

The Right to Counsel
by Gerald Rueckert and Art Hesse

The U. S. Constitution states, "*the accused shall enjoy the right to have the assistance of counsel for his defense.*" This phrase does not specify whether or not the accused will have counsel if he has no money to pay for one, nor does it state at what time during the accused's passage through the criminal justice system he has the right to counsel.

Students will:

1. Learn how the right to counsel, when charged with a crime, has evolved over the past 50 years.
2. Learn factors that bring about changes in Supreme Court decisions.

Materials needed:

Video Tape "*Gideons Trumpet*"

OVERHEAD: Court Decisions

Copies of: **Student Handout 1: Betts v. Brady**
Student Handout 2: Gideon v. Wainwright
Student Handout 3: Escobedo v. Illinois
Student Handout 4: Miranda v. Arizona
Student Handout: TIME LINE
Student Handout: HYPOTHETICAL CASE

Time needed: 4 days

Grade level: 9th grade

Procedure:

DAY 1

1. Divide students into four small groups with each group assigned to one of the four Supreme Court Cases (**Student Handouts 1-4.**) Assign one student to act as the lawyer for the state and one student to act as the lawyer for the accused. Each lawyer will be given five minutes to present his/her side of the issue.

2. The remaining students will be given fifteen minutes to discuss and decide the issue as if they were the U. S. Supreme Court. They will answer the questions posed at the end of the case.

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Procedure cont.

DAY 2

1. There will be a large group debriefing of the actual U. S. Supreme Court decisions (**OVER-HEAD: Court Decisions**) shown on the overhead projector at which time the students will fill in the **Student Handout: TIME LINE** graph showing the step-by-step expansion of the right to counsel clause.

DAY 2 & 3

1. Show the video tape "*Gideon's Trumpet.*"

2. The **Student Handout: HYPOTHETICAL CASE** will be passed out to each student at the end of day 3 for reading for discussion on Day 4.

DAY 4

1. Large group discussion of the **HYPOTHETICAL CASE**.

Student Handout 1: *BETTS V. BRADY*, 316 U.S. 455 (1942)

The accused, one Smith Betts, was indicted for robbery by the state of Maryland. He was an unemployed farm hand, without funds to pay for an attorney. His request for counsel was denied because local practice permitted appointment only in rape and murder cases. The court also noted that he was not helpless, but instead was a man, 43-years-old, of ordinary intelligence, who had once before been in criminal court. The state's case consisted of evidence identifying the accused as the robber. The defense was that the accused had witnesses to prove he was in another place at the time of the robbery. The simple issue was the truth of the testimony for the state or for the accused. After his request for a lawyer was denied, the accused chose to be tried without a jury. He decided not to appear as a witness himself. He was found guilty and sentenced to 8 years in prison.

Group 1 is the Supreme Court of 1942. Your task is to decide if the judges refusal to provide a lawyer for Betts makes this trial unfair.

1. What specific part of the Bill of Rights is involved in this case?
2. Who is responsible for the defense of a poor person?
3. Can a person of normal intelligence defend himself in court?
4. Explain why Betts should or should not be given a new trial?

Student Handout 2: *GIDEON V. WAINWRIGHT*, 372 U.S. 335 (1963)

Clarence Gideon was charged in a Florida state court with breaking and entering a poolroom. A small amount of money was taken from a vending machine. Under Florida law, this offense was a felony. Gideon appeared in court claiming to be indigent and asked that counsel be appointed to represent him. The judge said he was not entitled to a lawyer because under Florida law the only time the court could appoint counsel to represent a defendant was when a capital offense had been charged.

Gideon represented himself as well as he could. He was found guilty and was sentenced to five years in prison. While in prison Gideon studied his constitutional rights in the prison library. He was convinced that his right to counsel had been violated. He wrote a handwritten letter on prison stationery to the United States Supreme Court asking that his case be considered.

Group 2 is the Supreme Court of 1963. Your task is to decide if Gideon received a fair trial.

1. What specific part of the Bill of Rights is involved in this case?
2. Who is responsible for the defense of a person who claims to be indigent?
3. Can an average citizen provide adequate defense for himself in a court of law.
4. Explain why Gideon should or should not be given a new trial?

