

# AMERICAN CONSTITUTION SOCIETY (ACS) CONSTITUTION IN THE CLASSROOM

## SIXTH AMENDMENT RIGHT TO COUNSEL ELEMENTARY (2-5) SCHOOL CURRICULUM — SPRING 2013

### Lesson Plan Overview

*Note: times are approximate. You may or may not be able to complete within the class period. Be flexible and plan ahead — know which activities to shorten/skip if you are running short on time and have extra activities planned in case you move through the curriculum too quickly.*

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Before the lesson: Ask the teacher if there is a seating chart available.

### **1. Introduction** (3-5 min.)

*Briefly introduce yourself. If the class is small, ask the students to introduce themselves.*

Think about the first time you went to a friend's home (or your friend came over to your home).

**1. Did your friend have any different rules at her home than you do at yours? Who can give me an example of a different rule your friend had at her home?** [*Call on a few students and ask them for examples, and write a few on the board.*] E.g.

- Whether students are allowed to wear shoes inside the house
- Whether students have to finish their homework before dinner
- Whether students are allowed to watch scary movies
- What time students have to go to bed

**2. What are some rules that everyone has at their home?** [*Call on a few students and ask them for examples.*] E.g.

- Don't steal
- Don't hurt people

Today we're going to talk about lawyers and what they do — one of the things they do is help us understand and follow laws so that we don't get in trouble. Lawyers also help protect our rights.

## **2. Background** (5-10 min.)

*The ACS Constitution Primer from fall 2012 may be helpful for this section as well:*  
[www.acslaw.org/sites/default/files/pdf/Virelli%20ACS%20Curriculum%20for%20Constitution%20Day.pdf](http://www.acslaw.org/sites/default/files/pdf/Virelli%20ACS%20Curriculum%20for%20Constitution%20Day.pdf)

- 1. Who knows what laws are?** *[Ask for students to answer. Try to elicit something that gets close to this and then summarize their answer as the following.]*

Laws are rules for a community. Just like we have rules at home — like the rule that we can't take something from our brother without asking his permission, we have rules in our community — a law that says we can't take a soda from a store without paying for it for example. They are created by Congress and the President.

- 2. What about rights: what are they?** *[Ask for students to answer. Try to elicit something that gets close to this and then summarize their answer as the following.]*

A right is a freedom protected by law.

United States citizens have a number of rights. Many of them come from the Bill of Rights, which is part of the United States Constitution. The Constitution is the most important set of laws in the United States. No other laws can violate it.

- 3. Can anyone give an example of a right we have in the United States?** *[Ask for students to answer.] E.g. Speech, religion, voting*

Another right we have in the United States, is the right to a lawyer. If someone is accused of breaking the law, she has the right to have a lawyer to explain the law and help defend her. This is called the right to counsel. (Counsel is another word for lawyer.)

- 4. Discussion Question: Is it important to know the laws you have to follow and the rights you have?**

- **Why — what happens if you go to your friend's house and you break a rule, even though you don't know the rules?**
- **When you go to your friend's house for the first time, who tells you the rules?**
- **Has anyone ever been accused of breaking a rule when it was someone else who did it? Raise your hand if that's happened to you.**

### **3. The Case of Jasper Madison (20 min.)**

*Read the following hypothetical case to the class (2-3 min.)*

The same thing happened in the make-believe story of Jasper Madison. Jasper was a kid like you. He was 11, had never been in trouble before, went to the local school, and lived with his mother.

One day, Jasper borrowed his mother's cell phone. Before school, Jasper and his friend Franklin were playing with the phone when Franklin took the phone and used it to send a rude text message to the school principal. Jasper laughed nervously while he watched what his friend was doing. After he sent the message, Franklin gave the phone back to Jasper.

The principal did not think it was funny though, and called the police. The police tracked the telephone number back to Jasper and arrested him at school, with the cell phone in his pocket. In the middle of class, he was handcuffed and marched to the police station. The police did not tell his mother or anyone else, and Jasper spent that first night on a hard mattress in jail.

