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High School Legal Curricula: Sixth Amendment Hypotheticals

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SIXTH AMENDMENT HYPOTHETICALS

The questions following each of the succeeding hypotheticals are designed to stimulate discussion and provoke thought on the part of the students. For this reason, questions are presented that cannot be answered precisely. The purpose of these discussion questions is simply to focus the students' attentions on the legal issues involved. Therefore, the "Hint To Teacher" is aimed at the questions that lend themselves to answers. The remaining questions are not intended to have answers but merely to serve as stepping stones to discovering and understanding the issues.

RIGHT TO COUNSEL

Hypothetical 1

It was a clear April morning in southern Florida. Jim and Al had been driving all night and decided to stop at a motel to sleep. They checked into their room and were soon asleep. Several hours later, they were abruptly awakened by pounding on their door. Al opened it and was faced by eight uniformed policemen. Thirty minutes later, they were in jail. The police informed them that they were charged with the murder and rape of a fifteen-year-old girl just outside of town. In her dying breath she described her assailants as "...two men...one with a beard." Jim had a beard.

The incident gave rise to an atmosphere of intense hostility in the community. Jim and Al's cause was so unpopular that no attorney would take their case. Lacking funds to get an attorney from elsewhere in the state, they were soon convicted. Both were sentenced to death.

With money from sympathetic relatives, Jim and Al hire you as their attorney. You appeal the conviction on the grounds that it violates their Sixth Amendment right to have a lawyer.

Can Jim and Al ask the state of Florida to provide them with an attorney without cost to them?

If they do have a right to have a lawyer, when does this right begin--at trial or some time before?

What if the evidence were such that Jim and Al were guilty anyway? Should the state be required to waste money defending them?

HINT TO TEACHER: The Sixth Amendment guarantees that every person accused of a crime shall have the right to assistance of counsel. This right is fundamental to a fair trial and vests in an accused when police action toward him becomes *accusatory* rather than *investigatory*. Merely because a defendant cannot afford to pay for his own lawyer does not mean that he loses this right. In this problem, Jim and Al are "accused" from the moment of their arrest and so, at that point, they have a right to privately-retained counsel. Jim and Al could not afford their own attorney and so, under the rule in the *Gideon* case, Florida is required to provide court-appointed counsel when a *critical stage* is reached. Jim and Al should receive the services of counsel at least by the time of their preliminary hearing. The charge is for a felony and so there is no reason for Florida to deny Jim and Al assistance of counsel.

Hypothetical 2

Oscar was arrested for armed robbery. He was suspected because his physical appearance closely matched that of the thief described by the teller at the bank. The thief was approximately six feet four inches tall and had a low voice and wore a stocking over his head. Oscar matched the description except for the stocking. Thereafter, he was made to appear at a line-up by the F.B.I. He demanded that they let him call his lawyer; the demand was refused. At the line-up, Oscar had to put a stocking over his head and line up with five other men on the line-up stage. All the other men were under five feet six inches in height and had high, squeaky voices. Oscar was positively identified as the thief. He calls you in as his attorney and wants to know what he can do to invalidate the line-up.

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Does the accused have the right to an attorney during a line-up?

The accused is not on trial at a line-up, so is there any harm in not having an attorney?

HINT TO TEACHER: A line-up is a *critical stage* and so any person accused of a crime who is made to appear in a line-up has the right to the advice of counsel. Oscar is being forced to participate in an unfair line-up and he has been prejudiced because of this proceeding. If, however, at Oscar's trial, the prosecution can establish that the victim is making an *independent identification*--one that is not based on the line-up, then the unfair line-up procedure is considered *harmless error*.

Hypothetical 3

Steve and Marjorie were enjoying a late evening view of the moon over the ocean. They really like each other and the time flew by without notice. However, Marjorie's parents became worried and called the police. The police, on the lookout, spotted the two in the car. Marjorie, not wanting to get into trouble, told the police that she wanted to go home but Steve forced her to stay. Things looked bad for Steve since Marjorie was only a seventeen-year-old high school student and he was a twenty-three-year-old college student.

