

Gideon at 40: Understanding the Right to Counsel



NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

LESSON PLAN

A lesson plan for high school history, civics, government, and social studies classes for use in 2003 to commemorate the 40th anniversary of the United States Supreme Court's landmark decision in *Gideon v. Wainwright*.

Purpose:

To promote student understanding of the importance of *Gideon v. Wainwright*, the Supreme Court's 1963 decision guaranteeing that all persons accused of a felony are guaranteed the right to counsel.

Overview:

On March 18, 2003, America will celebrate the 40th anniversary of the landmark 1963 U.S. Supreme

Court decision in *Gideon v. Wainwright*, in which a poor Florida prison inmate caused the single biggest change in the history of the U.S. criminal justice system. Before *Gideon*, persons accused of crime could be sent to prison without any representation by a lawyer unless they were wealthy enough to hire one. As a result of *Gideon*, the quality and fairness of the justice system, and its ability to guard against conviction of the innocent, have been vastly improved. Yet in many places, court-appointed lawyers do not have the resources necessary to provide competent representation, so injustices still occur.

Students will become familiar with the history of the right to counsel in the United States and be able to analyze this right as it relates to current events. Students will also learn how federal and state governments provide counsel to poor persons accused of crime. Finally, students will be made aware that the quality of defense services for those who cannot afford paid counsel varies greatly from state to state – with some states failing to provide meaningful defense services even 40 years after the *Gideon* decision.

Recommended Grade Levels: 9-12

(lesson plan contains suggested activities for advanced classes)

Time Required:

One class period. Optional extension activities may require additional time. Ideally taught on March 18, 2003 (the 40th anniversary of the Supreme Court's decision in *Gideon v. Wainwright*) but also appropriate for Law Day activities (May 1) or in curricula throughout 2003 addressing the Constitution, the Bill of Rights, or the U.S. criminal justice system.

Designed For:

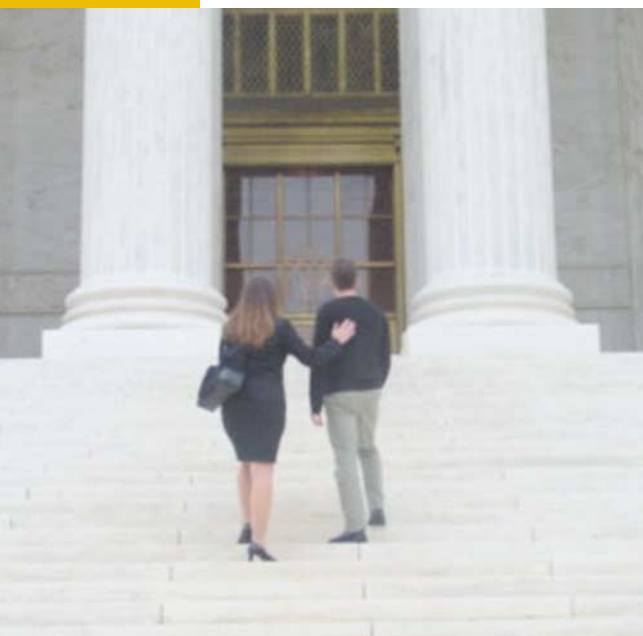
Social Studies, History, Government, and Civics classes.

Advanced Preparation:

Assign students to read the Supreme Court's decision in *Gideon v. Wainwright* (available for download at www.nacdl.org/gideon).

Optional:

- Invite a defense attorney to serve as a guest speaker (for assistance, contact NACDL at 202-872-8600 x224 or indigent@nacdl.org).
- Screen the movie *Gideon's Trumpet*.
- Assign students to read any of the books listed under the "Additional Resources" section on Page 7 of this lesson plan.



Specific Objectives – Students will:

1. Learn how one individual's case brought about this landmark decision.
2. Evaluate the impact of *Gideon v. Wainwright* on the U.S. criminal justice system.
3. Understand the importance of competent counsel to a fair trial and recognize the right to counsel as a core guarantee of the Bill of Rights.
4. Articulate the methods used to provide appointed counsel service to indigent persons accused of crime.
5. Analyze current cases and events as they relate to this decision.
6. Conclude that providing competent counsel for indigent defendants is an ongoing challenge in our criminal justice system.



