

“Awwwww C’mon! That’s Not Fair!”

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Adapted to Delaware standards from *We the People: The Citizen and the Constitution*, Level I, Lesson 20. 2003. Center for Civic Education. Calabasas, California.

Lesson Description: This lesson uses case studies to teach and reinforce the concept of due process. Students apply their understandings in the context of criminal proceedings then develop skits to illustrate violations of due process.

Grade Level: 5

Standard: Civic Standard 2

End of Cluster Expectations (Benchmarks): Students will understand that the principle of “due process” means that the government must follow its own rules when taking actions against a citizen. Due process stipulates that government must act *fairly* and in accordance with *fair* rules in all that it does.

Content

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.

Civics standard 2 for grades 4–5 stresses an understanding of what *rule of law* means. A true understanding would require an appreciation of the difficulty in getting those who make the rules to make rules that constrain their power, and then forcing those individuals to feel obliged to obey those rules.

Essential Question: How does due process protect American citizens?

Assessment: see page 15 and 16

Objective(s): Students will be able to

- State in general terms what due process means.
- Explain the importance of the due process clauses in the Bill of Rights (Fifth Amendment) and in the Fourteenth Amendment.
- Identify situations in which due process rights are important, particularly the right to a lawyer in criminal proceedings.

Prior Knowledge and Skills: Students should understand the concept of fairness and be able to describe situations involving fairness in every day life. Students should also know what an amendment is and have a basic understanding of the Bill of Rights.

Vocabulary:

- **Due Process:** Due process stipulates that government must act fairly and in accordance with fair rules in all that it does. There are two types of due process – substantive and procedural. This lesson focuses on procedural due process. Procedural due process stipulates that the procedures used by the government in gathering information and making decisions be reasonable and fair.
- **Violate:** to break or disregard (as in a rule or law).
- **Principle:** a basic truth, law, assumption, or standard of behavior. Teachers should make sure that students are able to distinguish “principle” from “principal.”

Time to Complete: Two to three 45-minute periods

Materials/resources needed:

- Handout 1: Defining Due Process
- Handout 2: Due Process Case Study
- Handout 3: You Be the Judge
- Visual 1
- Copy of Bill of Rights and Fourteenth Amendment (optional)
- Chart paper (two for each group of 3–5 students)
- Markers for each group
- Poster/picture final product rubric
- Handout 4: Assessment

Procedure Steps:

1. Warm-up/introduction: meet with a student prior to class to plan a little classroom drama that no one else knows about. Focus the drama on a situation in which a teacher (you) accuse the student of cheating, stealing, vandalism, etc. Act out the drama at the beginning of class. The “scenario” should capture the rest of the class’s attention and show a teacher’s rush to judgment (e.g., “You cheated and get a zero!” or “You stole my pen and will now serve detention!”). It should show the “unfairness” or lack of due process for this student.
2. Ask students to read Handout 1 – “Defining Due Process.” Ask the students to explain the term “due process” and apply it to the warm-up activity. Do they think their teacher acted fairly? How might teacher have acted to uphold due process requirements?
3. Tell the students that they are going to extend their understanding of due process in this lesson by applying what they learned to the procedures that government uses to deal with those accused of a crime.
4. Organize the class into groups of 3–5 students. Distribute copies of Handout 2 – “Due Process Case Study.” Ask a student to read the introduction aloud. Then, pose the bulleted questions that follow to the class:

- Which group of people is protected by the Sixth Amendment to the Constitution? How are they protected?
- Why do you think accused people are given the right to a lawyer?

Invite responses.

