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

A. Demand to enter your home for no particular reason and forcibly enter if you object.
B. Ignore your demands to know why your home or property is being searched.
C. Charge you with a crime without telling you and then force you to confess your guilt.
D. Find you guilty in secret a very long time after your arrest.
E. Keep putting you on trial over and over until a jury decides you are guilty.
F. Take your property without paying you for it.

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

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

People are often surprised to find how much of the Bill of Rights involves protections for those who have been accused of a crime. Five amendments in the Bill of Rights deal with some aspect of criminal procedure—the Fourth, Fifth, Sixth, Seventh, and Eighth Amendments. The Founders knew from history and experience that if there were not protections for citizens who are accused of crimes and clear rules of due process for the government to follow, then the government would have unlimited power and citizens could not live freely. The idea was that it was better for guilty people to go free than for the judicial system to wrongly punish even one innocent person.

**Gathering Evidence: What Does the Fourth Amendment Protect?**

One of the most common ways the British violated the rights of American colonists was the use of “general” search warrants. These warrants were easy to get and did not list a particular person or place to be searched. Any official who held a general warrant could search for anything he wanted, and British officers often used these warrants to unjustly search colonists. The Founders wanted to stop this type of abuse with the Fourth Amendment. The Fourth Amendment requires that warrants be specific about the person and place to be searched. It also requires that law enforcement officers must show probable cause to receive a warrant, meaning that they must show a
judge evidence that the person or place may be involved in a crime. The Fourth Amendment demands that government officials go beyond simple suspicion and balance citizens’ rights with proper enforcement of laws.

**Government Power: What Does the Fifth Amendment Protect?**

The Fifth Amendment contains a number of protections for individuals after a search has been conducted or an arrest has been made. One of the most important of these is protection from self-incrimination. Also known as “pleading the Fifth” or “the right to remain silent,” this protection means the government cannot force someone to give evidence against him or herself. A person may refuse to answer police questions that might make him or her seem guilty, and, at trial, the accused person cannot be required to take the stand and testify under oath.

The Fifth Amendment also guarantees that the government cannot try an accused individual for the same crime more than once, a practice known as double jeopardy. Without a ban on double jeopardy, the government could try an individual over and over until it got the verdict it wanted.

**Determining Guilt or Innocence: What Does the Sixth Amendment Protect?**

The Sixth Amendment guarantees a jury trial for all individuals accused of a crime. Trials must be speedy, public, and be held in the locale where the crime took place. It also requires that citizen juries, not a judge, decide the guilt or innocence of the accused. (This protection is also in the body of the Constitution.) Accused individuals have the rights to know the crimes they are accused of committing, to see all evidence the government has against them, to face their accusers, to call witnesses in their defense, and to have a lawyer to assist in their defense. Because the Sixth Amendment defends individuals from the huge power and resources of the government, it is essential to the preservation of liberty.
Jury Overruled? What Does the Seventh Amendment Protect?

The Seventh Amendment to the Constitution guarantees a right to trial by jury in common law cases involving amounts over $20. It also states that cases decided by a jury cannot be overturned unless there was a factual error. A judge can set aside a jury’s verdict, but he or she cannot make a verdict or call a new trial. The Supreme Court upheld this clause in Slocum v. New York Insurance Co. (1813). The Court said that while an appeals court could set aside a jury verdict “for error of law” and order a new trial, “it may not itself determine the issues of fact.”

Guilty: What Does the Eighth Amendment Protect?

The Founders knew that individual rights do not end when someone is found guilty of a crime. The Eighth Amendment requires that fines and penalties for guilty persons are not excessive. Most people understand this as the idea that the punishment must fit the crime. While the Bill of Rights does not define what is “excessive,” the Supreme Court has defined it as punishment that is extremely out of balance with the offenses committed in United States v. Bajakajian (1988).

Perhaps more challenging to define is the Eighth Amendment’s ban on “cruel and unusual punishments” for guilty individuals. Generally, this protection was meant to prevent punishments like whipping or other methods common throughout history. The definition of “cruel and unusual” punishment is often hotly debated.

