

Judicial Opinion Writing Activity—Answer Key

Gideon v. Wainwright (1963)

What you need to know before you begin: In a given term between October and April, the U.S. Supreme Court usually hears oral arguments in 70 to 80 cases. For one hour, the attorneys for the **petitioner** (who lost in the lower court and is now appealing the decision) and **respondent** (who won in the lower court) present arguments and answer the justices' questions. Later that week, the justices hold a private conference and discuss the case. The justices vote on the outcome of the case starting with the chief justice and then the associate justices in order of seniority with the most junior justice going last. The party in the majority with at least five votes wins. The chief justice or the most senior justice in the majority will assign a justice the job of writing a legal explanation, called an **opinion**. The justice will write a draft of the Court's **majority opinion** and circulate it to the other justices in the majority who will sign on to the opinion if they agree. The same procedure will happen to the justices in the minority who will write a **dissenting opinion**. Justices who agree with the outcome of the majority but for different legal reasons may write **concurring opinions** to explain their differences. There can also be more than one dissenting opinion.

How it's done: You have been given the background, facts, issue, constitutional provisions and federal statutes, and arguments of the case. Consider and apply the constitutional provisions and statutes to the *Schenck v. United States*. Carefully consider all of the arguments. Decide if you will find for the **petitioner** (Schenck) and **reverse** the decision of the lower court or for the **respondent** (United States) and uphold or **affirm** the lower court's decision. Assume the majority of justices agree with you and write the Court's **majority opinion** explaining the reasons for the decision.

Case name: *Gideon v. Wainwright* **Date decided:** _____ (today's date).

Justice _____ (your name) delivered the opinion of the Court.

The question presented is: [Does the Sixth Amendment's right to counsel in criminal cases extend to defendants in state courts, even in cases in which the death penalty is not at issue?](#)

1. Brief summary of case and lower court decision(s):

Gideon filed a *habeas corpus* petition, arguing that he was improperly imprisoned because he had been refused a free lawyer during his trial, thus violating his constitutional rights guaranteed by the Sixth Amendment. The Florida Supreme Court ruled against him. From his prison cell, *Gideon* hand-wrote a petition to the U.S. Supreme Court, asking the Court to hear his case. The Supreme Court agreed and appointed lawyer Abe Fortas, who was later named as a justice to the Supreme Court, to argue on his behalf.

2. Write a paragraph explaining how the constitutional provision(s) or statute(s) apply:

The **Sixth Amendment** states, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." However, the Bill of Rights originally only

applied to the federal government (Congress). The Sixth Amendment does not distinguish between types of criminal cases.

The 14th Amendment states, "...nor shall any State deprive any person of life, liberty, or property, without due process of law..." The 14th Amendment also does not distinguish between types of criminal cases. Even non-capital crimes can result in long prison sentences, which is depriving someone of their liberty. There is no "trivial" criminal case because a person's liberty is at stake.

3. Write a paragraph explaining which arguments are most persuasive and why:
Student answers will vary.
4. Therefore, we find for the petitioner / respondent (circle one), _____
(name of party) and therefore reverse / affirm (circle one) the decision of the lower court.
Student answers will vary.

After students complete the Judicial Opinion Writing Activity, consider sharing the [complete case summary](#) or the [decision summary and key excerpts from the majority opinion and concurring opinions](#).

Gideon v. Wainwright (1963)

Argued: January 15, 1963

Decided: March 16, 1963

Background

Part of the Bill of Rights, the Sixth Amendment to the U.S. Constitution protects the rights of people accused of crimes. Among these protections is the right to have a criminal defense lawyer's assistance. That means that the government cannot prevent someone from consulting with a lawyer and having a lawyer represent them in court. Not everyone who has been accused of a crime, however, can afford to hire a lawyer. In 1938, the U.S. Supreme Court ruled that, in federal criminal courts, the government must pay for a lawyer for **indigent** defendants who cannot afford one themselves. People are considered indigent if they are so poor that they are unable to afford the necessities of life like food and shelter. *Gideon v. Wainwright* is a case about whether or not that right must also be extended to indigent defendants charged with crimes in state courts, where most crimes are prosecuted.

The 14th Amendment says that states shall not “deprive any person of life, liberty, or property, without due process of law.” The Supreme Court has ruled that some of the constitutional rights that at first only protected people from infringement by the federal government, are so fundamental to the concept of liberty (protected by the 14th Amendment) that they must also apply to state governments. In 1963, the Supreme Court reconsidered whether, in criminal cases, the right to counsel paid for by the government was one of those fundamental rights, even though it had held the opposite only 21 years before.

Facts

In 1961, someone burglarized the Bay Harbor Pool Room in Panama City, Florida. Based partly on eyewitness reports, police arrested Clarence Earl Gideon after he was found nearby with a pint of wine and some change in his pockets. Gideon, who could not afford a lawyer, asked the Florida court to appoint one for him. The judge denied his request. At that time Florida law required appointment of counsel for indigent defendants only in capital (death penalty) cases. Gideon defended himself at trial, but the jury found him guilty of breaking and entering and petty larceny, which are felonies under Florida law.

