David Okon Edimo just completed his senior year at Richard Montgomery High School in Rockville, Maryland, and will be attending Yale University this fall. His favorite school subjects are art history, economics, social anthropology, and English. David intends to study Ethics, Politics & Economics or a related subject at Yale. Afterward, he wants to work in public service and attend law school. He would like to work in a state attorney general’s office or in public interest law. David enjoys public policy, art, and journalism.

Due Process: The Great Constitutional Equalizer

When a scared fourteen year old girl walked into our office clutching her phone and in need of help, I saw the face of Captain John Preston. Preston lived three hundred years earlier, but they both faced similar dilemmas. Confronted by an intimidating criminal justice system, they looked to someone for sympathy and help. Captain Preston, charged with murder at the Boston Massacre, turned to John Adams. This girl, facing a drug charge, turned to us at the public defender’s office where I interned. For me, their connected experiences exemplify access to justice—the idea that both a wealthy British officer and a young Latina girl are entitled to a zealous defense. The Constitution is a critical part of ensuring this equitable access to justice; Preston hired a private attorney\(^1\), but the girl in our office depended on her right to court-appointed counsel under *Gideon v. Wainwright*\(^2\). Thankfully, the Constitution
is laced with protections that ideally provide every American with a fair opportunity to defend themselves from charges. Still, there is more work to be done to fully realize its promise.

Though the most well-known due process protections are found in the Bill of Rights, we see protections weaved in throughout the entire document. Article I, Section 3 (the impeachment clause) and Article III, Section 2, which establishes judicial power, are prominent first instances. Ironically, the impeachment clause protects perhaps the most powerful people in the world: the President of the United States and other civil officers. Though they may be impeached by a majority vote in the House of Representatives, they can only be convicted and removed from office by a two-thirds vote of the Senate\(^3\). Furthermore, the president’s trial is presided over by the Chief Justice\(^4\). This is because, in the same spirit as the guarantee to an impartial jury, these procedures help mitigate the influence of politics in a highly charged environment. This vindicates our core belief that no individual should face punishment unless a certain burden is met. And with every additional vote required to convict an impeached officer, the likelihood of a politically-motivated conviction, rather than one for “high crimes and misdemeanors”\(^5\), becomes less likely. Although these protections apply to very few individuals, they are epitomic of access to justice because even unsympathetic parties are insulated from abuse. Another important protection is found in Article III, Section 2, which provides that “The Trial of all Crimes...shall be held in the State where the said Crimes shall have been committed”\(^6\). Like the ordeal with Captain Preston, this is a lesson that we learned from our revolution. Our colonial overlords routinely removed trials of crimes committed in the colonies to Britain for political expediency\(^7\). This section prevents forum shopping and ensures that the community of a specific jurisdiction can pass judgment on an offense committed within that jurisdiction.

Americans likely find most comfort in the access to justice protections found in the Bill of Rights and other amendments. Specifically, the Fifth, Sixth, Seventh, and Fourteenth amendments
have major implications for an individual’s ability to protect themselves against the power of the state. The Fifth Amendment’s requirement that defendants be indicted by a grand jury is perhaps the most critical safeguard against malicious prosecution; it is also one of the purest manifestations of democracy in our constitutional system. Citizens are able to literally tell the government whether or not they will permit a prosecution to go forward. However, for a number of reasons, this clause hasn’t been incorporated via the Fourteenth Amendment to apply to state trials as well. While this might be more efficient for a prosecutor, it leaves a gaping hole in our system of checks. The Sixth Amendment protects the rights to a speedy and public trial, an impartial jury, confrontation of witnesses, and access to counsel. This is arguably the most important amendment for ensuring access to justice. Without this amendment, the state could effectively imprison a defendant for an extended period of time while supposedly awaiting trial. An impartial jury ensures that there’s a legitimate chance at convincing them of your non-guilt, and the access to counsel and ability to confront witnesses ensures that one can truly present the best defense possible. Attorneys are virtually required in felony cases to be able to successfully navigate the complex labyrinth of criminal procedure. That’s why the girl charged with a drug offense had to come to our office. She needed the expertise of our lawyers to ensure that her rights were defended and so that professionals could examine the evidence and witnesses and force the state to meet its burden of proof. The Seventh Amendment protects the right to a jury in civil trials, which can be just as injurious to personal liberty as criminal trials.

The Fourteenth Amendment is the major key to these rights because of a doctrine known as incorporation. A vast, vast majority of cases play out in state courts, but as written, the Constitution generally only applies to federal situations. But because of a series of Supreme Court decisions, many rights have been “incorporated” to also apply at the state level. Without this mechanism, hundreds of thousands of defendants would go without crucial rights.
For many, justice means getting a preferred result. But to me, justice is done when each side of a dispute has a meaningful opportunity to present a robust argument for themselves. It has special meaning to me as someone who has seen the justice system up close through the eyes of a public defender, and as a first-generation immigrant in a community that has a healthy skepticism of authority. Whether for the benefit of someone like me or someone like Captain Preston, it’s important that the Constitution ensure that the awesome power of the state is exercised judiciously. With chronically underfunded public defenders offices, gargantuan court backlogs, and other issues, it’s not yet reality. But it can be, it must be, and we will make it so.

1 Preston’s case occurred before the Constitution (or even the Declaration of Independence) but is still a model for the right to counsel and to a fair trial.
2 Gideon v. Wainwright, 372 U.S. 335 (1963) held that state courts are required to appoint attorneys for criminal defendants who cannot otherwise afford to retain counsel.
3 U.S. Constitution. Art. I, Sec. 3.
4 Ibid.
5 U.S. Constitution. Art. II, Sec. 4.
6 U.S. Constitution. Art. III, Sec. 2.