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Dear Teacher,

Thank you for inviting me to speak in your school. I look forward to talking with your students and developing a meaningful dialogue with them.

The theme of my discussion will concern the choices that we make in life and how these choices, especially those made by our youth may influence our future.

Throughout my career as a judge, I have witnessed the potentially devastating impact that poor choices can have on people. While I realize that my visit to your school will not solve the problem, I do hope that we can begin a positive discussion on learning how to make good decisions in life, especially when it involves our judicial system.

Attached is a lesson plan that has worked successfully for me in the past. The lesson will involve preparation on your part in raising certain issues with your students. The pre-visit lesson may one to three class periods, depending upon your students, prior to my visit. The lesson is designed to open the discussion about a few important issues, among them Constitutional rights and the consequences of the choices made by youth in the legal system. I will address these issues with the students and be able to answer their questions.

If you have any questions, please contact my office.

I look forward to my visit.

Cordially,

Ben C. Clyburn

Chief Judge of the District Court of Maryland

The Choices We Make

Life is about making choices and living with the consequences of those choices. It is not always easy to make the correct choice and the legal consequences can be severe.

Teachers: This lesson is divided into 3 parts.

Part 1 involves a class discussion, where the teacher reads items to the class, asks questions and discusses answers.

Part 2 provides students with an investigation into a court case, where students read and discuss materials in groups or as a class.

Part 3 involves a discussion with the Chief Judge regarding the issues raised

Time Frame: This lesson will take 1-3 class periods prior to the classroom visit. The teacher should adapt the discussion to the appropriate level of the students.

Objectives:

To gain an understanding of the 5 and 14th Amendments to the Constitution of the US.

To understand how the legal consequences of actions and how the law may impact your life.

Teacher

General Introduction: Teacher should introduce the concept that life is about making choices and that we must live with the consequences of those choices. Everyday we make choices. Some are simple, such as what and when to eat, to what to wear and who to hang out with after school. Some choices are more difficult, such as career choices or selecting friends. It is not always easy to make the correct choice and the legal consequences can be severe.

The following scenarios, based upon actual cases, raise a number of questions regarding friends, peer pressure and the use of alcohol and drugs. Discuss as appropriate with students.

Scenario 1: A Decision That Shaped a Life

You are 14 years old. It is Superbowl Sunday and you are over at your friend's house playing video games and watching TV. You are drinking and using drugs. A few of the older youth hatch a plan to burglarize a neighbor's house. You do not want to stay behind alone, so you tag along.

You take your time going over to the neighbors and talk about what you are going to do. You do not want to be called a "scaredy-cat"--- your reputation is very important to you, especially in the eyes of older youth.

What do you do? You have choices. (Discuss the various options: leave, call the police, go with friends, etc. What are the consequences of each action? Loss of face, embarrassment, not getting into trouble, getting into trouble, etc.)

One boy takes off. Another boy kicks in the door, and then takes off.

You expect to find the house empty, but find out you are wrong. Two people are home. When you discover this, you hide behind a table. The two older boys--- one is 17 and the other is 19--- decide to kill the people. You watch in horror as your friends go berserk and kill both people.

You have never been in trouble with the law.

What do you do? You have choices to make? Discuss the possible choices of the youth and the consequences, especially for the 14 year old and the boy who kicked in the door. Do you think they should be charged with a crime? What crime? What do you think happened?

The preceding incident occurred in Florida. Alvin Morton, then 19, was sentenced to death. The 17 year old was given a life sentence with no possibility of parole for 50 years. The boy who kicked in the door sentenced to 20 years in prison for being an accessory to murder and conspiracy to commit armed robbery. The 14 year old was given a life sentence with no possibility of parole for 25 years. He will be eligible for parole when he is 39, but he is not optimistic that the parole board will ever let him out. If he committed the crime after 1995, when Florida eliminated the possibility of parole for people sentenced to life, he would not even have that hope.

What do you think? Do you think the sentences were fair? What can you learn from this? (Pick your friends wisely, be careful about using drugs and alcohol, think about consequences, etc.)

