laws across the country violated the Eighth Amendment?



death penalty. The Supreme Court has considered cases involving the death penalty since the 1800s. In the 1890 case *In re Kemmler*, for example, the Court ruled that the death penalty was not cruel and unusual punishment.

In general, until the early 1970s the Supreme Court refused to find any law unconstitutional that allowed government to hand out death sentences to people convicted of serious crimes. In the 1972 case *Furman v. Georgia*, however, a sharply divided Court ruled that the capital punishment laws enforced by states across the country violated the Eighth Amendment. In that case, several justices said that many death penalty decisions were influenced by racism and other factors that made such punishments inconsistent—and thus unfair—in their application.

Over the next few years, states changed their capital punishment laws to address the Supreme Court's concerns. In 1976 in *Gregg v. Georgia*, the Supreme Court ruled in favor of a new Georgia law allowing the death penalty. The law called for a two-step process in cases involving capital punishment. First, a jury decides whether the accused person is guilty or innocent. If the jury finds the



**PRINCIPLES OF DEMOCRACY** Florida attorney general Robert Shevin argued in *Profitt v. Florida* that the death penalty may prevent some criminal behavior. What 1890s Supreme Court decision ruled that some forms of the death penalty were not cruel and unusual punishment?

accused person guilty, it then decides whether the death penalty should be imposed. The jury—or in a bench trial, the judge—also must consider whether any other circumstances involved in the case make the death penalty an inappropriate punishment. In addition, the state's highest court automatically reviews each death penalty case.

Since 1976 the Supreme Court has approved other laws allowing capital punishment. In addition, new state and federal laws passed in 1994 increased the number of crimes that are punishable by death.

### SECTION 3

## REVIEW

1. Define the following terms: change of venue, bench trial, double jeopardy.
2. Why is a speedy and public trial vital to protecting the rights of accused people? What are other characteristics of a fair trial?
3. Why is defining "cruel and unusual punishment" difficult? How has the Supreme Court suggested that cruel and unusual be defined?
4. Why did the Supreme Court rule against the death penalty in 1972? How did the state of

Georgia's new capital punishment process meet the Court's requirements for a constitutional law allowing the death penalty?

### 5. Thinking and Writing Critically

Do you think the death penalty is cruel and unusual punishment? Why or why not?

### 6. Applying **CONSTITUTIONAL GOVERNMENT**



Conduct an Internet search for information on the legal process of a country of your choice. Briefly outline the information.



**SECTION 1**

The First Amendment secures many fundamental freedoms, although additional individual liberties are protected by other constitutional amendments as well. For example, the Fifth Amendment protects people's right to due process of law. Courts have broken due process into two parts—procedural and substantive due process—to use in ensuring that government laws are fair and reasonable and that they are applied according to set procedures and as the Constitution prescribes.

Originally, the Fifth Amendment's Due Process Clause and the rest of the Bill of Rights protected the people from federal government actions only. However, the Fourteenth Amendment to the Constitution extended most Bill of Rights protections to state actions.

The Fourth Amendment requires authorities to protect individuals against governmental intrusion. The Bill of Rights also has been interpreted to protect people's right to privacy, although this interpretation has been controversial.

**SECTION 2**

People accused of crimes also have rights that are protected by the Constitution. Accused people have the right to a writ of *habeas corpus*, a court order that requires police to bring a person accused of a crime to court and to show good reasons to keep him or her in jail. People also are protected from bills of attainder, laws that punish people without a trial, and *ex post facto* laws, which punish people for actions that were legal at the time they were committed.

In addition, the Constitution requires that all people accused of federal crimes be brought before a grand jury. A grand jury protects the rights of accused people by forcing government to show that it has enough evidence to support its case against them.

The Constitution also protects people from self-incrimination and from unfair questioning by police. The Miranda Rule states that the

police cannot question suspects without first informing them of their rights to remain silent and to consult with a lawyer.

**SECTION 3**

Government must also respect people's right to both a fair and public trial by jury and an adequate defense. The right to a fair trial is established in the Fifth, Sixth, Seventh, and Eighth Amendments, which together establish the right to a speedy and public trial, the right to trial by jury, the right to an adequate defense, and restrictions on trying a person twice for the same crime.

The Constitution also provides certain protections for people who have been found guilty of crimes in fair trials. The Eighth Amendment protects people convicted of crimes from "cruel and unusual punishment." Defining cruel and unusual is difficult, however.

The issue of the death penalty has been controversial for many years. The Supreme Court has considered cases involving the death penalty since the 1800s. In general, until the 1970s the Supreme Court refused to rule that laws allowing government to put people to death were unconstitutional. However, in 1972 a sharply divided Court ruled against the death penalty as it was then being instituted in the states. In 1976, however, the Court upheld a new Georgia death penalty law. Since that year, the Supreme Court has approved other laws that allow capital punishment.

**Government Notebook**

Review what you wrote in your Government Notebook at the beginning of the chapter about searches by police and school officials. Now that you have studied this chapter, how would you revise your answers? Record your answer in your Notebook.



