

# TEACHING TOOLS: NYS UNIFIED COURT SYSTEM

## MIDDLE SCHOOL LEVEL

### Justice: The Constitution and the Criminal Courtroom\*

#### LEARNING CONTEXT

##### Purpose:

The purpose of this exercise is to have students become familiar with the concept of justice, which includes preserving the Constitutional rights of those accused of committing crimes. Students will see how provisions in the United States Constitution and in case law preserve these constitutional rights to due process and equal and fair treatment under the law.

##### Grade Level:

6, 7 and 8

##### Learning Standard:

Social Studies Standards 1 and 5.

##### Core Curriculum (includes excerpts from the Social Studies Resource Guide with Core Curriculum):

Grade 6: The grade 6 social studies program emphasizes the interdependence of all people, keying on the Eastern Hemisphere. Sixth graders learn that governments change over time and place to meet the changing needs and wants of their people. As an example, students should understand that the Bill of Rights addresses some basic human rights that the Framers of the Constitution feared were not otherwise protected in the governments they had witnessed. The extent to which human rights are protected becomes a key issue in the totalitarian societies of the Eastern Hemisphere that the sixth graders learn about, and understanding the United States' human rights guarantees will provide a useful basis for comparison.

Grade 7/8: Social studies content in grades 7 and 8 focuses on a chronologically organized study of United States and New York State history. Course content ties political, geographic, economic, and social trends in United States history to parallel trends and time frames in New York history. The federal and state governments constantly reevaluate their roles with respect to everything from fiscal and monetary policies to social programs and technology changes, as efforts toward justice for all citizens continue.

##### Concepts/Themes:

- Examining how government protects the rights of individuals and promotes the common good.
- Understanding how the courts insure justice, fairness and due process for all people who seek to utilize or otherwise become involved in the court system.
- Analyzing the sources of the nation's values as embodied in federal and state constitutions, statutes and case law; appreciating the principles, ideals and core values of our democracy (human dignity, liberty, justice, and equality).

\* Developed with the assistance of Kevin O'Hagan, Garden City High School, Garden City Union Free School District

### Prior Knowledge:

Students should be able to grasp the concepts of justice, due process, fairness and equality. They should be able to understand the basic purpose of our justice system, the role of the courts in that system, and the purpose of a trial.

Students must be able to read primary documents and present information in verbal and written form.

### PROCEDURE

The teacher should devote adequate time to discussing the fundamental concepts involved in a relevant manner. Students will learn about the rights embodied in the Bill of Rights and case law (see Day 1) that preserve justice and assure due process for those accused of committing crimes. These exercises are intended to provide students a detailed appreciation of some of the fundamental rights they enjoy as American citizens.

### Special Message to Teachers

The activities within each Teaching Tool are designed to build on each other to, first, develop students' knowledge of basic law-related concepts; then, show students how the concepts are utilized or implemented in the court system; and, finally, demonstrate how students should apply the concepts in their everyday lives. However, the various activities that comprise each tool may also be used as stand-alone exercises. For example, you may choose to incorporate only Day 1 or Day 3 into your course work. Or, you may choose to use Day 1 in connection with one unit and then use Day 2 in a later unit.

**There is more than one way to utilize the Teaching Tools – the proper use is the use that is beneficial to your classroom.**

### INSTRUCTIONAL/EDUCATIONAL MODIFICATIONS

The instructional approach can be easily modified based on class dynamics. Independent written activity can be substituted for verbal activities. Cooperative learning strategies allow for the pairing of students with varying abilities and help free the teacher to assist those that require more individualized instruction.

## Day 1 – Document Analysis

The teacher should discuss the notion of justice and of being accorded due process and fair treatment under the law. Students should understand that the Colonists had not received the benefit of all of these rights when they left their home nations, and the Framers of the Constitution sought to remedy those problems. The teacher may wish to discuss historical examples that demonstrate what happens when justice is not served – the Salem witch hunts, racially motivated lynchings, McCarthyism – in order to demonstrate how our government has evolved to prevent such events from occurring again.

