



# **AMERICAN CONSTITUTION SOCIETY (ACS)**

## **SIXTH AMENDMENT LESSON PLAN**

### **RIGHT TO COUNSEL**

#### **JUNIOR HIGH SCHOOL**

Description: This unit was created to introduce students to the Sixth Amendment through the Supreme Court's decision in *In re Gault*, 387 U.S. 1 (1967). The *Gault* case established that juveniles in the juvenile justice system possess constitutional rights under the Fifth, Sixth, and Fourteenth Amendments. The lesson also includes a section about the role of a defense attorney.

Time Needed: To complete the full lesson plan, you would likely need two class periods, but the different sections were designed to be taught independently.

Supplies Needed: This packet, handouts included in the packet, and for reference *Youth Justice in America* (CQ Press 2005).<sup>i</sup>

## OVERVIEW OF LESSON PLAN

- Part One:** Case of State v. Jasper Madison – a hypothetical examination of the issues in the Gault case.
- Facts to be read out loud to the class.
  - General class response. (Read the general questions and allow a five minute discussion of students' general sense of fairness of situation).
- Part Two** Role of a Lawyer – What a Good Lawyer Should Do
- Part Three** Sixth Amendment Text (handout)
- Handout to be distributed – one page
  - Sixth Amendment Textual Review (discuss the meaning of the words in class).
- Part Four** Case of Gerald Gault
- *Gault* Case Excerpt [Highlighted portions are most relevant]
  - *Gault* Case Review

## **Part I – A Hypothetical Case about the right to a lawyer**

*Read the Following out loud to the Class*

### State v. Jasper Madison

Jasper Madison had never been in trouble before. At age 16, he lived with his mother and attended the local high school.

One day, Jasper borrowed a cell phone from his mother. After school, Jasper and his friend Franklin Adams began playing with the phone. Franklin took the phone from Jasper and typed a naughty text message and sent it to the school Principal. Franklin typed the text message using the phone's keypad. The message was childish, rude, and obscene. Franklin sent the message while Jasper held the phone and laughed nervously at what his friend was doing.

The Principal was not amused and called the police. The police tracked the telephone number back to Jasper and he was arrested at school. In the middle of English class, he was handcuffed and marched to the police station. The police did not call his mother, or tell any other family member. Jasper was not told the charges on which he was arrested. That first night Jasper slept on the hard mattress in the local juvenile facility.

The next day, Jasper appeared before a juvenile judge. He did not speak to a lawyer. Jasper's mother arrived, but did not participate in the hearing. She was handed a piece of paper listing "unlawful communication of obscene messages" as the charge against Jasper. The Principal did not show up at the hearing. The text message was not reviewed by the judge. The judge questioned Jasper about the text message. Jasper admitted it was his phone, and he was present while Franklin typed the messages. After Jasper answered the judge's

questions, the judge found him guilty. There was no recording of what happened in the courtroom.

Jasper was sentenced to spend one year in the State Juvenile Detention Facility. Jasper was told he could not appeal.

### GENERAL CLASS RESPONSE

*After asking the class to think about what happened, ask them the following questions.*

- **Does what happened to Jasper seem fair? Why or why not?**
- **If you were Jasper, what would you want to happen? Who should he get to talk to? What information should he have been given?**
- **If you think it was unfair, where does that sense of unfairness come from? Do you know of a rule or law that protects someone like Jasper Madison?**
- **Do you know who would protect Jasper? (A lawyer).**
- **What does a lawyer do?**

## WHAT A LAWYER DOES – STEP BY STEP

Go through each step and make the student list out what they think should happen on each step before giving them the answers.

Picture that Jasper was given a lawyer to help him and protect his constitutional rights. What should a lawyer do?

### STEP 1. Initial Meeting: Establishment of an attorney/client relationship<sup>ii</sup>

*QUESTION TO THE CLASS:* **WHAT SHOULD A LAWYER DO IN THE FIRST MEETING WITH A CLIENT?**

Answers:

1. **Explain duty.** A defense lawyer will tell Jasper that she works for him and represents his interests. This means she does not care what the government wants to do about the case, nor what the judge wants to do, nor even what Jasper's mother wants to do about the case. Her duty is only to her client: Jasper.
2. **Confidential.** The lawyer will also tell Jasper that everything he tells her remains confidential, that she is forbidden to share anything she learns about Jasper's case with other people, and that Jasper can tell her anything without fearing that she will tell other people. This means

Jasper can tell her about the case without the concern that she will use this confidential information against him. This is called the “attorney-client privilege.”