The next day, Jasper was brought in front of a judge in a courtroom. Lots of other people Jasper didn't know were in the room but Jasper sat at a small table by himself, in front of the judge. After he sat down, someone handed Jasper a piece of paper that said, "Jasper Madison is accused of unlawful transmission of an obscene message." Jasper did not know what that meant and there was no one to tell him what it meant.

Right after Jasper read the paper, the judge told the first witness to step forward. Jasper turned around and saw his principal walking into the courtroom. The principal raised his right hand and promised the judge he would tell the truth. Then he told the judge he received a rude text message from Jasper's mother's phone and thought it was Jasper who sent it. Next the judge asked a police officer to come in to the courtroom. The police officer, Jasper remembered, was the same person who had arrested him in class. The officer pointed at Jasper and told the judge he had found the phone used to message the principal in Jasper's pocket. He told the judge it had Jasper's fingerprints on it and was Jasper's phone. The judge then turned to Jasper and boomed, "the Defendant may proceed." Jasper was scared; he didn't know the judge meant it was his turn to tell his side of the story. So he sat there quietly. The judge then said, "Since you have nothing to say and the principal and police officer both say you sent the message, I find you guilty and sentence you one year in jail."

### **Jasper Madison Discussion Questions (~15 min.)**

Divide the students into groups. You can divide them however is most convenient or at the suggestion of the teacher as long as there are at least four groups. Assign each group one of these questions (it's okay if you have to give the same question to more than one group). Give each group 3-5 minutes to brainstorm some answers then have each group present their answers to the question while you or the teacher summarizes them on the board. Divide the answers up in columns by question so you can show how the answers in each column relate to the answers in other columns illustrating the connection between fairness and assistance of counsel.

- 1) Does what happened to Jasper seem fair? Why or why not? E.g.**
  - Franklin did it, not Jasper.
  - Jasper didn't get to tell his side of the story.
  - Franklin didn't testify.
  - Jasper didn't know what "unlawful transmission of an obscene message" meant.
  
- 2) If you were Jasper, what would you want to happen? E.g.**
  - Present my side of the story/mount a defense
  - Have Franklin testify
  - Question the police officer and principal
  - Explain why Jasper's fingerprints were on the phone
  - Call mom
  
- 3) Is there anyone who could've helped Jasper when he was arrested or in court? How?**
  - A lawyer (see next question).
  - Mom — prompt the student on what mom would do to help; then ask what other kind of person could help Jasper with those sorts of things
  
- 4) What if Jasper had a lawyer sitting next to him helping him? What do you think a lawyer could have done to help Jasper? E.g.**
  - Question the police officer
  - Question the principal
  - Tell Jasper what the charges meant (explain the law) & explain what was going on in the courtroom (the procedure)
  - Summon other witnesses
  - Call Jasper's mom

Use the answers on the board to connect issues across all four questions and explain that if Jasper had a lawyer, many of the things that made this unfair might not have happened.

## **4. The Sixth Amendment (10-15 min.)**

### **1. What is a right?**

A right is a freedom protected by law.

### **2. Where are some rights listed?**

*Look for:* Bill of Rights or Constitution.

*Pass out Handout 1 (or copies of the Constitution and ask the students to turn to the page with the Sixth Amendment).*

This is called the Sixth Amendment. It is part of the Bill of Rights in the United States Constitution. It lists some of the rights we have in the United States. It says, in part, *[read the excerpt or, if you passed out copies of the Constitution, read the full text of the 6<sup>th</sup> then draw their attention to the phrase “assistance of counsel.”]*

### **3. What does it mean that we have the right to assistance of counsel? [Try to guide the class to a hash out a response similar to the one below; it may be helpful to break up some of the words used and use the board.]**

Remember that counsel means lawyer. And a lawyer is someone who knows the law and uses that knowledge to help us to understand and follow the law and to protect our rights.

The right to assistance of counsel is the right to have a lawyer help you with your case. This means Jasper can have a lawyer help him with his case by explaining the law and helping him argue that he didn't send the text message. Everyone has this right, whether you are an adult or a kid.

### **Discussion questions to extricate some of the limitations of the Right to Counsel**

### **4. What if the judge in Jasper's case had allowed Jasper to hire a lawyer but Jasper hadn't saved up enough of his allowance to pay for one — should he still get a lawyer?**

Fifty years ago the United States Supreme Court — the highest court in the United States — decided the very important case of Clarence Gideon. Gideon's case said that the right to counsel is so important to a fair trial that even if someone can't afford a lawyer, that person must be given a lawyer for free. So even if Jasper couldn't afford a lawyer, he would still get one.