5. Distribute chart paper and markers to each group. Ask the groups to read the case study on Handout 2 then record their responses to questions 1–3 on a piece of chart paper. Invite a representative from each group to post and present their answers.
6. Explain the Court’s actual holding in the case: In *Gideon v. Wainwright*, the Court found that the Sixth Amendment’s guarantee of counsel was a fundamental right, essential to a fair trial, which should be made applicable to the states through the Due Process Clause of the Fourteenth Amendment (visit <http://www.oyez.org/oyez/resource/case/139>)
7. Ask the students how the *Gideon* case (i.e., *Gideon*) fits into the discussion about due process. Lead them to the understanding that the right to a lawyer in criminal cases is one of the requirements of due process. Suggest that making an accused person go to trial without a lawyer is as unfair as making a team compete without a coach.
8. Distribute copies of Handout 3 – “You Be the Judge.” Ask the students to analyze the three cases on the handout and decide as a group whether the guarantee of due process was violated. Have a few students share their responses.
9. Debrief Handout 3 by posing the following questions to the whole class:
 - Do you believe that you would be treated fairly if you were accused of a crime? Why or why not?
(One plausible response – “Probably, because the Constitution guarantees due process.”)
 - Should every person who is accused of a crime be treated fairly? Why or why not?
(Plausible responses – “Yes, because if the government gets away with treating one person unfairly, it is likely that it can treat others unfairly. Also, the American people are committed to the principle of equality. We should treat others as we would hope to be treated ourselves.”)

- Would it be better to require the government to make decisions openly or secretly? Explain why.
(One plausible response – “It’s usually better to have government make decisions openly because it gives the people a chance to make sure that it is acting fairly.”)
 - To summarize, what are some of the procedures that government must follow to insure due process?
(Sample Responses: give accused people a lawyer, conduct proceedings in open, let an accused person testify on his own behalf, not force a person to testify against himself, etc.).
10. Explain to the students that one way people can prove that they understand something is by providing examples. Ask the students to work in their groups to prepare a short skit which illustrates the violation of a student’s or an accused person’s right to due process. Have the students present their skits to the class and ask volunteers to explain how due process was violated.
11. Have the students draw a picture or poster. Divide the poster into two parts. On one side, show a situation (student’s choosing) in which a due process right is being violated. On the other side, show the same situation, but with the due process right being protected. Students should explain in words each picture in terms of due process. Share the drawings with the class. (See rubric on page 13.)

Closure: Project Visual 1 (Review the Lesson) on the screen. Pose each prompt one at a time and check for understanding.

Assessment: Administer the assessment.

Extensions:

1. Have students watch a television drama or movie that deals with law enforcement. Keep a journal of how due process rights are protected or violated. Have students share your observations with the class.
2. Invite a police officer to your class. Ask the officer to discuss what the police have to do to protect due process rights when they suspect someone of a crime. Prepare questions to ask your guest before the visit.
3. Have students find newspaper articles that give example of the right of due process. Have them share the articles with the class.
4. Why is the guarantee of due process so important? Brainstorm examples of everyday situations with a partner where due process is needed. Student pair will pick one example, create a script, and perform the situation in front of the class. A rubric will be used to determine if the students understand due process and how it affects their lives.

5. Interview the school principal or a school board member. Ask them about your school's due process rules when dealing with students. Share what was learned with the class.
6. Assign a Landmark Supreme Court case from the website www.landmarkcases.org and have the students investigate one of the cases cited there. This can be a basic research assignment, a higher level enrichment, or a class unit. This site also has different reading levels for each case. Students can be divided into pairs and investigate the facts of the case, the decision itself (which Amendment was addressed in the decision, what rights were violated, etc.), and how they would decide the case if they were on the Supreme Court. Students could present this as a PowerPoint to the class.
7. Students can make a collage with old newspapers, magazines, or Internet pictures that illustrate rights that they feel are most relevant in their lives today.

Sources Used:

Center for Civic Education (2003). *We the People: The Citizen and the Constitution*. Level I, Lesson 20. Calabasas, California.

Handout 1: Defining Due Process

What is the right to due process of law?

Due process is a term used to describe the requirement that government officials must act fairly when doing their jobs. They must use fair procedures when they gather information and enforce the law.

The right to due process of law is the right to be treated fairly by your government. You will find the term “due process of law” used in two places in the United States Constitution.

