

## ***Delaware Model Unit***

This unit has been created as an exemplary model for teachers in (re)design of course curricula. An exemplary model unit has undergone a rigorous peer review and jurying process to ensure alignment to selected Delaware Content Standards.

**Unit Title:** Due Process  
**Designed by:** Jill Krause  
**District:** Woodbridge School District  
**Content Area:** Social Studies  
**Grade Level:** 5

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### **Summary of Unit**

Fundamental ideals are enumerated in the introduction to [Civics Standard Two](#): individual liberty, freedom of religion, representative democracy, equal opportunity, and equal protection under the law. This is not a complete list of the main ideals of American democracy, but they are umbrella concepts. For example, the principles of limited government and civil rights are means to achieve individual liberty.

Civics Standard Two for this grade stresses an understanding of what rule of law means. Such understanding requires knowing the alternative: rule by whim of rulers. Implied in the concept of due process is that there are rules that constrain how those with government authority treat citizens, and that these rules are derived from explicit rights. A true understanding would require an appreciation of the difficulty in getting those who make the rules (laws) to make rules that constrain their power and then forcing them to feel obliged to obey these rules. Students should understand that the rule of law is a rare and precious achievement and requires constant vigilance due to the inherent temptation to abuse authority.

Due process protects American citizens by requiring the government to pass and follow fair laws (substantive due process), and to treat people fairly (procedural due process). Due process is part of the American political system because history has shown that governments have a great deal of power and resources and have used them in ways that harm people and ignore individual rights. People need to be protected from those who have power, and due process is one way to protect individuals.

While due process applies in civil as well as criminal cases, it applies centrally to criminal procedures, and the Constitution specifically enumerates the fundamental rights of an accused, such as the right to an attorney and the right to a trial by jury. The inclusion of a separate due process clause in Amendment V and XIV broadens the requirement of fairness beyond the enumerated rights to include the presumption of innocence and the requirement placed on the the prosecution to prove its case "beyond a reasonable doubt." While the 5<sup>th</sup> Amendment offers protections from federal abuse, the 14<sup>th</sup> Amendment extends these protections to state governments. Amendments V and VI contain fundamental protections guaranteed to individuals who are accused of a crime. The guarantees include protections against double jeopardy and self-incrimination as well as the rights to a lawyer, a speedy and public trial, to be informed of accusations, to be confronted with witnesses, and to obtain friendly witnesses. The due process protections are triggered when a government attempts to deprive a person of life, liberty, or property.

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## **Stage 1 – Desired Results** (What students will know, do, and understand)

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### **Delaware Content Standards**

- **Civics Standard Two 4-5a:** Students will understand that the principle of “due process” means that the government must follow its own rules when taking actions against a citizen.

### **Big Ideas**

- Government
- Due process

### **Unit Enduring Understandings**

- The principles and ideals underlying American democracy are designed to promote the freedom of the American people.
- Due process protects American citizens by requiring the government to pass and follow fair laws and to treat people fairly

### **Unit Essential Questions**

- What is due process and how does it protect individuals?
- How am I protected from those with authority over me?
- How does the Bill of Rights attempt to honor the principle of due process?
- Why should a government obey the laws it makes?

### **Knowledge and Skills**

#### **Students will know...**

- What due process is.
- What rule of law means.
- The government must pass and follow fair laws.
- The government must treat people fairly.
- Due process protects American citizens.

#### **Students will be able to...**

- Understand that the principle of “due process” means that the government must follow its own rules when taking actions against a citizen.
- Discriminate between situations where due process has protected American citizens and situations where citizens were not protected.
- Use content-appropriate vocabulary in order to communicate understanding of Civics content and concepts.
- Understand multiple causes and use information to predict likely effects.
- Use Civics content and concepts as evidence to solve problems and to make and support reasoned decisions, explanations, conclusions, or predictions.

## Stage 2 – Assessment Evidence

(Evidence that will be collected to determine whether or not Desired Results are achieved)

### Transfer Task

This summative assessment is a transfer task that requires students to use knowledge and understandings to perform a task in a new setting or context.

The assessment and scoring guide should be reviewed with students prior to instruction. Students should work on the task after lessons have been completed.

### Essential Question Measured by the Summative Assessment

- How am I protected from those with authority over me?

<b>Prior Knowledge</b>	Now that you have learned about your due process protections, you are ready to use this knowledge to develop a reasoned explanation of how the government must pass and follow fair laws. Also, you will use this knowledge to explain how the government must treat people fairly.
<b>Problem</b>	You are employed by the United States Department of Immigration and Naturalization as a Naturalization Specialist. The department is working overtime to help prepare new immigrants for an upcoming citizenship test. Many of the new immigrants are struggling to understand their due process protections.
<b>Role/ Perspective</b>	As an employee of this Department, you have been asked to help create a teaching tool to help the new immigrants learn these protections.
<b>Product/ Performance</b>	Create a multimedia presentation (website, PowerPoint, video, trifold, brochure, etc.) that teaches others how American citizens are protected from those with authority over them. The presentation should include: <ul style="list-style-type: none"><li>• Examples of the due process protections of American citizens.</li><li>• A student-designed example of a situation where due process has protected an American citizen.</li><li>• The use of content-appropriate vocabulary.</li><li>• A student-designed explanation of why due process is important to American citizens.</li></ul>
<b>Criteria for Exemplary Response</b>	Be sure to include: <ul style="list-style-type: none"><li>• Examples of due process protections of American citizens.</li><li>• Situations where due process has protected American citizens.</li></ul>

## Transfer Task Rubric

Scoring Category			
The multimedia presentation provides...	Score Point 3	Score Point 2	Score Point 1
Examples of the due process protections of American citizens.	The content of the multimedia presentation includes a thorough list of due process examples.	The content of the multimedia presentation includes a partial list of due process examples.	The content of the multimedia presentation includes a minimal list of due process examples.
Student-designed situations where due process has protected American citizens.	Situations are often given and enhance the understanding of the due process protections.	Situations are sometimes given and enhance the understanding of the due process protections.	Situations are rarely given to enhance understanding of the due process protections.
Use of content-appropriate vocabulary.	All unit vocabulary words are used in the content of the task.	Most unit vocabulary words are used in the content of the task.	Some unit vocabulary words are used in the content of the task
A student-designed explanation of why due process is important to an American citizen.	Explanation is thoroughly connected to the importance of due process to American citizens and shows impact the protections have on daily life of American citizens.	Explanation is somewhat connected to the importance of due process to American citizens and shows partial impact the protections have on daily life of American citizens.	Explanation is minimally connected to the importance of due process to American citizens and shows little impact the protections have on daily life of American citizens.

### Performance Level

Advanced	11-12
Meets the Standard	9-10
Below the Standard	6-8
Well Below the Standard	4-5

## **Student Self-Assessment and Reflection**

When students are required to think about their own learning, to articulate what they understand and what they still need to learn, achievement improves.

-Black and William, 1998; Sternberg, 1996; Young, 2000

How a teacher uses the information from assessments determines whether that assessment is formative or summative. Formative assessments should be used to direct learning and instruction and are not intended to be graded.

The Checks for Understanding at the end of each instructional strategy should be used as formative assessment and may be used as writing prompts or as small-group or whole-class discussion. Students should respond to feedback and be given opportunities to improve their work. The rubrics will help teachers frame that feedback.

An interactive notebook or writing log could be used to organize student work and exhibit student growth and reflection.

## Stage 3 – Learning Plan

(Design learning activities to align with Stage 1 and Stage 2 expectations)

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### Lesson One

#### Essential Question

- What is due process?
- How does due process protect individuals?

