Inquiry Question: What is the proper balance between the rights of people accused of crimes and the interest of government and society in public safety?

Introduction: Balancing the Rights of the Accused and Public Safety / page 2

The Right to Counsel / page 3

The Right to Remain Silent / page 5

Inquiry Question / page 7

Inquiry Extension Question / page 9

Content created and featured in partnership with the TPS program does not indicate an endorsement by the Library of Congress.
Introduction: Balancing the Rights of the Accused and Public Safety

In the United States, people who are accused of a crime have several rights afforded to them. One example is the protection against unreasonable searches and seizures. But what if public safety is at risk? Should law enforcement have to follow all of the requirements that protect the accused from unreasonable searches and seizures? Or, should law enforcement be allowed to take public safety into consideration when conducting a search and seizure?

Many of the rights of the accused are based on the Bill of Rights, which is a part of the U.S. Constitution. Initially, these rights applied only to limit the power of the federal government, and states were generally free to operate their criminal justice systems without significant federal involvement. However, after the ratification of the 14th Amendment in 1868, the U.S. Supreme Court began to apply parts of the Bill of Rights to the states as well as the federal government. In the 1960s and 1970s, the Supreme Court incorporated many of the protections for accused persons found in the Fourth, Fifth and Sixth Amendments, making it so states could also not abridge these rights. (Learn more in the Incorporation Doctrine Inquiry Pack.) As a result, most of the protections in those amendments now apply in both state and federal court, and they limit the power of state and local law enforcement in addition to federal law enforcement.

Some rights of accused persons that apply to both state and federal governments include:

- Protection from unreasonable searches and seizures (Fourth Amendment)
- Protection from being forced to incriminate yourself (Fifth Amendment)
- Protection from being tried for the same crime twice, known as “double jeopardy” (Fifth Amendment)
- The right to fair procedures in the justice system, known as “procedural due process” (Fifth Amendment)
- The right to have a lawyer represent a criminal defendant in any case resulting in jail time (Sixth Amendment)
- The right to an impartial jury hear and decide a case when the defendant is accused of serious crimes (felonies) (Sixth Amendment)
- The right to question (cross-examine) witnesses at trial (Sixth Amendment)
- The right to a “speedy and public trial” (Sixth Amendment)
- The protection against cruel and usual punishments when being sentenced and unreasonable bail and fines (Eighth Amendment)

Most of these rights trace their history back to the Magna Carta (1215) and the English Bill of Rights (1689), both of which were documents meant to limit government power and tyranny.

The courts play an important role in interpreting the general language of the Bill of Rights. For example, the Sixth Amendment provides a criminal defendant the right “to have the assistance of counsel for his defense.” But this language does not clearly say that the government must provide a lawyer; it might mean that a defendant can have a lawyer if she can afford one. In addition, the language doesn’t explain when the right begins to apply. If it only applies at a trial but not, for example, when the defendant is being questioned by police, the right might not be as helpful.

Similarly, the Fourth Amendment protects against unreasonable searches and seizures. But the Constitution does not explain when a search is reasonable, and what is reasonable or unreasonable will vary with the facts and circumstances of individual cases. In fact, the reasonableness of a search may not depend just on a person’s individual rights and expectations; courts will often balance those individual rights with concerns about public safety, the protection of police officers, and the need for law enforcement. For example,
police may be required to get a search warrant in many circumstances but may be excused from a warrant requirement if there is a health emergency or if a defendant is destroying evidence.

The U.S. Supreme Court’s treatment of the Fifth Amendment likewise involves competing interests. Since 1966, the Court has generally required police to provide a familiar Miranda warning, including the right to remain silent and the right to counsel, to an accused person who is being interrogated in custody. But the Court has also determined that there is a “public safety exception” to the requirement that police provide a Miranda warning. This exception was established in *New York v. Quarles* (1984), a Supreme Court case in which the police apprehended a suspect and searched him, only to find an empty gun holster. Police asked him where the gun was before reading his Miranda rights. In *New York v. Quarles*, the Court decided that the rule established in the *Miranda* case is not absolute. Law enforcement officers can make an exception if there is reasonable belief that forgoing Miranda warnings is necessary in order to keep the public safe.

One way in which courts enforce the protections in the Bill of Rights is known as the “exclusionary rule.” If a law enforcement officer conducts an unconstitutional search or unlawful interrogation and finds evidence as a result, that evidence usually may not be used in a trial. This rule was first established by the Supreme Court for use in federal trials in 1914 (*Weeks v. United States*). The exclusionary rule was extended to apply to the states in 1961 (*Mapp v. Ohio*). Since then, the Court has identified certain exceptions to the exclusionary rule, including an exception that allows illegally obtained evidence to be used at trial if it is inevitable that it would have been found even without the law enforcement misconduct. The exclusionary rule is designed to deter constitutional violations. But its critics claim that it allows guilty people to go free because it can keep a jury from hearing important evidence of guilt.

Often, appellate cases about criminal procedure involve striking an acceptable balance between the rights of the accused and the government’s interest in protecting public safety. What is the best way to strike a balance between the rights of people accused of a crime and the protection of the general public?
The Right to Counsel

Source A: “Address by the Honorable Robert F. Kennedy” (1963)¹

Equality of justice in our courts should never depend upon the defendant’s wealth or lack of resources, but in all honesty we must admit that we have failed frequently to avoid such a result. It was many years ago that Chief Justice Taft observed:

"Of all the questions which are before the American people, I regard no one as more important than the improvement of the administration of justice. We must make it so that the poor man will have as nearly as possible an equal opportunity in litigating as the rich man, and under present conditions, ashamed as we may be of it, this is not the fact."

