

To Be Confronted With The Witnesses Against Him
by Charles Saxton

In the activity that follows, students in small groups are asked to take on the role of Supreme Court Justices, deciding whether the right of the accused to confront the witnesses against him has been abridged or denied. A brief summary of the case and the arguments for and against the defendant's appeal are provided. All the cases are fictional. Each group is required to make a decision, write majority and minority opinions, and report their decision to the rest of the class.

Since each group is dealing with the same basic issue while the specifics of the cases differ, a report of the groups' decisions and a full class discussion is the culmination of this activity.

Students will:

- 1.** Learn to apply the basic principles (in this case the right to confront witnesses) to specific situations.
- 2.** Learn the role the court has in weighing the rights of the accused against the protection of society.
- 3.** Practice writing a justification of their decision based on the principles spelled out in the Constitution.

Materials Needed: Copies of: **Student Handout: CASE STUDY 1**
Student Handout: CASE STUDY 2
Student Handout: CASE STUDY 3
Student Handout: CASE STUDY 4
ARTICLE VI (See Appended Materials)
TEACHER BACKGROUND

Time Needed: 2-3 days (groups willing to thoroughly discuss the issues involved may take more **time than this.**)

Grade Level: 11th-**12th grades**

RIGHTS OF THE ACCUSED TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM

Procedure:

1. Students should be made familiar with the rights of the accused as guaranteed in **the** Constitution.
2. Divide the class into groups. Since the Supreme Court has nine members, you may want to use groups of nine students and for classes of fewer than 36 use only some of the case studies provided. Or you may want to use smaller groups since historically the number on the Court has varied, but it is suggested that you use odd-numbered groups so that the chances of an evenly divided opinion are eliminated. For classes of more than 36 students, one case can be assigned to more **than** one group.
3. Hand out the **xeroxed copies of Student Handout: CASE STUDIES 1-4**. You may want to have copies of all cases available to all students since a class discussion will follow the small group decisions, but if xeroxing funds are limited, this is **not** essential.
4. Allow the students to read the specifics of the individual case to which they have **been** assigned.
5. Have the students meet in their groups and discuss their initial feelings about the cases and how the Constitution applies to their **particular** case.
6. When the students have reached an individual decision about the constitutionality of each case, have them poll their group to determine the **court's** decision.
7. When the group has voted and made its determination, those voting with the majority should confer to write a majority opinion explaining why they decided as they did, those voting in the minority opinion explaining why they feel the court has erred **in** its decision.
8. When all groups have voted (this may be done before or after the opinions are written), reconvene the entire class and have each group report its decision, allowing time to discuss the opinions and how they relate to **ONE ANOTHER**. (See **Teacher Material: Questions for Discussion**.)
9. When all written opinions have been handed in, publish or post the opinions **of the court**.

**RIGHTS OF THE ACCUSED
TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM**

TEACHER MATERIAL

??? QUESTIONS FOR Discussion ???

1. How did the rights of the accused to confront the witnesses against him (her) compare in each of these cases?
2. In which case was the accused's right to confront witnesses most severely **restricted** or denied?
3. Is this an important right? Why is it a part of the **Bill of Rights**?
4. Did the severity of the crime weigh in your decision as to whether or not the accused's rights had been violated? Should the severity of the crime be part of the consideration of the Justices?
5. In each of these cases a jury had found the individual guilty, yet in our system someone accused of a **crime is said to be innocent** until proven guilty. As a Justice in a case under appeal, did you consider these individuals guilty or innocent when they came before you? Should guilt or innocence be a consideration when a **Constitutional question is involved**?

Additional Resources

Some cases involving the right to confront witnesses that you may want to examine or have available to your students as they deliberate on these *questions* are:

Coy v. Iowa, 108 *SCt.* 2798 (1988)
Larson v. Minnesota, 111 *SCt.* 29 (1990)
U.S. v. Inadi, 106 **SCt.** 1121 (1986)

Note to Teachers

The case studies are all hypothetical, but they were designed to address real issues. They were also designed so that the most complete denial of the right to confront witnesses occurs in the most serious offense. This was done so that in the full class discussion the clash between the accused's right to due process and the society's right to protect itself come into clear **conflict**.