Steve was convicted of contributing to the delinquency of a minor. He spent all of his money at the trial defending himself; and although the state gave all criminal defendants the right to one automatic appeal, he could not afford an attorney and forfeited his appeal. The state refused to pay for an attorney to argue for him on appeal. He writes to you from prison and asks you to file a *secondary appeal* for him based on his denial of counsel.

What will the results be now?

He had a lawyer at the trial and lost; does he deserve another chance at the state's expense?

HINT TO TEACHER: *Douglas v. California* requires states to provide indigents with counsel on the initial appeal, when that appeal is granted

as a matter of right. The purpose of appellate review is to determine whether or not the trial proceedings were conducted fairly and without error. Steve should not be convicted solely because his trial was conducted improperly. Steve was denied counsel for his initial appeal and so his Sixth Amendment right to counsel and his right to an initial appeal were violated.

Hypothetical 4

Kurt, a 15-year-old boy, was caught by the gym teacher smoking marijuana behind the science building. He was so terrified that he resolved to make no protest no matter what happened to him, hoping to get off as lightly as possible. He was taken into custody without notice to his parents. Later, his mother was advised orally that he was being held for possession of marijuana and that a public hearing would be held on the following afternoon in juvenile court. A charge was filed against Kurt on the day of the hearing. The charge made no reference to the facts upon which the action was based; instead it stated only that Kurt was a delinquent minor. Neither the boy nor his parents were given a copy of the charge, and at the trial the gym teacher was not present to testify. As a matter of fact, there was only a single witness--the policeman who admitted Kurt to juvenile hall. Officer Johnson merely stated that Kurt confessed to possessing marijuana. At the trial, neither Kurt's parents nor an attorney were present. In addition, neither Kurt nor his parents were advised of Kurt's right to remain silent, to be represented by counsel, or to have court-appointed counsel if he could not afford an attorney. Kurt was sentenced to youth camp for two years for possession of marijuana.

Was Kurt denied any constitutional rights? Which ones?

Does Kurt need an attorney even though this is a juvenile proceeding?

Does the fact that he could be sentenced to a reform school make a difference?

HINT TO TEACHER: Since 1967, juveniles have substantially the same Sixth Amendment rights as adults. Any proceeding that can result in committing a juvenile to a state institution is governed by due process

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requirements of the Fourteenth Amendment. These include (1) written notice of the charges and factual allegations, in advance, to both the minor and his parents or guardian; (2) notice to the minor and his parents or guardian that the minor has the right to assistance of counsel and (3) the right to have a court-appointed attorney if he cannot afford to hire one; and (4) a warning to the minor of his privilege against self-incrimination. Kurt was denied due process of law and so his sentence to youth camp for two years is an unconstitutional denial of liberty.

RIGHT TO A JURY TRIAL

Hypothetical 5

Pete Saxon was arrested for drunk driving and was refused a jury trial because his state only granted jury trials in hard labor and capital cases. A judge convicted Pete even though Pete claimed he had not been intoxicated.

Was Pete denied a constitutional right?

Suppose the maximum punishment for the offense is a \$300 fine and/or two years in jail?

Would a jury trial make a difference in Pete's case?

What is the function of a jury? Is a jury trial important?

HINT TO TEACHER: Any person accused of a crime has the constitutional right to a jury trial if the crime is considered *serious*. Pete's state cannot limit the right to a jury trial to only *hard labor* and *capital cases* because a *serious offense* is any crime that has a possible punishment of more than six months in jail or a \$500 fine or both. If the maximum possible punishment for Pete's offense is a \$300 fine and/or two years in

jail, the offense is *serious* because a two-year jail sentence is greater than six months. A jury cannot convict an accused unless it is convinced *beyond a reasonable doubt* that the accused is guilty. Pete claimed that he was not guilty and that if he had had a jury trial, perhaps he could have raised doubts in the minds of the jurors regarding his intoxication. A jury, in Pete's case, could have meant the difference between conviction and acquittal.

RIGHT TO AN IMPARTIAL JURY

Hypothetical 6

In 1947, two blacks were arrested and charged with killing a police officer while attempting a robbery in the Bronx, New York. The district attorney had the men tried before a special "blue ribbon" jury. A "blue ribbon" jury consisted of people from a list of citizens who are supposed to be especially well-educated, open-minded and well-qualified for jury duty. These people were usually doctors, teachers or white-collar workers. These juries usually did not have women on them.

