

# **NYJA – ADVOCACY INSTITUTE**

## **SIXTH AMENDMENT LESSON PLAN**

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 includes a section about the role of a defense attorney.

Length of Lesson: 4 class periods

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. John J. Junior – 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** Quiz on John J. Junior's case (handout)
- Handout to be distributed – one page
  - Have students fill out answers to questions 1-4
  - After filling out paper, explain which ones are the correct answers.
- Part Three** Sixth Amendment & Fifth Amendment Text (handout)
- Handout to be distributed – one page
  - Sixth Amendment Textual Review (discuss the meaning of the words in class).
  - Fifth 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]
  - **Points to Ponder** *Gault* Case Review
- Part Five:** For the Class/ Class Debate
- For the Class – Debate the Case State v. Roger Ruse – a second hypothetical based on the *Gault* case used to explore the legal issues in the case.
- Part Six:** Role of a Lawyer – What a Good Lawyer Should Do  
Ineffective Assistance Debate

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

*Read the Following out loud to the Class*

### State v. John J. Junior

John J. Junior had never been in trouble before. At age 15, he lived with his parents and attended the local high school. One day, John borrowed a cell phone from his mother. After school, John and his friend Roger Ruse began playing with the phone. Roger took the phone and typed an obscene text message and sent it to the school Principal. Roger typed the text message using the phone's keypad. The message was childish, rude, and obscene. John Junior held the phone and laughed at the message while Roger typed.

The Principal was not amused and called the police. The police tracked the telephone number back to John 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 parents, or tell any family member. John was not told the charges on which he was arrested. That first night John slept on the hard mattress in the local juvenile hall.

The next day, John appeared before a juvenile judge. He did not speak to a lawyer. John'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 John. The Principal did not show up at the hearing. The text message was not reviewed by the judge. The judge questioned John about the text message. John admitted it was his phone, and he was present while Roger typed the messages. After John answered the judge's questions, the judge found him guilty. There was no recording of what happened in the courtroom.

**John was sentenced to spend one year in the State Juvenile Detention Facility. John 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 John Junior seem fair? Why or why not?**
- **If you were John, 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 John J. Junior?**

## TAKE A QUIZ ON JOHN J. JUNIOR'S BAD DAY (Handout)

**1. In John's case, the charge of "unlawful communication of obscene messages" was never explained to him. What right does John have to be informed of the charges against him?**

- (a) John doesn't have a right to know what he was charged with because John was there and knows if did something wrong.
- (b) John doesn't have a right to know what he was charged because his mother and the judge were informed of the charges.
- (c) John 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 John's case, he did not have a lawyer. What right does he have to talk to a lawyer?**

- (a) John doesn't get an attorney because he has a parent present in court and the judge is there to protect his rights.
- (b) John can get a lawyer, but only if his parents pay for one and bring the lawyer to court.
- (c) John 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 John's case, he answered the questions the judge asked him. Does he have a right to remain silent?**

- (a) John is required to talk to the judge because the judge was trying to find the truth, and John should tell the truth.
- (b) John is required to talk to the judge because confession is good for children who have done something wrong.
- (c) John has the right to remain silent; he doesn't have to say anything that would incriminate himself.

**4. In John's case, the Principal did not come to court, and there were no other witnesses called against him. What right does John have to challenge the case against him?**

- (a) John doesn't have the right to challenge the Principal's version of events because the Judge didn't think it was necessary.
- (b) John doesn't have the right to confront the Principal because the text message was clear and it came from John's mother's phone.
- (c) John has the right to question the Principal to challenge the evidence against him.

## ANSWERS TO QUIZ

*For the teacher*

In each of the questions, the third answer (c) is the correct constitutional answer.

Before 1967, and the Supreme Court's decision *In Re Gault*, the other answers (a) & (b) were used to deny young people in the juvenile justice system constitutional protections. The other answers were, in fact, used to try to persuade the Supreme Court 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.”***

### FIFTH AMENDMENT UNITED STATES CONSTITUTION

***“No person ... shall be compelled, in any criminal case, to be a witness against himself. “***

## 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.

## FIFTH AMENDMENT TEXT REVIEW

What are the protections in the Fifth Amendment?