#### Background

History and experience suggested to the Founding generation that power and those who held it posed a constant threat to liberty and individual rights. The ratification of the Constitution depended partly on some assurance that the increased powers that were delegated to the new national government would be limited in a manner that respected the fundamental rights of a free people. Due process protects American citizens by requiring government to pass and follow fair laws (substantive due process) and to treat people fairly (procedural due process).

While due process applies in civil as well as criminal cases, it applies centrally to criminal procedures, and the Constitution specifically enumerates the fundamental rights of an accused, such as the right to counsel and the right to a trial by jury. The inclusion of a separate due process clause in Amendments 5 and 14 broadens the requirement of fairness beyond the enumerated rights to include protections, such as the presumption of innocence and the requirement placed on the prosecution to prove its case “beyond a reasonable doubt.”

[Some instructional strategies in this unit are adapted from \*Fairy Tales Can Show Due\*, a lesson developed by Fran O'Malley of The Democracy Project at the Institute for Public Administration, University of Delaware.](#)

### Instructional Strategies

#### Strategy One: Gathering Information A-B-C Grafitti<sup>1</sup>

Students will access their prior knowledge of the rights enumerated in the U.S. Constitution that are fundamental to American democracy. The objective of this strategy is to build on previous learning about the Bill of Rights. This strategy groups students together to reach an understanding of a concept by either accessing prior knowledge at the beginning of a unit or accessing learned knowledge at the end of a unit.

Have groups of 2-4 students draw a rectangular box at the top of a sheet of paper. Give the following directions to each group:

- Write a term or concept in the box.
- Fold the paper down the middle to create two columns.
- Letter alphabetically A to M down the left side.
- Letter alphabetically N to Z down the right side.

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<sup>1</sup> <http://www.readingquest.org/strat/>

Instructions: Tell students to jot down a word or phrase for each letter of the alphabet that addresses the question: "What are some things you already know about your rights under the United States Constitution?"

[Handout 1](#) can be copied and used as an alternative to having students draw their own A-B-C graffiti chart. Teachers could collect and review as a formative assessment. Students with prior knowledge of the Bill of Rights<sup>2</sup> will be more successful initially with this unit.

While students are sharing out the best 3 terms or phrases, the teacher should make a chart for students that only contains terms related to due process protections. For example, if a student read quartering of soldiers for letter Q, do not add to the chart. However, if a student shares the right to an attorney, record that on a class chart.

Explain to students that the chart highlights protections American citizens are guaranteed if they are arrested for a crime. Add any due process protections students have not shared. Use [Handout 2](#) as a reference for the protections guaranteed through due process.

### Check for Understanding

- ❖ Identify two protections that an American citizen receives if he or she is accused of a crime.

### Rubric

2 – This response gives two valid protections.

1 – This response gives one valid protection.

### Strategy Two: Gathering Information Four-Fold Activity<sup>3</sup>

Have students work in groups of 3–4. Each group should fold a large piece of paper in half twice and then bend down the upper-left corner. When the paper is opened, the creases in the paper have created four rectangular quadrants and a diamond-shaped area in the center, as illustrated in [Handout 3](#).

Have students write "Due Process" in the center of the diamond.<sup>4</sup> Also, have students record the definition of due process (the government must pass fair laws and treat people fairly) in the center diamond.

For two minutes, each group should list words and/or examples of due process that come to mind. Write the words in the top left quadrant.

Each group should next rank the top 3 words or examples of due process to share with the class. Write the top 3 words in the top right quadrant.

Finally, have each group write an analogy in the bottom left quadrant and create an illustration that matches the analogy to share with the class. Draw the illustration in the bottom right quadrant.

*(Due process is like \_\_\_\_\_ because \_\_\_\_\_.)*

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<sup>2</sup> [Click here for Bill of Rights, a 5<sup>th</sup> grade unit for the Delaware Recommended Curriculum.](#)

<sup>3</sup> This strategy is helpful with a student's vocabulary acquisition. Acquiring vocabulary is not memorizing definitions, but rather forming, understanding, and using concepts in spoken and written language. The DRC units use a variety of vocabulary strategies while students gather information within the learning plan. Benchmark vocabulary is essential content that students must master for benchmark understanding to take place. <http://www.readingquest.org/strat/wordmap.html>

<sup>4</sup> [Handout 3](#) can be used as an alternative to having students create their own.

### Check for Understanding

- ❖ Why is due process important for American citizens? Explain your answer.

#### **Rubric**

- 2 – This response gives a valid reason with an accurate and relevant explanation.
- 1 – This response gives a valid reason with an inaccurate, irrelevant, or no explanation.

### **Strategy Three: Extending and Refining Role-Play<sup>5</sup>**

Prior to class, select five students to read roles in a Reader's Theater about the story of "Goldilocks and the Three Bears." The roles include Storyteller, Goldilocks, Mama Bear, Papa Bear, and Baby Bear.

Provide students with a copy of [Handout 4 – Reader's Theater](#). Tell students that they are going to be treated to a performance of "Goldilocks and the Three Bears." The performance is based on a story with which most of them are quite familiar but there will be a twist.

Conduct the Reader's Theater. Allow the performers to read from the script.

After the Reader's Theater, ask students:

- With which crime(s) is Goldilocks charged?
- Why is Goldilocks charged with each crime?

### Check for Understanding

- ❖ Are the charges against Goldilocks fair? Explain your answer.

#### **Rubric**

- 2 – This response offers a reasonable conclusion that is supported with an explanation grounded in the evidence .
- 1 – This response gives a conclusion not linked to the evidence.

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<sup>5</sup> Performance verbs based on the six facets of understanding, as established by J. McTighe and G. Wiggins, include exhibit (explain), tell a story of (interpret), perform (apply), infer (perspective), role-play (empathy), and reflect (self-knowledge). Simulations and role-playing allow students to tap into all types of understanding because they are required to analyze and interpret a concept and then put themselves in the shoes of someone who experienced that event or situation.

Role-playing and simulations are slightly different because the first requires students to act out an open-ended situation in which a decision or conclusions need to be made. There is no "correct" answer. Simulations on the other hand have correct answers. For instance, if a group of students are simulating a meeting of the Federal Reserve Board, they should be accurately analyzing economic indicators and deciding on an expansionary or retractionary policy. One is clearly the correct choice depending on the indicators.

Source: Carol Ann Tomlinson & Jay McTighe, *Integrating Differentiated Instruction + Understanding by Design*. Alexandria, VA: ASCD, 200 PP.



#### Strategy Four: Extending and Refining Continuum Scale

Have students work in small groups of 2-3 to come up with what they think would be a “good” punishment for Goldilocks. Have students share their proposed punishments and explain why they think their punishments are “good.”

Students should create a web on the types of punishments he/she could receive. Then, rate the punishments from mild to harsh by creating a continuum scale. Teachers wishing to view a sample can [click here for Handout 5](#).

Have groups share the punishment web and continuum scale that they create.

#### Check for Understanding

I considered the evidence.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
I considered more than one side of the story.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
I considered the severity of the crime, and made the punishment match.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
I considered the opinion of others.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
I compared this to what I already know about punishments.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
I put myself in Gold E. Locks shoes.	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Select one statement above.

Explain the reason for your response.

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#### Rubric for last item

2 – The response gives a valid reason and an accurate or relevant explanation.

1 – The response gives a valid reason and an inaccurate, irrelevant, or no explanation.