II. Presenting the Case of *Gideon v. Wainwright*

Options for Presenting the Case:

- Assign students to read the decision in *Gideon v. Wainwright* and complete the homework sheet on Page 8 outlining the basic facts and legal findings in the case.
- Using the script included on Page 11 of this lesson plan, assign students to present the case from the perspectives of different individuals involved in the *Gideon* case.
- Assign reading of the first chapter of the book *Gideon's Trumpet* by Anthony Lewis prior to class. It explains how the case reached the U.S. Supreme Court.
- Show movie clip of *Gideon's Trumpet* (starring Henry Fonda) that presents facts of the case.

I. Opening Activity

Before class begins, confidentially ask two students to role-play an officer and suspect. At the beginning of class, have the "officer" enter the classroom and "arrest" the "suspect." Instruct the suspect to say "I want a lawyer," and the officer to respond: "According to a new Supreme Court decision, we can't let you talk to your lawyer until we finish with you, and if you can't afford a lawyer, that's too bad." Start a discussion about students' reactions to this "new Supreme Court decision" that you are not entitled to a lawyer. You may want to ask students to compare what the officer in the classroom scenario said to what students see on television shows involving arrests. Students will likely comment that on television, police officers usually recite the Miranda warnings: "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney before questioning. If you cannot afford an attorney, one will be appointed to represent you." Ask students why the right to a lawyer is so important that it is the first thing said to a suspect upon arrest.

Television programs your students may watch:

- *The Practice*
- *NYPD Blue*
- *Matlock*
- *Diagnosis Murder*
- *Law and Order*
- *Judging Amy*
- *Perry Mason*
- *JAG*

Case Background:

In 1961, Clarence Earl Gideon was accused of breaking into and entering the Bay Harbor Poolroom in Panama City, Florida. When brought to trial, Gideon, a penniless drifter too poor to hire a lawyer, asked that the state appoint counsel for him. His request was denied based on the **precedent** set by the 1942 U.S. Supreme Court ruling in the case of *Betts v. Brady*, which said that the right to a lawyer is not essential to a fair trial. Gideon was forced to defend himself. One example of damaging testimony came from the taxi driver who picked up Gideon at the pool hall. He quoted Gideon as saying, "Don't tell anyone you picked me up." Gideon, acting in his own defense, did not challenge this statement during the first trial. He was found guilty and sentenced to five years in prison. From prison, Gideon filed a handwritten petition, **in forma pauperis**, to the U.S. Supreme Court. His "Petition for a **Writ of Certiorari** to the Supreme Court State Of Florida" asked the U.S. Supreme Court to hear his case and overrule his conviction on the basis that he was denied a fair

Glossary terms highlighted in blue can be found on Page 7 of this lesson plan.

trial because he did not have the assistance of counsel at his trial. In 1963, the court agreed to hear Gideon's case and ruled that a state must provide legal counsel to anyone charged with a felony who cannot afford a lawyer. The Supreme Court found that the **Sixth Amendment's** guarantee of counsel is a fundamental right, essential to a fair trial. Gideon was retried and **acquitted**. His lawyer in the second trial asked the taxi driver – who had given damaging testimony during the first trial – if Gideon had ever asked him before to deny that the driver had picked him up. The taxi driver responded that Gideon said this every time the driver picked him up and suggested that it was because of a problem with his wife.

The Warren Court (right) decided *Gideon v. Wainwright* on March 18, 1963. Photo by Harris & Ewing, courtesy of The Supreme Court of the United States Office of the Curator.



Gideon's trial in Florida began on August 4, 1961

The Court (Judge Robert L. McCrary, Jr.): The next case on the docket is the case of the State of Florida, Plaintiff, versus Clarence Earl Gideon, Defendant. What says the State, are you ready to go to trial in this case?

Mr. Harris (William E. Harris, Assistant State Attorney): The state is ready, your Honor.

The Court: What says the Defendant? Are you ready to go to trial?

The Defendant: I am not ready, your Honor.

The Court: Did you plead not guilty to this charge by reason of insanity?

The Defendant: No, Sir.

The Court: Why aren't you ready?

The Defendant: I have no counsel.

The Court: Why do you not have counsel? Did you not know that your case was set for trial today?

The Defendant: Yes, sir, I knew that it was set for trial today.

The Court: Why, then, did you not secure counsel and be prepared to go to trial?

