

AMERICAN CONSTITUTION SOCIETY (ACS) CONSTITUTION IN THE CLASSROOM

SIXTH AMENDMENT RIGHT TO COUNSEL MIDDLE & HIGH SCHOOL CURRICULUM — SPRING 2013

Lesson Plan Overview

Note: times are approximate. You may or may not be able to complete within the class period. Be flexible and plan ahead — know which activities to shorten/skip if you are running short on time and have extra activities planned in case you move through the curriculum too quickly.

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Before the lesson: Ask the teacher if there is a seating chart available. Also ask what the students already know about the Constitution as this will affect the lesson plan.

1. Introduction & Background (3-5 min.)

Briefly introduce yourself. If the class is small, ask the students to introduce themselves.

If students’ knowledge about the Constitution is limited, give a brief introduction about the Constitution including:

- (1) that the first three articles set up our structure of government;*
- (2) the three branches; and*
- (3) the Bill of Rights and the protections it provides.*

The ACS Constitution Primer from fall 2012 may be helpful in doing so:

www.acslaw.org/sites/default/files/pdf/Virelli%20ACS%20Curriculum%20for%20Constitution%20Day.pdf

Who knows what a police officer tells someone when they arrest him?

- *Look for answers like “You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to a lawyer. If you cannot afford a lawyer one will be appointed to you at no cost.”*
- *The key is to elicit the second part, even if it requires you to prompt some students with the “You have the right to remain...”*

The second part of that — the right to a lawyer — is what we’ll be talking about today. One of the reasons that’s particularly relevant this year is that this March 18th is the fiftieth anniversary of a very important U.S. Supreme Court case that dealt with the right to a lawyer. That was a case called *Gideon v. Wainwright*.

2. Hypo 1: The Case of Jasper Madison (10-15 min.)

Give Handout 1 to the students and read it aloud or have the students do so. The text of the handout is copied below for your convenience.

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

One day after school, Jasper and his friend Franklin Adams were playing with Jasper’s phone. Franklin took the phone from Jasper and typed an obscene text message and sent it to the school Principal. 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.

Break the class up into three groups and assign each of the groups one of the questions below. Give the students 5-8 minutes to read the handout and discuss their responses to the questions. Afterwards, have each of the groups present their answers to the class.

Discussion questions:

- 1) Does what happened to Jasper seem fair? Why or why not?**
- 2) If you were Jasper, what would you want to happen? Who should he get to talk to? What information should he have been given?**
- 3) 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?**

3. Pre-Quiz (3-5 min.)

After you go over the previous responses have the students raise their hands and vote on the following three questions.

- 1. In Jasper's case, the charge of "unlawful communication of obscene messages" was never explained to him. What right does Jasper have to be informed of the charges against him?**
 - (a) Jasper doesn't have a right to know what he was charged with because Jasper was there and knows if did something wrong.
 - (b) Jasper doesn't have a right to know what he was charged because his mother and the judge were informed of the charges.
 - (c) Jasper has the right to be told of the charges in advance of the court hearing, so he has a reasonable opportunity to prepare to defend himself against the charges.
- 2. In Jasper's case, he did not have a lawyer. What right does he have to talk to a lawyer?**
 - (a) Jasper doesn't get an attorney because he has a parent present in court and the judge is there to protect his rights.
 - (b) Jasper can get a lawyer, but only if his parents pay for one and bring the lawyer to court.
 - (c) Jasper has the right to a free lawyer to assist him about the law, inquire into the facts, and help him in his decisions.
- 3. In Jasper's case, the Principal did not come to court, and there were no other witnesses called against him. What right does Jasper have to challenge the case against him?**
 - (a) Jasper doesn't have the right to challenge the Principal's version of events because the Judge didn't think it was necessary.
 - (b) Jasper doesn't have the right to confront the Principal because the text message was clear and it came from Jasper's mother's phone.
 - (c) Jasper has the right to question the Principal to challenge the evidence against him.

ANSWERS TO QUIZ

In each of the questions, the third answer (c) is the correct answer. Ask the students why answer three is the correct answer. Ask where they would find this information and once they get to the Constitution, see if anyone knows which amendment expressly guarantees the right to counsel.

Pass out Handout #2.

4. Sixth Amendment Text & Explanation (5 min.)

Using Handout 2, have a student read the excerpt from the Sixth Amendment to the class and pause to explain each clause. To reinforce the meaning of each part, you can use the Case of Jasper Madison as an example. For instance, get the students involved by soliciting answers from them about whether Jasper received the requisite protection or what could have been done so that Jasper could receive that protection.

- 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 can have a lawyer help us defend our case and, if we can't afford to hire a lawyer, we will get a lawyer for free.

In 1967, the U.S. Supreme Court decided a case called *In re Gault*. In *Gault* the Supreme Court concluded that the Sixth Amendment applied to juveniles accused of crimes in the juvenile justice system. However, before 1967, the other answers (a) & (b) were used to deny young people in the juvenile justice system constitutional protections. In fact, those answers were used to try to persuade the Supreme Court that youth did not deserve constitutional rights in *In re Gault*.