As you know, it wasn't until March of this year, with the Supreme Court's decision in Gideon vs. Wainwright, that the poor man's right to appointed legal counsel was held to be applicable to all courts in the land, at the state as well as the Federal level.

I think the story of the Gideon case gives us a profound insight into the nature of our judicial system at its best--and into the basic sense of human justice on which it is founded.

If an obscure Florida convict named Clarence Earl Gideon had not sat down in his prison cell with a pencil and paper to write a letter to the Supreme Court, and if the court had not taken the trouble to look for merit in that one crude petition, among all the bundles of mail it must receive every day, the vast machinery of American Law would have gone on functioning undisturbed.

Source A Information: This speech was delivered in 1963 by Robert F. Kennedy, then the attorney general of the United States. The attorney general is the head of the U.S. Department of Justice and also a member of the president’s cabinet. Kennedy delivered this speech to the New England Conference on the Defense of Indigent Persons Accused of Crime. His speech was delivered about six months after the Supreme Court decided the Gideon v. Wainwright (1963) case. At the time of that case, most states already provided free legal counsel to indigent defendants, but the Gideon case guaranteed that all states must provide attorneys to people accused of serious crimes (felonies) who cannot afford them.
Source B: Dissenting Opinion in Garza v. Idaho (2019)²

Third, our precedents seek to use the Sixth Amendment right to counsel to achieve an end it is not designed to guarantee. The right to counsel is not an assurance of an error-free trial or even a reliable result. It ensures fairness in a single respect: permitting the accused to employ the services of an attorney. The structural protections provided in the Sixth Amendment certainly seek to promote reliable criminal proceedings, but there is no substantive right to a particular level of reliability. In assuming otherwise, our ever-growing right-to-counsel precedents directly conflict with the government’s legitimate interest in the finality of criminal judgments. I would proceed with far more caution than the Court has traditionally demonstrated in this area.

Source B Information: In the Garza case, the U.S. Supreme Court made a complex ruling about the effectiveness of court appointed lawyers. When Supreme Court justices disagree with a ruling, they may write a dissenting opinion explaining the reasons for their disagreement. The excerpt above is from Justice Clarence Thomas’ dissent, and this section of the dissent was joined by Justice Neil Gorsuch. In this part of his opinion, Thomas weighs in on many decades of the Supreme Court’s decisions about the Sixth Amendment phrase, “the accused shall enjoy the right...to have Assistance of Counsel for his defense.”

Questions to Consider for Sources A and B:

1. Observe: What do you notice first about the information in these sources?

2. Reflect: What argument does Robert F. Kennedy make about the right to counsel in Source A? What argument does Justice Thomas make about the right to counsel in Source B? Compare and contrast their arguments. Then, research how the right to counsel is implemented in your state.

3. Question: What questions do you have about these sources?
The Right to Remain Silent


> The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of forgoing it. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system—that he is not in the presence of persons acting solely in his interest.

Source C Information: Ernesto Miranda was arrested after a victim identified him as her assailant. The police officers who questioned him did not inform him of his Fifth Amendment right against self-incrimination or of his Sixth Amendment right to the assistance of an attorney. He confessed to the crime; however, his attorney later argued that his confession should not have been used at his trial. The U.S. Supreme Court agreed, deciding that the police had not taken proper steps to inform Miranda of his constitutional rights. As a result of this Supreme Court case, police officers were required to inform suspects of their right to remain silent and their right to an attorney. These became known as “Miranda rights.”
Source D: “Letter to William J. Brennan” (1966)¹

Source D Information: The Gideon v. Wainwright (1963) and Miranda v. Arizona (1966) decisions left some people upset by the Supreme Court’s rulings. This letter is from the prosecuting attorney of Vigo County in Indiana. Prosecuting attorneys work for the government to try cases against people accused of committing crimes. Berry’s letter was sent to Justice William Brennan, one of the Supreme Court justices who was in the 5-4 majority in the Miranda case, decided earlier that month.
Questions to Consider for Sources C and D:

1. **Observe**: What do you notice first about these sources?

2. **Reflect**: What argument does the Supreme Court make in Source C about Fifth Amendment rights? What argument does Ralph Berry make in Source D about the rights of the accused? Could there be a compromise between these two arguments? Explain your reasoning.

3. **Question**: What questions do you have about these sources?
Inquiry Question

What is the proper balance between the rights of people accused of crimes and the interest of government and society in public safety?

In answering the question, consider these additional questions:

• Is the balance tilted too far in favor of accused persons or too far in favor of public safety?
• Can you think of reasons for why the balance should change?
• Can you think of reasons for why the balance should not change?

Use the sources above and the timeline to support your answer.
Extension Inquiry Question

Research the 1968 Supreme Court case of *Terry v. Ohio* to see how the Court balanced the rights of the accused persons with the need for police officers to be safe.

*Do you agree or disagree with this decision? Can you imagine that this stop and frisk case could be abused by law enforcement?*

Explain your thinking.
Notes