At the trial, the defendants' attorney objected to the "blue ribbon" jury. He claimed that a person accused of a crime has the right to be tried by a jury taken from all levels of education, occupation and cultural backgrounds. This objection was overruled and the two men were convicted and sentenced to death.

Is a "blue ribbon" jury an impartial one?

Would it be more inclined to convict an indigent laborer than a stockbroker?

Should a jury be limited to any particular groups of people?

Is it fair for a black man to be tried by a jury with no blacks on it?

If you were on trial, would you want a jury made up of people like you? Why?

How should a jury be picked?

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HINT TO TEACHER: Even though each individual on a "blue ribbon" jury may be impartial, the jury itself is not considered impartial because it requires special qualifications for each member. The claim of the defense attorney is a valid one. Jurors must be chosen from all segments of society.

Hypothetical 7

John was arrested for murder. At his trial, the prosecution attorney for the state removed all jurors who expressed reservations about sending a man to the gas chamber. John was convicted of first degree murder and was sentenced to the gas chamber.

Is this a denial of a fair trial?

Is this an example of a denial of a person's right to an impartial jury?

What is the danger of having this type of jury?

HINT TO TEACHER: John's case is similar to the situation in *Witherspoon v. Illinois*. The jury at John's trial will be "prosecution prone"--more willing to convict John and sentence him to death, and therefore, it is not an impartial jury.

RIGHT TO A SPEEDY TRIAL

Hypothetical 8

Ben Johnson was arrested for suspicion of armed robbery because he fit the description of the robber given to the police by the victim. Ben claimed he could prove he had not committed the robbery. He said he had an airtight alibi.

Ben was taken to jail and had to stay there because he could not raise bail. His arraignment was held and a trial date, scheduled. On the day of the trial, the district attorney asked for a postponement because he was not prepared. That happened several times so that Ben sat in jail for 18 months waiting. He finally demanded his trial or to be set free.

Was Ben's "gripe" a legitimate one?

Why is it important to have a speedy trial?

If Ben had waited 18 months in jail for his trial because the court calendar was crowded, would his right to a speedy trial have been denied?

Should the alternative have been "give me a trial within a certain time or release me"?

HINT TO TEACHER: Ben is being denied his right to a speedy trial because there is no legitimate reason for continually delaying. Ben should not have to suffer because of the district attorney's procrastination. The situation would be different, however, if the reason for the delay were due to a full court calendar. The speedy trial requirement means that the trial must be held as soon as it is administratively possible. While an 18-month delay under those circumstances would be unfortunate, it would not be unconstitutional.

RIGHT TO BE INFORMED OF SPECIFIC CHARGES

Hypothetical 9

Clyde Harvey, a black living in Mississippi, let civil rights workers stay in his house one summer, angering white neighbors in the town.

One day when Harvey was away from his house, the police entered and searched without a search warrant and found two cans of beer and "a little whiskey in a jar". Harvey was arrested and charged with "possession of whiskey," a crime in Mississippi punishable by a fine of up to \$500 and up to 90 days in jail. Harvey thought he was being charged with having the beer but not the whiskey and so he pleaded guilty. He did not have an attorney and his conviction resulted in a 90 day jail sentence.

What constitutional rights are involved here? What Sixth Amendment rights?

Do you think Clyde Harvey would have pleaded guilty if he had known

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fully the charges against him?

Could an attorney have helped in this case? How?

How does it help a defendant to know the charges against him?

HINT TO TEACHER: The right of an accused to be informed of the specific charges against him is expressly enumerated in the Sixth Amendment. It is considered to be fundamental for a fair trial--one of the goals of the Sixth Amendment. Clyde Harvey was not fairly convicted because he did not know exactly what he was charged with, and, had he known, he might have conducted his defense differently. An attorney would have been helpful to Clyde because the attorney could have informed Clyde of the charges against him. The attorney could have argued for exclusion of the evidence because the search of Clyde's home was without a warrant under circumstances in which a warrant was required. Therefore, the search was unlawful and a violation of the Fourth Amendment. If the evidence had been excluded, the prosecution's case against Clyde would have been very weak, and Clyde would probably have been acquitted.