3. **Gather information.** Jasper’s attorney will next want some information about him. The information will be used to make arguments to convince a judge to get him out of detention, to gain a basic sense about the evidence against him, and to understand what his goals are in the case. In interviewing Jasper,<sup>iii</sup> the lawyer will try to find out his family background, his schooling, his prior experience with the juvenile justice system, and what happened to land him in trouble. The lawyer will then use this information to make arguments about his release and to begin an investigation of his case. He has just developed an “attorney-client” relationship.
  
4. **Jasper’s Story.** In the initial meeting, Jasper might tell the lawyer about how he was just standing there when Franklin took the phone. He would explain that he lives with his parents and attends the local high school. He would explain that he had never been in trouble with the law, and that he wanted the lawyer to call his mother and let her know he is all right. The lawyer will use the information Jasper provided to help the judge understand that he is not a danger to the community, that he has family and friends in the community, and that he would show up to the trial about the text message.

## STEP 2. Continuing Representation: Protection of Rights<sup>iv</sup>

*QUESTION TO THE CLASS:* **HOW SHOULD AN ATTORNEY PROTECT YOUR RIGHTS BEFORE TRIAL? WHAT SHOULD SHE DO ON YOUR BEHALF?**

Answers:

1. **Protection:** Jasper's attorney's first goal is to protect his freedom and preserve his rights. Lawyers can protect these important liberty interests by filing written papers called "motions" and arguing for Jasper in court. In addition, Jasper's attorney's job is to try to allow him to remain free from juvenile detention hall. His lawyer will thus argue for his release to the community.
2. **Information.** Jasper's attorney's second goal is to keep him informed about the case.<sup>v</sup> After all, it is Jasper's case, and his liberty that all of these proceedings are about. Jasper's attorney should make sure to explain the charges against him and the government's evidence. It is important for him to have sufficient information to participate knowingly and intelligently in his defense. For example, Jasper could provide names of witnesses, of possible evidence for his case, or defense strategies. What is important is that Jasper's attorney remains in communication with him so that he can feel like he has a role in his own defense.

### Step 3. Pretrial Duties: Investigation and Advice<sup>vi</sup>

*QUESTION TO THE CLASS:* **HOW SHOULD YOUR ATTORNEY INVESTIGATE YOUR CASE? WHAT SHOULD SHE DO TO PREPARE FOR TRIAL?**

Answers:

- 1. Investigation.** In the text case, the evidence against Jasper comes from one source—namely the Principal. It is, thus, necessary to investigate the facts against Jasper. Jasper’s attorney has a duty to investigate all of the facts in the case. Thus, either the lawyer or her investigator should go to the scene of the crime and interview the witnesses, talk to Franklin, and see if there could be any reason to doubt the evidence of who actually sent the text.
- 2. Reasons for investigation.** For example, if Franklin admits to the judge that he did the texting and not Jasper or if Franklin tells the judge that Jasper had no idea about the plan beforehand that would help the case. These facts would be necessary to show at trial because they would undermine the government’s case and support the argument that Jasper was innocent of sending the message.
- 3. Legal Options.** Jasper’s lawyer also has the duty of advising him of all of his legal options. For example, Jasper could go to trial, Jasper could plead guilty in the hopes of a lighter sentence, or Jasper might be eligible to

enter a diversion program where he would be required to complete some sort of alternative punishment.

Depending on the jurisdiction where Jasper was arrested, the options are different. However, no matter where he was arrested, his lawyer should explain all of these choices and give him the final decision about what to do.<sup>vii</sup>

## Step 4. Trial<sup>viii</sup>

*QUESTION TO THE CLASS:* **WHAT SHOULD YOUR LAWYER DO AT TRIAL? WHAT ARE THE RESPONSIBILITIES OF A LAWYER IN TRIAL?**

Answers:

1. **Defend.** At trial, Jasper's lawyer is there to defend his innocence. She will prepare a defense strategy that tries to convince the judge or jury that the government has not met its burden of proving him guilty "beyond a reasonable doubt."
2. **Opening Statement.** His lawyer's argument will take the form of an opening statement, laying out a theory of the case.
3. **Cross-examination.** It will also consist of questioning ("cross-examining") the government witnesses in an effort to make the judge doubt their story.
4. **Theory of Defense.** Let's say the theory of Jasper's defense is that he did not have the intent to send the text because he did not know what Franklin would do with the phone. You would want your lawyer to cross-examine the government's witnesses (probably the Principal) about the fact that the Principal does not know who (between Franklin or Jasper) actually texted him, he just knows that a particular phone number texted him.