- We are entitled to remain silent and not incriminate ourselves. This means the accused does not have to answer the government's questions in a criminal 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>ii</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.**

## HANDOUT

\*\*\*

---

**Application of Paul L. GAULT and Marjorie Gault, Father and  
Mother of Gerald  
Francis Gault, a Minor, Appellants.**

**Supreme Court of the United States  
No. 116.  
Argued December 6, 1966.  
Decided May 15, 1967.**

Mr. Justice FORTAS delivered the opinion of the Court.

### I.

On Monday, June 8, 1964, at about 10 a.m., Gerald Francis Gault and a friend, Ronald Lewis, were taken into custody by the Sheriff of Gila County. ... The police action on June 8 was taken as the result of a verbal complaint by a neighbor of the boys, Mrs. Cook, about a telephone call made to her in which the caller or callers made lewd or indecent remarks. It will suffice for purposes of this opinion to say that the remarks or questions put to her were of the irritatingly offensive, adolescent, sex variety.

At the time Gerald was picked up, his mother and father were both at work. No notice that Gerald was being taken into custody was left at the home. No other steps were taken to advise them that their son had, in effect, been arrested. Gerald was taken to the Children's Detention Home. When his mother arrived home at about 6 o'clock, Gerald was not there. Gerald's older brother was sent to look for him at the trailer home of the Lewis family. He apparently learned then

that Gerald was in custody. He so informed his mother. The two of them went to the Detention Home. The deputy probation officer, Flagg, who was also superintendent of the Detention Home, told Mrs. Gault 'why Jerry was there' and said that a hearing would be held in Juvenile Court at 3 o'clock the following day, June 9.

...

On June 9, Gerald, his mother, his older brother, and Probation Officers Flagg and Henderson appeared before the Juvenile Judge in chambers. Gerald's father was not there. He was at work out of the city. Mrs. Cook, the complainant, was not there. No one was sworn at this hearing. No transcript or recording was made. No memorandum or record of the substance of the proceedings was prepared. Our information about the proceedings and the subsequent hearing on June 15, derives entirely from the testimony of the Juvenile Court Judge, Mr. and Mrs. Gault and Officer Flagg at the habeas corpus proceeding [a separate review hearing] conducted two months later. From this, it appears that at the June 9 hearing Gerald was questioned by the judge about the telephone call. There was conflict as to what he said. His mother recalled that Gerald said he only dialed Mrs. Cook's number and handed the telephone to his friend, Ronald. Officer Flagg recalled that Gerald had admitted making the lewd remarks. Judge McGhee testified that Gerald 'admitted making one of these (lewd) statements.' At the conclusion of the hearing, the judge said he would 'think about it.' Gerald was taken back to the Detention Home. He was not sent to his own home with his parents. On June 11 or 12, after having been detained since June 8, Gerald was released and driven home. There is no explanation in the record as to why he was kept in the Detention Home or why he was released. At 5 p.m. on the day of Gerald's release, Mrs. Gault received a note signed by Officer Flagg. It was on plain paper, not letterhead. Its entire text was as follows:

Mrs. Gault:

Judge McGHEE has set Monday June 15, 1964 at 11:00 A.M. as the date and time for further Hearings on Gerald's delinquency  
'/s/ Flagg'

At the appointed time on Monday, June 15, Gerald, his father and mother, Ronald Lewis and his father, and Officers Flagg and Henderson were present before Judge McGhee. Witnesses at the ... proceeding differed in their recollections of Gerald's testimony at the June 15 hearing. Mr. and Mrs. Gault recalled that Gerald again testified that he had only dialed the number and that the other boy had made the remarks. Officer Flagg agreed that at this hearing Gerald did not admit making the lewd remarks. But Judge McGhee recalled that 'there was some admission again of some of the lewd statements. He--he didn't admit any of the more serious lewd statements.' Again, the complainant, Mrs. Cook, was not present. Mrs. Gault asked that Mrs. Cook be present 'so she could see which boy that done the talking, the dirty talking over the phone.' The Juvenile Judge said 'she didn't have to be present at that hearing.' The judge did not speak to Mrs. Cook or communicate with her at any time. Probation Officer Flagg had talked to her once--over the telephone on June 9.

At this June 15 hearing a 'referral report' made by the probation officers was filed with the court, although not disclosed to Gerald or his parents. This listed the charge as 'Lewd Phone Calls.' At the conclusion of the hearing, the judge committed Gerald as a juvenile delinquent to the State Industrial School 'for the period of his minority (that is, until 21), unless sooner discharged by due process of law.' An order to that effect was entered. It recites that 'after a full hearing and due deliberation the Court finds that said minor is a delinquent child, and that said minor is of the age of 15 years.'