Student Handout 3: *ESCABEDO V. ILLINOIS*, 378 U.S. 478 (1964)

On the night of January 19, 1960, the accused's brother-in-law was fatally shot. At 2:30 a.m. that morning, the accused was arrested without a warrant and questioned. The accused made no statement to the police and was released at 5:00 p.m. that afternoon. On January 30, Benedict DiGerlando, who was then in police custody and who was later indicted for the murder along with the accused, told police that the accused had fired the fatal shots. Between 8:00 and 9:00 p.m. that evening, the accused and his sister were arrested. On the way to the police station, the detectives told the accused that they "*had a witness who had named him as the one who had fired the gun and that he might as well admit to this crime.*" The accused said, "*I am sorry but I would like to have the advice from my lawyer.*"

Shortly after the accused arrived at police headquarters, his lawyer appeared. The police refused to let the accused speak to his lawyer. The accused repeatedly asked to speak to his lawyer but the police said his lawyer didn't want to see him. After confronting the accused with DiGerlando, the accused said, "*I didn't shoot Manuel, you did it.*" After the admission of knowledge of the crime, the accused made further statements involving himself in the crime. At no time was the accused advised of his constitutional rights before or during the questioning. Under Illinois law, mere participation in the murder plot was legally as damaging as an admission of firing the fatal shot. (The *Gideon v. Wainwright* decision in 1963 requires the accused person be provided a lawyer when he is put on trial for a criminal offense.)

Group 3 is the Supreme Court of 1964. Your task is to decide if Escobedo's trial was unfair because of his inability to confer with his lawyer when being questioned by the police.

1. What specific part of the Bill of Rights is involved in this case?
2. Why would it be helpful for the accused to have a lawyer present when he is questioned by the police?
3. Would it be harmful to the police to have a lawyer present when questioning an accused person?
4. Explain why Escobedo should or should not be given a new trial.

Student Handout 4: *MIRANDA V. ARIZONA*, 384 U.S. 436 (1966)

On March 13, 1963, Ernesto Miranda was arrested at his home and taken to a police station in Phoenix, Arizona. He was identified as the person who had raped a woman. He was interrogated for two hours by two police officers. He had not been advised of his right to have counsel present while being questioned. At the end of the two hour period, the police officers had a signed confession from Miranda stating that the confession was made voluntarily without threats or promises of immunity and "*with full knowledge of my legal rights, understanding that any statement made may be used against me.*" He was found guilty of kidnapping and murder. He appealed his case to the Arizona Supreme Court. This court held that his rights had not been violated in obtaining the conviction and upheld that conviction.

Group 4 is the Supreme Court of 1966. Your task is to decide whether failure to notify Miranda of his rights violated the Constitution.

1. What specific part of the Bill of Rights is involved in this case?
2. Should an accused person be advised of their rights when being questioned?
3. Is it important to have legal counsel present while being questioned? Why?
4. Explain why Miranda should or should not be given a new trial?

Student Handout: HYPOTHETICAL CASE

Reginald Manybucks is 18 years old, white, and the son of a well respected wealthy family that has lived in the community for 125 years. Reginald just graduated from high school and has been accepted at Hamline University in St. Paul. In high school he was captain of the football team, played in the varsity band and participated in several other extracurricular activities including the student council.

Leroy Poorhouse is an 18-year-old, black male who is a newcomer to this community. He is unemployed and a high school dropout. Reginald and Leroy met at a recent party. When Reginald was leaving the party with 18-year-old Lusa Morales, whom he had just met, Leroy stopped him and asked for a ride home. The three teenagers left the party together. Lusa's body was found the next day. She had been shot with a 25 caliber gun. Reginald and Leroy were arrested and charged with her murder. Reginald and Leroy each own a 25 caliber gun.

Reginald's family can afford to hire the best lawyers available for his defense. They hire a private investigator to thoroughly investigate the case. They have a ballistics expert analyze Reginald's gun.

Leroy claims to be indigent and asks the court to provide the same assistance for his defense as Reginald's family has done for Reginald.

- 1.** Should Leroy be granted the same assistance for his defense as Reginald?
- 2.** What is meant by "*due process of the law*" in the 14th Amendment?

OVERHEAD: Court Decisions

Betts v. Brady (1942)

Betts was not helpless, but was a man 43-years-old, of ordinary intelligence and ability to take care of his own interests in the trial of the narrow issue of the truthfulness of his alibi that he was at another place at the time the robbery occurred. The right to appointment of a lawyer **is not** a basic right essential to a fair trial.

Gideon v. Wainwright (1963)

From the very beginning, our state and National Constitution and laws have placed great emphasis on safeguards designed to assure fair trials before impartial juries in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with a crime has to face his accusers without a lawyer to assist him.

Escobedo v. Illinois (1964)

The Supreme Court held that the defendant needed the "*guiding hand of counsel*" to advise him of his rights and that the confession was unconstitutional.

Miranda v. Arizona (1966)

The court held that confessions obtained through custodial interrogation cannot be used in a trial unless the defendant was told of his right to remain silent and right to have an attorney.

RIGHTS OF THE ACCUSED
THE RIGHT TO COUNSEL