- **Fifth Amendment.** It says that no person shall be “...deprived of [have taken away] life, liberty, or property without due process of law.” This amendment protects your right to be treated fairly by the *federal* government.
- **Fourteenth Amendment.** It says “...nor shall any State deprive any person of life, liberty, or property without due process of law.” This amendment protects your right to be treated fairly by your *state* and *local* governments.

The Bill of Rights protects you from unfair treatment by the *federal* government. The Fourteenth Amendment protects you from unfair treatment by *state* and *local* governments.

Due Process Means More

Due Process refers to the right to be treated fairly by all agencies of your government. Your right to due process is not limited to making sure you are treated fairly by law enforcement agencies and the courts. The laws that government passes must also be fair.

Handout 2: Due Process Case Study

When should you have the right to a lawyer?

Introduction

The Sixth Amendment states, “In all criminal prosecutions, the accused shall enjoy the right to...have the assistance of counsel for his defence.” In other words, if you are accused of a crime and there is a possibility that you may go to jail, you have the right to have a lawyer help defend you. If the government does not allow you to have a lawyer, your constitutional right to due process would be violated.

- Which group of people is protected by the Sixth Amendment to the Constitution? How are they protected?
- Why do you think accused people are given the right to a lawyer?

Case Study

In the famous case, *Gideon v. Wainwright*, the United States Supreme Court had to think about some new questions involving the right to a lawyer. In a small group, read the following summary of the *Gideon v. Wainwright* case and answer the questions that follow. Be prepared to share your responses with the rest of the class.

Gideon v. Wainwright (1963)

The police accused Clarence Gideon of breaking into a pool hall in Florida. They said he had stolen some wine and taken some coins from a cigarette machine. Gideon was 50 years old. He was a poor, uneducated man who did not know much about the law.

In court, Gideon asked the judge to appoint a lawyer for him. Gideon said that he was too poor to hire one himself. The judge said no. He said that Gideon did not have the right to have the court pay for a lawyer. The court could only do so when the charge was murder.

Gideon was tried before a jury. He acted as his own lawyer. He made an opening speech to the jury. He asked questions of the witnesses against him. Gideon called his own witnesses to tell his side of the story. Then he made his final speech to the jury.

The jury decided that Gideon was guilty of the charges. The judge sent Gideon to prison for five years.

While in prison, Gideon wrote a petition to the United States Supreme Court asking the justices to review his case. He wrote his petition by hand and in pencil. Gideon argued that all citizens have a right to a lawyer in cases where they might be sent to prison. The Court agreed to hear Gideon’s appeal.

Pretend that you are one of the justices hearing Gideon’s case.

1. Do you think the judge should have appointed a lawyer to help Gideon? Why or why not?
2. Do you think that the right to have a lawyer means that the government has to provide a lawyer for all people who do not have the money to hire one? Why or why not?

3. When should an accused person have a right to a lawyer? Explain why.
 - a. At the time of his or her arrest by a police officer?
 - b. Before he or she is questioned by a police officer?
 - c. Before the trial to prepare for the trial?
 - d. During the trial?
 - e. After the trial, if the person thinks the trial was unfair and wants another trial?

Handout 2: Due Process Case Study

When should you have the right to a lawyer? (Teacher's Guide)

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

- What does the right to have a lawyer in a criminal case mean?
- Must the government pay a lawyer to defend you if you cannot afford to pay for one yourself?

In the famous case, *Gideon v. Wainwright*, the United States Supreme Court thought again about what the constitutional right to a lawyer means. In a small group, read the following story. Then answer the questions that follow it. Be prepared to share your responses with the class.

Gideon v. Wainwright (1963)

The police accused Clarence Gideon of breaking into a pool room in Florida. They said he had stolen a pint of wine and taken some coins from a cigarette machine. Gideon was 50 years old. He was a poor, uneducated man who did not know much about the law.