The Defendant answered the Court's question, but spoke in such low tones that it was not audible.

The Court: Come closer up, Mr. Gideon, I can't understand you. I don't know what you said, and the Reporter didn't understand you either.

At this point the Defendant arose from his chair where he was seated at the Counsel Table and walked up and stood directly in front of the Bench, facing his Honor, Judge McCrary.

The Court: Now tell us what you said again, so we can understand you, please.

The Defendant: Your Honor, I said: I request this Court to appoint counsel to represent me in this trial.

The Court: Mr. Gideon, I am sorry, but I cannot appoint counsel to represent you in this case. Under the laws of the State of Florida, the only time the court can appoint counsel to represent a defendant is when that person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint counsel to defend you in this case.

The Defendant: The United States Supreme Court says I am entitled to be represented by counsel.

The Court: Let the record show that the defendant has asked the court to appoint counsel to represent him in this trial and the court denied the request and informed the defendant that the only time the court could appoint counsel to represent a defendant was in cases where the defendant was charged with a capital offense. The defendant stated to the court that the United States Supreme Court said he was entitled to it.

Source: Anthony Lewis, *Gideon's Trumpet* (Vintage Books 1964), pp. 9-11.

Note: The *Gideon* holding is technically limited to alleged felonies. However, subsequent Supreme Court decisions have extended the *Gideon* holding to alleged misdemeanors (petty crimes usually punishable only by a short time in a local jail) and other proceedings like contempt of court actions and probation, and parole revocation proceedings. Basically, if someone who is now free risks being incarcerated, there is a right to counsel and, if the person cannot afford a lawyer, one will be appointed.

III. Activities

I. Class Discussion

Option 1: Invite a criminal defense attorney to lead a class discussion about criminal defense work and the right to counsel. The National Association of Criminal Defense Lawyers will assist you with finding a guest speaker for the class. For assistance, contact 202-872-8600 x224 or indigent@nacdl.org

Option 2: Have students discuss television shows, movies, and books with courtroom settings as well as familiar cases to focus on the role of counsel. (Possibilities might include *Law and Order*, *To Kill a Mockingbird*, *Twelve Angry Men*, and the O.J. Simpson case.) Students should discuss the challenges faced by an unrepresented defendant.

Option 3: (for advanced classes or where teachers assign additional readings) Assign groups of students to read one of the following books: *To Kill a Mockingbird*, *The Scottsboro Boys*, or *Gideon's Trumpet*. Ask at least one student to give a report on each book, followed by a moderated class discussion. Note: many students will have read, or will read, *To Kill a Mockingbird* in Language Arts classes. Teachers using this lesson plan may be able to use *To Kill a Mockingbird* in the discussion without having to assign it.

1 Discussion of *To Kill a Mockingbird*

1. In *To Kill a Mockingbird*, which is set in Alabama in the early 1930s, what fees were Tom Robinson and his family able to pay Atticus Finch? (They could not afford to pay a fee.)

2. Why did Atticus agree to be Tom's lawyer when he would not be paid? (He wanted Tom to have a fair trial.)

3. In real life, would a lawyer be willing to represent someone like Tom for free? (Not likely. Students should understand that if Atticus had not volunteered his services, Tom would have been on his own.)

2 Discussion of *The Scottsboro Boys*

1. In the "Scottsboro Boys," which occurred in 1920s Alabama, were local lawyers willing to take the case? (No.)

2. What are the similarities between the real-life events in the Scottsboro Boys case and the fictional case of Tom Robinson in *To Kill a Mockingbird*? (African-Americans charged with sexually assaulting white women.) What impact did these circumstances have on the willingness of attorneys to take the case? (Societal pressures provided a disincentive.)

3. What is the essential holding by the U.S. Supreme Court in *Powell v. Alabama*, the Scottsboro Boys case? (In **capital cases**, the U.S. Constitution requires appointment of a lawyer if the defendant cannot afford to hire one. Students should understand that *Powell* did not address the right to counsel in cases where the death penalty is not a possible punishment. After *Powell*, someone could still be convicted and sent to prison without a lawyer.)

3 Discussion of *Gideon's Trumpet*

1. How do the facts in Clarence Earl Gideon's case differ from those in the Scottsboro Boys case? (Not a **capital case** and defendant is white.) How are the facts similar? (Gideon is too poor to hire an attorney; he is tried and convicted.)