Before the Court decided *In re Gault*, it decided the case I mentioned to you earlier, *Gideon v. Wainwright*. Clarence Gideon was a man charged with breaking into a pool hall in Florida, stealing the coins from a jukebox, and taking some beer from the bar. When he was brought into court Mr. Gideon insisted he was innocent, but he couldn't afford to hire a lawyer. So he asked the judge to appoint him a lawyer, but the judge denied him one. As a result he had to represent himself against a trained, skilled prosecutor and he lost. Mr. Gideon was convicted and sentenced to five years prison. He appealed his case to the U.S. Supreme Court, claiming that it was unjust that he was convicted merely because he did not have enough money to hire a lawyer. The justices of the Supreme Court agreed and said that lawyers in criminal court are necessities, not luxuries. That was March 18, 1963.

5. Class Debate: Franklin Adams's Disciplinary Hearing (20 min.)

Taking the lessons of Gault and Jasper's case, we now apply those principles in a second fact pattern. Read the following fact pattern aloud while passing out Handout 3.

Suppose that Franklin Adams, Jasper's friend, went to a different public high school than Jasper. When Franklin's principal, Mr. Sharpton, learns about the text message and that Franklin was not prosecuted, he is furious. Mr. Sharpton is friends with the principal who received the text message and was deeply offended by what Franklin did. Principal Sharpton tells Franklin he is going to hold a disciplinary hearing about the text message and Franklin will attend. The hearing will be composed of Mr. Sharpton and two teachers. The principal from Jasper's school will be a witness and Franklin will be required to tell his side of the story too. If, at the end of the hearing, Mr. Sharpton and the two teachers conclude that Franklin sent the text message Franklin will be kicked off the varsity football team and may be suspended. Franklin, who hopes to play college football after graduating high school, fears a suspension and being kicked off the football team will prevent him from being admitted to college and receiving a football scholarship.

Franklin asks to have a lawyer represent him at the hearing. Principal Sharpton denies the request, telling Franklin that it will not be an adversarial hearing – there are no sides – just him and two teachers hearing from Jasper's principal and Franklin to find out what happened. Principal Sharpton adds that he will make sure the hearing is fair. Neither Principal Sharpton nor anyone else at the hearing is a lawyer. Franklin sues the school to allow him to have a lawyer at the hearing.

You know the constitutional law from *In re Gault* and the Court asks half of you to represent the school and the other half to represent Franklin.

Divide the class into two teams (Franklin's lawyers and the school's lawyers) to debate the issue. Tell the students you will give both sides five minutes to prepare their arguments and elect two spokespeople each. Then each side will have five minutes to present their arguments (divided equally between their two spokespeople). Read the following prompts to each side:

- **As Franklin's lawyer**, what are your best arguments that Franklin is entitled to be represented by a lawyer at the hearing? How is this case like Jasper's case?
- **As the school's lawyer**, what are your best arguments that Franklin doesn't need a lawyer for the hearing to be fair? How is this case different from Jasper's case?

As each side argues, note their main arguments (or ask the teacher to do so). After the arguments, review each team's main points with the entire class, asking students the counterarguments (this allows you to involve the entire class, not just the four spokespeople). Try to draw out the distinctions between this case and Jasper's as well as the similarities.

Wrap-up of Franklin Hypo: Franklin’s case presents a difficult question because the Sixth Amendment applies only to “criminal prosecutions.” This is one of the key limitations of the Sixth Amendment Right to Counsel. It doesn’t usually apply in a school hearing. This may leave some of you thinking this is a bit unfair: as some of you have argued, the principal appears to be unfairly biased against Franklin, and the consequences for Franklin — while not including jail — are very significant. Although these alone would not entitle Franklin to have a lawyer at the hearing under the Sixth Amendment, other provisions of the Constitution might provide Franklin some protection here.

For example: Procedural due process, 5th Amendment RTC, Privilege against self-incrimination / right to remain silent.

6. Wrap-up/Review (5 min.)

Ask the students to list aloud the five major protections that the Sixth Amendment offers:

- **Speedy and public** trial.
- **Notice** of the nature and cause of charge.
- **Confront** the witnesses against us.
- **Compulsory process**
- **Assistance of counsel**

Pass out Handout 4 for the students to read on their own time. For younger students you may want to review it briefly, or at least explain some parts of it like “obscene” and “appeal.” Ask students if they have any questions about the Sixth Amendment, the Constitution, or being a lawyer.

Handout 1: *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 an obscene 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.

Handout 2: Sixth Amendment of the 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.”

Handout 3: Franklin Adams's Disciplinary Hearing

Suppose that Franklin Adams, Jasper's friend, went to a different public high school than Jasper. When Franklin's principal, Mr. Sharpton, learns about the text message and that Franklin was not prosecuted, he is furious. Mr. Sharpton is friends with the principal who received the text message and was deeply offended by what Franklin did. Principal Sharpton tells Franklin he is going to hold a disciplinary hearing about the text message and Franklin will attend. The hearing will be composed of Mr. Sharpton and two teachers. The principal from Jasper's school will be a witness and Franklin will be required to tell his side of the story too. If, at the end of the hearing, Mr. Sharpton and the two teachers conclude that Franklin sent the text message Franklin will be kicked off the varsity football team and may be suspended. Franklin, who hopes to play college football after graduating high school, fears a suspension and being kicked off the football team will prevent him from being admitted to college and receiving a football scholarship.

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You know the constitutional law from *In re Gault* and the Court asks half of you to represent the school and the other half to represent Franklin.

Handout 4: 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 20th Century. 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.