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High School Legal Education: The Sixth Amendment

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THE SIXTH AMENDMENT

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, 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.

Important Rights Guaranteed by This Amendment

1. Right to a lawyer
2. Right to a jury trial
3. Right to an impartial jury
4. Right to a speedy trial
5. Right to confront and cross examine witnesses
6. Right of the accused to have witnesses brought in for him (compulsory process)

PURPOSE OF THIS AMENDMENT

The Sixth Amendment is in the Constitution to insure that when one is accused of a crime and is brought to trial, he is treated fairly and given the best chance possible to defend himself. He cannot do this without being afforded the rights listed above.

How well can one defend himself without a lawyer, and when does he need one? What good is a trial without witnesses

in one's favor? Do juveniles get all the rights of adults? Can one get fair treatment at a trial where there are T.V. cameras in the courtroom? These and other problems will be explored in the material that follows.

RIGHT TO A LAWYER

An important and controversial part of the Sixth Amendment states that in all criminal prosecutions the accused shall "have the assistance of counsel." This language was eventually used by the courts to mean that the accused had the right to be represented at trial even if a lawyer had to be supplied at the state's expense.

To help understand this complex subject, let's look at some typical problems in this area. In each case put yourself in the place of the attorney and help to solve the difficulties of those involved.

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 the charge was for 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. Their cause was so unpopular

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that no attorney would take their case. Lacking funds to get an attorney from elsewhere in the state, they were soon convicted; and both were sentenced to death.

With money received from sympathetic relatives, Jim and Al hire you to fight for their cause in the courts. You now bring an action based on violation of their Sixth Amendment right to have a lawyer. What will be the results in your action? Was the evidence such that Jim and Al were guilty anyway so that the state should not have to waste money defending them? If they do have a right to have a lawyer, when does this right being -- at trial or some time before? These are difficult questions to answer. However, over the years the Supreme Court has formulated rules governing these very same issues.

A LOOK AT THE LAW

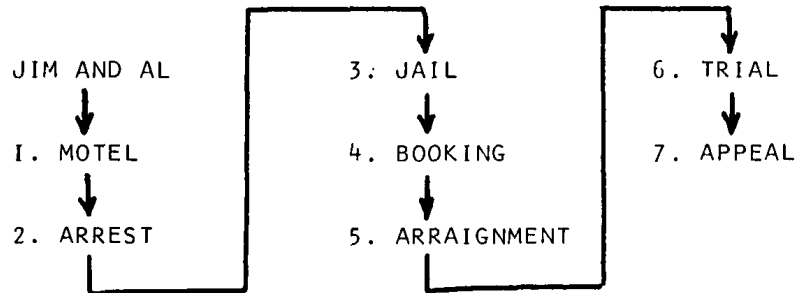
In a case similar to our situation, the United States Supreme Court held:

1. The accused was denied his Constitutional rights when on arraignment he was not asked by the judge whether he had counsel, could afford counsel, whether he wished to have counsel appointed, or whether he had friends who might assist in that regard; (Arraignment is the formal presentation of charges against the accused just before trial).
2. His rights were denied when he did not receive court appointed counsel;

3. The right of one charged with a crime to be represented by counsel includes the fair opportunity to be represented by the counsel of his choice; and

4. One charged with a crime is as much entitled to assistance of counsel in preparation for trial as at the trial itself.

THE CRITICAL STAGE TEST: Using the four criteria above, look at an outline of the facts of the problem and determine when Jim and Al had the right to have a lawyer appointed for them.



DISCUSSION: From our rules the arraignment (step 5) is the point at which Jim and Al had the right to have a lawyer appointed for them at the expense of the state. The court has also held that the accused has a right to a lawyer, at his own expense, from the time the police start formally accusing him of being the one who committed the crime. The police have a duty to inform the accused of this right at an early enough time to protect it.

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From our rules we have found that Jim and Al have the right to a court appointed lawyer if they cannot pay for one through the trial step. What of the appeal stage after the trial has been conducted? Are they on their own again without the aid of counsel? Carefully read the next problem and keep in mind the reasons why the Sixth Amendment offers the right to counsel to the accused. How fair is a trial if one is abandoned by professional help on an appeal?