2. In what unusual way did Gideon get his case before the U.S. Supreme Court? (He sent the Court a hand-written petition, which the court considered under a procedure called **in forma pauperis**, where the Court forgoes its usual filing fee for people who cannot pay. The Court receives thousands of these each year from prisoners; almost all are summarily rejected. Gideon's was a notable exception. The Court accepted it for consideration and appointed an attorney to argue on Gideon's behalf. The attorney was Abe Fortas, who later became a Supreme Court justice.)

3. What was the holding of the Supreme Court in *Gideon v. Wainwright*? (A person facing prison as a possible punishment has a right to appointed counsel if he or she cannot afford to hire an attorney.)

2. Small Group Work on Current Events

A. Divide students into small groups. Give each group one of the “current events” newspaper articles listed below and ask them to discuss the right to counsel issue raised in the article. Groups should then present their issue to the class.

- **Ineffective Counsel:** Bruce Shapiro, "Sleeping Lawyer Syndrome," *The Nation* (April 7, 1997).
- **Innocence:** David Zeman and Ben Schmitt, "How Justice Failed Eddie Joe Lloyd," *Detroit Free Press* (Oct. 24, 2002).
- **Economic Disparity:** Lorraine Adams and Serge F. Kovaleski, "The Best Defense Money Could Buy," *Washington Post* (Oct. 8, 1995).
- **Self-Representation:** Warren Richey, "The Trials of Self-Defense," *Christian Science Monitor* (July 24, 2002).
- **Denying Access to Lawyers:** Elizabeth Amon, "The Fight Over Access to Terror Suspects," *National Law Journal* (June 10, 2002).
- **Attorney-Client Privilege:** William Glaberson, "Experts Divided on New Anti-Terror Policy that Scuttles Lawyer-Client Confidentiality," *New York Times* (Nov. 3, 2001).
- **Underfunded Public Defense:** Bill Rankin, "Defending the poor: Three systems, is one superior?," *Atlanta Journal-Constitution* (April 21, 2002).

Contact NACDL for copies of these articles at 202-872-8600 x224 or indigent@nacdl.org.

B. Follow with a discussion about whether the right to counsel has been fulfilled since the decision in *Gideon v. Wainwright*.

3. Extension Learning Opportunities

A. Field trip: Take students to the local courthouse to witness courtroom proceedings and follow with a discussion about the role of counsel in the courtroom.

B. Mock trial: Consider having your students participate in a mock trial program to help demonstrate the role of counsel in protecting a defendant’s rights in the courtroom.

C. Research: Assign students to find out how your state/county provides defense services to those who cannot afford it. (Can be accomplished by calling the local criminal defense bar association, state/county government, or newspaper and online research.) Students should determine whether their state/county system has experienced any problems with funding or the quality of appointed defense counsel and suggest ways that the state/county can improve its **public defense system**.

DISCUSSION: Understanding How Public Defense Services are Provided

Note: A guest speaker criminal defense attorney will be very useful for this discussion. Teachers may wish to find out in advance how their state/county provides criminal defense services to the poor and whether the system is experiencing any problems. For more information about **public defense systems**, see Spangenberg & Beeman, "Indigent Defense Systems in the United States," available online at www.nacdl.org/gideon.

1. What methods are used to provide appointed lawyers to defendants who cannot afford to hire attorneys? (See Glossary on Page 7 for definitions)

- **Public defenders**
- **Contract defenders**
- **Private assigned counsel**

2. What are the most important elements to ensuring that any **public defense system** provides quality representation to defendants? (Adequate funding; resources to hire investigators and experts; access to technology and legal research tools; and qualified and well-trained lawyers. Support from the judiciary and the community is also important.)

3. What are some of the problems that arise when **public defense systems** are underfunded? (Appointed lawyers have too many cases and cannot adequately prepare for all of them; the system does not attract qualified lawyers; backlogs occur in the criminal justice system because not enough attorneys are available; convictions are reversed because the defendant did not have competent representation at trial; and innocent persons are convicted, meaning that the guilty remain on the street.)

4. Bottom line: the right to counsel is mandated by the Constitution and the U.S. Supreme Court’s decision in *Gideon v. Wainwright*. Systems for providing counsel to those who cannot afford it must be adequately funded to fulfill the constitutional right to counsel in a meaningful way. The right to counsel continues to be litigated every day in courtrooms across the country.