#### Strategy Five: Application

##### Think-Pair-Share<sup>6</sup> and Graphic Organizer

Students need to understand the concept of *fair* in order to understand the principles of due process. Have students conduct a Think-Pair-Share strategy<sup>7</sup> when responding to the following questions:

<sup>6</sup> <http://www.wcer.wisc.edu/archive/cl1/CL/doingcl/thinkps.htm>

<sup>7</sup> Use a Think-Pair-Share as a way to have students engage in a conversation. This strategy is ideal for teachers and students new to cooperative learning. First, the teacher poses an open-ended question or problem. Each individual student takes approximately one minute to think about an answer or solution on their own. The student

- What is fair?
- Is fair equal?

Have students complete [Handout 6](#), a two-column chart identifying what punishment is fair in a situation or what situation deserves a particular punishment.

### Check for Understanding

- ❖ Select a situation and punishment that you proposed. Explain why that punishment is fair.

### ***Rubric***

- 2 – The response links a situation/punishment reasonably and with a sound justification.
- 1 – The response links a situation/punishment unreasonably or with an unsound justification.

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then pairs up with another student, and they discuss their answers or solutions together. The whole class reports in partners various answers and solutions.

## Lesson Two

### Essential Question

- How am I protected from those with authority over me?

### Instructional Strategies

#### Strategy One: Gathering Information Brainstorming<sup>8</sup>

Write the term “due process” on the board. Explain that due process refers to the requirement that government act fairly and in accordance with fair laws.

The key concept students should know is fairness. The due process requirement involves two aspects of fairness.

1. The laws that government passes must be fair.
2. The manner in which government treats people must be fair.

To assist students in developing their understanding of due process, a review of the word is needed. Refer back to Lesson 1, Strategy 2. Students completed a four-fold activity as a group.

Have students work as a pair to complete a [Frayer Model](#) using due process. Model the concept of fairness using [Handout 17](#).

Teachers should first explain the Frayer model diagram to students and then model how to fill out the diagram. Provide students with time to practice with assigned terms.

Once the diagram is complete, have students share their work with other students. Display students' diagrams as posters throughout the unit so students can refer to the words and continue to add ideas.

After completing the Frayer model, tell students that, in the United States, we have developed lawful procedures designed to make sure that our government does not treat those who have been accused of crimes unfairly. In fact, we believe so strongly that people must be protected from unjust actions that we have written fundamental protections into the United States Constitution.

Place students in groups of 2-3. Give each group chart paper and markers and invite them to create a web (start with the term due process in the center circle) that illustrates some laws that afford due process to those who are accused of a crime and that government must follow so that accused individuals are protected and treated fairly. Have the groups display and explain their webs.

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<sup>8</sup> Brainstorming allows student to actively connect to prior knowledge and/or problem solve either individually or in groups. By thinking about what they already know about a topic, students and teachers can begin to assess understandings and misunderstanding of a concept. If in groups, students can learn from others by listening to their knowledge base or teach others by highlighting inaccuracies. Vocabulary can also be evaluated.

There are many formats in which brainstorming may take place. Following are just a few:

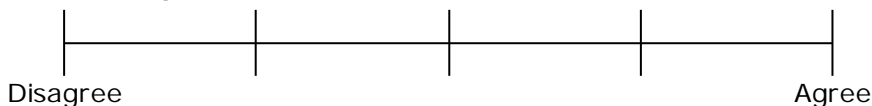
- Webbing (probably the most well known and most popular)
- Graffiti writing
- Carousel (This is ideal for kinesthetic learners because students rotate around the room answering various questions or responding to a variety of topics that are posted)
- Fishbowl (panel leads the class)

### Check for Understanding

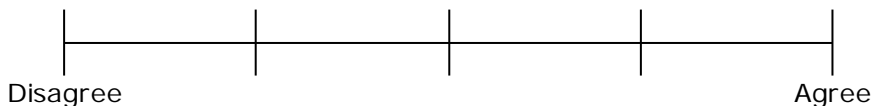
- ❖ Complete the following Continuum Scale to demonstrate understanding of due process.

Place a dash on the scale to indicate your agreement with the following statements.

The laws that government passes must be fair.



The manner in which government treats people must be fair.



- ❖ What is due process? Support your answer with an example.

### Rubric

- 2 – This response gives a valid explanation with an accurate and relevant example.
- 1 – This response gives a valid explanation with an inaccurate, irrelevant, or no example.

### Strategy Two: Extending and Refining Non-Linguistic Representations

Tell the students that they are now going to work with a partner to look at some of the protections afforded to American citizens under our Constitution. Distribute copies of [Handout 7: Amendments 5 and 6](#).

Ask the students to work with a partner to generate a list of fundamental rights that are found in Amendments 5 and 6. It would be appropriate to provide students with a highlighter for this activity. Tell students that they might struggle with some of the language but that they should do the best they can to interpret the meaning of the texts.

Have students complete the [chart on Handout 7](#) with their partner. Use the following instructional strategy to assist students with the highlighting of the text:

Understanding the difference between main ideas and supporting details is important to understanding text. Using highlighters can help students gain that skill. Strategies include:

- ♦ Underline or highlight ONLY the keywords, phrases, vocabulary, etc.
- ♦ Use one color for main ideas and a second color for supporting details.
- ♦ Use boxes vs. circles or some other graphic to differentiate between main ideas and details.
- ♦ Underline or highlight cause and effect in the two different colors.

It is helpful for teachers to model this technique for students and discuss with students what was highlighted or underlined and why, in addition to what was not underlined and why. Teachers might want to photocopy the same text for every student and practice this skill collectively as a class.

Ask each group to identify and explain one right that they came up with until the groups exhaust their lists. Ask students to offer examples to demonstrate their understanding (e.g., an example of double jeopardy).

### Check for Understanding

- ❖ Describe a due process protection and explain how it protects individuals from government abuse of power.

#### **Rubric**

2 – This response gives a valid due process protection with an accurate and relevant explanation.

1 – This response gives a valid due process protection with an inaccurate, irrelevant, or no explanation.

### **Strategy Three: Application Gallery Walk**

Project a copy of [Handout 9: Guarantees of Due Process](#). Review the definition of due process and the rights that an accused individual has under that protection. Ask students to give examples of each right or protection as you present them.

Distribute pieces of blank paper (crayons or colored pencils optional) to the students. Randomly assign one of the rights listed on [Handout 2](#). Pairs should draw a sketch or cartoon that offers an artistic interpretation of the right which they selected. Tell them to identify the right (e.g., right to an attorney) on the BACK of the drawing.

Collect drawings without having the students explain them. After class, place a number on the front of each drawing and post them around the room. Select several drawings to invite accurate predictions as well as a range of rights.

Distribute copies of [Handout 8: Gallery Walk Worksheet](#). Assign small groups of students to each drawing that is posted around the room so that there are relatively equal numbers of students standing under each drawing.

Tell them that their task is to try to determine which right each drawing represents. They are to write the numbers of each drawing in the left-hand column on their handout. For example, if drawing #1 represents the right to counsel, students should write #1 in the right-hand column next to right to counsel.

Tell students to rotate clockwise around the room until they have analyzed every drawing. Give the groups approximately 60 to 90 seconds at each drawing. Ask each pair who has their drawing posted to stand under their drawing and:

- Explain what right their drawing represents; and
- How that drawing illustrates it.

Have the rest of the class compare the pairs' explanations to their responses on [Handout 8](#). Be sure to clear up any misconceptions that arise during the pairs' explanations.

### Check for Understanding

- ❖ Encourage [transfer](#) by asking students to think of a different situation in which due process protections might be triggered (e.g., being accused of violating a school rule). Describe the situation and explain which due process protection could be triggered.

#### **Rubric**

2 – The response gives a valid situation and an accurate or relevant explanation.

1 – The response gives a valid situation and an inaccurate or irrelevant explanation.

- ❖ Click here for [Handout 10](#), which should be used as a Check for Understanding.