Steve and Marjorie were enjoying a late evening view of the moon over the ocean. They really dug each other and the time flew by without notice. However Marjorie's parents were worried and called the police. The police, then on the lookout, spotted the two in the car. Marjorie not wanting to get into trouble, tells the police that she wanted to go home but Steve forced her to stay. Things then started to look 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 trial to defend himself; and although the state gave all criminal defendants one appeal as a right, he could not then 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 San Quentin and asks you to bring an action for him based on his denial of counsel.

What will the results be now? He had a lawyer at trial and lost; does he deserve another chance -- now at state ex-

pense? From the holdings above and the ideals of fair trial and right to counsel embodied in the Sixth Amendment, what sort of treatment should your client's claim receive in court?

A LOOK AT THE LAW

The Supreme Court holds that the right to counsel extends to the first appeal where appeal is granted as a matter of right under the state law. In the major case on the subject, Justice Douglas stated for the Court: "[W]here the merits of the one and only appeal that an indigent has are decided without benefit of counsel...an unconstitutional line has been drawn between the rich and the poor."

In the discussion following the first problem, it was mentioned that the accused had a right to counsel prior to the arraignment. The Critical Stage was reached when the actions of the police took a turn from the stage of investigation to that of accusation. As an example, follow closely the facts of the next problem. Notice that what pretends to be an investigation is in reality forcing the accused into a very incriminating situation which more and more closely focuses guilt upon him. Notice the need for the lawyer to insure the accused fair treatment. The situation is a not so typical line-up.

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 6 feet 4 inches and had a low voice and wore a stocking over his head. Oscar matched the description except for the stocking. He was soon, thereafter,

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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 5 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.

Does the accused have the right to an attorney during a line-up? He's not getting convicted here, so where directly does the harm lie?

A LOOK AT THE LAW

The Supreme Court has held that people in Oscar's position have a right to have their lawyer at the line-up and, furthermore, that the lawyer for the accused must be informed of all impending line-ups.

A 1968 Congressional act, The Omnibus Crime Control and Safe Streets Act of 1968, brought about a change in the rules described above. It allows certain confessions and line-ups to be admitted into evidence even though the suspect has not been warned of his Constitutional rights. This legislation remains to be tested in the courts and is fairly limited in its scope because it is not applicable to the state courts. It applies only in the federal courts.

SUMMARY OF ONE'S RIGHT TO A LAWYER

The adult's right to a lawyer, as we have seen by our discussion, may be summarized as follows:

I. One has the right to a lawyer

A. At State Expense

1. WHO: one who is the accused at a criminal proceeding and cannot afford his own attorney.

2. WHEN: at arraignment, at trial, and at any appeal given the accused as a matter of right.

B. At his Own Personal Expense

1. WHO: any accused in a criminal proceeding.

2. WHEN: at all of the times when he has a right to a lawyer at State expense and when he is in a line-up or at any other highly accusatory stage. The accused must be warned of his right to counsel by the police.

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JUVENILE PROCEEDINGS

So far we have been discussing the rights of the ADULT criminally accused; however are these Constitutional safeguards available also to the criminally accused juvenile? Before determining which of our Sixth Amendment rights are applicable to minors and to what degree if they are, let's look at the following problem which illustrates some of the serious questions involved.

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 was 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 his Constitutional rights? The juvenile system is designed to protect youth from the harsh punishment

and social disgrace heaped upon the criminal adult. Would these protections necessarily be lost by applying adult standards and formality to juvenile proceedings? Kurt hires you to argue his case, what do you feel are his chances?

A LOOK AT THE LAW

In 1967 the matter was finally decided by the Supreme Court. The court held in that case that a minor was denied a fair hearing because juvenile delinquency proceedings that might lead to commitment in a state institution must measure up to the requirements of an adult fair trial. These requirements as they relate to a minor include:

1. Written notice of specific charges and factual allegations, given to the minor, his parents or guardian in advance of the hearing so as to permit preparation;
2. Notification to the child or his parents 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 by the court;
3. The minor must be sufficiently warned of his Constitutional privilege against self-incrimination-- (see 5th Amendment); and,
4. In the absence of a valid confession, a determination of delinquency and an order of commitment must be based only on sworn testimony subject to cross examination in accordance with Constitutional requirements.

Keeping these rules in mind, look back on our problem and evaluate what will happen to Kurt in this situation. Care should be taken to remember that limitations on the rights of minors still exist; in our areas of concern, the privilege

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against self incrimination and the right to counsel are limited to the actual proceedings while, in adult criminal cases, these rights and privileges are operative immediately upon arrest.

THE RIGHT TO A JURY TRIAL

If you are arrested for drunk driving and you are refused a jury trial because your state deems a jury trial necessary only in hard labor and capital cases, are you denied your Constitutional rights? Also suppose the maximum punishment for the offense is a \$300 fine and/or two years in jail. The Supreme Court has held:

1. Trial by jury in serious criminal cases is fundamental to the American scheme of justice and the right applies to all courts in this country.
2. A serious criminal offense is one having a maximum penalty of over six months in jail and/or a fine of \$500 or more.

Using these standards in our drunk driving case, we find that since the possible penalty is for over six months you would have the right to a jury trial.

THE RIGHT TO AN IMPARTIAL JURY

Consider the situation where a person is on trial for murder and the prosecution excuses all jury members who have any objections to allowing the death penalty. Is this a denial of a fair trial? Is this an example of a denial of a person's right to an impartial jury?

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John was arrested for murder. At his trial the prosecution attorney for the state removed all jurors who were at all disturbed by the idea of sending a man to the gas chamber. John was convicted of first degree murder and was sentenced to the gas chamber without any delay.

He hires you as his attorney to handle the appeal of his case. You argue that John was denied his right to a fair and impartial jury because of the actions of the prosecution. What is the danger of having this type of jury?

A LOOK AT THE LAW

Prior to 1968, the courts had held that:

1. persons may not be systematically excluded from juries because of race; and
2. states may fix different and higher qualifications for jurors for special types of criminal cases.

In 1968, the Court decided an important case where the defendant (a convicted murderer) challenged a long established practice of excusing all prospective jurors who indicated they had any objections, based on morality and conscience, against capital punishment. The Supreme Court held that such a practice results in a prosecution prone jury (that is, one more willing to convict and sentence to death). Justice Stewart stated in the reported opinion of the case, "... (A) state may not entrust the decision of whether or not a man should live or die to a tribunal organized to return a verdict of death."

THE RIGHT TO A SPEEDY TRIAL

In order to have a fair trial it must be as close to the occurrence of the crime as possible. For this and other reasons

discussed below the Sixth Amendment gives the accused the right to be brought to trial as soon as possible after the arrest.

Jim was arrested at a local sit-in in a restaurant which refused to serve Mexicans or Blacks. The government didn't feel they could get a conviction against Jim on an "inciting to riot" violation, but they did warn him that if he caused any more trouble, they would arrest him again and bring him to trial on the charge. Jim hires you as his attorney to get the government to stop harassing him.

Were Jim's Constitutional rights to a speedy trial violated?

A LOOK AT THE LAW

The Supreme Court holds that the Sixth Amendment's right to a speedy trial is mandatory in all the courts of the country. In one case the Court recognized that right was denied in a situation such as that above. The Court further recognized specifically that the denial took place by an indefinite prolonging of the oppressive effects caused by the state being able to bring the accused to trial when they felt like it. Among these oppressive effects are public scorn, deprivation of employment, and restrictions on freedoms of speech, association, and participation in unpopular causes.

THE RIGHT OF CONFRONTATION AND CROSS EXAMINATION

Keeping in mind the ideas of fair trial and fairness to the accused, consider whether statements by a witness at a

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hearing prior to trial, at which the defendant is not represented by counsel and has no opportunity to cross examine, may be used against the defendant at a later trial even though the witness who made the statement is not present at the later trial. To better understand this situation, read carefully the following problem.

Hal bought a watch from Junky 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 upon it, he swore out a complaint for his arrest. Hal was arrested; and the jeweler went down to the police station, identified Hal, and said that he was the man who robbed his store. At the time of the trial, the jeweler was taking a vacation in Brazil.

Can Hal have a fair trial without the jeweler's presence at trial? What if Hal was in fact guilty and the jeweler could see and remember perfectly, how would you feel then?

A LOOK AT THE LAW

The Supreme Court has laid down the following rules for such situations: 1. The Sixth Amendment guarantees protecting the accused's right to confront a witness against him is binding in all courts in the U.S. 2. The right of confrontation includes the right of cross-examination. How would these rules apply to our facts here?

THE RIGHT TO COMPULSORY PROCESS

At a criminal proceeding must the government produce all witnesses for the accused as well as those that it needs for its case against him? A 1967 case answered this question in the affirmative, holding that: the right of the accused to have the court bring in witnesses for him as well as the prosecution is binding on all courts in the country.

