



# 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: