Lesson: Is Solitary Confinement “Cruel and Unusual”?

OVERVIEW
Today it is not unusual to hear political pundits, legislators and judges bolstering their arguments by linking them to the original intent of the founding fathers and the authors of the U.S. Constitution. But many argue that interpretations of some concepts have changed over time. In this lesson, students will look at one of those concepts: cruel and unusual punishments. In particular, they will use a lesson focused on the relationship between evidence and opinion as they examine whether or not prolonged solitary confinement should be declared unconstitutional based on the Eighth Amendment.

Video clips provided with this lesson are from Herman’s House, a documentary about Herman Wallace, an inmate at Angola prison who has spent 40-plus years in solitary confinement, more than any other person in the United States.

POV offers a lending library of DVDs that you can borrow anytime during the school year—FOR FREE! Get started by joining our Community Network.

OBJECTIVES
By the end of this lesson, students will:
- Know what the Eighth Amendment to the U.S. Constitution says
- Understand that the interpretation of the phrase “cruel and unusual punishments” has changed over time
- Understand the relationship between the Eighth Amendment and debates about the legality of solitary confinement
- Examine the credibility and persuasive power of various types of evidence
- Reflect on how they use evidence to formulate opinions

GRADE LEVELS
9-12

SUBJECT AREAS
Civics
Criminal Justice
Government
Social Studies
U.S. History
MATERIALS
- Internet access and equipment to show the class online video
- Notebook paper opinion scales (see step 3 of the activity)

ESTIMATED TIME NEEDED
One 50-minute class period, plus two days for a homework project (one day for writing and one day for sharing)

FILM CLIPS
Clip 1: Herman Wallace Describes His Cell (length 0:041)
   This clip begins at 0:22, with Herman Wallace’s voice describing his cell. It ends at 1:03, when the scene switches to live action.

Clip 2: Jackie Sumell Explains the Genesis of Herman’s House (length 0:57)
   The clip begins at 5:19 with Jackie Sumell describing writing to Herman Wallace. It ends at 6:16 with Wallace explaining that he never thought about a house; he would be happy homeless as long as he were free.

Clip 3: Herman Wallace Describes His Dream House (length 0:55)
   The clip begins at 8:10 with Wallace beginning to describe the features of his dream house. It ends at 9:05 with Sumell talking about activism.

Clip 4: Herman Wallace is Arrested for Bank Robbery (length 1:27)
   The clip begins at 13:42 with Wallace describing his original arrest for bank robbery. It ends at 15:09 with Wallace commenting on how long he has been in prison.

Clip 5: NPR Reports on Herman Wallace’s Case (length 1:23)
   The clip begins at 17:27 with an NPR news story. It ends at 18:50 with an onscreen slate about Wallace’s appeal.

Clip 6: Michael Musser’s Story (length 3:46)
   The clip begins at 30:42 with Michael Musser telling his story. It ends at 34:28 with Musser’s mother imagining the good that Herman Wallace could do if he were released.

Clip 7: Herman Joins the Black Panthers (length 0:46)
   The clip begins at 40:06 with Wallace talking about being locked up. It ends at 40:52 with Wallace describing the Panthers’ greatest contribution to the community: pride.

Clip 8: Does He Deserve It? (length 3:20 sec)
   The clip begins at 47:32 with an attorney talking about how long Wallace has been in solitary confinement. It ends at 50:55 at the end of Sumell’s conversation with a man on the street.
Clip 9: The Origin of Solitary Confinement (length 1:12)
The clip begins at 52:29 with information on the origin of solitary confinement. It ends at 53:41 with comments from an architect.

Clip 10: Confined to a Cage (length 1:36)
The clip begins at 1:11:25 with Wallace talking about being in a cage. It ends at 1:13:01 with an explanation of Rule 30 (C).

ACTIVITY

1. Introduce the Eighth Amendment
Begin the activity by making sure that students know what the Eighth Amendment says and how the Supreme Court has interpreted the phrase “cruel and unusual punishments.” Ask students whether they are familiar with the phrase “cruel and unusual punishments” and what they think it means. After soliciting a few responses, make sure they know that the phrase comes from the U.S. Constitution and share with them the text of the Eighth Amendment:

   EIGHTH AMENDMENT (ratified in 1791)
   Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Note that the definition of what is considered cruel and unusual has changed over time. For example, the chain gangs once common in prisons are no longer permitted, and some states have abolished the death penalty as cruel and unusual. Even states that retain the death penalty have changed the ways they kill people in a nod to seeking more humane processes.

Changes in the way the U.S. Constitution is interpreted are made via Supreme Court decisions. In 1958 in Trop v. Dulles, the Supreme Court ruled that the Eighth Amendment “must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”

Briefly discuss with the class the meaning of “evolving standards of decency” and “the progress of a maturing society.”

Let students know that there is disagreement about whether or not prolonged solitary confinement is permitted or should be outlawed as cruel and unusual punishment. That’s the issue they are going to explore. Their job will be to determine whether or not current “standards of decency” dictate that prolonged solitary confinement is cruel and unusual punishment or not.

2. Introduce the Film Herman’s House
Let students know that they are going to begin their information-gathering process by watching clips from a documentary film called Herman’s House. Make sure that students know what a documentary film is and how it differs from a Hollywood film as a source of reliable information. Briefly summarize the content of the film, noting that Herman Wallace has been held in solitary confinement longer than any other person in the United States. You might also
give a bit of history about Angola prison, which was once notorious for its chain gangs and its racist practices. You could also share the statistics from the end of the film: 2.3 million people are incarcerated in the United States; 80,000 are in solitary confinement.

3. Prepare for Viewing
Prepare for viewing by asking each student to take a piece of notebook paper and turn it on its side (landscape orientation). Have each one find the center of the page and mark that as “0.” Then, have them number the rest of the lines with lines to the right being positive numbers (1, 2, 3, etc.) and the lines to the left being negative numbers (-1, -2, -3, etc.). Each endpoint should then be labeled. The negative side should be “solitary confinement is not cruel and unusual”; the positive side should be “solitary confinement is cruel and unusual.” At the start of viewing, each student should place a pen (or some other indicator) at the point on the scale that reflects his or her current view (with 0 being neutral or undecided).

Tell students that they are going to see a series of short excerpts from the film. After each clip they should move their indicators to show how the content of that segment influenced their views. Also tell them to think about why they thought the clip was influential or not—what evidence did they think was most convincing?

(NOTE: You could save in-class time by preparing the makeshift scales ahead of time or by providing electronic versions of a rating scale for students to use.)

4. Viewing the Clips
Play each of the clips, pausing briefly after each to allow students to move their indicators in response. Ask them to note which clips cause them to change their views about whether or not prolonged solitary confinement meets current standards of decency.

You might also need to pause between clips to provide essential background information (e.g., making sure that students know about the role the Black Panther Party played in political life in the United States in the late 1960s and early 1970s).

5. Wrap Up
After the final clip, ask where students ended up on the scale. Ask them to reflect on how each new piece of evidence influenced their thinking. Were they reaching conclusions before considering all available evidence? If time allows, encourage students to share explanations for their positions. Complete the activity with this assignment:

Write a one-page explanation about the evidence you found most convincing, why that evidence was convincing, what other evidence you would need to be 100 percent convinced and where you think you can find that evidence.

Using a tool like VoiceThread or Edmodo or a class wiki, have students share their conclusions and make observations about any patterns they notice in the most credible or most persuasive types of evidence.
EXTENSIONS

1. Compare Herman Wallace’s story with novels about crime and punishment that students have read, such as *The Scarlet Letter* or *The Autobiography of Malcolm X*. How does what they now know about the Eighth Amendment inform their analyses of the novels?

2. Investigate solitary confinement policies in your state’s prisons. Write to prison officials and legislators to share your thoughts on the policies.

3. Conduct a more detailed study of punishment and rehabilitation in the United States from colonial times to the present day. Invite students to think about why practices common in colonial times (e.g., corporal punishment, such as whipping and caning, public shaming using the pillory and stocks, submersion using a ducking stool, banishment, the use of a brank, branding, death by stoning and forced labor) are no longer in use today. Given the changes over time, ask students what they think politicians and scholars mean today when they talk about adhering to the original intent of the Constitution’s framers in arguments about U.S. law.

4. Read or watch testimony about the effects of solitary confinement (see the American Psychological Association resource listed below). Discuss whether the testimony inspires students to move the indicators on their opinion scales and note which parts of the testimony had the most impact and why.

RESOURCES

**Legal Information Institute**

[www.law.cornell.edu/anncon/html/amdt8toc_user.html](http://www.law.cornell.edu/anncon/html/amdt8toc_user.html)

On this website, Cornell University Law School provides an annotated version of the U.S. Constitution and explains Supreme Court rulings related to the Eighth Amendment.

**American Law and Legal Information: Eighth Amendment**


This is a good, fairly easy to read discussion of rulings related to what does and does not constitute “cruel and unusual punishments.”

**FindLaw**


This for-profit site designed to connect attorneys with potential clients offers reliable summaries of legal issues related to the Eighth Amendment that can be downloaded in PDF format.

**Colonial Court: A Building Block of American Democracy**

[http://score.rims.k12.ca.us/score_lessons/colonial_court/index.html](http://score.rims.k12.ca.us/score_lessons/colonial_court/index.html)

This “virtual museum,” developed by an educator participating in the Colonial Williamsburg Teacher Institute Project, contains a range of background information and teaching resources related to American colonial courts.
American Psychological Association: “Psychologist Testifies on the Risks of Solitary Confinement”
www.apa.org/monitor/2012/10/solitary.aspx
This article from the organization’s magazine describes Craig Haney’s work, the results of which indicate that prolonged solitary confinement is psychologically harmful. For the full text, as well as a webcast of testimony on the subject given before the Senate Committee on the Judiciary, see www.judiciary.senate.gov/hearings/hearing.cfm?id=6517e7d97c06eac4ce9f60b09625ebe8

POV: Media Literacy Questions for Analyzing POV Films
http://www.pbs.org/pov/educators/media-literacy.php
This list of questions provides a useful starting point for leading rich discussions that challenge students to think critically about documentaries.

POV: Herman’s House Discussion Guide
http://www.pbs.org/pov/hermanshouse/This guide provides additional discussion prompts (which could also be used as writing prompts), activity ideas and links to related resources.

STANDARDS

Common Core State Standards for English Language Arts & Literacy in History/Social Studies, Science and Technical Subjects
(http://www.corestandards.org/assets/CCSSI_ELA%20Standards.pdf)

**SL.9-10.1** Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups and teacher-led) with diverse partners on grades 9-10 topics, texts and issues, building on others’ ideas and expressing their own clearly and persuasively.

**SL.11-12.1** Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups and teacher-led) with diverse partners on grades 11–12 topics, texts and issues, building on others’ ideas and expressing their own clearly and persuasively.

**SL.9-10.2** Integrate multiple sources of information presented in diverse media or formats (e.g., visually, quantitatively, orally) evaluating the credibility and accuracy of each source.

**SL.11-12.2** Integrate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, orally) in order to make informed decisions and solve problems, evaluating the credibility and accuracy of each source and noting any discrepancies among the data.

**SL.11-12.3** Evaluate a speaker’s point of view, reasoning and use of evidence and rhetoric, assessing the stance, premises, links among ideas, word choice, points of emphasis and tone used.
RH.11-12.7 Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.

RI.9-10.8 Delineate and evaluate the argument and specific claims in a text, assessing whether the reasoning is valid and the evidence is relevant and sufficient; identify false statements and fallacious reasoning.

W.9-10.2, 11-12.2 Write informative/explanatory texts to examine and convey complex ideas, concepts and information clearly and accurately through the effective selection, organization and analysis of content.

W.9-10.4, 11-12.4 Produce clear and coherent writing in which the development, organization and style are appropriate to task, purpose and audience.

W.9-10.6 Use technology, including the Internet, to produce, publish and update individual or shared writing products, taking advantage of technology's capacity to link to other information and to display information flexibly and dynamically.

W.11-12.6 Use technology, including the Internet, to produce, publish and update individual or shared writing products in response to ongoing feedback, including new arguments or information.

**Content Knowledge:** (http://www.mcrel.org/standards-benchmarks/) a compilation of content standards and benchmarks for K-12 curriculum by McRel (Mid-continent Research for Education and Learning).

- Language Arts, Standard 1: Uses the general skills and strategies of the writing process.
- Language Arts, Standard 2: Uses the stylistic and rhetorical aspects of writing.
- Language Arts, Standard 8: Uses listening and speaking strategies for different purposes.
- Language Arts, Standard 9: Uses viewing skills and strategies to understand and interpret visual media.
- Language Arts, Standard 10: Understands the characteristics and components of the media.

United States History, Standard 8: Understands the institutions and practices of government created during the Revolution and how these elements were revised between 1787 and 1815 to create the foundation of the American political system based on the U.S. Constitution and the Bill of Rights.
Civics, Standard 8, Level IV (Grade 9-12) 9: Knows ways in which Americans have attempted to make the values and principles of the Constitution a reality.

Civics, Standard 14: Understands issues concerning the disparities between ideals and reality in American political and social life.

Civics, Standard 18: Understands the role and importance of law in the American constitutional system and issues regarding the judicial protections of individual rights.

Civics, Standard 19, Level IV (Grade 9-12) 7: Knows how to use criteria such as logical validity, factual accuracy, emotional appeal, distorted evidence and appeals to bias or prejudice in order to evaluate various forms of historical and contemporary political communication.

Civics, Standard 21: Understands the formation and implementation of public policy.

ABOUT THE AUTHOR
Faith Rogow, Ph.D., is the co-author of *The Teacher’s Guide to Media Literacy: Critical Thinking in a Multimedia World* (Corwin, 2012) and past president of the National Association for Media Literacy Education. She has written discussion guides and lesson plans for more than 150 independent films.