Students should be given the primary materials containing relevant law (for pertinent excerpts, see Relevant Law, attached). Either individually, or as a group, they should read the materials and be able to identify the provisions that protect the following rights:

1. protection against unreasonable searches and seizure (4<sup>th</sup> Amendment)
2. requirement of probable cause for search or arrest warrants (4<sup>th</sup> Amendment)
3. guarantee of a Grand Jury indictment (5<sup>th</sup> Amendment)
4. protection against double jeopardy (5<sup>th</sup> Amendment)
5. the right to not testify against yourself (5<sup>th</sup> Amendment)
6. guarantee of due process (5<sup>th</sup> Amendment, 14<sup>th</sup> Amendment – makes the 5<sup>th</sup> Amendment apply to all of the States)
7. the right to a trial by an impartial jury of your peers (6<sup>th</sup> Amendment)
8. the right to cross-examine witnesses that testify against you (6<sup>th</sup> Amendment)
9. the right to trial counsel (6<sup>th</sup> Amendment)
10. no cruel and unusual punishment (8<sup>th</sup> Amendment)

The teacher should spend some time discussing the significance of each of these rights. When it is evident that the class understands the origin of these rights, the teacher may have the students read and discuss excerpts from significant case law that demonstrate the application of some of these rights. Some of the cases particularly highlight the Court's weighing of the rights of an individual against the action taken by law enforcement authority.

Students may be asked to complete the Worksheet for assessment purposes.

## Relevant Law

### Constitutional Provisions:

#### Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

#### Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

#### Amendment VI

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 defence.

#### Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

#### Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### Case Law:

#### Mapp v. Ohio (1961):

Cleveland police officers received a tip that a suspect in a bombing case was hiding in Miss Mapp's home. The officers knocked on her door and demanded entrance, but Mapp refused to admit them without a search warrant. Subsequently, more officers arrived and the police forcibly opened the door to Mapp's home and entered her apartment. They began a general search of her apartment, including looking through papers. In the basement, the officers found obscene

materials and arrested Mapp for possession of the obscene materials. The police were unable to demonstrate that they had obtained a search warrant to permit them to enter the Mapp home. The United States Supreme Court determined that the Fourth Amendment applied to protect Mapp from the warrantless search and seizure even though it was the state (of Ohio) and not the federal government that arrested and prosecuted her. The Court determined that the Fourteenth Amendment's Due Process Clause guarantees that Fourth Amendment rights apply to state, as well as federal, police action.

"Why should not the same rule apply to what is tantamount to coerced testimony by way of unconstitutional seizure of goods, papers, effects, documents, etc.? \* \* \* our holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense. \* \* \* Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise. \* \* \* Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice."

#### Gideon v. Wainwright (1963):

Mr. Gideon was charged with a felony in Florida and requested a court appointed attorney due to his lack of money, which request was denied. Gideon represented himself at trial and was found guilty. Specifically overruling a prior Supreme Court case, the Court found that Gideon's Sixth Amendment rights had been violated by the denial of appointed counsel.

"\* \* \* reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."

#### Escobedo v. Illinois (1964):

Mr. Escobedo's brother-in-law was shot and killed one night. The next morning, the police arrested Escobedo without a warrant and interrogated him. Escobedo made no statement and was released later in the afternoon with the help of a lawyer Escobedo had retained. Subsequently, Escobedo and his sister were arrested and taken to police headquarters. On the way, Escobedo requested to speak to his lawyer for advice. The lawyer arrived at police headquarters but was denied the opportunity to meet with Escobedo, who was being interrogated even though he kept

requesting to speak to his lawyer. Escobedo made statements that indicated knowledge of who committed the crime and, at trial, was convicted of murder. The Supreme Court favorably cited decisions of the New York Court of Appeals and found that the use of the statements at trial violated Escobedo's Sixth Amendment right to counsel.

"We have also learned the companion lesson of history that no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights. No system worth preserving should have to fear that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights. If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system. We hold, therefore, that where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied 'the Assistance of Counsel' in violation of the Sixth Amendment to the Constitution as 'made obligatory upon the States by the Fourteenth Amendment,' (*Gideon v. Wainwright*, 372 US, at 342) and that no statement elicited by the police during the interrogation may be used against him at a criminal trial. \* \* \* Nothing we have said today affects the powers of the police to investigate an 'unsolved crime,' \* \* \* We hold only that when the process shifts from investigatory to accusatory – when its focus is on the accused and its purpose is to elicit a confession – our adversary system begins to operate, and, under the circumstances here, the accused must be permitted to consult with his lawyer."