5. **Present Evidence.** In addition, Jasper might want the lawyer to present evidence that supports his theory of the case (maybe even have Franklin himself testify that it was not Jasper's fault). Jasper's lawyer might also have him testify about his version of the events.
  
6. **Closing Argument.** His lawyer would also be able to present a closing argument summarizing the evidence presented to the court in an effort to convince the judge or jury to believe his side.

## Step 8. Sentencing<sup>ix</sup>

*QUESTION TO THE CLASS:* **WHAT SHOULD A LAWYER DO AT SENTENCING? WHAT IS THE GOAL OF SENTENCING? WHAT SHOULD BE DONE TO PREPARE FOR SENTENCING? WHAT WOULD BE PRESENTED TO THE JUDGE AT SENTENCING?**

Answers:

1. **Minimize Punishment.** After trial, if Jasper should lose, the lawyer will argue for the best sentence that minimizes the punishment and maximizes the resources available to him through probation (if a probation system is in place in your state).
2. **Emphasize the Positive.** At sentencing, the lawyer will try to emphasize all of Jasper's positive attributes, his accomplishments, his goals, and why he can be a contributing member of society in the future.
3. **Second Chance.** In short, the lawyer will try to convince the judge why he should be given another opportunity to rehabilitate his life in the community.

## **WHY DO WE GET LAWYERS**

**So a lawyer does a lot for a person accused of a crime. Compare what happened to Jasper in the original story and what could happen when Jasper gets a lawyer. Which of the two Jasper's would you want to be (the one without a lawyer or the one with a lawyer)?**

**So why do we get a lawyer to help us? Answer: The Constitution!**

**We get lawyers because the US Constitution guarantees the "right to counsel."**

**Hand out the 6<sup>th</sup> Amendment text handout.**

### **Note for instructors**

Before 1967, and the Supreme Court's decision *In Re Gault*, the Supreme Court had held that youth did not deserve constitutional rights. In *In re Gault*, the Supreme Court held that the Fifth, Sixth, and Fourteenth Amendment applied to juveniles accused of crimes in the juvenile justice system.

## Handout

### SIXTH AMENDMENT UNITED STATES CONSTITUTION

***“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, ... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”***

## SIXTH AMENDMENT TEXT REVIEW

*Use this part of the class to break down the words in the Constitution.*

What are the protections in the Sixth Amendment?

- We are entitled to a **speedy and public** trial. This means that trials must be held within a reasonable time and cannot be held in secret.
- We are entitled to **notice** of the nature and cause of charge. This means we must be told about what we are being accused of before trial.
- We are entitled to **confront** the witnesses against us. This means the government is required to present the witnesses who have accused us of a crime and allow us to ask them questions.
- We are entitled to **compulsory process**. This means we are allowed to call witnesses for our defense at trial.
- We are entitled to the **assistance of counsel**. This means we are provided a free lawyer to help defend our case.

*Read to the Class the fact of the real case of 15 year old Gerald Gault*

## **THE CASE OF GERALD GAULT**

**Gerald Gault was fifteen years old when he found himself in the midst of what became one of the most important legal cases of the 20<sup>th</sup> Century.<sup>x</sup> Gerald and a friend were arrested after a female neighbor complained to police about an obscene phone call. Gerald and his friend were suspected of the call. Police took Gerald into custody without telling his parents or informing any family member. He spent the night in the juvenile detention hall. The next day, Gerald appeared before a juvenile judge. He was not represented by a lawyer. At the hearing, no witnesses appeared to testify against Gerald. The state did not provide any notice of the facts about why Gerald was arrested. No record was kept of the testimony. The judge asked Gerald some questions about the phone call. Gerald was never informed of his right to counsel, his right against self-incrimination, or any other rights. Based on Gerald's answers, the judge ordered a second hearing a week later. Gerald was sent to juvenile hall. At the second hearing, again the female neighbor did not appear. Despite conflicting evidence about Gerald's role in the phone call, he was found guilty ("delinquent") and sent to the state juvenile reformatory for six years, until he turned twenty-one.**

