

Right to Counsel: An Analysis of How the Right to an Attorney Expanded from *Betts v. Brady* (1942) to *Gideon v. Wainwright* (1963)
by Deb Baarsch and Gerald Louden

Students will:

1. Explain the present interpretation of the Sixth Amendment right to counsel and its connection to the 14th Amendment due process application to the states established by the *Gideon v. Wainwright* case.
2. Identify key legal terms relevant to the study of the selected cases.
3. Understand that Supreme Court rulings can change over time.
4. Observe how the Supreme Court selects, hears, and decides its cases. (Contingent on viewing "*Gideon's Trumpet*").
5. Analyze an example of how one individual's initiative resulted in the expansion of a basic right for everyone.

Materials needed:

Copies of: **Student Handout: SIXTH & 14TH AMENDMENT AND LEGAL TERMS**
 CASE SUMMARY *BETTS V. BRADY*
 Student Handout: *BETTS* Discussion Questions
 VIDEO TAPE "*Gideon's Trumpet*" (not included)
AND **Student Handout: GUIDED NOTETAKING STUDY**
 QUESTIONS FOR "GIDEON'S TRUMPET"
OR **CASE SUMMARY *GIDEON V. WAINWRIGHT***

Time needed: 4-5 days

Grade level: 10th - 12th grades

Procedure:

1. Introduce the topic by handing out **Student Handout: SIXTH & 14TH AMENDMENT AND LEGAL TERMS** which will help students understand the two cases. Ask students to write the Sixth and 14th Amendments in their own words. Select examples from students to check for understanding. Ask students to give their opinions on the following issues:

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Procedure cont.

- A. What circumstances must exist for the right to counsel to apply?
 - B. Do defendants have the right to an attorney in every case? Explain that this is an issue to look for when they read **CASE SUMMARY *BETTS V. BRADY***
 - C. What does the phrase "*due process*" mean?
 - D. What should an accused person have in order to ensure that the "process" he or she is "due" exists?

2. Distribute **CASE SUMMARY *BETTS V. BRADY***. Break students into small groups to answer the questions on **Student Handout: *BETTS* DISCUSSION QUESTIONS**. Each group should report their findings to the class with particular emphasis on the last four questions. Ask students whether they were surprised by the ruling of this case. Compare the students' initial opinions regarding the circumstances for the right to an attorney guarantee with the ruling in *Betts v. Brady*. Ask students the following:
 - A. Do you think that you would have the "*ordinary intelligence*" to defend yourself against charges brought by the state?
 - B. Would requiring you to defend yourself if you could not afford a lawyer be fair or just (due process)?
 - C. If you were a Supreme Court Justice, would you have voted with the Majority to rule that *Betts* was not denied due process when the Florida court refused to grant him an attorney on the basis of monetary need (since the Florida Constitution required counsel only in cases of capital offenses)? Take a poll of the student responses.

3. Students are now ready to either view the video tape "*Gideon's Trumpet*" (104 min.) and to take notes using **Student Handout: GUIDED NOTETAKING STUDY QUESTIONS FOR "GIDEON'S TRUMPET"** or read **CASE SUMMARY *GIDEON V. WAINWRIGHT*** if the video is not locally available. You may choose to have students read the **CASE SUMMARY** after viewing the video to clarify any questions that they have.

4. Have students work with a partner to compare notes from the video or discussion questions from the **CASE SUMMARY**. Tell them you are going to randomly select answers to the last question, "What did Gideon accomplish?" to read to the class.

5. Ask students to analyze as a class or in small groups the questions on **Student Handout: FOLLOW UP QUESTIONS TO *GIDEON V. WAINWRIGHT*** as a culminating activity.

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Procedure cont.

OPTIONAL ACTIVITY: Divide the class into two and assign one side to prepare arguments to support the principle that individuals should have the right to counsel in all cases and the other side to defend the position that the right to counsel should be guaranteed only in cases of felonies. Allow students to debate.

After the debate you may tell students that the Supreme Court extended the Sixth Amendment right to counsel to misdemeanor cases in which imprisonment is imposed in 1972 in *Argersinger v. Hamlin*.