THE CONTROVERSIAL ISSUE OF FAIR TRIAL V. FREE PRESS

In order for the accused to have a fair trial, an atmosphere free from inflamed public opinion must be maintained. This is essential to the selection of an unbiased jury. The Supreme Court in dealing with the issue has IMPLIED the accused's right to be free from the adverse effects on his trial by hostile publicity on television and radio and in the press. A number of fairly recent cases have established guidelines. In 1961, the Court put down a case solely on the grounds of prejudicial pretrial publicity where most jurors reflected a deep and bitter prejudice. Later, in 1966, the Court revised a conviction because of undue publicity and failure to take proper action to insulate the jury.

Special emphasis has been given to the role of television in prejudicing the jury and destroying the chance of a fair trial. In the early 1960's, the Supreme Court reversed a murder conviction because the defendant's murder confession was

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presented on live television and then rerun on video tape on two other occasions. The viewing population covered the area from where the jurors were drawn. The Court decided that to have a fair trial the proceedings would have to be moved to an area unaffected by the adverse publicity. Two years after this case was decided, the Court was faced with the case in which there were television cameras in the courtroom itself during the trial. The high court revised the conviction with directions that it be retried "... in the proper manner." "In the proper manner" included the right of the accused to have his day in court free from distractions inherent in tele-casting (that is, the jury being subject to distraction, testimony being impaired, and elected judges being more subject to the political pressures of their constituency).

SUMMARY

(Other Rights Promised the Accused by the Sixth Amendment)

1. One has a right to a jury trial in all offenses where the accused can be put in jail for over six months or fines \$500 or more.

2. One has the right to an impartial jury. Impartial jury means: (a) One cannot be excluded from the jury because of race; (b) The juror may be required to have higher qualifications in certain criminal cases; and (c) In a trial for murder a juror against capital punishment may not be excluded for that reason.

3. The accused has the right to be brought to trial as quickly as possible.

4. The accused has the right to have the state bring in witnesses in his favor.

5. The accused has the right to have a trial free from prejudicial publicity which would have a detrimental effect on his rights to a fair trial.

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APPENDIX

TABLE OF CASES

Powell v. Alabama, 287 U.S. 45 (1932)
Betts v. Brady, 316 U.S. 455 (1941)
Gideon v. Wainwright, 372 U.S. 355 (1963)
Douglas v. California, 272 U.S. 353 (1963)
Escobedo v. Illinois, 378 U.S. 478 (1964)
Miranda v. Arizona, 384 U.S. 436 (1966)
United States v. Wade, 388 U.S. 218 (1967)
In Re Gault, 387 U.S. 1 (1967)
Duncan v. Louisiana, 391 U.S. 145 (1968)
Witherspoon v. Illinois, 391 U.S. 510 (1968)
Klopper v. North Carolina, 386 U.S. 213 (1967)
Pointer v. Texas, 380 U.S. 400 (1965)
Washington v. Texas, 388 U.S. 14 (1967)
Irwin v. Dowd, 366 U.S. 717 (1961)
Sheppard v. Maxwell, 384 U.S. 333 (1966)
Riddeau v. Louisiana, 373 U.S. 723 (1963)
Estes v. Texas, 381 U.S. 532 (1965)

Behavioral Objectives:

The student shall achieve a score of not less than 70% on a forty minute test (without support materials) designed to measure his ability: to distinguish between what does and does not constitute a violation of the rights of the criminally accused; to be able to define those rights; and to be able to describe the rationale for the existing laws that are applicable in cases of criminal prosecutions with special emphasis upon juvenile proceedings:

1. Given six hypothetical instances of either a violation or non-violation of the Sixth Amendment the student shall:
 - a. determine which right, if any, has been violated;
 - b. explain the rationale for his decision.
2. The student shall be able to define:
 - a. right to counsel
 - b. right to a jury trial
 - c. right to an impartial jury
 - d. right to a speedy trial
 - e. right to confront and cross-examine witnesses
 - f. right to the compulsory process
3. The student shall be able to determine the requirements of a "fair trial," especially as they relate to juvenile proceedings.
4. The student shall be able to explain the essence and import of the "Omnibus Crime Control and Safe Street Act of 1968" and the issue of "free press" as it relates to pretrial publicity.