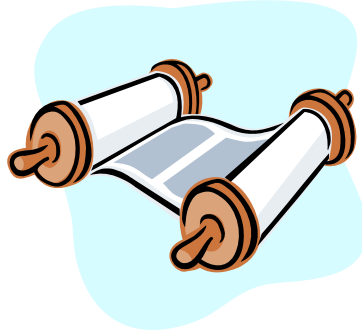


# ***NATIONAL YOUTH JUSTICE ALLIANCE***

## **GAULT AT 40 –**

### **CONSTITUTIONAL LESSON PLAN**



## **Juvenile Constitutional Rights**

Description: This unit was created to honor the 40<sup>th</sup> anniversary of 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.

Objectives: The goal is to commemorate this significant case by teaching students about the importance of the Constitution as a relevant document that confers rights upon them as young people.

Length of Lesson: 1- 2 class periods (90 minutes)

Supplies Needed: This packet

Age Group: 9th-12th grade

## 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.

The lesson plan can be taught in one class, or sections can be highlighted depending on the time and interest of the students. Handouts are included to focus on portions of the constitutional text and cases for class discussion.

## **RIGHT TO COUNSEL – GAULT LESSON PLAN**

### **CASE # 1: 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

- 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

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

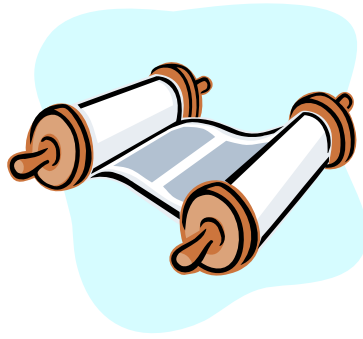
What are the protections in the Sixth Amendment?

- 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.



Excerpt from *Youth Justice in America* (CQ Press 2005)

## 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>i</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.

\*\*\*

---

**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.'

## II.

...We do not in this opinion consider the impact of these constitutional provisions upon the totality of the relationship of the juvenile and the state... We consider only the problems presented to us by this case. These relate to the proceedings by which a determination is made as to whether a juvenile is a 'delinquent' [meaning guilty as a juvenile] as a result of alleged misconduct on his part, with the consequence that he may be committed to a state institution. 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.

For the reasons stated, the judgment of the Supreme Court of Arizona is reversed and the cause remanded for further proceedings not inconsistent with this opinion. It is so ordered.

Judgment reversed and cause remanded with directions.

---

Points to ponder:

- 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?
- What would a lawyer have done during the hearing that Gerald was not able to do? Do you think there would have been a different outcome? Why?
- What does the court mean by the term “due process”? What process was due to Gerald? Why are procedural protections important? Why did the Supreme Court compare the proceedings to a “kangaroo court”?
- What is the value of “notice”? What does it mean to have notice of a hearing? Why is it important?
- What does the “guiding hand of counsel” mean? Why did the Court state this was important?<sup>ii</sup>

## FOR THE CLASS – DEBATE TIME

### Case #2:

### State v. Roger Ruse

One week after John J. Junior was sent to the state juvenile detention facility, Roger Ruse is arrested for the same obscene text message. Roger is arrested for the same incident and brought before the same juvenile judge.

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.

#### 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>iii</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?
- 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?

## **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?

---

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

<sup>ii</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>iii</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).