... As to these proceedings, there appears to be little current dissent from the proposition that the Due Process Clause has a role to play. The problem is to ascertain the precise impact of the due process requirement upon such proceedings.

...

**[W]e confront the reality of that portion of the Juvenile Court process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years.** It is of no constitutional consequence--and of limited practical meaning--that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a 'receiving home' or an 'industrial school' for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. ...

**In view of this, it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase 'due process.' Under our Constitution, the condition of being a boy does not justify a kangaroo court.**

... If Gerald had been over 18, he would not have been subject to Juvenile Court proceedings. For the particular offense immediately involved, the maximum punishment would have been a fine of \$5 to \$50, or imprisonment in jail for not more than two months. Instead, he was committed to custody for a maximum of six years. If he had been over 18 and had committed an offense to which such a sentence might apply, he would have been entitled to substantial rights under the Constitution of the United States as well as under Arizona's laws and constitution.

We now turn to the specific issues which are presented to us in the present case.

### III.

#### NOTICE OF CHARGES.

...**No notice was given to Gerald's parents** when he was taken into custody on Monday, June 8. On that night, when Mrs. Gault went to the Detention Home, she was orally informed that there would be a hearing the next afternoon and was told the reason why Gerald was in custody. **The only written notice Gerald's parents received at any time was a note on plain paper from Officer Flagg delivered on Thursday or Friday, June 11 or 12, to the effect that the judge had set Monday, June 15, 'for further Hearings on Gerald's delinquency.'**

...**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.'**...

### IV.

#### RIGHT TO COUNSEL

...There is no material difference in this respect between adult and juvenile proceedings of the sort here involved. In adult proceedings, this contention has been foreclosed by decisions of this Court. A proceeding where the issue is whether the child will be found to be 'delinquent' and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. **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.'**...

We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents

must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child....

## V.

### ...SELF-INCRIMINATION...

Our first question, then, is whether Gerald's admission [about the lewd phone calls to the authorities] was improperly obtained and relied on as the basis of decision, in conflict with the Federal Constitution. ... Specifically, the question is whether, in such a proceeding, an admission by the juvenile may be used against him in the absence of clear and unequivocal evidence that the admission was made with knowledge that he was not obliged to speak and would not be penalized for remaining silent.

...

**It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children.** The language of the Fifth Amendment, applicable to the States by operation of the Fourteenth Amendment, is unequivocal and without exception. And the scope of the privilege is comprehensive.

...

It would be entirely unrealistic to carve out of the Fifth Amendment all statements by juveniles on the ground that these cannot lead to 'criminal' involvement. **In the first place, juvenile proceedings to determine 'delinquency,' which may lead to commitment to a state institution, must be regarded as 'criminal' for purposes of the privilege against self-incrimination.**

**We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults.**

The 'confession' of Gerald Gault was first obtained by Officer Flagg, out of the presence of Gerald's parents, without counsel and without advising him of his right to silence, as far as appears.

Judgment reversed and cause remanded with directions.

---

## 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

*Before the debate, it is important to focus on two questions that will center the debate – the importance of notice and the right to a lawyer.*

*The first question to ask the class is:* **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:** Preparation, sense of fairness, ability to mount a defense, investigation, 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:* **What does the “guiding hand of counsel” mean? Why did the Court state this was important?**<sup>iii</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:** to answer legal questions, give advice, frame issues, argue intelligently, investigate, explain the process, 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. Roger Ruse

One week after John J. Junior was sent to the state juvenile detention facility, Roger Ruse (John's friend) is arrested for the exact same obscene text message. Roger is arrested for the same incident and brought before the same juvenile judge the next day.

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

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

### ADVOCACY – Debate Issue 1: Notice

Roger 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, indecent, profane, suggestive, or immoral message to another person...**"<sup>iv</sup>

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

- One side of the class is Roger's friend(s). What are your best arguments as to why three days is not enough notice to adequately defend Roger?
  - *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 Roger 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

Roger 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, Roger is told that he can ask the prosecutor any legal question he wants during trial. In addition, Roger's mother is a lawyer and she will be present at the trial. Thus, he has two lawyers to help him.

- As Roger's friend, what are your best arguments that Roger 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, Roger'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?

### **Debate Issue 3: Self-Incrimination**

In order to get to the truth about what happened, the Judge wants order John Junior to come back to court (from the state juvenile detention facility) to testify against Roger in Roger's trial. John does not want to testify at Roger's trial.

