

Guaranteeing Just Trials in the 21st Century

Task – Students will examine past, historical cases to define effective counsel in the context of the 6th Amendment and the Strickland test before applying their definition to a new, modern case to determine a defendant’s ability to appeal their conviction.

Unit: Modern America; 21st Century

Persistent Issue: What should society do to promote fairness and justice for those living in its jurisdiction?

Central Question: How should the US judicial system guarantee a fair trial in the twenty-first century?

Lesson Purposes:

1. Define the 6th Amendment and the Strickland test.
2. Determine the effectiveness/ineffectiveness of counsel’s actions in a variety of cases.
3. Apply a working definition of effective counsel and the Strickland test to determine if a defendant should receive an appeal based on ineffective counsel.

Lesson 1: Grabber

Lesson 2: Overview of Bill of Rights

Lesson 3: Amendment 5 Effective Counsel and Public Defenders

Lesson 4: 6th Amendment Effective Counsel (Research Lesson)

Lesson 5: 7th and 8th Amendments Fair Juries and Fair Punishments

Lesson 6: Culminating Activity Social Media Campaign

Lesson 1: Teacher will lead students through the grabber using the **Ghostbusters II scene scaffold**. As students work in small groups, writing down examples of effective and ineffective counsel on sticky notes to place on a T-chart on the board, it is important for students to articulate the following:

- Definition of counsel
- Definition of effective
- 6th amendment that protects right to counsel
- Effects of effective/ineffective counsel
- Examples of effective/ineffective counsel
- Strickland test of Supreme Court that defines ineffective counsel: 1. Objectively deficient 2. Reasonable probability that a competent attorney would lead to different outcome
- Definitions of court-appointed attorneys and the general appeals process.

Teacher may use this **intro powerpoint** to go through these ideas. By the end of the grabber, students should have a working list of what constitutes effective or ineffective counsel. Teacher can remove irrelevant examples students originally created after they have learned about the 6th amendment and the Strickland test.

Lesson 2: Teacher will go over the Bill of Rights Amendments with students, specifically going over the rights of the accused in the 4th, 5th, 6th, 7th, and 8th Amendments via powerpoint lecture. Teacher will emphasize the historical context of these amendments (British rule) and ask why these amendments are still relevant to citizens

today. Teacher may give example scenarios and have students guess which amendment is being described. Students may play review games like Kahoot to match the amendment to the right given. Students will complete an exit ticket to assess their understanding of the amendments.

Lesson 3: Teacher will use provided PIH on effective counsel in context of public defenders to illustrate the importance of the 5th Amendment. Students will articulate the challenges and possible solutions for public defender burn out in response groups with a series of three possible solutions. Teacher will evaluate students in a group discussion on the benefits/costs of each solution and may also require an exit ticket to assess students' personal views.

Lesson 4 (Research Lesson): Teacher will begin by a review of the grabber and the list the class created on what makes effective counsel. Teacher will again ask students to articulate why it is important to have effective counsel (students may refer to grabber or from previous lessons on public defender burnout). Teacher will inform students they are going to be refining their definition today by looking at three/four different cases, then serve again as a member of the appeals court in the modern trial they've seen before. Now with better understanding of effective counsel and the chance to work with other professionals (classmates), students will be better equipped to decide the fate of the defendant and whether they should receive a mistrial due to ineffective counsel.

Teacher will provide students with the **Case Analysis Chart** and the **three (or four) cases** and place students in groups of two to four. The teacher may decide to use either the Scottsboro case and the McVeigh case for the first cases representing good/bad counsel, then re-introduce the Strickland case, before having students complete the two "muddy" cases (Dew and Van Hook). The teacher may use discretion to assign groups to only look for the first column (effective counsel) or the second column (ineffective counsel), or assign the entire DRC to each group. The students' goal should be to find at least one example of effective and ineffective counsel in every case (preferably as many as possible). The teacher will remind students that the final column, did the attorney pass the Strickland test and was this a fair trial, is helping them create a more refined list of what it means to have effective counsel or not.

If time allows, and as a differentiation strategy for advanced learners, the teacher may also provide this scaffold to deepen student thinking, **What Would You Do Differently?** In this scaffold, students working in their groups would take the cases from the DRC with ineffective counsel and write out ways that they would defend their client to provide better counsel. The scaffold requires students to use their understanding of the Strickland Test in order to brainstorm how to create a defense that both avoids deficiency and prejudice.

After groups have worked through all three/four cases, teacher will call the group back as a whole to review the original list created in the grabber. Based on the cases, students will articulate stronger definitions of what it means to be effective or not as a counselor. Teacher will remind students of the Strickland test that the Supreme Court uses to determine ineffectiveness as well. Teacher will spend a good amount of time in the middle and last cases to explain how the Court can still see mistake-making counsel as still effective, and losing counsel as still effective as well.

List of Effective Counsel Characteristics:

- Knowledgeable of court procedures and the law and rights
- Ethical and professional conduct
- Not prejudiced against defendant
- Loyal to client and client's wellbeing; protects client confidentiality
- Enough time and resources to prepare defense
- Strategic trial decisions
- Thorough review of evidence
- Hardworking
- Persuasive and confident in front of court - strong court performance
- Clear communication with client

Finally, teacher will provide students with the final modern case. Teacher may use the **Elwood Dalton case** or the fictional **Dubois case**. Teacher will remind students they may have seen this case before, but as in real life, the court appeal judges may first read a case, then do background case reading to make their final decision. Students will work in groups of 4 to re-read the case, and using the protocol on the DRC, fill out what makes effective counsel in this case and what makes ineffective counsel, and why it matters to the final outcome. Students may come to a decision as a four-person court of appeals, then share out with the class in a final classroom discussion. Majority wins as a class on whether the defendant receives a new trial based on ineffective counsel. Teacher will reveal the courts' decisions in regards to the case using this [timeline](#) (if using the real Adnan Syed case).

Teacher will reveal the overall votes and tell students that even if they didn't agree with the final outcome, they will get the chance to fully explain their views in a letter to the state appeals court about the case. Teacher will provide students with the **Letter to the State Appeals Court** scaffold and provide students with time in class to write the five-paragraph essay, using the **model** provided about Confederate Secession.

Lesson 5: Students will explain the importance of fair juries and fair punishments using video clips from the movie **Just Mercy** and from the Equal Justice Initiative website. Students will then read a series of scenarios describing a punishment in the criminal justice system and have to decide whether that punishment took place in the United States or in another country, based on the definition of cruel and unusual punishment in the 8th amendment. As a final task, students will read the case of the caning of the American student in Singapore and write an exit ticket on whether the student received a fair punishment or not.

Lesson 6: In the culminating activity, students will answer the Central Question on what constitutes a fair trial in the US today. They will do this in pairs by creating a social media campaign that describes the aspects of a fair trial. They will have a choice board in what type of social media they create in Canva or in another software: short videos/TikTok, Instagram story, Instagram post, website, email blast, hashtags. Teacher will decide a minimum amount of content students must create and use the associated rubric to assess whether

students clearly articulated what makes a fair trial and utilized social media to make a persuasive argument for what reforms the criminal justice system needs.