

## **Gideon v. Wainwright / Excerpts from the Majority Opinion—Answer Key**

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### **The following are excerpts from Justice Black’s majority opinion:**

Since 1942, when *Betts v. Brady* . . . was decided by a divided Court, the problem of a defendant’s federal constitutional right to counsel has been a continuing [sic] source of controversy and litigation in both state and federal courts. To give this problem another review here, we granted *certiorari* . . . Since Gideon was proceeding *in forma pauperis*, we appointed counsel to represent him and requested both sides to discuss in their briefs and oral arguments the following: “Should this Court’s holding in *Betts v. Brady* be reconsidered?”

The Sixth Amendment provides, “In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” We have construed this to mean that in federal courts counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived. *Betts* argued that this right is extended to indigent defendants in state courts by the 14<sup>th</sup> Amendment. In response, the Court stated that, while the Sixth Amendment laid down “no rule for the conduct of the States, the question recurs whether the constraint laid by the Amendment upon the national courts expresses a rule so fundamental and essential to a fair trial, and so, to due process of law, that it is made obligatory upon the States by the 14<sup>th</sup> Amendment.” . . . In order to decide whether the Sixth Amendment’s guarantee of counsel is of this fundamental nature, the Court in *Betts* set out and considered “[r]elevant data on the subject.”

On the basis of this historical data the Court concluded that “appointment of counsel is not a fundamental right, essential to a fair trial.”

Explicitly recognized to be of this “fundamental nature” and therefore made immune from state invasion by the 14<sup>th</sup>. . . are the First Amendment’s freedoms of speech, press, religion, assembly, association, and petition for redress of grievances . . . the Fifth Amendment’s command that private property shall not be taken for public use without just compensation, the Fourth Amendment’s prohibition of unreasonable searches and seizures, and the Eighth’s ban on cruel and unusual punishment.

We accept *Betts v. Brady*’s assumption, based as it was on our prior cases, that a provision of the Bill of Rights, which is “fundamental and essential to a fair trial” is made obligatory upon the States by the 14<sup>th</sup> Amendment. We think the Court in *Betts* was wrong, however, in concluding that the Sixth Amendment’s guarantee of counsel is not one of these fundamental rights. Ten years before *Betts v. Brady*, this Court . . . had . . . declared that “the right to the aid of counsel is of this fundamental character.” *Powell v. Alabama*, . . . (1932). While the Court at the close of

its *Powell* opinion did . . . limit its holding to the particular facts and circumstances of that case, its conclusions about the fundamental nature of the right to counsel are unmistakable.

Not only these precedents but also reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal . . . spend vast sums of money to . . . try defendants accused of crime . . . Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which 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. A defendant's need for a lawyer is nowhere better stated than in the moving words of Mr. Justice Sutherland in *Powell v. Alabama*:

The Court in *Betts v. Brady* departed from the sound wisdom upon which the Court's holding in *Powell v. Alabama* rested. Florida, supported by two other States, has asked that *Betts v. Brady* be left intact. Twenty-two states, as friends of the Court, argue that *Betts* was "an anachronism when handed down" and that it should now be overruled. We agree.

The judgment is reversed and the cause is remanded to the Supreme Court of Florida for further action not inconsistent with this opinion.

## Questions to Consider

1. Why did the Supreme Court of the United States agree to hear Gideon's case?  
[The Supreme Court of the United States agreed to hear Gideon's case in order to determine if the ruling in \*Betts v. Brady\* \(1942\) should be reversed. In doing so, they would determine whether in state criminal trials, indigent defendants are entitled to a lawyer, even in non-capital cases.](#)
2. Prior to this case, which rights were considered to be "fundamental and essential to a fair trial" and thus "made obligatory on the States by the 14<sup>th</sup> Amendment"? Why do you think the right to a lawyer was not included in this list?  
[The rights which were considered to be "fundamental and essential" and thus "made obligatory on the States by the 14th amendment" were "the First Amendment's freedoms of speech, press, religion, assembly, association, and petition for redress of grievances . . . the Fifth Amendment's command that private property shall not be taken for public use without just](#)

compensation, the Fourth Amendment's prohibition of unreasonable searches and seizures, and the Eighth's ban on cruel and unusual punishment." The ones that seem to be "fundamental and essential to a fair trial" are freedom from unreasonable searches and seizures and the ban on cruel and unusual punishments. These are rights that historically had frequently been denied to people by dictatorial governments, so perhaps that is why they were on the list but the right to a lawyer and other trial rights may not have been included. Perhaps the right to a lawyer was not as widespread a concern. These are also rights that are enjoyed outside of courtrooms. The Supreme Court of the United States might have trusted state judges to protect in-court rights.

3. What did the Court say about the right to counsel in the *Powell* case?  
In *Powell v. Alabama* (1932), the Court said that the right to counsel is of this fundamental nature. However, the ruling was limited to the facts and circumstances of that case.
4. When Justice Black says, "Governments, both state and federal . . . spend vast sums of money to . . . try defendants accused of crime. . . ." Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses", what point is he trying to make? Provide an example of a recent case in which "vast sums of money" were spent. Do you think it made a difference in the outcome of the case? Explain. In this quotation, Justice Black is trying to say that having a good lawyer can often be expensive, making a difference in the quality of representation an individual receives and in the outcome of the case. If this were not true, people would not bother to hire them. One example is the OJ Simpson case, where the defendant hired Johnny Cochran to represent him. Some people argue that this had an impact on the outcome.
5. Many of the decisions the Supreme Court of the United States makes are based on the principle of *stare decisis*, or let the previous decision stand. In the case of *Gideon v. Wainwright*, the Court clearly broke with a precedent it had established. Was it justified in doing so?  
A case can be made for either answer. One could argue that the Court was justified in breaking the principle of *stare decisis*. While the decision in *Gideon* technically overturned *Betts*, both *Powell* and *Betts* had determined that in certain circumstances, indigent criminal defendants were entitled to a lawyer in state criminal proceedings, so this was really just an extension of those two cases. Furthermore, when the Court realizes that something is unjust, rather than let that unjust decision stand, it should overturn the decision. Others might argue that the Court was not justified in doing so because if the Court is constantly changing its mind, there will be little continuity in criminal proceedings in our country. This will make for widespread confusion and perhaps lead to even more violations of individual rights.