- As Roger's friend, what is your best argument that John should not have to incriminate himself again (thus protecting Roger)?
- As the government, what is your best argument in support of the judge's ordering John to talk in Roger's trial. Should Roger be the one preventing John from testifying? Whose constitutional right to silence is it?

## **Part 5: WHY ARE LAWYERS IMPORTANT?: HANDOUT**

*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?**

## **Walk Through What a Lawyer Does in a Criminal Case**

*The best way to understand the Sixth Amendment's right to counsel is to track the normal path of a simple criminal case.*

**Imagine that you are eighteen years old and need a new pair of socks. You go to the department store to buy the socks. You go to the sock section, take a pair off the rack, and head to the cash register. Because the cash register line in the sock department is too long you decide to find another cash register. On your way to finding another cash register you duck into the bathroom. You come out with the socks tucked under your arm and are immediately stopped by store security and arrested for attempted shoplifting.**

**The store security officer informs you that since you had taken the socks, concealed them under your arm, had not paid for them, had avoided the nearest cash register, and looked suspicious when you entered the bathroom, and still had the socks concealed, he had reason to arrest you.**

**He shows you a copy of the criminal statute that defines "shoplifting" as "taking or concealing possession of personal property of another that was offered for sale knowingly and with the intent to appropriate the property without complete payment for it." The guard refuses to listen to your explanation that you were going to pay for the socks. The police also refuse to listen to you,**

**explaining they must accept the accusations of the store security officer. You are handcuffed, placed in a police car, and taken to a police station. After a night in jail, you meet your court-appointed lawyer.**

## 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.*

### **STEP 1. Initial Meeting: Establishment of an attorney/client relationship<sup>v</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 you that she works for you and represents your interests. This means she does not care what the government wants to do about the case, what the judge wants to do, or even what your mother wants to do about the case. Her duty is only to her client: you.
2. **Confidential.** She will also tell you that everything you tell her remains confidential, that she is forbidden to share anything she learns about your case with other people, and that you can tell her anything without fearing that she will tell other people. This means you can tell her about the case without the concern that she will use this confidential information against you. This is called the “attorney-client privilege.”

3. **Gather information.** Your attorney will next want some information about you. The information will be used to make arguments to get you out of jail, to gain a basic sense about the evidence against you, and to understand what your goals are in the case. In interviewing you,<sup>vi</sup> the lawyer will try to find out your family background, your schooling, your prior experience with the criminal justice system, and what happened to land you in jail. The lawyer will then use this information to make arguments about your release and to begin an investigation of your case. You have just developed an “attorney-client” relationship.
  
4. **Your Story.** In the initial meeting, you might tell the lawyer about how you were just trying to buy some socks when the security guard stopped you. You would explain that you live with your parents and attend the local high school. You would explain that you have never been in trouble with the law, and that you want the lawyer to call your mother and let her know you are all right. The lawyer will use the information you provided to help the judge understand that you are not a danger to the community, that you have family and friends in the community, and that you would show up to the trial about the “stolen” socks.

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

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

Answers:

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

### Step 3. Pretrial Duties: Investigation and Advice<sup>ix</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 socks case, the evidence against you comes from one source—namely what the security guard claims to have seen. It is, thus, necessary to investigate the security guard and the facts against you. Your 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, see if there is a videotape of the incident, and see if there could be any reason to doubt the observation of the security guard.
2. **Reasons for investigation.** For example, what if the guard admits to your lawyer that he only saw you for a few seconds before you came out the bathroom. What if he admits that he did not watch you at any time in the socks department? Or what if it turns out that the security guard was watching another young man who looked like you and was dressed like you and who disappeared into the bathroom minutes before you? Or finally, what if you find out that this particular security guard has made ten false arrests in the past year in the hopes that he could get a better job at a bigger department

store? These facts would be necessary to show at trial because they would undermine the government's case and support the argument that you were innocent.

- 3. Legal Options.** Your lawyer also has the duty of advising you of all of your legal options. For example, you could go to trial, you could plead guilty in the hopes of a lighter sentence, or you might be eligible to enter a diversion program where you would be required to complete some sort of alternative punishment. Depending on the jurisdiction where you are arrested, the options are different. However, no matter where you are arrested, your lawyer should explain all of these choices and give you the final decision about what to do.<sup>x</sup>

## Step 4. Trial<sup>xi</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, your lawyer is there to defend your 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 you guilty “beyond a reasonable doubt.”
2. **Opening Statement.** Your lawyer’s argument will take the form of an opening statement, laying out your 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 or jury doubt their story.
4. **Theory of Defense.** Let’s say the theory of your defense is that you did not have the intent to deprive the store of its property. You would want your lawyer to cross-examine the government’s witnesses (probably the security guard) about the many possible innocent explanations of your actions.