Hypothetical 10

Jack, who had three prior felony convictions on his record, was arrested and charged with burglary, a crime punishable in that state by a maximum of 10 years in prison. Without consulting an attorney, Jack intentionally pleaded guilty to the burglary charge, thinking the only punishment he would receive for that offense was ten years. But a state *habitual criminal statute* also applied--a fact that Jack did not know. Because of that statute and because Jack had pleaded guilty, he was sentenced to life imprisonment. Jack appealed on the ground that his conviction was invalid because he did not have the aid of an attorney and, therefore, did not fully understand the charges against him.

Should Jack's conviction be reversed?

Would he have pleaded guilty if he had known about the habitual criminal statute?

Could an attorney have helped?

What if most people knew about the habitual criminal statute?

What do you think of habitual criminal statutes?

HINT TO TEACHER: The right of an accused to be informed of the specific charges against him is guaranteed by the Sixth Amendment. Jack was not fairly convicted because he did not know that he was charged with violating a state habitual criminal statute. Had Jack known of the statute he might have conducted his defense differently. No doubt an attorney would have explained the charges fully to him.

RIGHT TO CONFRONT AND CROSS-EXAMINE WITNESSES

Hypothetical 11

Hal bought a watch from Jerald Jewelers. The owner of the shop was an old man who was partially blind and had a hard time remembering anything. Later in the day the Jewelry store was robbed by someone about the same size as Hal. Having Hal's check with his address on it, the jeweler filed a complaint which resulted in Hal's arrest. Hal was arrested; the jeweler identified Hal as the man who robbed his store. At the time of the trial, the jeweler was on vacation.

Can Hal receive a fair trial if the jeweler is not present?

What if Hal were in fact guilty and the jeweler could see and remember perfectly?

HINT TO TEACHER: The Sixth Amendment guarantees to an accused the right to be "confronted with the witnesses against him." This means that the old jeweler must testify at Hal's trial. This would give Hal's attorney the opportunity to question the old man and expose the fact that the man

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is partially blind and has a poor memory. Hal cannot have a fair trial without the jeweler's presence.

Hypothetical 12

Dorothy Bailey, a United States government employee, was fired after a loyalty board said it has "reasonable grounds" to believe she was a communist and not loyal to the United States. The evidence that had caused her dismissal was secret information in the files of the loyalty board. The board received information about Dorothy Bailey from unknown witnesses who did not swear to its truth.

Dorothy eventually appealed her dismissal to the Supreme Court. At her trial, she testified that she was not a communist. Also, many people wrote letters to the trial court saying that she was loyal. No witnesses testified against her.

Was Dorothy Bailey denied any constitutional rights?

Was she fired under fair circumstances?

Should she have been able to question the secret witnesses? Should they have been present at the trial?

What if the witnesses were specially trained government agents who would no longer be useful if their identities were known? Should they be required to testify even if they are known to be honest?

Who should decide whether witnesses should be required to appear in court?

HINT TO TEACHER: The right of confrontation includes administrative proceedings and so Dorothy Bailey has the right to question the witnesses regarding the source and veracity of their information. At the very least, the witnesses must testify at Dorothy's trial. They are witnesses against her and the Sixth Amendment requires their appearance.

RIGHT TO COMPULSORY PROCESS

Hypothetical 13

The cafeteria cook at a factory that made weapons for the Navy was declared a security risk by the plant security officer and dismissed from employment. It was a privately-owned cafeteria that did its own hiring and firing. The cook asked for a trial in order to find out why he had been found a security risk and to challenge the accusation. The security officer was asked to appear at the trial and testify, but he refused.

Does it make sense to have the trial if the security officer is not there?

Can justice result if the security officer will not testify?

Should the security officer be required to come to the trial? Who should order him to appear? Who is best equipped to enforce the order?

What is a subpoena? What happens to a person who disobeys a subpoena?

HINT TO TEACHER: The right to compulsory process means that an accused can order witnesses to appear at his trial. This ensures that everyone necessary for a fair trial will be present. Only the security officer knows the reason why the cook was declared a security risk. Therefore, it would be pointless to have the trial if the security officer were not present. Courts use a subpoena to enforce this right of compulsory process. The subpoena tells a witness that he must attend the trial, and, if he does not, he can be punished. In effect, it is a crime to disobey a subpoena.