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Student Handout: SIXTH & 14TH AMENDMENTS AND LEGAL TERMS

SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; or have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

FOURTEENTH AMENDMENT - Sect. 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

Terms Related To The Cases

Appeal : to take a case to a higher court for review

Defendant: the person who is charged for an offense in a criminal action

Prosecutor: the public attorney who is handling the criminal proceedings on behalf of the people

Petition: a formal written request filed with a court which seeks action or relief

Habeas Corpus: request to bring a person (body) before a court; usually directed at whoever is detaining that person

Certiorari: an order by a higher court to a lower court to send them the certified record of the case to be reviewed

Majority Opinion: ruling of the higher court which is reviewing the case decided by a lower court (On the U.S. Supreme Court, a decision needs only five of the nine judges' votes to be valid.)

Dissenting Opinion: the arguments by a judge who disagrees with the decision of the majority

Felony: a crime that is more serious than a misdemeanor; usually punishment is imprisonment in excess of one year

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CASE SUMMARY: *BETTS V. BRADY*

Cite: 316 U.S. 455 (1942)

Smith Betts was a farm hand who was out of work and on relief when he was indicted for robbery in Carroll County, Maryland. At the time of his arraignment he informed the judge that due to a lack of money he was unable to hire counsel. He asked the judge to appoint an attorney for his defense. The judge denied his request stating that it was not the county's practice to provide counsel for indigent (anyone who lacks the means of support) defendants except in cases being prosecuted for murder or rape.

Betts pleaded not guilty and conducted his own defense before the judge after waiving his right to a jury trial. Although Betts attempted to establish an alibi, the judge found Betts guilty and sentenced him to eight years in prison. Betts filed a petition for a writ of habeas corpus to the Circuit Court of Maryland claiming that he had been deprived of his Sixth Amendment right to counsel as guaranteed by the due process clause of the 14th Amendment to the states. His case was heard but his claim was denied. He then sought a hearing before the Court of Appeals in Maryland where his case was also rejected.

When Betts petitioned the U.S. Supreme Court, they agreed to review his case. In a 6-3 decision, the Court held that the due process guarantee of the 14th Amendment did not obligate the states to provide counsel in every case in which the accused is unable to obtain counsel. Delivering the majority opinion, Justice Owen Roberts stated,

"The Sixth Amendment of the national Constitution applies only to trials in federal courts. The due process clause of the Fourteenth Amendment does not incorporate, as such, the specific guarantees found in the Sixth Amendment although a denial by a state of the rights or privileges specifically embodied in that and others of the first eight Amendments may, in certain circumstances ... deprive a litigant of due process of law in violation of the Fourteenth ... denial is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, and in the light of other considerations, fall short of such denial."

The Court's majority found that Betts was a 43 year-old-man of "ordinary intelligence and ability" who had previous experience with the criminal courts through a prior conviction for larceny. Therefore, he was not handicapped in such a way to deny fundamental fairness guaranteed by the due process clause. Each case would have to be examined for special circumstances that infringed upon fundamental fairness before a judge would order the defendant to be provided with counsel. Betts did not meet the "*special circumstances*" test.

Student Handout: *BETTS* DISCUSSION QUESTIONS

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1. What right did Betts claim that he was denied? What Amendments did he use to defend his claim?
2. What was the response of the lower court?
3. Under what "*special circumstances*" would the Sixth Amendment right to counsel be applied to the states according to the Supreme Court?
4. Who would make the decision of whether defendants fell into the "*special circumstances*" that would guarantee their Sixth Amendment right to counsel in serious cases (felonies)? Do you see any problems with how this decision regarding the circumstances is made?
5. Give an example of a person who would fit the ruling of the Supreme Court in *Betts v. Brady*.
6. Who might be discriminated against under this ruling?
7. Do you think the Supreme Court's decision was fair? Explain the reasons for your opinion.