5. **Present Evidence.** In addition, you might want your lawyer to present evidence that supports your theory of the case (maybe the store videotape). Your lawyer might also have you testify about your version of the events.
  
6. **Closing Argument.** Your 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 your side.

## Step 8. Sentencing<sup>xii</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 you lose, your lawyer will argue for the best sentence that minimizes the punishment and maximizes the resources available to you through probation (if a probation system is in place in your state).
  2. **Emphasize the Positive.** At sentencing, your lawyer will try to emphasize your positive attributes, your accomplishments, your goals, and why you can be a contributing member of society in the future.
  3. **Second Chance.** In short, your lawyer will try to convince the judge why you should be given another opportunity to rehabilitate your life in the community.
-

***Exercise:* Have students role-play the following scene from the movie “Slam”.**

A good defense lawyer should do all of the above things in every case. This is what the constitutional right to counsel should mean. But, does it work like that in the real world?

**Look at the following excerpt from the movie “Slam” involving a conversation between an overworked defense lawyer and a young man caught with illegal drugs. In the movie, the young man from the Washington D.C. area, Raymond Joshua was caught possessing marijuana and is now facing the decision of what to do. This is his first meeting with his appointed defense lawyer.**

**What do you think about the relationship between the lawyer and the accused? Has a good attorney client relationship been developed? Are the standards being met?**

# HANDOUT

---

**SLAM: Excerpt from the movie**

INT. VISITING ROOM –

*Ray meets his LAWYER, a suave, fast-talking lawyer who's been here a million times before.*

LAWYER

**I'm your attorney. I've been assigned by the court to represent you. I'm a defense lawyer. I've been asked by the prosecution to see if we can cut a deal—which means, plead guilty or cop out. Let me ask you this are you guilty?**

RAY

*(baffled)*

**Of what?**

LAWYER

**Of possession of marijuana.**

RAY

**What...I mean, I don't know.**

*(searching)*

**I can't get a trial or something?**

LAWYER

**Well, you can get a trial. They call that cop or rock. You can take the cop—we plead—or rock, which means we take you to trial. But if you lose, you're looking at ten.**

**Mandatory. Ten. And you have to do 85 percent of ten. Which means eight and a half years.**

RAY

*(can't believe it)*

**So wait, if I try to fight it, I have to serve more time for just trying to fight it?**

LAWYER

**If you get found guilty, you would. And usually—**

*(he pauses, gathers himself)*

**The success ratio of convictions in drug cases is about 90 to 95 percent. If they lock up ten people, nine, nine and a half go to jail. But the chances of beating it is like ... trying to throw a snowball into an elephant's mouth, man, at a hundred feet. You can't make it.**

*Ray doesn't want to hear this.*

LAWYER (cont'd)

**You are in trouble. You are a victim of—you are a casualty of war.**

*(sizing Ray up)*

**You got two options—three: You can plead guilty to a simple possession, which is two or three years, you do eighteen months. You can go to trial and run the risk of doing ten years if you get found guilty. Or, you can cooperate, which means you can rat, snitch,**

**blow the whistle on whoever you want to  
blow it on in order to get out.**

**RAY**

*(stunned)*

**Cop-cooperate, which I'm not gonna do.  
You say I can't even fight it 'cause I'll serve  
more time. This doesn't make any ... sense.  
None whatsoever, man. It doesn't make any  
sense at all. ...**

**LAWYER**

*(sympathetic but helpless)*

**I know it sounds like a lot of time, but most  
guys get a lot longer than that, man. The  
best I can do is try to get you two to three.  
Even if you were innocent I could only get  
you two to three. You are a victim brother.  
You're black, you're young, you come from  
the Southeast, you're in the inner city... you  
don't have a chance. Your best chance now  
is to see how little time can you get before  
you get back to society. It ain't about  
beating it. When they lock you up, you  
dead.**

---

## CLASS QUESTIONS

- What is your reaction to this scene? Did the lawyer do what he was supposed to do?
- Did he establish a good attorney/client relationship? Did he establish trust?
- If you were given the opportunity to talk to the lawyer, what would you say about his manner, tone, professionalism?
- How would you feel if you were Raymond Joshua? Would you have a positive view of your lawyer?
- Do you think the situation is realistic? Would things have been different if the defense lawyer was a high paid lawyer? What would have been different?