IV. Wrapping Up

Everyone is in favor of protecting citizens from crime and punishing those who commit crimes. Through television, the movies, and the news, students often see the work of law enforcement and prosecutors. Rarely, however, do students learn about the essential role of defense counsel, particularly those who represent individuals who cannot afford an attorney. Innocent people are wrongly accused of crime, and unless they receive com-

petent representation, they may be convicted and spend years in prison for crimes they did not commit. Defenders shield against convictions of the innocent; ensure that sentences are not unfair or the result of prejudice; protect the constitutional rights of defendants; and help individuals get access to drug treatment, mental health services, transitional programs, and other social services.

Indeed, the integrity of our criminal justice system relies on balance – i.e., that both the prosecution and the defense are aggressive advocates equipped with the necessary resources to do their jobs. Society has a strong interest in ensuring that this balance exists so that the criminal justice system is fair and produces just results. That is the essence of the U.S. Supreme Court’s ruling in *Gideon v. Wainwright* and why, on its 40th anniversary, it is still considered the most significant criminal justice decision in the history of the Supreme Court.

As then-Attorney General Robert F. Kennedy said in an address to the New England Law Institute on November 1, 1963:

“If an obscure Florida convict named Clarence Earl Gideon had not sat down in his prison cell with a pen and paper to write a letter to the Supreme Court, and if the Court had not taken the trouble to look for merit in that one crude petition among all the bundles of mail it must receive every day, the vast machinery of American law would have gone on functioning undisturbed.

But Gideon DID write that letter, the Court DID look into his case; he WAS retried with the help of competent defense counsel, found not guilty and released from prison after two years of punishment for a crime he did not commit – and the whole course of American legal history has been changed.”

V. Assessment

Option 1: Writing Assignment

Ask students to write an opinion editorial (approximately 500 words) or a letter to the editor (approximately 75-100 words) to their local newspaper, noting the 40th anniversary of *Gideon v. Wainwright* and explaining the importance of the right to counsel. Teachers may want to submit students’ editorials/letters to the local paper or the local bar association magazine.

Option 2: Short Quiz

A short quiz and answer key are included on Pages 9 and 10 of this lesson plan. The quiz tests information learned both from the Supreme Court decision in *Gideon v. Wainwright* and the case summary included in the lesson.

“The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm, dispassionate recognition of the rights of the accused and even of the convicted criminal; . . .



tireless efforts towards the discovery of curative and re-generative processes; unfailing faith that there is a treasure, if you can only find it, in the heart of every man. These are the symbols which, in the treatment of crime and the criminal, mark and measure the stored-up strength of a nation, and are the sign and proof of the living virtue within it.”

— Winston Churchill
In the House of Commons, 1910

Additional Resources

Books

Teachers in advanced classes or who wish to spend more time on the right to counsel should consider assigning the following books:

- Anthony Lewis, *Gideon's Trumpet*
- Harper Lee, *To Kill a Mockingbird*
- James Haskins, *The Scottsboro Boys*
- Jim Dwyer, Peter Neufeld, and Barry Scheck, *Actual Innocence: When Justice Goes Wrong and How to Make it Right*
- Jim Dwyer, Peter Neufeld, and Barry Scheck, *Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted*
- John C. Tucker, *May God Have Mercy: A True Story of Crime & Punishment*
- Gerald W. Getty, *Public Defender*
- Joan Hewitt and Richard Hewitt, *Public Defender: Lawyer for the People*
- Mayer Goldman, *The Public Defender*

Movies

- *Gideon's Trumpet*
- *To Kill a Mockingbird*

All books and movies are available at www.amazon.com.

Documentaries

- *Murder on a Sunday Morning*
www.hbo.com/americaundercover/murder
- *Presumed Guilty: Tales of the Public Defenders*
www.pbs.org/kqed/presumedguilty
- *Innocent Until Proven Guilty: James Forman, Jr., Public Defender*
www.filmakers.com/indivs/InnocentUntil.htm

Websites

- **Supreme Court of the United States**
www.supremecourtus.gov

Contains general information and history of the Supreme Court, its case docket and rules, and links to the Constitution and other documents.