## Lesson 3

### Essential Question

- How does the Bill of Rights attempt to honor the principle of due process?

### Instructional Strategies

#### Strategy One: Gathering Information Highlighting Text/Selective Underlining<sup>9</sup>

Provide a copy of [Handout 11](#) to each student. Students should have two different colors to highlight important text and details.

Use the highlighted information to create a web about the principles of due process. Create this as a class on a chart or have students partner to create a web. Debrief the main ideas of the reading to prepare students for the Check for Understanding.

#### Check for Understanding

- ❖ Why is the guarantee of due process important to citizens? Support your answer with an example.

#### Rubric

- 2 – This response gives a valid reason with an accurate and relevant explanation.
- 1 – This response gives a valid reason with an inaccurate, irrelevant, or no explanation.

#### Strategy Two: Extending and Refining Graphic Organizer

Provide a copy of [Handout 12](#). Have students work with a partner to complete the graphic organizer. Students should use [Handout 12](#) to organize the information from the reading in Handout 11.

#### Check for Understanding

- ❖ Should the government always have to treat people fairly when they have been accused of a crime? Why or why not?

#### Rubric

- 2 – The response gives a valid reason and an accurate or relevant explanation.
- 1 – The response gives a valid reason and an inaccurate or irrelevant explanation.
- 0 – No reason given and/or no explanation.

#### Strategy Three: Extending and Refining Timed Pair Paraphrase

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<sup>9</sup> Understanding the difference between main ideas and supporting details is important to understanding text. Using highlighters can help students gain that skill. Strategies include:

- Underline or highlight ONLY the key words, phrases, vocabulary, etc.
- Use one color for main ideas and a second color for supporting details.
- Use boxes vs. circles or some other graphic to differentiate between main ideas and details.
- Underline or highlight cause and effect in the two different colors.

It is helpful for teachers to model this technique for students and discuss with students what was highlighted or underlined and why, in addition to what was not underlined and why. Teachers might want to photocopy the same text for every student and practice this skill collectively as a class.

Form groups of 3-5 students and assign the task of reading the amendments on [Handout 13](#) in order to answer the questions that follow. Students should write their answers on chart paper and share their opinions with the rest of the class.

Pose this question to pairs after reviewing [Handout 13](#) and use the Timed-Pair-Paraphrase instructional strategy<sup>10</sup> for discussion:

Suppose a police officer suspects that you have committed a crime and arrests you.

- ♦ Which of the rights you have just read about do you think would offer you the best protections? Why?

### **Strategy Four: Application Cubing<sup>11</sup>**

In the case of *Gideon v. Wainwright*, 372 U. S. 335 (1963), the Supreme Court reversed the decision of an earlier Court and held that a state must provide counsel for an indigent accused of a serious crime. This case is an example of how the idea of due process, or fundamental fairness, can change over time.

Provide students with a copy of [Handout 14](#) in order to read a brief summary of the *Gideon v. Wainwright* court case. Complete a cubing activity using the following questions on the cube.

1. Explain whether Gideon had been given a lawyer to help him. Why or why not?
2. Does the right to have a lawyer mean the government has to provide one to anyone who cannot afford one? Why or why not?
3. Under what circumstances should lawyers be appointed to help people accused of breaking any laws, even traffic laws? Are there only certain laws people might break that they should or should not be appointed a lawyer? Why or why not?
4. Apply situations when a should person have the right to a lawyer. Upon arrest? Before being questioned? Before the trial? After the trial, if the person thinks the trial was unfair and wants another trial?

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<sup>10</sup> This strategy requires all students to participate in the discussion.

- Students get together with a partner. The teacher should decide which partner will go first. For instance, the teacher may tell one student "tell how the novel you're reading depicts the era in which it was written. You have two minutes. If your partner quits sharing, ask questions."
- Set a timer. After what ever number of minutes you feel appropriate, have each student tell what the other just said. "The paraphrase might start, 'I heard you say...'"
- Ask students to share with the whole class what their partners said. Reverse the process.

Source: Betty Hollas. *Differentiated Instruction in a Whole-Group Setting*. c.2005. Crystal Springs Books, pg. 10.

<sup>11</sup> Cubing promotes differentiated instruction in a variety of ways because it requires students to work in groups with each answering a series of six questions. Ideally, a cubing template is copied, so that when students finish they can cut & fold to create a 3-D cube that students can use for a formative assessment.

Variations of cubing include:

- Write questions based on the six cognitive levels regarding a concept. Have students answer each question.
- Divide the class into groups based on their learning modalities & photo copy boxes in different colors based on the learning modality. Write six different questions for each box based on the learning modality.
- Have each group create a cube with questions about a particular concept. Then have groups exchange their cubes and answer the questions as each student 'rolls' the cube.

Source: Betty Hollas. *Differentiated Instruction in a Whole-Group Setting*, 2005. Crystal Springs Books, pg. 20-21.

5. Analyze whether defendants should have the right to have the services of other experts to help them prepare for their trials? Fingerprint experts? People to find witnesses? Psychiatrists?
6. Argue whether Gideon was or was not treated fairly by the government according to the Bill of Rights. Why or why not?

### **Check for Understanding**

- ❖ How does the Bill of Rights attempt to honor the principle of due process? Support your answer with an example.

### **Rubric**

- 2 – This response gives a valid explanation with an accurate and relevant example.
- 1 – This response gives a valid explanation with an inaccurate, irrelevant, or no example.



## Lesson 4

### Essential Question

- Why should a government obey the laws it makes?

### Instructional Strategies

#### Strategy One: Gathering Information

##### WebQuests and Games

##### Graphic Organizers/Nonlinguistic Representations<sup>12</sup>

Conduct students in small groups through this introductory webquest in order to assist teachers and students with basic background knowledge about what happens when someone goes to trial.

<http://www.icivics.org/web-quests/courts-nutshell>

In this judicial variation of the classic card game "Go Fish!," students use a write-on courtroom game board and play with cards that show the people involved in a trial—such as judges, court staff, attorneys, and litigants—and each of those peoples' roles. By trying to match people and roles to make pairs, students learn what trial participants do both in court and out of court.

<http://www.icivics.org/lesson-plans/trial-court-go-fish>

Have students create a web with **Court Employees that Ensure Fair Procedures** in the center circle. Label 5 outer circles with the following jobs: JUDGE, DEFENSE ATTORNEY, PROSECUTING ATTORNEY, JURY, and COURT REPORTER. Students can write a brief description for each job in the corresponding outer circle.

TEACHER TIP: Following up on the Supreme Court Case of Gideon v. Wainwright and Civics Standard One –have students diagram the structure of American government and note how it can insure that government acts fairly, e.g. the Courts declaring executive (police) actions unconstitutional.

### Check for Understanding

- ❖ How do court employees ensure the government is obeying its own laws? Explain your answer with an example.

### Rubric

- 2 – This response gives a valid explanation with an accurate and relevant example.
- 1 – This response gives a valid explanation with an inaccurate, irrelevant, or no example.

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<sup>12</sup> Since students learn differently it is important for teachers to present the information in such a way that accommodates as many students' needs as possible. Yet, the primary way that teachers introduce concepts to students most often is linguistically, through either written notes or readings. According to Marzano's research following up with nonlinguistic representations provides strong effects on achievement. Those activities may include: creating graphic representations (graphic organizers), making physical models, generating mental pictures, drawing pictures, and engaging in kinesthetic activity. Graphic organizers are essential design tools for every classroom. They allow students to access prior knowledge and then gather new information.

## Strategy Two: Gathering Information

### Paper Pass<sup>13</sup>

Conduct a paper pass so that students can identify and understand the jobs people do to ensure fair court procedures.