**Gerald challenged the constitutionality of these proceedings before the Supreme Court. The Supreme Court agreed that what happened to Gerald was "fundamentally unfair." The Court held that certain protections needed to be in place in juvenile delinquency hearings. The Court ruled that at a minimum, juveniles are entitled to assistance of counsel, notice of the charges against them, the right to confront witnesses against them, and the protection against self-incrimination.**

## CLASS POLL QUESTIONS

*Have the class answer yes or no.*

- Do you think the trial judge in Gault was fair in his sentence of Gerald?
- Do you think that six years in the juvenile detention facility (the State Industrial School) was an appropriate punishment for the phone call?

## FOCUS ON GAULT

*It is important to focus the class on two questions that center the debate in Gault – (1) the importance of notice and (2) the right to a lawyer.*

*The first question to ask the class is:*

**Is part of what feels unfair about what happened to Jasper and Gerald Gault that they were not provided any warning about what would happen? That they were suddenly sucked into a system and tried and convicted?**

**If you think yes, that is what the Supreme Court thought. The Supreme Court was concerned with the idea of “notice.”**

**What do we mean by notice? What is the value of “notice”?**

- **In the Supreme Court case, the court stated, “...No notice was given to Gerald’s parents when he was taken into custody...” “The only written notice Gerald’s parents received at any time was a note on plain paper from Officer Flagg.”**
- *Ask the class to list three reasons why knowing about the charges ahead of time would be important.*

- **Answers:**

- (1) Preparation; (2) sense of fairness; (3) ability to mount a defense; (4) investigation; (5) time to think/reflect etc.
- The Supreme Court’s answer (taken from Gault is) **“...Notice, to comply with due process**

**requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must 'set forth the alleged misconduct with particularity.'...**

*The second question to ask the class is:*

**So, what would a lawyer do for Gault? We reviewed it with Jasper, but what would happen with Gault? What does the "guiding hand of counsel" mean? Why did the Supreme Court state this was important?<sup>xi</sup>**

- In the Supreme Court case, the issue was whether Gerald Gault needed a lawyer with him before he was sent to the juvenile hall.
- *Ask the class to list three reasons why having a lawyer would be useful.*
  - **Answers:**
    - (1) To answer legal questions; (2) give advice; (3) frame issues; (4) argue intelligently; (5) investigate, explain the process; (6) to protect client, etc.
    - The Supreme Court's answer (taken from Gault is) **"The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child 'requires the guiding hand of counsel at every step in the proceedings against him.'**..."

## FOR THE CLASS – DEBATE TIME

*Taking the lessons of Gault and the first hypothetical case, we now apply those principles in a second hypothetical case.*

### Case #2:

#### **State v. Franklin Adams**

One week after Jasper Madison was sent to the state juvenile detention facility, Franklin Adams (Jasper's friend) is arrested for the exact same naughty text message. Franklin is arrested for the same incident and brought before the same juvenile judge the next day.

This time however you are asked to help Franklin. You know the constitutional law from In re Gault. How do you resolve the following questions?

*Divide the class up into two teams (Franklin's friend/lawyer and the government) and debate the issue.*

## ADVOCACY – Debate Issue 1: Notice

Franklin is told that he is charged with “unlawful communication.”

The state law says that “It is unlawful for a person ... **to communicate** or convey **by telephonic** or other electronic means **an obscene, vulgar, [naughty] indecent, profane, suggestive, or immoral message to another person...**”<sup>xii</sup>

Trial is set in three days. Is three days adequate notice for Franklin to prepare for trial?

- One side of the class is Franklin’s friend(s). What are your best arguments as to why three days is not enough notice to adequately defend Franklin?
  - *Use the answers developed in the earlier discussion and in Gault to frame a solid argument that this is insufficient notice to defend a criminal case.*
- The other side of the class is the government. What are your best arguments as to why three days is “sufficiently in advance of the scheduled court proceeding” to provide Franklin a “reasonable opportunity” to prepare for trial?
  - *Use the answers developed in the earlier discussion and in Gault to frame a solid argument that this enough notice to defend a criminal case.*

## Debate Issue 2: Right to a Lawyer

Franklin is told that there is no lawyer available to represent him, however, the judge will make sure the State prosecutor is fair in trial. Because the state prosecutor is a lawyer, Franklin is told that he can ask the prosecutor any legal question he wants during trial. In addition, Franklin's mother is a lawyer and she will be present at the trial. Thus, he has two lawyers to help him.