Miranda v. Arizona (1966):

The Court considered multiple cases in which statements were obtained from defendants and admitted at trial. Each of the defendants had been questioned while in custody and cut off from the outside world, without being given a full and effective warning of their rights at the outset of the interrogation process.

"We start here, as we did in Escobedo, with the premise that our holding is not an innovation in our jurisprudence, but is an application of principles long recognized and applied in other settings. We have undertaken a thorough re-examination of the Escobedo decision and the principles it announced, and we reaffirm it. That case was but an explication of basic rights that are enshrined in our Constitution – that 'No person . . . shall be compelled in any criminal case to be a witness against himself,' and that 'the accused shall . . . have the Assistance of Counsel' – rights which were put in jeopardy in that case through official overbearing. These precious rights were fixed in our Constitution only after centuries of persecution and struggle. \* \* \* Our holding \* \* \* briefly stated is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant

may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.”

The teacher may also wish to check [www.tourolaw.edu/patch](http://www.tourolaw.edu/patch) for summaries of these cases.

## Day 2 – Recognizing and Prioritizing Your Rights

### Prioritizing Your Rights

This exercise can be done in group (one large or several small), verbal form or in individual, written form. The teacher will ask students to pick five of the rights discussed on Day 1, prioritize them, and explain their selection and prioritization in detail -- “If you were one of the Framers of the Constitution and had to pick only five rights to put into the Bill of Rights, name which five you would select in order of their importance, and explain your choices.”

It does not matter which rights are selected for discussion; rather, the point of the exercise is to determine whether students truly appreciate the meaning and significance of each of the amendments.

### Recognizing Your Rights

Students should be provided with newspapers to review or given a homework assignment to find newspaper articles regarding recent high profile criminal cases in their community that may contain an indication that the rights of the accused were preserved.

For example, the articles may indicate that evidence was suppressed, which means that 4<sup>th</sup> Amendment search and seizure principles were at stake; or, the articles may simply provide quotations from the attorney for the accused, highlighting the fact that the accused was entitled to counsel.

## Day 3 – Visit from a Criminal Law Authority

The teacher should arrange for a criminal court judge (contact your local court using the Unified Court System’s web page for information), prosecutor (contact the local prosecutor’s office), or criminal defense attorney (contact the local Bar Association) to visit the classroom and discuss the practical aspects of rights of the accused.

The visitor will be able to answer questions regarding the arraignment process, Miranda rights, probable cause hearings, and other pre-trial evidentiary hearings that determine what evidence will be admissible against the criminal defendant. Students should be given the opportunity to work in groups or individually to formulate questions for the visitor. If time allows, the teacher may wish

to provide the speaker with a list of questions to answer before the visit. The visitor may also be willing to conduct mock hearings or mock interrogations to demonstrate how Constitutional rights protect people who are falsely accused of a crime.

### ASSESSMENT PLAN

The teacher may evaluate the students based on responses to the Worksheet, the prioritization exercise and the newspaper review. The teacher may also informally evaluate students based on their enthusiasm for and participation with the guest speaker.

Name: \_\_\_\_\_

Date: \_\_\_\_\_

### Bill of Rights and the Rights of the Accused

Directions: Indicate which Amendment from the Bill of Rights guarantees the each of the rights listed below.

1. trial by jury \_\_\_\_\_

2. no unreasonable search and seizure \_\_\_\_\_

3. representation by counsel \_\_\_\_\_

4. Grand Jury indictment \_\_\_\_\_

5. due process \_\_\_\_\_

and \_\_\_\_\_

6. no double jeopardy \_\_\_\_\_

7. the right to remain silent \_\_\_\_\_

8. cross-examination of witnesses \_\_\_\_\_

9. probable cause for arrest \_\_\_\_\_

10. no cruel and unusual punishment \_\_\_\_\_