Criminal Procedure Protections and You

Most citizens obey laws, but due process does not just protect those people who break the law. It is important for us all. The Founders wrote the Constitution to “establish justice” and “to secure the blessings of liberty” for themselves and future generations. A big part of that was protecting minorities (including suspected criminals) from the “tyranny of the majority.” The protections of the Fourth, Fifth, Sixth, Seventh, and Eighth Amendments all help balance individual rights and the powers of government.
Comprehension and Critical Thinking Questions

1. Which amendments in the Bill of Rights protect people who are accused of crimes? Why did the Founders include these amendments in the Bill of Rights?

2. What specific protections for the accused are contained in the Fourth Amendment? In the Fifth Amendment?

3. In what ways does the Sixth Amendment protect an accused individual after he or she has been charged with a crime?

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

   How does this quote from the Supreme Court’s ruling in Mapp v. Ohio (1961) show the importance of protections for those accused of crimes? Do you think the Founders would agree with this statement? Why or why not? (Answer in 2-3 sentences.)

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

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

<table>
<thead>
<tr>
<th>FOURTH AMENDMENT</th>
<th>INTERPRETATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. “the right of the people to be secure ... against unreasonable searches and seizures, Shall not be violated...”</td>
<td>1. People and their homes, possessions, etc., cannot be searched or taken without reason.</td>
</tr>
<tr>
<td>2.</td>
<td>2.</td>
</tr>
<tr>
<td>3.</td>
<td>3.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>FIFTH AMENDMENT</th>
<th>INTERPRETATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. “No person shall be held to answer for a capital ... crime unless on a presentment or indictment of by a Grand Jury”</td>
<td>1. People suspected of very serious crimes must be indicted [formally accused] by a Grand Jury.</td>
</tr>
<tr>
<td>2. “nor shall any person be subject for the same offense to be twice put in jeopardy of life and limb...</td>
<td>2.</td>
</tr>
<tr>
<td>3.</td>
<td>3.</td>
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<tr>
<td>4.</td>
<td>4.</td>
</tr>
</tbody>
</table>
### SIXTH AMENDMENT INTERPRETATION

<table>
<thead>
<tr>
<th>Number</th>
<th>Original Text</th>
<th>Interpretation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>“the accused shall enjoy the right to a speedy and public trial, by an impartial jury.”</td>
<td>1.</td>
</tr>
<tr>
<td>2.</td>
<td>“[the accused shall] be informed of the nature and cause of the accusation.”</td>
<td>2. People must be told what crime they are accused of committing.</td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td>3.</td>
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<tr>
<td>4.</td>
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<td>4.</td>
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<tr>
<td>5.</td>
<td></td>
<td>5.</td>
</tr>
</tbody>
</table>

### SEVENTH AMENDMENT INTERPRETATION

<table>
<thead>
<tr>
<th>Number</th>
<th>Original Text</th>
<th>Interpretation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>“where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved”</td>
<td>1. People have a right to a jury trial in common law cases concerning a value of more than twenty dollars.</td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td>2.</td>
</tr>
</tbody>
</table>

### EIGHTH AMENDMENT INTERPRETATION

<table>
<thead>
<tr>
<th>Number</th>
<th>Original Text</th>
<th>Interpretation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Excessive bail shall not be imposed.</td>
<td>1. The government cannot impose excessive bail.</td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td>2.</td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td>3.</td>
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</tbody>
</table>
Defining Cruel and Unusual

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

Text of the Eighth Amendment:
“…nor cruel and unusual punishments inflicted.”

“Cruel:"
A. How do you know if a punishment is cruel?
B. Is a cruel punishment one that…
   1. causes lots of pain and suffering?
   2. is too lengthy to carry out?
   3. involves other circumstances that are not mentioned here?
   4. is too lengthy?
E. Does the type of crime committed, the circumstances of the accused, or the type of punishment matter in how you interpret this word?

“Unusual:"
1. How do you know if a punishment is unusual?
2. What is the difference between “usual” and “unusual”? How uncommon does a punishment have to be in order to be called unusual? Or was “unusual” meant by the Founders to outlaw arbitrary punishments rather than merely infrequent ones?
3. How should we determine what is unusual? Must it be unusual compared to state and federal laws and practices? Must it be unusual compared to international laws and practices?