- **The Oyez Project at Northwestern University**

www.oyez.org

Contains the case docket, abstract, voting sheet, and oral arguments in *Gideon v. Wainwright*.

- **National Equal Justice Library**
www.equaljusticelibrary.org

Contains historical information about the *Gideon* case, including oral history interviews with Abe Krash, Anthony Lewis, and Bruce Jacobs.

- **National Association of Criminal Defense Lawyers**
www.nacdl.org

Contains special pages on the 40th anniversary of *Gideon v. Wainwright* and Indigent Defense, including links to a variety of other resources on the Web.

Glossary

Acquitted: to be cleared of a charge; the judgment of a jury or judge that a defendant is not guilty of a charged crime.

Bill of Rights: the first ten Amendments of the United States Constitution that outline the rights and liberties guaranteed to citizens of the United States.

Capital case: a case in which the death penalty is a possible sentence.

Contract defender: an attorney, a group of attorneys, a bar association, or a private nonprofit organization that has a contract to provide representation in some or all of the **indigent** cases in a jurisdiction.

Indigent: without means; impoverished.

In forma pauperis: permission given to a poor person to proceed in a case without being required to pay court costs or fees.

Precedent: a judicial decision used as a standard in future cases on a similar subject.

Private assigned counsel: a private lawyer who accepts the assignment of **indigent** criminal cases.

Public defender: a lawyer in a public or private nonprofit organization with full- or part-time staff attorneys and support personnel that provides representation to **indigent** persons accused of crimes.

Public defense system: the method of providing criminal defense services to persons accused of crime who cannot afford to hire an attorney; may be a federal, state, or county-based system; system may assign cases to full-time staff **public defenders**, to private attorneys assigned to cases for a set or hourly fee, and/or to attorneys who take cases pursuant to a contract specifying a total, per case, or hourly fee.

Sixth Amendment: one of the ten Amendments in the **Bill of Rights** of the United States Constitution, it reads, "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; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

Writ of Certiorari: the order of an appellate court declaring whether it will hear an appeal from a lower court; if the writ is denied, the appellate court refuses to hear the appeal; if the writ is granted, the appellate court agrees to hear the appeal and orders the lower court to send the case record to the higher court.

In 1770, John Adams was asked to represent eight British soldiers who had killed five American colonists. "No one else would take the case,

he was informed. . . . Adams accepted, firm in the belief, as he said, that no man in a free country should be denied the right to counsel and a fair trial." Later, Adams said that the case was

"one of the best pieces of service I ever rendered my country." — from David McCullough, *John Adams* (Simon & Schuster 2001), pp. 66-68.



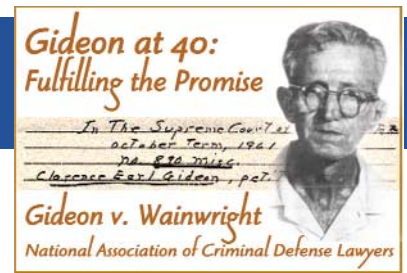
Homework Sheet: *Gideon v. Wainwright*

Name _____ Class Period _____

After reading the *Gideon v. Wainwright* U.S. Supreme Court opinion, answer the following questions based on the information learned in the case.

1. Who was the defendant in this case, of what crime was he convicted, and what was his sentence?
2. In what courts was *Gideon v. Wainwright* heard? Where was the final decision made?
3. Why did the trial court in Florida refuse to appoint counsel for Mr. Gideon?
4. What is the significance of the *Betts v. Brady* case mentioned in the opinion?
5. What Constitutional Amendment mentions the right to counsel in criminal cases?
6. What was the Supreme Court's decision in *Gideon v. Wainwright* and what was the reasoning behind that decision?

Quiz: *Gideon v. Wainwright*



Name _____ Class Period _____

1. With what crime had Clarence Gideon been charged?
2. What circumstances made him unable to obtain counsel?
3. What prior Supreme Court decision prevented the state court from furnishing Gideon with the lawyer he requested?
4. Who defended Gideon during his first trial and what was the outcome?
5. What was one piece of testimony that influenced the jury's decision?
6. What action did Gideon take while imprisoned?
7. On what basis did the 1963 Supreme Court overturn the earlier court decision?
8. What was the outcome of Gideon's second trial?
9. What was one important fact presented in the second trial that was not presented in the first?
10. What guarantee is now in place for persons accused of a crime who may be sentenced to time in jail?