In your discussion, discuss how a person's concept of fairness may be different than the law. While one may argue that the sentence imposed on the 14 year old and the boy who kicked in the door was not fair, the sentence imposed was "just" because it fell within the guidelines mandated by the law.

The 14 year old was high on drugs and alcohol and decided to “tag along” because he did not want to be called a ‘scaredy-cat.” The boy said, “This decision shaped my life since.”

When considering consequences, one needs to consider what is fair and what is the law. When a person appears in a court, judgment is based upon the facts and the law, not upon emotions or feelings.

The following scenario illustrates how an individual’s sense of fairness may differ from the law.

Scenario 2: Is the Provisional Driver’s License in Maryland Fair?

The State of Maryland recently passed a law that prohibits any driver under the age of 18 with a learner’s permit to use a cell phone or any other wireless communication device while driving. The law does not impact drivers over the age of 18.

The law also prevents driver’s who obtain their provisional license from carrying any passenger under the age of 18, except if the passenger is a direct family member. In other words, a teen driver with a provisional license can’t have any friends in the car while driving for the first 5 months of the provisional license.

Is this fair? Other drivers may use cell phones and drive with passengers. Does the law discriminate against teens? Yes, it does but doesn’t violate Constitutional rights. While teens may not consider the law fair, it is the law.

As you consider the next case, you will need to distinguish between what you feel is right and what the law states.

Scenario 3: Eric and His Constitutional Rights

The following is based upon an actual case that was heard in the Maryland Court of Special Appeals. The case involves a number of important issues. The teacher reads the first section to the class and discusses the issues raised. The teacher then distributes to the students a case study. The students read the case carefully, then decide whether or not Eric's Constitutional rights were violated. Finally, the class needs to decide Eric's fate. What should happen to him? What should the consequences be for his friends?

(Teacher reads section to class and discusses issues raised.)

Initial class discussion

On November 11, 1995, Tiffany, fifteen-years-old, and her friend Melanie went to Eric's house, a fourteen year old, where they drank alcoholic beverages with Eric and three other boys: Dante, Lewis, and Ricky. All were less than eighteen years old. Tiffany consumed approximately one bottle of fortified wine within an hour, and soon became unconscious. She began to vomit in the house. Eric does not have permission to have friends over, nor is he allowed to drink.

What should the boys and girl do with Tiffany? What other options exist; what might they do? What are the consequences of each possible action?

Eric directed the boys to carry Tiffany outside to the porch after she began to vomit. The boys went back into the house "because it started raining." Eric then dragged Tiffany to the woods so that his mother would not discover her and so that she would not "mess up" the house with vomit. Dante went out to check on Tiffany, and suggested to Eric that he call 911. Eric said no "because I knew it would be a whole bunch of like police cars and stuff, and I didn't want them coming to the house." Dante, instead, called the sheriff but gave an incorrect address that Eric had given him because Eric did not want the police coming to his house. Eric would say: "I thought it was close to, you know, where she was at."

Eric said that he had wanted to check on Tiffany once more that evening and wanted to bring her back to the basement, but that his mother forbade him to leave the house. Eric did not tell his mother why he wanted to go outside and never checked on Tiffany.

Neighbors found Tiffany's body the next morning.

Student Case Study: Eric and His Constitutional Rights
(Distribute to students.)

Use the basic facts below to 1) present a case that the police violated Eric's Constitutional rights or 2) present the State's case that his rights were not violated. Once both sides are discussed, decide which side do you think will win.

The Facts: The Investigation

The police arrived at Eric's house and asked his mother if they could talk to him. Eric's mother asked the police if he needed a lawyer. The answer was no. The police asked Eric, along with his mother, to go to the police station. The police had interviewed other witnesses and asked Eric if he would agree to an interview. Eric was not forced to talk to any of the police officers, and was told that he does not have to speak to the police, but that his discussion would help the police in the investigation.