- As Franklin's friend, what are your best arguments that Franklin is entitled to his own lawyer, not just a lawyer at trial?
- As the government, what is the best argument to show that a prosecutor can be fair and with his mother present, Franklin's legal rights are protected? Why can't his mother or the judge (who is also a lawyer) be the "guiding hand" mentioned by the Supreme Court?

## **WHY ARE LAWYERS IMPORTANT?:**

*What does the right to counsel mean in practice.*

*Take a quick poll:*

**Who does the defense lawyer work for?**

- (a) The judge?**
- (b) The prosecutor?**
- (c) You?**

**What kind of schooling does a defense lawyer have to have?**

- (a) A high school degree?**
- (b) A college degree?**
- (c) A law degree?**

**What should the defense lawyer explain about the case?**

- (a) The charges?**
- (b) The punishment?**
- (c) The law?**
- (d) The government's evidence?**
- (e) All of the above?**

**Does a defense lawyer get paid more if their client pleads or goes to trial?**

- (a) Plea?**
- (b) Trial?**
- (c) They get paid by the hour so it doesn't matter?**

**What is a defense lawyer's job in trial?**

- (a) To help the government get a conviction?**
- (b) To protect a client's rights?**
- (c) To do whatever the judge wants of the lawyer?**

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<sup>i</sup> Written by Andrew Guthrie Ferguson, Assistant Professor, UDC David A. Clarke School of Law. This lesson plan was written specifically to be used in conjunction with *Youth Justice in America* (CQ Press 2005) because much of the lesson is protected by the *Youth Justice in America* copyright. Please do not distribute without permission. The lesson plan was originally written for the National Juvenile Defender Center and its celebration of the 40<sup>th</sup> Anniversary of *In re Gault*. See [www.njdc.info](http://www.njdc.info). The NJDC is the preeminent juvenile defender organization in the country.

<sup>ii</sup> ABA Standards for Criminal Justice 4-3.1 (3d ed. 1993).

<sup>iii</sup> ABA Standards for Criminal Justice 4-3. 2 (3d ed. 1993).

<sup>iv</sup> ABA Standards for Criminal Justice 4-3.6 (3d ed. 1993).

<sup>v</sup> ABA Standards for Criminal Justice 4-3.8 (3d ed. 1993).

<sup>vi</sup> ABA Standards for Criminal Justice 4-4.1 (3d ed. 1993).

<sup>vii</sup> ABA Standards for Criminal Justice 4-6.1 & 4.6.2 (3d ed. 1993)

<sup>viii</sup> ABA Standards for Criminal Justice 4-5.2, 4-7.2, 4-7.4, 4-7.5, 4-7.6, 4-7.7 (3d ed. 1993).

<sup>ix</sup> ABA Standards for Criminal Justice 4-8.1 & 4-7.9 (3d ed. 1993).

<sup>x</sup> Juvenile Court Procedures, 81 HVLR 171 (1967)

<sup>xi</sup> Francine T. Sherman, Thoughts on a Contextual View of Juvenile Justice Reform Drawn From Narratives of Youth, 68 Temp. L. Rev. 1837 (1995).

<sup>xii</sup> South Carolina Code 1976 § **16-17-430. Unlawful communication**

(A) It is unlawful for a person to:

- (1) use in a telephonic communication or any other electronic means, any words or language of a profane, vulgar, lewd, lascivious, or an indecent nature, or to communicate or convey by telephonic or other electronic means an obscene, vulgar, indecent, profane, suggestive, or immoral message to another person;
- (2) threaten in a telephonic communication or any other electronic means an unlawful act with the intent to coerce, intimidate, or harass another person;
- (3) telephone or electronically contact another repeatedly, whether or not conversation ensues, for the purpose of annoying or harassing another person or his family;
- (4) make a telephone call and intentionally fail to hang up or disengage the connection for the purpose of interfering with the telephone service of another;
- (5) telephone or contact by electronic means another and make false statements concerning either the death or injury of a member of the family of the person who is telephoned or electronically contacted, with the intent to annoy, frighten, or terrify that person; or
- (6) knowingly permit a telephone under his control to be used for any purpose prohibited by this section.

(B) A person who violates any provision of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned not more than thirty days.