Extra Credit: In what ways might the provision of counsel still fall short of the "fair trial" standard?

Answer Key to Homework Sheet

(A1) Clarence Earl Gideon, the defendant, was charged with breaking and entering a Florida poolroom, a felony under Florida law, and sentenced to 5 years in prison.

(A2) Heard in Florida State Court, Florida Supreme Court, U.S. Supreme Court. U.S. Supreme Court overturned the decisions of the lower courts and, having the ultimate authority over all courts in the U.S., made the final decision.

(A3) The laws of the State of Florida only required that the court appoint counsel when a defendant was facing the death penalty.

(A4) *Betts v. Brady* was a former Supreme Court case, argued 21 years before *Gideon*, that addressed the right to counsel in a state court. *Betts* decided that indigent defendants were not constitutionally guaranteed counsel in the state court, which was overturned by *Gideon*.

(A5) Sixth Amendment.

(A6) The Court overruled *Betts* and held that a state must provide legal counsel to anyone charged with a felony who cannot afford a lawyer. The right to counsel is a fundamental right and essential to a fair trial.

Answer Key to Quiz

(A1) In 1961, Clarence Earl Gideon was charged with breaking and entering the Bay Harbor Poolroom in Panama City, Florida.

(A2) Gideon was a penniless drifter who could not afford to pay a lawyer.

(A3) In 1942, ruling in the case of *Betts v. Brady*, the Supreme Court held that the right to a lawyer was not essential to a fair trial.

(A4) During his first trial, Gideon defended himself. He was found guilty and sentenced to five years in prison.

(A5) Damaging testimony came from the taxi driver who picked up Gideon at the pool hall. He quoted Gideon as saying, "Don't tell anyone you picked me up." Gideon, acting in his own defense, did not challenge this statement during the first trial.

(A6) Gideon wrote a letter to the Supreme Court that his right to a fair trial had been violated because he had not been provided with counsel.

(A7) In 1963, the Supreme Court overruled the prior decision on the basis that there could be no fair trial in a felony case unless counsel was provided.

(A8) Gideon was acquitted when he was retried with benefit of counsel.

(A9) His lawyer in the second trial asked the taxi driver if Gideon had ever asked him before to deny that he had picked him up. The taxi driver responded that Gideon said this every time the driver picked him up and suggested that it was because of a problem with his wife.

(A10) The right to counsel is guaranteed to criminal defendants facing jail time who cannot afford to pay for a lawyer.

(Extra Credit) Representation for the poor in criminal cases is still underfunded in many states and counties throughout the United States. Public defenders and court-appointed attorneys may have very high caseloads, making it difficult for them to provide meaningful representation to each defendant. Many attorneys also do not have access to important resources, such as investigators and expert witnesses. In many places, court-appointed attorneys are paid so little that only inexperienced or unqualified attorneys are willing to take these appointments. Recent cases in which innocent individuals were exonerated by DNA evidence after years of incarceration have revealed the extent to which inadequate counsel can jeopardize the integrity of the justice system.

Script: Presenting the Case of *Gideon v. Wainwright*

Narrator: Have you ever wondered what it would be like to be charged with a crime you did not commit? That's what happened to Clarence Earl Gideon. Not only was he charged, he was convicted and sent to prison. This terrible injustice might have been prevented if ... well, listen to his story.

Gideon: The year was 1961. The place – Panama City, Florida. I lived right across the street from the Bay Harbor Poolroom. One night someone broke into the poolroom. Unfortunately, I was in the wrong place at the wrong time. Someone reported having seen me making a phone call from the telephone booth outside the pool hall. I was arrested and charged with this crime, but, you see, I didn't do it.

Narrator: Then why were you charged?

Gideon: Because I did make that phone call around the time of the break-in. And, just like this witness reported, I did call a cab to take me ... well, it doesn't matter where it took me. The thing is, the circumstances made me seem guilty. Like I asked the cab driver that night not to tell anyone that he had picked me up. Of course, I didn't know about the break-in, and I sure didn't know I was a suspect. I guess I was just a likely target. An ex-convict, a drifter with no money. And like I said, I was in the wrong place at the wrong time.

Narrator: So what happened?