The police asked Eric's mother for permission to interview Eric, while she watched and listened via a monitor, and she agreed. The police then asked Eric, in his mother's presence, if he would be willing to speak with the police alone, on tape. Eric agreed. Eric appeared "coherent" and not under the influence of drugs or alcohol during the interview.

His mother did not ask the police if Eric needed a lawyer when he was being questioned at the police station and the police never raised the issue. The police did not know at this time the cause of Tiffany's death; they would need to know the cause before charges could be filed. The police assured Eric that no one would be arrested that day, that he could go home after questioning and that they were just interviewing people about the incident. The police did not read Eric or any other youth their Miranda warnings.

The following day Eric was arrested and charged. Eric's lawyer would argue that his testimony the day before was inadmissible in court because he was not made aware of his Constitutional rights. The state of Maryland argued that his rights were not violated.

Were Eric's constitutional rights violated?

What are the two basic arguments? **Attention: Read every word carefully.**

Here are the basic facts upon which the case was built:

1. The Fifth Amendment to the Constitution states:

No person 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...

The Fifth Amendment contains a guarantee of basic due process applicable only to actions of the federal government. The Fourteenth Amendment contains the same phrase, but expressly applies to the States: *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.*

The Supreme Court has interpreted the two clauses identically, meaning there is no substantial difference in protection from federal or State action.

2. The **Miranda warning** is given by police in the United States to suspects who have been placed in custody or have been arrested. The Miranda warnings were mandated by the 1966 United States Supreme Court decision in the case of *Miranda v. Arizona*. They are a means of protecting a criminal suspect's Fifth Amendment right not to be subjected to coerced self-incrimination or to their right to silence as the police are questioning him or her.

3. Though every U.S. jurisdiction has its own regulations regarding what, precisely, must be said to a person when they are arrested, the typical warning is as follows:

You have the right to remain silent. If you give up that right, anything you say can and will be used against you in a court of law. You have the right to an attorney and to have an attorney present during questioning. If you cannot afford an attorney, one will be provided to you at no cost. During any questioning, you may decide at any time to exercise these rights, not answer any questions or make any statements.

For Teacher: Teacher should raise the following issues with the class as an aide for the students.

Discussion points

1. The central issue which must be decided is at what point was Eric in “the custody” of the police. In a custodial situation, Miranda warnings are required. A custodial situation generally involves: “Whether the suspect is physically deprived of his freedom of action in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by such interrogation.” (Court of Appeals, Whitfield v. State, 287 Md.)

Example: A 10 year old is picked up as a runaway and transported to the police station. The police do not inform him that he is free to leave, nor tell him his mother is in the other room waiting for him. Is the child in custody?

In the case of the runaway, the court decided that he was in custody for Miranda purposes because he “reasonably perceived himself to be in the custody of the police.”

This is the central question in Eric’s case: Was he in custody?

2. The second issue to be examined: Was Eric’s discussion and subsequent confession to the police voluntary? Eric’s lawyer argued that his mother was misinformed about needing a lawyer. The State argued that police did not need to inform her of Eric’s Miranda rights at the time. Which was correct?

This issue raises an important point: If the police question a person, should the person answer the questions?

Teacher: Raise the following question with students after they complete the above task.

3. What should the consequences be for Eric?

Eric was convicted of “depraved heart murder,” meaning the murder was “the willful doing of a dangerous and reckless act with wanton indifference to the consequences and perils involved.” His actions created a situation, which had a very high risk of death or serious injury to another. Although Eric may not have intended to harm Tiffany, he acted in a way that showed extreme indifference to the value of human life.

Was this charge fair? Should the fact that Eric was drinking and under the influence of alcohol be considered in the sentence? What should be done with the other youth involved?

Presented by Chief Judge
in class



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How an individual is processed in a criminal case

1. Investigative Phase: What can a police officer do during an investigation of a crime?
2. Custodial Phase: When is a suspect in custody? Why is this important?
3. What happens during the custodial phase? What are your rights?
4. What is jail? What would jail time mean to you?
5. How do we keep youth from going to jail?