RIGHTS OF THE ACCUSED TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM

A series of garage fires were set destroying buildings and the contents of the garages. Gus Roebottom was arrested and convicted of arson. From her window, Ava Turner was an eyewitness to the last fire. Ms. Turner suffers from agoraphobia and has not left her house in over 35 years. In order to accommodate Ms. Turner's condition, the court allowed the prosecuting attorney and the defense attorney to cross-examine her in her home. The questions and responses were videotaped, and the tape was played for the jury. On the strength of Ms. Turner's testimony, the jury found Mr. Roebottom guilty of arson, and he was sentenced to 10 years in prison.

Mr. Roebottom then appealed the case to the State Supreme Court, but they upheld the conviction. The appeal has now reached you-The Supreme Court of the United States. Based on what you know of the 6th Amendment to the Constitution and its application to this case, you must *decide whether to uphold his conviction or overturn it and* order a new trial.

Mr. Roebottom's attorney has argued that the 6th Amendment's guarantee of his right to confront the witnesses against him has been violated because he was not present at the videotaping in Ms. Turner's home, and she did not appear in court. Because of this violation of his rights under the 6th Amendment, his conviction should be thrown out and a new trial ordered.

The attorney for the state has argued that because Mr. Roebottom's attorney had the opportunity to cross-examine Ms. Turner, this fulfilled the constitutional requirement that the accused have the right to confront the witnesses against him. Actual face-to-face confrontation in court was not required. Ms. Turner's psychiatrist has testified that she would be unable to function outside the security of her home. Furthermore, because she was the only eyewitness to the crime, without her testimony the state would have had insufficient evidence to bring Mr. Roebottom to trial. If Ms. Turner had appeared in court, Mr. Roebottom would have had no active role in questioning her; he was in court to view the videotape; his attorney had the opportunity to question Ms. Turner on his behalf. Therefore, his appeal shoULD BE DENIED.

Your Decision

Grant his appeal, and give **him a** new trial
or
Deny his appeal, and uphold his **conviction**

**RIGHTS OF THE ACCUSED
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Student Handout: CASE STUDY 2

Silvia Libertini and her former boyfriend were arrested for smuggling cocaine into the United States. Following their arrest, her boyfriend Albert Solomon was granted immunity in return for his testimony against Ms. Libertini. Mr. Solomon testified in court about Ms. Libertini's involvement with the drug smuggling, but before he could be cross-examined by Ms. Libertini's attorney, he fled the country, and efforts to return him have been unsuccessful. The judge in the case instructed the jury to ignore Mr. Solomon's testimony and continued with the trial. Mr. Libertini was found guilty and sentenced to 25 years in prison.

Ms. Libertini's attorney appealed the case to the Federal District Court of Appeals who upheld the conviction. She then appealed the case to you-the Supreme Court of the United States. Based on your interpretation of the 6th Amendment and its application to this case, you must *decide whether to uphold her conviction or overturn it and* order a new trial.

The appellant's attorney has argued that since Mr. Solomon was allowed to testify against Ms. Libertini, but her attorney had no opportunity to cross-examine this witness, her right to confront the witness against her was abridged. At this point the judge should have ruled a mistrial and had a new jury impaneled. Although the jury was instructed to ignore Mr. Solomon's testimony, Ms. Libertini's attorney has argued that this is for all practical purposes impossible. Therefore, she asks that the conviction be overturned and a new trial ordered.

The attorney for the state has argued that the judge acted correctly in instructing the jury to ignore Mr. Solomon's testimony, that the state made every effort to have Mr. Solomon returned for testimony, that there was other evidence in addition to Mr. Solomon's testimony, and that a new trial would have involved additional time and expense. A new trial without Mr. Solomon's testimony would have put the state at a distinct disadvantage. Mr. Solomon was granted immunity originally because it was believed that he had played a small role in the drug smuggling and that the information he would provide would be important in obtaining a conviction against Ms. Libertini. Therefore, a new trial without his testimony would likely have the effect of setting Ms. Libertini free. To avoid this, he is asking that the court deny her appeal and uphold **THE CONVICTION**.

Your Decision

Grant her appeal, and give **her a** new trial

or

Deny her appeal, and uphold **her conviction**

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Student Handout: CASE STUDY 3

Omar Rahjiv owned a prized and valuable stamp collection. He alleged that it was stolen from him by his cleaning woman Francis Fonda. Mr. Rahjiv testified in court as to his suspicions about Ms. Fonda and his reasons for those suspicions. The court adjourned before Ms. Fonda's attorney could cross-examine him. During the night Mr. Rahjiv had a stroke. The trial was suspended until he was able to return to testify, but on his return he had lost the ability to speak or write. He was allowed to respond to cross-examination by nodding his head. At the conclusion of the trial, the jury found Ms. Fonda guilty of stealing the stamp collection, and she was sentenced to seven years in prison.