## **ADVOCACY PIECE ON *SLAM* – INEFFECTIVE ASSISTANCE OF COUNSEL**

*Explain to students:*

**The Constitution grants all citizens the right to counsel in a criminal trial. But what kind of lawyer do you get?**

**In this advocacy argument, you are the judges to see if the lawyer in *Slam* was ineffective or not. The legal test is whether your lawyer made mistakes that other lawyers would not make, and that these mistakes negatively affected the outcome of your trial. In legal terms: “deficient performance” and “prejudice.”**

*Here are the additional facts you need:* **Joshua, the young man in *Slam* did have the marijuana on him. He was observed by a policeman throwing the marijuana down after he ran away. The odds are that he would be found guilty by a trial. The trial would be in Federal court which is why the sentences are so harsh. The sentence for possession of marijuana in D.C. Superior Court is a maximum of six months. The federal public defender is correct about the law, but not very sympathetic in his tone. His investigator has gotten the police reports and talked to a witness who supports what the police will say happened.**

*Divide Up the Students*

**Today the lawyer is on trial. The young man complained that the lawyer did not follow the step by step rules of practice – Step 1, Step 2, Step 3. A judge is upset with the defense lawyer’s conduct.**

**Half the class will be the defenders of the defense lawyer. Their job is to defend the defense lawyer arguing that the lawyer’s performance was not deficient or prejudicial.**

**Focus on the three steps – what did the lawyer do well:**

STEP 1. Establishment of an attorney/ client relationship

STEP 2. Protection of Rights

Step 3. Investigation and Advice

**Half the class will be the prosecutors – trying to show that his performance was deficient and prejudicial.**

**Focus on the three steps – what did the lawyer not do well:**

STEP 1. Establishment of an attorney/ client relationship

STEP 2. Protection of Rights

Step 3. Investigation and Advice

*Some possible help for answers...*

In Strickland v. Washington, 466 U.S. 668, 685 (1984) the Supreme Court provided a two-part test for ineffective assistance of counsel.

1. Deficient Performance: To satisfy the first prong of this test, you must overcome the strong presumption that your lawyer's conduct falls within the wide range of reasonable professional assistance. What this means is that you have to show that your lawyer did things that no other lawyer would do, or failed to do things that every other lawyer would do. For example, if your lawyer was asleep during trial you have to show that it is uncommon for lawyers to sleep during trial and that such conduct is unprofessional.
2. Prejudice: To satisfy the second prong, you must show that there was a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. This means that you have to show that the bad lawyering made a difference. For example, if your lawyer fell asleep in trial, you have to show that sleeping affected the outcome of the trial.

## **SPEAKING YOUTH TO POWER – FINAL EXERCISE**

*As a final exercise have students list the top 10 things that their lawyer failed to do in their trial. Have a general discussion, but make each student fill out their own list. After making them write down the top ten concerns, then ask them to respond to the following.*

**Have them write a letter to their lawyer explaining who the promise of the right to counsel was realized in their case.**

*In the response piece to their lawyer have them address what they think of the promise of the right to counsel? Is it working? Personalize it? Make it real? How does it affect them How does it affect all of us?*

---

<sup>i</sup> Written by A.G. Ferguson, Esq. 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*.

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

<sup>iii</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>iv</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.

\* Written by the National Youth Justice Alliance, Andrew G. Ferguson, Esq. ([www.nyja.org](http://www.nyja.org) for more information).

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

- 
- <sup>vi</sup> ABA Standards for Criminal Justice 4-3. 2 (3d ed. 1993).
- <sup>vii</sup> ABA Standards for Criminal Justice 4-3.6 (3d ed. 1993).
- <sup>viii</sup> ABA Standards for Criminal Justice 4-3.8 (3d ed. 1993).
- <sup>ix</sup> ABA Standards for Criminal Justice 4-4.1 (3d ed. 1993).
- <sup>x</sup> ABA Standards for Criminal Justice 4-6.1 & 4.6.2 (3d ed. 1993)
- <sup>xi</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>xii</sup> ABA Standards for Criminal Justice 4-8.1 & 4-7.9 (3d ed. 1993).