Use the following questions for this strategy:

- Where do we find out if a person is guilty or innocent? What are the responsibilities of this place?
- Who do we need to be in charge of making sure that everyone does things the fair way? What are the responsibilities of this person?
- Who will help the accused tell their side of the story? What are the responsibilities of this person?
- Who do we need to represent the people who think the accused is guilty? What are the responsibilities of this person?
- Who do we need to keep a record of what happens, so that we can check for mistakes and make sure that everything that happens is fair? What are the responsibilities of this person?
- What is the group of citizens called that helps to decide the outcome of a court case? What does a jury do? How does the jury find people guilty or not guilty?

The teacher should write each bulleted set of questions on a separate sheet of oversized poster paper. Then divide students into groups and distribute one poster sheet to each group. Ask the students to brainstorm answers to the questions and write them below the question. Everyone in the group should have an opportunity to contribute.

Then, after a pre-established period of time (e.g., 4-5 minutes), the groups pass their sheet clockwise to the next group. Each group will then repeat the brainstorming process for each of the next two questions. Once the group receives the fourth question, they are responsible for finding evidence to support or disprove what was written during the brainstorming sessions. On the same sheet, the group should record page numbers or paragraph numbers where they found the evidence using either their textbook or a reading distributed by the teacher. After the groups finish their research, each group will post the papers and present their findings to the class.

### Check for Understanding

- ❖ Rather than a long and expensive court case, why not just have police look at the evidence and decide whether someone accused of a crime is guilty or not?

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<sup>13</sup> Gayle H. Gregory & Carolyn Chapman, *Differentiated Instructional Strategies*, c. 2002.

Participating in a paper pass allows students to actively activate prior knowledge and discuss misperceptions. For example, questions for a paper pass might include:

- How is unemployment calculated?
- All people are not unemployed for the same reasons. So, why are various people unemployed?
- Why are some unemployed individuals in a more serious predicament than others?
- What is an acceptable rate of unemployment? Why?

### Strategy Three: Extending and Refining Think-Pair-Share

Tell students that you are going to tell them a story, and they should write down individual responses to the questions that you ask.

Begin by saying to students,

*Last week, I overheard a conversation that made me stop and think. I decided it would be good to share the conversation with you and maybe you could help me answer my questions. Last week, I was in the grocery store and I overheard several people talking very excitedly about a student who had been accused of throwing a rock through a school window. They were all saying what kind of punishment they thought the student should receive.*

My first question is:

- *Based on what I overheard, do these people know for sure the student threw the rock?*

Allow time for individual responses, then have each student explain his or her response to a partner.

Ask students:

- *Why would I ask that first question? Why would I be concerned about knowing for sure the student had thrown the rock?*

Accept a few responses. Then, remind the students that a person is believed innocent until he or she has been proven guilty. Before you continue, it is very important the students understand the terms innocent and guilty.

My second question is:

- *Where will we find out if the student was guilty of throwing the rock?"*

Asking, *"Do you think the student is guilty of throwing the rock through the window?"*

Have the students answer using thumbs up (yes) or down (no). Remind the students that a person is believed to be innocent until he or she has been proven to be guilty.

### Strategy Three: Extending and Refining Mock Court<sup>14</sup>

Explain to students that, in order for the government to treat people fairly in a court hearing, they must differentiate between facts and opinions when hearing testimony and examining evidence.

The following scenario about a missing bicycle will help students distinguish between facts and opinions, and then use the facts to solve the case. This helps students recognize that legal personnel use facts much more than opinion, as they themselves use a series of facts to draw a reasonable conclusion when determining the innocence or guilt of an individual.

[Handout 15](#) is a teacher resource to use as a way to lead the class discussion while reviewing the scenario. Have students keep a [T-chart](#) for the classroom that highlights the facts and opinions in the scenario.

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<sup>14</sup> **The Mystery Solved**

John's bike was returned by Mike, who had asked John two weeks before if he could borrow it on the 14th. John had simply forgotten that he had given permission.

The mock court may be organized in a variety of ways, depending upon the maturity of the students. The simplest way is to divide the class into three groups.

- One group will represent John and try to present all of the reasons why Lou should pay him for the bicycle.
- A second group represents Lou and should present all of the reasons why he should not have to pay.
- A third group represents jurors, and they decide what should be done based on the evidence.

It is also possible to form a series of groups of three students. Each student will play the role of either John, Lou, or the judge. Give groups an opportunity to prepare a role-play of the case. When all groups have completed their role-play, ask each judge how they decided the case and why. When a decision has been reached, debrief the activity by discussing:

- What are the arguments in favor of finding Lou guilty of taking John's bike?
- What arguments can be made in favor of finding Lou innocent of taking John's bike?
- How strong is each argument?
- Are other arguments possible?

### Check for Understanding

- ❖ Why is it important to consider fact over opinion when deciding the outcome of a case? Explain your answer.

### Rubric

2 – This response gives a valid reason with an accurate and relevant explanation.

1 – This response gives a valid reason with an inaccurate, irrelevant, or no explanation.

### Strategy Four: Application Case Studies

[This strategy is an adapted version of Due Process and the Case of John Doe by Fran O'Malley of The Democracy Project.](#)

Students will engage in a case study based on an actual Supreme Court case to develop an understanding of the concept of due process.

Pose the following question to students and have them use the Think-Pair-Share strategy to share their response.

- Have you ever been involved in or witnessed a case when someone was treated unfairly? Explain your answer.

Randomly select a few pairs of students to share their stories. Refer students back to [Handout 13](#), particularly the main idea of the 5<sup>th</sup> Amendment. Project a copy for students to review.

Review the beginning of the 5<sup>th</sup> Amendment with students:

"No person shall be...deprived of life liberty, or property, without due process of law..."

Ask students to work with a partner to explain what they think this means. Use the **Timed Pair Paraphrase**<sup>15</sup> strategy so all students are engaged.

Explain to the students that the 5<sup>th</sup> Amendment to the Constitution guarantees due process. Due process means that the government must act fairly by following its own rules when taking actions against a citizen. Before proceeding, ask the students to turn to their shoulder partner and give an example for the term due process. Select a few students to share their examples.

Explain to the students that you are going to pass out a piece of paper ([Handout 16](#)) that contains a reading. The reading describes a case in which a man claims that he was treated unfairly. Tell students that their purpose for reading is to decide whether they agree with what happened to Mr. Miranda and be able to explain why or why not. Have students read [Handout 16](#) and think about their response.

Use an **Inside-Outside Circle**<sup>16</sup> as a sharing strategy for the following questions:

- What due process protections did Mr. Miranda not receive as an accused citizen?
- Why do you think it is important for the government to be held accountable for providing those protections?
- If you knew that Mr. Miranda was guilty, would you still expect the government to honor the principles of due process? Explain your answer.
- What are some reasons Mr. Miranda would sign a confession if he was innocent?

Place the students in groups of three. Ask students to create a skit with the following roles:

- One student to play the role of a judge;
- A second student to argue that the man was treated unfairly; and
- A third student to argue that the man was treated fairly.

Tell the judge that his or her job is to decide whether the man was treated fairly or unfairly. Students can use information from the text to help them with the skit. Have students present their skits.

As students are presenting, create a class [T-chart](#) that organizes the students' thinking about the fair or unfair treatment. Debrief after presentations using the chart as a way to review main points of presentations.

Use the following questions as part of the debriefing:

- What does the term due process mean?
- Do you think that the police acted fairly or unfairly when they questioned Mr. Miranda without explaining his rights to him? Explain why.

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<sup>15</sup> Students get together with a partner. The teacher should decide which partner will go first. For instance, the teacher may tell one student, "Tell how the novel you are reading depicts the era in which it was written. You have two minutes. If your partner quits sharing, ask questions."