In court, Gideon asked the judge to appoint a lawyer for him. Gideon said that he was too poor to hire one himself. The judge said no. He said that Gideon did not have the right to have the court pay for a lawyer. The court could only do so when the charge was murder.

Gideon was tried before a jury. He tried to be his own lawyer. He made an opening speech to the jury. He asked questions of the witnesses against him. Gideon called his own witnesses to tell his side of the story. Then he made his final speech to the jury.

The jury decided that Gideon was guilty of the charges. The judge sent Gideon to prison for five years.

While in prison, Gideon wrote a petition to the Supreme Court. He wrote it by hand and in pencil. Gideon argued that all citizens have a right to a lawyer in cases where they might be sent to prison. The Court agreed to hear the appeal.

1. Should the judge have appointed a lawyer to help Gideon? Why or why not?

Most students will agree that the judge should have appointed a lawyer for Gideon because he was uneducated and did not have the skill to serve as his own attorney, nor could he afford to hire an attorney.

2. Should the right to have a lawyer mean that government has to provide one for all people who do not have the money to hire one? Why or why not?

Students will probably agree that any person who cannot afford to hire an attorney should be provided one by the government.

3. When should a person have a right to a lawyer?
 - a. Upon arrest?
 - b. Before being questioned?
 - c. Before the trial?
 - d. After the trial, if the person thinks the trial was unfair and wants another trial?

Students will probably agree that a person is entitled to a lawyer before he or she is questioned, before trial, and during the trial. Most will agree that he or she should be entitled to a lawyer after the trial as well, if the accused thinks the trial was unfair and wants to appeal the outcome.

Handout 3: You be the Judge

Why is due process important in criminal proceedings?

It is very important for you to understand that due process requires the government to act fairly. Read Cases 1–3 (below) and decide whether the guarantee of due process was violated.

Case 1: The police suspect you of a crime. They use force to make you give them information that suggests you are guilty.

- *Did the police violate due process? Explain.*
- *What might have been a fairer way to proceed?*

Case 2: You must appear in court. The judge listens to all the witnesses against you but doesn't allow you to present your side of the story.

- *Did the judge violate due process? Explain.*
- *What might have been a fairer way to proceed?*

Case 3: The leaders of your country make decisions about your life, liberty, and property. They make these decisions in secret and do not allow you or anyone else to participate.

- *Did the leaders violate due process? Explain.*
- *What might have been a fairer way to proceed?*

Visual 1

Review the lesson

1. What does the right to due process mean?
2. How does due process protect American citizens?
3. Why is the right to due process important?
4. Give an example of how the guarantee of due process protects your rights to life, liberty, and property?

Visual 1

Review the lesson

1. What does the right to due process mean?

Due process means the right to be treated fairly by the government. The government must use fair procedures when gathering information and making decisions.

2. How does due process protect American citizens?

Due process protects American citizens by requiring the government to follow fair laws and to act fairly in its treatment of people.

3. Why is the right to due process important?

Without due process the government and its agencies might treat the people in arbitrary or even cruel ways. The people would not feel secure; they would not trust the government to ensure the common good.

4. Explain how due process protects your right to life, liberty, and property from unfair and unreasonable acts by people in government?

Due process protects these rights by ensuring that all people are treated according to fair and reasonable standards and that these standards are known and accessible to all the people. If government officials violate these rights, they can be prosecuted and removed from office.

Rubric: Poster Project on Due Process

4

- _____ Poster reveals a thorough understanding of due process.
- _____ The poster includes all required elements as well as additional information.
- _____ All items of importance on the poster are clearly labeled.
- _____ All graphics relate to due process and make it easier to understand.

3

- _____ Poster reveals a partial understanding of due process.
- _____ All required elements are included on the poster.
- _____ Most items of importance on the poster are clearly labeled.
- _____ All graphics relate to the topic and most make it easier to understand.