Ms. Fonda appealed her conviction to the state supreme court which upheld the guilty verdict. She then appealed the case to you-the United States Supreme Court. Based on your interpretation of the 6th Amendment and its application to this case, you must *decide whether to uphold her conviction or overturn it and* order a new trial.

Ms. Fonda's attorney has argued that the restrictions placed upon her in her cross-examination of Mr. Rahjiv in effect denied her the right to confront the witness against her. While the prosecuting attorney had the opportunity to allow Mr. Rahjiv to elaborate in his own words about the details of the case, she could obtain only "yes" or "no" responses from him on cross-examination. While the judge suspended the trial, Ms. Fonda's attorney argues that a mistrial should have been ruled and a new trial ordered at which time both attorneys would have obtained testimony from Mr. Rahjiv under the same conditions. Since this was not done, Ms. Fonda's attorney is asking you to overturn her conviction and order a new trial to ensure that Ms. Fonda is tried receiving all the rights guaranteed to her by the 6th Amendment to the Constitution.

The attorney for the state has argued that the trial was conducted in good faith. The judge did all he could to ensure that Ms. Fonda received a fair trial. Under the circumstances, no more could have been expected. To rule a mistrial and begin the trial anew would have involved additional time and taxpayer expense. Because Ms. Fonda was present in court when Mr. Rahjiv gave his testimony, and since her lawyer had the opportunity to cross-examine Mr. Rahjiv, the state has provided to Ms. Fonda all the protections guaranteed her under the 6th Amendment and therefore she has no grounds on which to appeal her conviction. It **shOULD BE UPHELD**.

Your Decision

Grant her appeal, and give **her a** new trial
or
Deny her appeal, and uphold **her conviction**

RIGHTS OF THE ACCUSED
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Student Handout: CASE STUDY 4

A series of brutal murders had taken place, but police had few leads and no witnesses. Then in the most recent murder, police found a four-year-old boy hidden in a closet at the murder scene. The boy was able to identify an individual in a police photo as the killer of his mother, but he was so traumatized by witnessing the brutal murder that the judge allowed him, for his own protection, to tell his story on videotape and had the tape played in court. Based on the boy's story, Sed Thurman was found guilty of murder and sentenced to be executed.

Mr. Thurman's attorney appealed the case to the state Supreme Court of his state which upheld the conviction. The case was then appealed to you-the Supreme Court of the United States. Based on your interpretation of the 6th Amendment and its application to this case, you must *decide whether to uphold the conviction or overturn it and* order a new trial.

Mr. Thurman's attorney has argued that the 6th Amendment expressly guarantees anyone accused of a crime the right to confront the witnesses against him. Since the boy was the only witness in the case, and since he neither appeared in court nor was available for cross-examination, Mr. Thurman was denied an essential right of the accused. Because of this, Mr. Thurman's trial and conviction were unconstitutional, lacking the essential fairness and justice that our system is supposed to provide. Therefore the finding of the court should be overturned and Mr. Thurman should receive a new trial.

The attorney for the state has argued that the testimony of the boy is essential to convince the jury of Mr. Thurman's guilt, but that the boy had already experienced such severe trauma in witnessing the murder, that to force him to appear in court, to confront Mr. Thurman, and to have to answer questions from Mr. Thurman's attorney would have been overly cruel on the part of the state. Furthermore, it is in the interest of the society to remove from its midst the kind of people who perpetrate these heinous crimes, and so the court must be flexible in its interpretation of the rights of those accused of these crimes. If Mr. Thurman's rights were restricted, such a restriction was necessary to bring the man who committed these brutal murders to justice. To order a new trial would mean either trying Mr. Thurman without the boy's testimony or forcing the boy to endure the ordeal of a trial, forcing him to relive the horrors of his mother's murder. Therefore the court should uphold his conviction and allow the state to carry out **ITS SENTENCE**.

Your Decision

Grant the appeal, and give **him a** new trial

or

Deny the appeal, and uphold his conviction