While serving his five-year sentence in a Florida state prison, Gideon began studying law. His study reaffirmed his belief that his rights were violated when the Florida Circuit Court refused his request for appointed counsel. Gideon filed a *habeas corpus* petition, arguing that he was improperly imprisoned because he had been refused a free lawyer during his trial, thus violating his constitutional rights guaranteed by the Sixth Amendment. The Florida Supreme Court ruled against him. From his prison cell, Gideon hand-wrote a petition to the U.S. Supreme Court, asking the

Court to hear his case. The Supreme Court agreed and appointed lawyer Abe Fortas, who was later named as a justice to the Supreme Court, to argue on his behalf.

Issue

Does the Sixth Amendment's right to counsel in criminal cases extend to defendants in state courts, even in cases in which the death penalty is not at issue?

Constitutional Amendments and Supreme Court Precedents

- **Sixth Amendment to the U.S. Constitution**

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

- **14th Amendment to the U.S. Constitution**

“...nor shall any State deprive any person of life, liberty, or property, without due process of law....”

- ***Powell v. Alabama* (1932)**

Nine teenagers were accused of assaulting two women. All nine were tried on one day within a week after being indicted and were found guilty in Alabama state court and sentenced to death. No lawyer represented the teens. The Supreme Court ruled that accused persons in a capital case have the right to counsel for their defense, which includes the right to have sufficient time to consult with counsel and to prepare a defense. The Court said that this is one of the fundamental rights that must be applied to the states under the 14th Amendment. The Court also said that state courts must appoint counsel, whether requested or not, when the defendant is incapable of making an adequate defense because of “ignorance, feeble-mindedness, illiteracy or the like.”

- ***Johnson v. Zerbst* (1938)**

The Supreme Court said that the Sixth Amendment requires that, in federal criminal cases that could be punishable by imprisonment, lawyers must be provided for defendants too poor to hire their own lawyer, unless the accused person waives that right.

- ***Betts v. Brady* (1942)**

Betts was convicted of robbery in Maryland under circumstances very similar to Gideon's. Despite Betts' request that a lawyer be appointed for him, the Supreme Court ruled that the 14th Amendment did not require states to provide counsel to the poor in non-death-penalty cases.

Arguments for Gideon (petitioner)

- Fair trials cannot be assured unless everyone has the assistance of a lawyer. The average person does not have the knowledge, resources, and skill required to provide an adequate legal defense for themselves.
- The Supreme Court has ruled that the right to counsel in death penalty cases is fundamental and applies to the states (*Powell v. Alabama*), but not in non-death-penalty cases (*Betts v. Brady*). This is not logical, and *Betts v. Brady* should be overturned. The Sixth Amendment does not distinguish between types of criminal cases, and neither does the 14th Amendment. Even non-capital crimes can result in long prison sentences, which is depriving someone of their liberty. There is no “trivial” criminal case because a person’s liberty is at stake.
- Society changed its thinking about the right to counsel between 1942, when *Betts v. Brady* was decided, and 1963, when *Gideon* came before the Court. At the time of the *Betts v. Brady* decision, fewer than half of the states required appointment of counsel to the poor. At the time of Gideon’s arrest, over 45 states required it.
- There is broad support to overturn *Betts v. Brady*. Twenty-two states filed amicus curiae, (“friend of the court”) briefs to support the application of the Sixth Amendment right to counsel to state courts regardless of the type of offense.

Arguments for Wainwright (respondent)

- *Betts v. Brady* established that in any criminal case a defendant is entitled to counsel if they can claim special circumstances that show they would be denied a fair trial without counsel. Gideon did not claim such circumstances.
- The United States has a federal system in which the federal government may not exercise arbitrary power over the states. Imposing an inflexible rule on states that all defendants are entitled to counsel if they cannot afford one would allow the Supreme Court (the federal government) to intrude into states’ powers. A state should be free to adopt any system it chooses, experimenting and adopting the types of rules and procedures it feels are necessary in its own courts.
- It is possible for a defendant without a lawyer to have a fair trial. Several judges may be involved in the processing of a defendant including arraignment, pretrial, and the trial. This exposure to multiple judges protects the defendant who is without a lawyer, as each judge knows the law and will ensure that the defendant is treated fairly. In any case, representation by a lawyer does not automatically guarantee a fair trial.
- The Supreme Court should uphold *Betts v. Brady*, which was decided only 21 years before *Gideon*. The Court considered this issue then and issued a ruling that should remain in force.

- If *Betts v. Brady* is overturned, states would have to provide lawyers to the indigent in all criminal prosecutions, no matter how small or trivial they are. This would place a tremendous burden on the taxpayers of every state.