Set a timer. After an appropriate length of time, have each student tell what the other just said. "The paraphrase might start, 'I heard you say...'"

Ask students to share with the whole class what their partners said. Reverse the process.

This strategy requires all students to participate in the discussion.

Source: Betty Hollas. *Differentiated Instruction in a Whole-Group Setting*. c.2005. Crystal Springs Books, pg. 10

<sup>16</sup> This strategy can be used in a variety of ways while gathering information, extending and refining, or applying. Two circles, each with six or seven students, are formed with one circle inside the other. The student on the inside circle interacts with their partner on the outside circle. Then one circle rotates so that each student has a new partner to either discuss the same question or a different question.

Source: Gayle H. Gregory & Lin Kuzmich, *Differentiated Literacy Strategies for Student Growth and Achievement in Grades K-6*, Corwin Press, 2005, page 65.

- Should Mr. Miranda be released from jail? Explain why.

Share the outcome of the Miranda case.<sup>17</sup> The Supreme Court ruled that Ernesto Miranda was treated unfairly. As a result of the ruling, the police now have to read the following rights to those who are accused of a crime:

- You have the right to remain silent.
- Anything you say can and will be used against you.
- You have a right to talk to a lawyer before being questioned and to have a lawyer present when you are being questioned.
- If you cannot afford a lawyer, one will be provided for you before any questioning if you so desire.

### Check for Understanding

- ❖ When the Supreme Court declares that an accused person has been treated unfairly and has been convicted, he or she may not be released from prison but is entitled to a new trial. Is this fair? Why or why not?
- ❖ Why should a government obey the laws it makes? Explain your answer.

### ***Rubric (for second bulleted item)***

- 2 – This response gives a valid reason with an accurate and relevant explanation.
- 1 – This response gives a valid reason with an inaccurate, irrelevant, or no explanation.

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<sup>17</sup> The case was appealed to the Supreme Court. The Supreme court ruled by a 5-4 vote that Mr. Miranda had been treated unfairly and the conviction was overturned. In a landmark ruling issued in 1966, the court established that the accused have the right to remain silent and that prosecutors may not use statements made by defendants while in police custody unless the police have advised them of their rights, commonly called the Miranda Rights. The case was later re-tried, Miranda was convicted on the basis of other evidence and served 11 years. He was paroled in 1972 and died in 1976 at the age of 34, after being stabbed in a bar fight. A suspect was arrested but chose to exercise his right to remain silent and was released.

The Court described in detail the unfairness and coercion used by some law enforcement officers engaged in interrogation. The majority also took note of deceptive practices in interrogation. For example, officers would put a suspect in a lineup and tell the person that he or she had been identified as a suspect in the instant crime as well as other crimes even though no such identifications had taken place. The suspect would confess to the instant crime to avoid being prosecuted for the fictitious crimes. The majority noted that these examples were exceptions, but it also stated that they were sufficiently widespread to warrant concern.

The Court then outlined the now-familiar procedures that law enforcement officers would have to follow thereafter. They would have to tell persons in custody that they have the right to remain silent, that they have the right to an attorney, that if they cannot afford an attorney the court will appoint an attorney, and that anything they say can be used in a criminal prosecution.

Ultimately, the Court held that statements made by a criminal suspect in custody would not be admissible at trial unless the suspect had made a knowing and intelligent waiver of his legal rights after being apprised of the various legal rights and after being given an opportunity to exercise those rights. The majority assured the law enforcement community that it did not intend to hamper criminal investigations and prosecutions. The Court pointed out that interrogations were still a perfectly legitimate investigative tool, that questioning a suspect without advising the suspect of legal rights before taking the suspect into custody was still legitimate, and that volunteered statements were likewise legitimate.

Name \_\_\_\_\_ Date \_\_\_\_\_

***Handout 1 – A-B-C Graffiti***

**Topic: Bill of Rights Protections – How does the Bill of Rights protect American citizens?**

Example: P = public trial

<b>A</b>	<b>N</b>
<b>B</b>	<b>O</b>
<b>C</b>	<b>P</b>
<b>D</b>	<b>Q</b>
<b>E</b>	<b>R</b>
<b>F</b>	<b>S</b>
<b>G</b>	<b>T</b>
<b>H</b>	<b>U</b>
<b>I</b>	<b>V</b>
<b>J</b>	<b>W</b>
<b>K</b>	<b>X</b>
<b>L</b>	<b>Y</b>
<b>M</b>	<b>Z</b>

## ***Handout 2: Due Process Protections***

### ***The Fundamental Rights of an Accused***

**Due Process** – The government must pass fair laws and treat people fairly.

**Double Jeopardy** – The government cannot try a person a second time for committing the same crime after he or she has been found not guilty.

**Self-Incrimination** – The government cannot force a person to testify against himself or herself.

**Speedy Trial** – The government cannot keep a person in jail for unreasonable amounts of time as he or she awaits trial.

**Public Trial** – The government must allow people to have a trial held before an open audience.

**Informed of Accusations** – The government must tell people what they are charged with.

**Confront Witnesses** – The government must allow a person who has been charged with a crime to ask questions of witnesses who might testify against him or her.

**Obtain Friendly Witnesses** – The government must help a person who has been accused of a crime to get witnesses who might help show that he or she is not guilty.

**Right to a Lawyer** – The government must allow a person who has been accused of a crime to have a lawyer to help argue his or her case. If a person cannot afford a lawyer, the government must provide one.

#### **Rights Not Listed But Guaranteed**

***Presumption of Innocence*** – The government must presume that a person who has been accused of a crime is innocent until they are found guilty.

***Burden of Proof*** – The government, not the accused, must “prove” its case i.e., that a person is guilty. A person who has been accused of a crime does not have to prove that they are not guilty.



*Handout 3: Four-Fold Activity – Due Process*

<b>List</b>	<b>Rank</b>
<b>Analogy</b>  Due process is like _____ because _____.	<b>Illustration</b>

**Due Process**  
The government must pass fair laws and treat people fairly.

*Handout 4*

**Reader's Theater**

**Gold E. Locks  
and the Three Bears**



## *The Characters*

**Storyteller   Papa Bear   Momma Bear   Baby Bear   Gold E. Locks**

## *The Story*

### **Storyteller**

Once upon a time there were three bears. They lived in a house in the woods. One morning Mother Bear got up and went downstairs to the kitchen. She made a big pot of porridge.

### **Momma Bear**

"Wake up, Father Bear. Wake up, Baby Bear. It's time for breakfast."

### **Storyteller**

Mother Bear put the porridge into three bowls. There was a big bowl for Father Bear, a middle sized bowl for Mother Bear, and a small bowl for Baby Bear.

### **Papa Bear**

"My porridge smells good, but it is too hot."

### **Momma Bear**

"My porridge smells good, but it is too hot."

### **Baby Bear**

"And my porridge smells good, but it is too hot. I can't eat it. "

### **Papa Bear**

"Let's all go for a walk in the woods until the porridge cools off."

### **Storyteller**

So they shut the door and went for a walk in the woods. Just then Gold E. Locks came by and saw the house of the three bears.

### **Gold E. Locks**

"I wonder who lives in this house. I'll go inside and have a look. "

### **Storyteller**

So Gold E. Locks pushed open the door and went inside. She looked at the kitchen table and she saw the three bowls of porridge.

### **Gold E. Locks**

"That porridge looks good. I'll just taste some. "

### **Storyteller**

Gold E. Locks picked up a spoon and she tasted the big bowl of porridge.

### **Gold E. Locks**

"I don't like this porridge. It is too salty. "

### **Storyteller**

Then she tasted the middle sized bowl of porridge.