**Student Handout: GUIDED NOTETAKING QUESTIONS FOR
"GIDEON'S TRUMPET"**

1. Upon what evidence does the office arrest Clarence Gideon?
2. Why does Gideon come to trial without a lawyer?
3. What happens when he asks the court to appoint a lawyer? Why?
4. Describe Gideon's past criminal history.
5. What is the outcome of the trial?
6. What constitutional basis does Gideon find for his appeal to the Supreme Court?
7. What three things did Gideon need to do for his appeal?
8. What kind of special circumstances were needed for Gideon to have been appointed a lawyer under the existing court interpretation? Did Gideon fit any of those special circumstances.
9. Describe Gideon's life when he was young.
10. According to Abe Fortas, Gideon's attorney before the Supreme Court, what is the basic difficulty of *Betts v. Brady*?
11. Of the 7,800 convicts in prison in Florida at the time of this case, how many were estimated to have been tried without counsel?
12. What is the Supreme Court ruling in this case? What is the vote?
13. What is the next step for Gideon?
14. Give examples of how Gideon's defense improved with counsel.
15. What had Gideon accomplished?

CASE SUMMARY OF *GIDEON V. WAINWRIGHT*

Cite: 372 U.S. 335 (1963)

Clarence Earl Gideon was charged with breaking into a poolroom in Bay Harbor, Florida with the intent to steal which was considered a felony by Florida law. While Gideon had performed odd jobs on occasion for the owner of this poolroom, he had no permanent employment and therefore lacked the funds to hire counsel for his defense. At his trial, Gideon asked the court to provide him with counsel due to lack of funds, but the judge denied his request on the basis that Florida law required counsel for defendants only in capital cases. Gideon pleaded not guilty and proceeded to defend his own case. The jury convicted him, and he was sentenced to five years in the state prison.

Convinced that he had been denied a right to counsel as guaranteed by the U.S. Constitution, Gideon researched the procedure required to appeal his case in the prison library. Preparing the petition for habeas corpus himself, Gideon appealed to the Supreme Court of the State of Florida to set aside his conviction. That court denied all relief.

Determined to pursue his rights, Gideon returned to the prison library to prepare his petition to the U.S. Supreme Court. Filing his petition **in forma pauperis** (as a pauper), Gideon fell under the federal law that allowed people too poor to pay the fee to bring the case to the Supreme Court. The Supreme Court granted certiorari and appointed a prestigious lawyer, Abe Fortas, to present Gideon's case.

In the decision that was unanimous, the Supreme Court ruled in favor of Gideon and overruled the *Betts v. Brady* decision that had held that the states need not apply the 14th Amendment due process requirement to the Sixth Amendment right to counsel in noncapital cases except in special circumstances. The Supreme Court referred to arguments by 22 states that had found the *Betts v. Brady* decision to be out of date. Writing the majority opinion, Justice Hugo Black stated that the Sixth Amendment guarantee of counsel was "*fundamental*" and "*essential*" to a fair trial and therefore must be made an obligation of the states by the 14th Amendment. He reasoned, "*That government hires lawyers to prosecute and defendants who have money hire lawyers to defend are the strongest indications of the widespread belief that lawyers are necessities, not luxuries...From the very beginning, our state and national constitutions have laid great emphasis on procedural and substantive safeguards designed to assure ... every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.*"

The Supreme Court then reversed the judgment against Gideon and sent his case back to the Florida Supreme Court. A new trial was ordered for Gideon in which he was appointed an attorney (this time the court even appointed the specific attorney requested by Gideon).

Clarence Earl Gideon was acquitted in the very same Florida courtroom where he had first been convicted.

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CASE SUMMARY OF *GIDEON V. WAINWRIGHT* cont.

FOR DISCUSSION: The *Gideon* decision only applied to felonies (serious crimes that carry the possibility of imprisonment). Looking at Justice Black's reasoning, do you think the Supreme Court would extend the right of counsel to misdemeanors at some point? In your opinion, what had Clarence Gideon accomplished?

**Student Handout: FOLLOW UP QUESTIONS TO *GIDEON V. WAIN-
WRIGHT***

- 1.** Why do you think that the Supreme Court changed its mind and recognized that Gideon had a right to an attorney?

- 2.** Do you see any significance in the fact that the decision was unanimous?

- 3.** Did the Supreme Court have to take the Gideon case?

- 4.** Do you think the Supreme Court should change its rulings frequently? Why or why not?

- 5.** Are some rights more important than others? Make a list of the rights that you think the Supreme Court should expect the states to enforce.

- 6.** Do you think the right to counsel should apply to both misdemeanors and felonies or to just felonies as implied by the *Gideon* ruling?