- **What would happen if only people with lots of money got a lawyer? Would that be fair?**
5. **Look at the first part of the Sixth Amendment. When does it say a person has the right to counsel? “In all criminal prosecutions”**
- **What does that mean?** Criminal means breaking the law. A criminal prosecution is when someone is accused of breaking the law and (usually) could go to jail.
  - **What if, instead of being prosecuted in court, Jasper’s teacher accused him of violating school rules and gave him detention for a week. Should Jasper have the right to counsel when he speaks with his teacher?** Jasper would not have the right to counsel when he speaks with a teacher because he is accused of breaking school rules, not the law, and is not facing jail time.
6. **What if this had happened in another country? Would the Sixth Amendment give Jasper the right to counsel in another country?**
- **Where is the Sixth Amendment?** In the Constitution.
  - **Whose Constitution?** The United States’.
  - The United States Constitution only applies in the United States. Other countries have different laws and different rights, much like there are different rights and rules in your friends’ homes than in your home. Many countries protect the right to counsel like the United States, but not all.

## **5. Wrap-up/Review (5-10 min.)**

*Ask the students to define each of these key terms:*

- **Law** – community rules created by Congress and the President
- **Right** – a freedom protected by law
- **Constitution** – the highest (most important) set of laws and freedoms
- **Lawyer** – someone who knows the law and uses that knowledge to help us understand and follow the laws and to protect our rights
- **Counsel** – another word for lawyer
- **Right to Counsel** – the right

*Ask the students where, when, and for whom the right to counsel applies, and where the right to counsel can be found. If you have extra time, there are additional hypos below as well.*

- **Where** – in the United States
- **When** – in criminal prosecutions
- **For whom** – both adults and kids
- **Where the RTC can be found** – the Sixth Amendment (of the Bill of Rights of the) of the U.S. Constitution

*Ask if there are any questions about the 6th Amendment, the Constitution, or being a lawyer.*

## **6. Additional Hypos (In case there is extra time)**

### **Delinquent David Denies Donut-Dabbling**

Your older brother David just graduated high school and is about to start college. This summer he gets a job working at Dippin' Donuts. A few weeks into his job, his boss notices jelly donuts have been going missing. Jelly donuts are David's favorite so his boss suspects him of stealing and eating them. When David's boss confronts him about the missing donuts, David says his co-worker Sally was the culprit. David's boss agrees to hold a mock trial the next day at which he will sit as judge and David can call Sally as a witness, but refuses to let David bring a lawyer. At the dinner table that evening, David tells mom and dad "It's illegal. The Sixth Amendment requires my boss to let me bring a lawyer." What do you say?

### **Finding of Fault Fails to Frustrate Franklin's Freedom (Jasper Jailed)**

Franklin, Jasper's friend, is not prosecuted for the text message. A few days after Jasper goes to jail, the superintendent calls Franklin into her office. The superintendent tells Franklin that she is going to hold a hearing to see if Franklin was involved with text messaging the principal. She says that if she concludes Franklin was involved, he will be suspended and not be able to go on the class trip to the state capitol next week. Franklin tells you he believes the superintendent has to let him bring a lawyer to the hearing. Do you agree?

### **Rash Rob Robs Robabank**

Thinking the bank's name too inviting, French bank robber Rash Rob robs your local Robabank. Unfortunately for Rob, local police officers are in the bank making their own withdrawal and catch him in the act. Rob immediately confesses and asks the police for leniency. Bank security cameras catch the confession on tape. The police arrest Rob and take him to court where his confession is played to the judge. Realizing the sentence he faces, Rob reconsiders his confession and asks for a lawyer. Having seen the tape, the judge denies the request, telling Rob he has already confessed and is not a U.S. citizen, thus he has no right to a lawyer at trial. Was the judge correct?

**Handout 1: Sixth Amendment of the United States Constitution**

“In all criminal prosecutions, the accused shall enjoy the right to ... have the assistance of counsel for his defense.”