### **Gold E. Locks**

"I don't like this porridge. It is too sweet. "

### **Storyteller**

Then she tasted the small bowl of porridge.

### **Gold E. Locks**

"This porridge is just right. Yum! Yum! "

### **Storyteller**

And Gold E. Locks ate it all up.

### **Gold E. Locks**

"Oh, dear! I am tired. I must sit down just for a bit. "

**Storyteller**

Gold E. Locks looked around the room and saw three chairs. She saw a big chair for Father Bear. She saw a middle sized chair for Mother Bear. And she saw a small chair for Baby Bear.

**Gold E. Locks**

"I think I will sit down over there."

**Storyteller**

Gold E. Locks tried the big chair first.

**Gold E. Locks**

"This is too hard!"

**Storyteller**

Then she tried the medium sized chair.

**Gold E. Locks**

"This is too soft."

**Storyteller**

Then she tried the littlest chair.

**Gold E. Locks**

"This seems just right."

**Storyteller**

Gold E. Locks bounced up and down on the chair to see how comfortable it was. Suddenly, the chair broke into pieces.

By this time Gold E. Locks was really tired. She went upstairs to see if there was a place where she could lie down. She found three beds and went right over to the biggest bed.

**Gold E. Locks**

"This is too high in the head!"

**Storyteller**

Next she tried the medium sized bed.

**Gold E. Locks**

"This is too high in the feet!"

**Storyteller**

Finally, she laid down on the littlest bed.

**Gold E. Locks**

"Ahhhhh! This is just right!"

**Storyteller**

Just then the three bears returned from their walk and headed to the kitchen for their porridge.

**Papa Bear**

"Someone's been eating my porridge!!!"

**Mama Bear**

"Someone's been eating my porridge!!!"

**Baby Bear**

"Some little rascal's eaten all of my porridge!!! There ain't nuttin' left! Nadda, zilch, zero!"

**Storyteller**

Papa Bear ran immediately into the living room.

**Papa Bear**

"Someone's been sitting in my chair!"

**Mama Bear**

"Hey...Someone's been sitting in my chair, too!"

**Baby Bear**

"Yo dudes...first my porridge, now my chair! It's trashed!"

**Storyteller**

The three bears were almost afraid to go up to the bedrooms. But they did.

**Papa Bear**

"My sheets are a mess! Someone's been in my bed."

**Mama Bear**

"Mine too!"

**Baby Bear**

"There she is!" [Everyone - point to Gold E. Locks] "Let's get her!" [Everyone grab Gold E. Locks]

**Storyteller**

Papa Bear called the local police who then arrested Gold E. Locks and charged her with the crime of trespassing. Gold E. is awaiting trial.

## *Handout 5*

### After Sharing



### ***Handout 6 – What Is Fair?***

Complete the chart with your partner by filling in the blank boxes.

<b>Situation</b>	<b>Punishment</b>
	Grounded for 2 weeks
Chewing gum in class	
	Sent to your room
Hitting your brother or sister	
	Lose cell phone for a month
Getting an F on a test	
Getting an F on your report card	

## ***Handout 7 – Amendments 5 and 6 to the U.S. Constitution***

Use a highlighter to highlight the words that match a due process protection. Complete the chart below the Amendments.

### **Amendment 5**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

### **Amendment 6**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

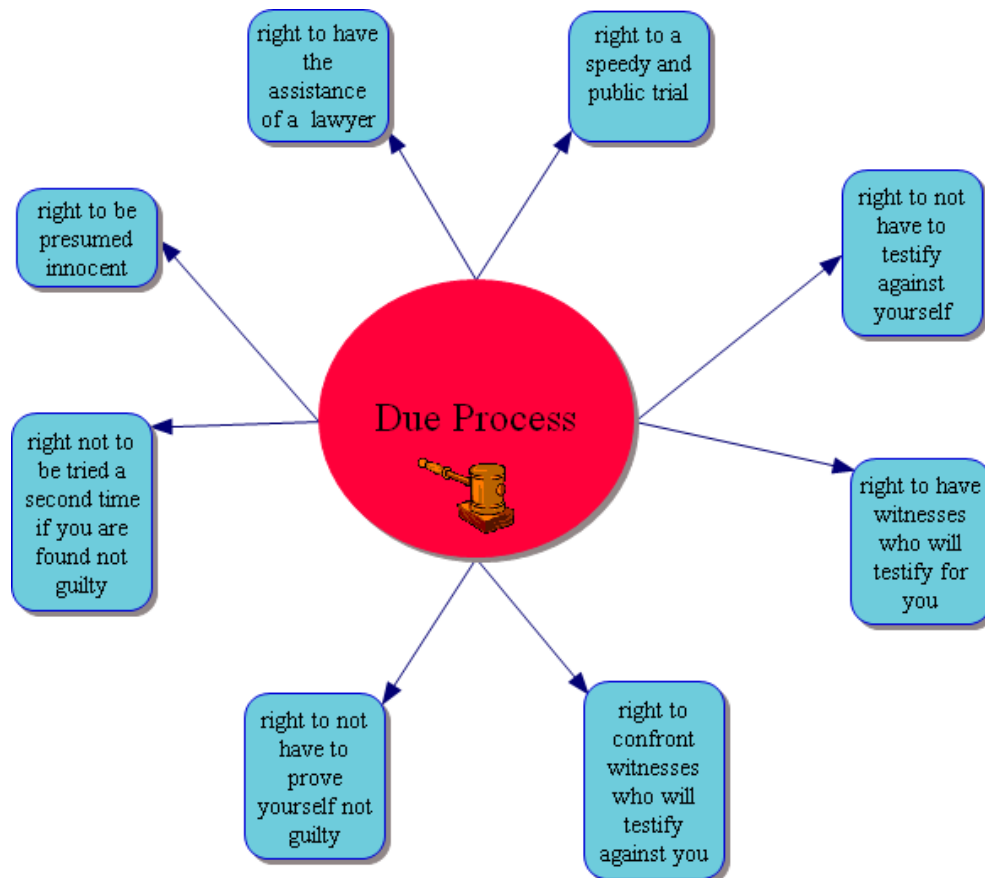
Language from amendment	Due process protection



***Handout 8 – The Fundamental Rights of An Accused  
Gallery Walk Worksheet***

<b>Rights</b>	<b>Which drawings illustrate each right? Place the drawings' numbers below.</b>
Double jeopardy	
Self-incrimination	
Due process	
Speedy and public trial	
Informed of accusations	
Be confronted with witnesses	
Right to obtain friendly witnesses	
Right to counsel	
Presumption of Innocence	

***Handout 9***  
***Rights That Help Ensure Due Process***



## *Handout 10*



1. Which of the following is government expected to do under the principle of due process?
  - a. act justly
  - b. act fairly
  - c. act openly
  - d. act honestly.



2. How might the person on the left side of this picture be protected by due process? Why should he be protected?

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## ***Handout 11***

### **What Is Due Process Of Law?**

The right to due process is the right to be treated fairly by your government. You will find the words due process in two places in our Constitution. They are in both the 5<sup>th</sup> Amendment and the 14<sup>th</sup> Amendment.

#### **5<sup>th</sup> Amendment:**

It states that no person shall be deprived of life, liberty, or property without due process of law. This amendment protects your right to be treated fairly by the federal government.

#### **14<sup>th</sup> Amendment:**

This amendment states that state governments cannot deprive you of your life, liberty, or property without due process of law. It protects your right to be treated fairly by your state and local governments. Most people don't know that before the 14<sup>th</sup> Amendment was passed, the Bill of Rights only protected you from unfair treatment by the federal government. The 14<sup>th</sup> Amendment has been used to protect you from unfair treatment by state and local governments. Due process means that members of your government must use fair methods or procedures when doing their jobs. They must use fair procedures when they make decisions. They must use fair procedures when they enforce the law.