# REVIEW

## REVIEWING CONCEPTS

1. How does the writ of *habeas corpus* protect the rights of the accused? Why does the Constitution prohibit bills of attainder and *ex post facto* laws?
2. What is capital punishment? How has the Supreme Court applied the Eighth Amendment to cases involving capital punishment?
3. What is the Miranda Rule? In what way does this rule protect people's right not to incriminate themselves?
4. What is the difference between procedural due process and substantive due process? What role does due process play in protecting the security and privacy of the people?
5. What elements of a fair trial are protected by the Bill of Rights?
6. What role does a grand jury play in protecting the rights of the accused?

## THINKING AND WRITING CRITICALLY



1. **CONSTITUTIONAL GOVERNMENT** Imagine that you have been asked to speak to high school students in a country whose government does not respect the rights to privacy and security. Write a short speech explaining the benefits of protecting these rights.
2. **CONSTITUTIONAL GOVERNMENT** One of the ways government uses its police power is by setting a minimum legal age for consuming alcoholic beverages. How do such minimum-age laws protect the health, safety, morals, and welfare of children and young adults? What other laws does government use to protect children and young adults?

3. **PRINCIPLES OF DEMOCRACY** What do you think would happen if the government were allowed to pass *ex post facto* laws? How might such power allow government to punish people unfairly?
4. **PUBLIC GOOD** Create a chart with two columns. In one column, list the rights of an accused person. In the other column, explain what might happen if each right listed in the first column were ignored in a particular trial. Then write a short paragraph explaining why respecting these rights promotes the public good.

## CITIZENSHIP IN YOUR COMMUNITY



Working with a partner, research and write a newspaper article on the process in your community that a person accused of a crime undergoes. Talk with a police officer, lawyer, or judge about what happens when a person is arrested and charged with stealing a car or destroying public property, for example. Your article should explain where a suspect is taken after arrest, where he or she is held in jail, where and when a grand jury meets to consider an indictment, where and how soon after indictment a trial takes place, and other information important to the case.

## INDIVIDUAL PORTFOLIO PROJECT



Create a pamphlet about due process that private clubs might use in developing rules for their members. The pamphlet should include explanations of procedural and substantive due process as well as suggest policies that clubs might use to ensure that their official actions follow due process. One policy, for example, might forbid a club from holding secret trials of members accused of breaking a rule.



## PRACTICING SKILLS: DISTINGUISHING FACT FROM OPINION



One key to evaluating what you see and hear is the ability to distinguish between fact and opinion. A fact is something that can be proved true, and an opinion is a personal belief about what is true. Read the statement below and answer the questions that follow.

“The Fourteenth Amendment was designed to keep state governments from limiting the rights of former slaves after the Civil War. It is my belief that the Supreme Court has used the Due Process Clause and the Equal Protection Clause to rule improperly on laws made by state and federal governments.”

1. Is the second sentence a statement of fact or opinion?
2. What descriptive words in the passage signal that the writer is expressing a fact or an opinion?
3. If you knew nothing about the Supreme Court, how might this description influence your opinion of it?

## THE INTERNET: LEARNING ONLINE



Conduct an Internet search for information about Supreme Court cases involving due process and the rights of the accused. You might use search words such as *Gideon v. Wainwright*, *Miranda v. Arizona*, and *Brown v. Mississippi*. Then create an Internet Docket Sheet that lists these cases, summarizes their significance, and provides Internet locations for finding information about them.

## ANALYZING PRIMARY SOURCES



### “EQUALITY IN AMERICA”

In 1792 Joel Barlow, a scholar of European political theory, wrote an essay on his views of government responsibility. In his essay he discusses the principles of equality and justice upon which the

U.S. government was built. The following excerpt from his essay describes government’s responsibility regarding laws. Read the excerpt and answer the questions that follow.

“A method of communicating instruction to every member of society is not difficult to discover, and would not be expensive in practice. The government generally establishes ministers of justice in every part of the dominion [country]. The first object of these ministers ought to be to see that every person is well instructed in his duties and in his rights; that he is rendered [made] perfectly acquainted with every law, . . . in case he should deem [consider] it unjust; that he is taught to feel the cares and interests of an active citizen, to consider himself as a real member of the state, know that the government is his own, that the society is his friend, and that the officers of the state are the servants of the people. A person possessing these ideas will never violate the law, unless it be from necessity; and such necessity is to be prevented by means which are equally obvious. . . .

It is not enough that the laws be rendered familiar to the people; but the tribunals [courts of justice] ought to be near at hand, easy of access, and equally open to the poor as to the rich. The means of coming at justice should be cheap, expeditious [quick and efficient], and certain; the mode of process should be simple and perfectly intelligible to the meanest [lowest] capacity, unclouded with mysteries and unperplexed [not confused] with forms. In short, justice should familiarize itself as the well-known friend of every man; and the consequence seems natural, that every man would be a friend to justice.”

1. What is the first task of a minister of justice? What obstacles might the government face in trying to accomplish this objective?
2. Do you agree that a “person possessing these ideas will never violate the law, unless it be from necessity”? Explain your answer.
3. What does Barlow say should be part of the country’s “means of coming at justice”?