2

- _____ Poster reveals a flawed understanding of due process.
- _____ Fewer than half of the required elements are included on the poster.
- _____ Several items of importance on the poster are clearly labeled.
- _____ The relationship between the graphics and due process required becomes only apparent after lengthy explanation.

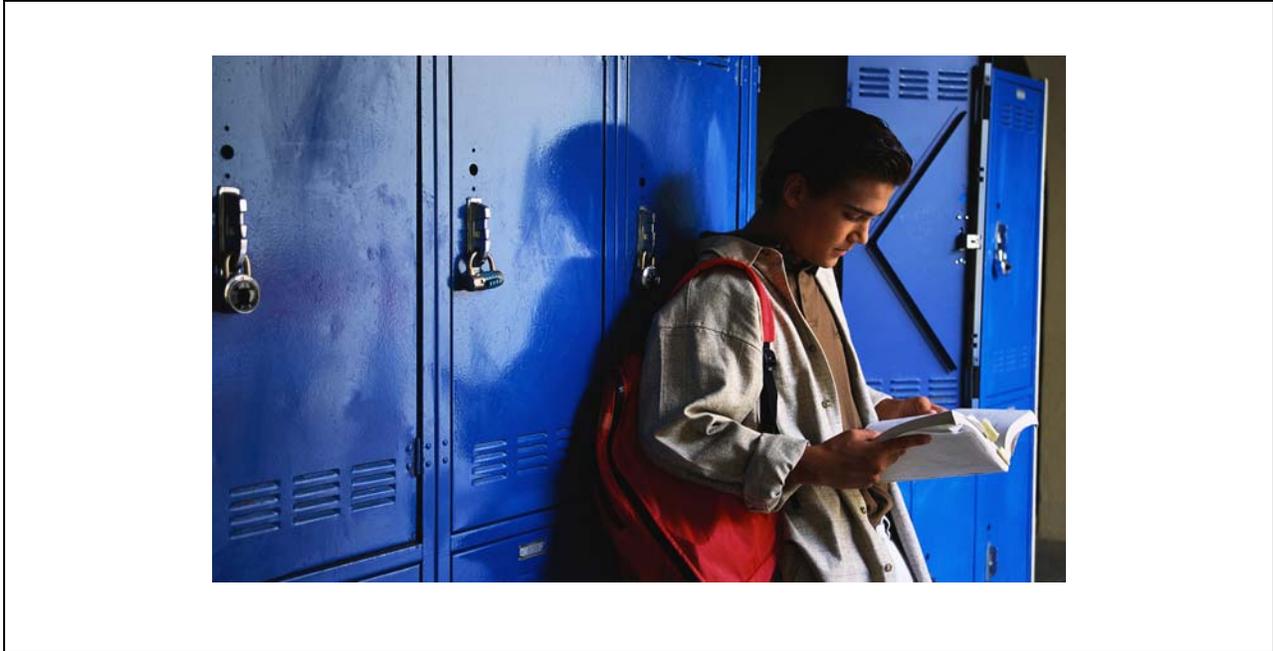
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- _____ Poster reveals little if any understanding of due process.
- _____ Most of the required elements are missing.
- _____ Labels are irrelevant and too small to view.
- _____ Graphics do not relate to due process.

Handout 4: Assessment Extended Response

Name _____

Grade _____



A principal wants to investigate a report that stolen property is in a student's book bag. Identify one step the principal could take to guarantee due process for this accused student and explain why that principal should take that step.

Response

Rubric

- 2 = this response gives a valid response with an accurate and relevant explanation*
- 1 = this response gives a valid response with an inaccurate, irrelevant, or no explanation*
- 0 = inaccurate or no response.*

Handout 4: Selected Response Assessment

Name _____

Grade _____



Which of the following illustrates how a judge might violate due process?

- A. Judge orders a police officer to read a person his rights.
- B. Judge orders an accused person to answer questions in court.
- C. Judge orders a principal to hear a student's story before suspending him.
- D. Judge orders the government to provide an accused person with a lawyer.

Correct Response: B