For example, the Bill of Rights states that if you are accused of a crime, you have the right to have a lawyer help defend you. Suppose the government did not allow you to have a lawyer. The government would have violated your right to due process that is guaranteed by the Constitution.

### **What does the right to have a lawyer in a criminal case mean?**

Does it mean the government must pay for a lawyer to help you if you cannot afford to pay for one yourself? The Supreme Court has changed its ideas about this right over a period of years. In 1963, in a famous case, the Supreme Court thought again about what the constitutional right to a lawyer means. In the case of *Gideon v. Wainwright*, 372 U. S. 335 (1963), the Supreme Court overruled its decision in a case decided 20 years earlier, and held that a state must provide counsel for an indigent accused of a serious crime. This case is an example of how our interpretation of due process, or fundamental fairness, can change over time.

## ***Handout 12 – Why Is Due Process Important in Criminal Trials?***

To understand the importance of fair procedures in enforcing the law, read the following actions that might be taken by a government.

Then answer the questions that follow them. Suppose you lived in a country in which the following things could happen.

<b>Action</b>	<b>Would you believe that you would be treated fairly? Why or why not?</b>	<b>Are there any circumstances in which this action would be considered fair? Explain your answer.</b>
If the police suspected you of a crime, they could force you by any means to give them information that might show you were guilty.		
If you were taken to court, the judge could use any means to get information from you to decide whether you were guilty.		
The leaders of the country could make decisions about your life, liberty, or property in secret, without allowing you or anyone else to participate.		

## ***Handout 13***

### **What Rights Do People Have When They Are Suspected or Accused of Crimes?**

Read the protections in the Bill of Rights summarized below. Then answer the questions that follow.

#### ***4<sup>th</sup> Amendment***

- People, their homes, and their possessions cannot be searched or taken by the government without a good reason.
- In most cases, the police must get a warrant (permission from a judge) before they can conduct a search.

#### ***5<sup>th</sup> Amendment***

- People who are accused of crimes do not have to give evidence against themselves.
- People cannot be tried again for a crime for which they have been found innocent.
- People's lives, liberty, or property cannot be taken from them without due process of law.

#### ***6<sup>th</sup> Amendment***

- A person accused of a crime has the right to a speedy, public trial by a jury (other citizens).
- People must be told what crimes they are accused of.
- People have a right to question the persons who are accusing them.
- An accused person has the right to have a lawyer.

#### ***8<sup>th</sup> Amendment***

- People arrested for crimes are entitled to be free on reasonable bail (money deposited with the court) while awaiting trial.
- If a person must pay a fine, it must be a fair amount.
- People found guilty of crimes shall not be punished in cruel and unusual ways.

**Suppose the police think you have committed a crime and come to arrest you. Which of the rights you have just read about do you think would be most important to you? Why?**

### ***Handout 14 – Gideon v. Wainwright***

Clarence Gideon was accused of breaking into a poolroom in Florida. Police said he had stolen a pint of wine and some coins from a cigarette machine. Gideon was a poor, uneducated man who was 50 years old. He did not know much about the law. However, he believed he could not get a fair trial without a lawyer to help him. When Gideon appeared in court, he asked the judge to appoint a lawyer for him. He was too poor to hire one himself. The judge told him that he did not have the right to have a lawyer appointed for him unless he was charged with murder.

Gideon was tried before a jury, and he tried to defend himself. He made an opening speech to the jury and cross-examined the witnesses against him. He then called witnesses to testify for him and made a final speech to the jury. The jury decided he was guilty. Gideon was sent to the state prison to serve for five years.

From prison he wrote a petition to the Supreme Court. It was handwritten in pencil. He argued that all citizens have a right to a lawyer in cases where they might be sent to prison.

## ***Handout 15***

### **Scenario and Evidence**

Read through the scenario and testimony, stopping periodically to provide students with a definition of fact and opinion appropriate to their level. Ask students to distinguish facts from opinion. Have the class respond to questions at the end of each person's testimony. On May 15, 2010, John's red, ten-speed bicycle disappeared. Detective Jim Shoes was assigned to investigate the case.

**Detective Shoes:** "When did you last see the bicycle?"

**John:** "I rode home after delivering my papers yesterday, May 14th, at about 6:30 p.m. I parked the bike in the corner of the garage. I didn't put the lock on because it was in the garage. When I got up to ride it to school, the bike was gone. I think Lou took it because he wanted a bike like mine, and I don't think he likes me."

### **Class Discussion**

- What are the facts?
- What are the opinions?

(If no response, re-read the situation and John's testimony and ask the questions again.)

Detective Jim Shoes interviews a neighbor:

**Detective Jim Shoes:** "Did you see John's bicycle yesterday?"

**Neighbor:** "Yes, I was cutting grass about 6:30, and I saw John ride his bicycle into the garage. About 9:30 I let my dog out and saw a suspicious shadow moving in the garage. I think it was Lou. He's always in trouble."

### **Class Discussion**

- What are the facts?
- What are the opinions?

Detective Shoes interviews Lou:

**Detective Shoes:** "John's bike is missing. Where were you and what were you doing about 6:30 p.m. on May 14, 2010?"

**Lou:** "I was just having fun. I was pitching for the Highland Park Champs. After the game the whole team went out for hamburgers. My folks picked me up about 10:30 p.m. at the Big Shake restaurant and we went home together. I had a really good evening. My brother John and I had a pillow fight which really made a mess. Then we went to sleep. I think Harvey took the bike."

Once again, have the class review the testimony and distinguish fact from opinion.



*Lesson 4 – Strategy Three*  
*T-Chart*

FACT	OPINION

### ***Handout 16 – Miranda vs. Arizona***

Ernesto Miranda was a poor Mexican ***immigrant*** who lived in Arizona in 1963. A woman ***accused*** Miranda of committing a crime against her. Miranda had a previous record of committing robbery and crimes against women. The police arrested Miranda and asked him questions about the crime for two hours. Ernesto Miranda was arrested on March 18, 1963, at his home in Arizona and taken to a Phoenix police station. At the station witnesses identified Miranda as the one who committed the crime. Police then brought Miranda to an interrogation room where he was questioned by two police officers. The officers did not tell Miranda that he had a right to an attorney, and Miranda confessed to the crime in two hours. Miranda wrote a confession on a piece of paper and signed the paper. At the top of the paper was a typed statement saying that Miranda had made the confession voluntarily and with full knowledge of his legal rights. Miranda was convicted of multiple crimes in an Arizona state court.

In the United States, people who are accused of crimes have certain rights granted by the Constitution. The 5<sup>th</sup> Amendment of the Constitution says that they have the right to be silent. The 6<sup>th</sup> Amendment of the Constitution says that they have the right to have a lawyer to help defend themselves.

The police did not tell Miranda that he had these rights when they arrested him. After the police were finished asking Miranda questions, he signed a ***confession***. The police used his confession in the trial, and Miranda was convicted of the crime. The judge decided he should serve 20 to 30 years in prison for each crime.



## ***Handout 17***

*How am I protected from those with authority over me?*

**Directions:** Complete the following Frayer Model as it is modeled for the entire class.

**Definition (in own words):**

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**Characteristics:**

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FAIRNESS

**Examples:**

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**Non-Examples:**

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**Directions:** Complete the following Frayer Model with your partner using the knowledge you already have about due process.

**Definition (in own words):**

**Characteristics:**

DUE PROCESS

**Examples :**

**Non-Examples:**