Notes:
Cruel and Unusual?

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

**SCENARIO 1**

Christopher, a high school junior who was almost 18 (a legal adult) told two of his friends, aged 15 and 16, that he wanted to murder someone. He had a plan. Christopher would break into Shirley's home, tie her up, and throw her off a bridge. His two friends weren't sure, but they decided to help Christopher when he told them they could “get away with it” because they were minors. The three boys met at 2:00 a.m. on the night of the murder, but Christopher’s 16-year-old friend was nervous and backed out. Christopher and his 15-year-old friend went to commit the crime they’d planned.

The pair entered Shirley’s home through an open window, waking her up. While she turned on a hallway light and asked “Who’s there?” Christopher went down the hall and entered Shirley’s bedroom. He recognized her from a car accident the two had been in, which he later admitted supported his decision to kill. The boys tied Shirley’s hands, covered her eyes, and drove her to a nearby bridge. They threw her into the river, where she drowned. Christopher was overheard bragging about the murder the next day at school where police arrested him. He waived [refused] his rights to remain silent and to have an attorney present. Christopher then admitted to the murder and agreed to reenact the crime on videotape.

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

1. What arguments would convince you that the punishment in this situation IS NOT cruel and unusual?

2. What arguments would convince you that the punishment in this situation IS cruel and unusual?

3. How would you rule in this case?

4. Is there anything about the details of this case that, if different, would change your ruling? Explain.
SCENARIO 2

Evan was a very troubled 14-year-old who had been in and out of foster care [temporary homes for children living outside of the custody of parents or guardians] for years. His mother was addicted to drugs and alcohol, and he had been abused by his stepfather. Evan himself also used drugs and alcohol, and he had tried to kill himself four times. The first attempt was when he was only six years old.

One night Evan was at home with his two friends, Colby and Cole. The two friends came to buy drugs from Evan’s mother, who sold them marijuana and gave them alcohol. All three boys left and went to Cole’s trailer, where they smoked their drugs and played drinking games.

Eventually, Cole passed out. While Cole was passed out, Evan stole his wallet. Evan and Colby split Cole’s $300 between them. When Evan tried to put the wallet back into Cole’s pocket, Cole woke up and grabbed Evan by the throat. Evan then hit Cole repeatedly with a baseball bat. After a number of hits, Evan put a sheet over Cole’s head, said, “I am God, I’ve come to take your life,” and hit Cole one more time. Evan and Colby then ran from Cole’s trailer, but quickly returned to hide their crime. They lit two fires, burning the trailer and leaving Cole to die from trauma and smoke inhalation.

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

1. What arguments would convince you that the punishment in this situation IS NOT cruel and unusual?

2. What arguments would convince you that the punishment in this situation IS cruel and unusual?

3. How would you rule in this case?

4. Is there anything about the details of this case that, if different, would change your ruling? Explain.
SCENARIO 3

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

By the mid-1800s, hanging was the most common method of execution throughout the country. In 1888, New York’s governor commissioned a study to find the most humane method of executing dangerous criminals. The committee’s answer was the electric chair, which became the preferred method of execution for the vast majority of states for the next 100 years. Over time, people became concerned about the pain and suffering caused by the electric chair. In response, Oklahoma became the first state to seek a different method. Listening to the advice of a professor of anesthesiology [pain reduction], Oklahoma replaced the electric chair with lethal injection. Lethal injection is now the most common way prisoners are put to death in the United States.

Medical personnel are responsible for setting up the IVs and drugs. The prison warden typically conducts the execution from a separate room with doctors watching the process for any signs of trouble. In some cases it is difficult for the prison warden to find a doctor willing to help with the execution. This is because doctors are sworn to follow the Hippocratic Oath, which commands each doctor to “do no harm.”

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

1. What arguments would convince you that the punishment in this situation IS NOT cruel and unusual?

2. What arguments would convince you that the punishment in this situation IS cruel and unusual?

3. How would you rule in this case?

4. Is there anything about the details of this case that, if different, would change your ruling? Explain.