Gideon: Well, I had to go to trial. But the problem was I couldn't afford a lawyer to represent me, and when I asked the court to appoint one, they wouldn't. They said that I wasn't entitled to a lawyer under the law because my crime was not a capital offense.

Trial Judge: I was simply following the law. Florida did not provide for the appointment of counsel in cases that were not eligible for the death penalty, and the Supreme Court had ruled 20 years earlier, in *Betts v. Brady*, that counsel was not essential to a fair trial in non-capital cases.

Gideon: There was no chance I would be sentenced to death for breaking into a pool hall. So I had to defend myself. And that was a pretty sorry state of affairs.

Narrator: What do you mean?

Gideon: I didn't have a clue what I was doing. I might as well have just told them I was guilty because I didn't have any idea how to prove that I wasn't. I didn't know how to

ask the right questions or present evidence or object to things the prosecutor did. And then there was the testimony of that cab driver. He really did me in.

Cab Driver: Wait a minute, Clarence. I just told them the truth. I told them that I picked you up outside the poolroom that night.

Gideon: And what else did you tell them?

Cab Driver: Just what you said – not to tell anyone that I had picked you up. I just told the truth.

Gideon: So I looked guilty as heck, and that's what the jury decided. There wasn't a thing I could think to do to make them think otherwise. So off to prison I went.

Narrator: How did you feel about this?

Gideon: How do you think I felt? How would you feel if you had to get locked up when you didn't do anything wrong? So I decided to fight it.

Narrator: Fight what?

Gideon: Fight my conviction. Ask for a new trial. Get them to say I should have had a lawyer. I wrote up a petition to the Supreme Court of the United States of America and asked them to hear my case. I asked them to overrule my conviction because I didn't have a fair trial.

Narrator: And what did the Supreme Court say?

Gideon: Well, the miracle is that they actually read my petition and agreed to hear my case. I mean lots of guys in prison write to the court. I was pretty lucky.

Supreme Court Clerk: He sure was lucky. We get hundreds of petitions from prisoners asking the Supreme Court to issue a *writ of certiorari* – in other words, asking the Court to hear their cases. Out of the more than 2,500 cases filed with the court that term, the Supreme Court only agreed to hear 150. Plus, the Court rarely hears cases filed *in forma pauperis* (those submitted by poor defendants), so it was pretty amazing that the Court decided to take up Gideon's handwritten petition.

Narrator: And what did they decide?

Gideon: They decided I was entitled to a new trial with a lawyer. And I have two peo-

ple to thank for that. A lawyer named Abe Fortas. And a judge named Justice Hugo Black.

Abe Fortas: Although I have argued before the Supreme Court many times, this was a milestone in my legal career. My argument basically was this: An accused person cannot properly defend himself. He needs a lawyer if he is going to have a fair trial.

Justice Hugo Black: Well, Mr. Fortas' argument was a little more involved. But that's what it came down to. It is not fair to try a person without a lawyer just because he or she is poor and cannot afford one. And Mr. Fortas argued Mr. Gideon's case brilliantly. It's no wonder he eventually became a justice on the Supreme Court.

Gideon: So the court decided in 1963 that I should get another trial and be represented by counsel. And this time I won.

Narrator: How?

Gideon: Because the lawyer knew how to ask the questions I didn't know how to ask in the first trial. For one thing, he knew the right question to ask that cab driver.

Cab Driver: He's right. Just like the first time, I told about how Clarence told me not to tell anyone he had picked me up. But that lawyer, he asked me one more question.

Lawyer: Did Mr. Gideon ever ask you on previous occasions to deny that you had picked him up?

Cab Driver: And I told him the truth. (Turning to the Lawyer.) Sure, I said, Clarence said that every time I picked him up. I think it had something to do with some kind of problem with his wife.

Gideon: Questions like that made a big difference. This time I was *acquitted*. And I was free. But more important, my petition to the Supreme Court meant that now anyone like me, anyone too poor to pay a lawyer, would have one appointed to represent him.

Narrator: And that is a basic right of Americans. The right to a fair trial with counsel. Is the system perfect? No. But thanks to Clarence Earl Gideon and Abe Fortas and Justice Hugo Black, our justice system now provides an attorney for indigent defendants. And that is a big deal.

Gideon at 40: Fulfilling the Promise

*In The Supreme Court of
October Term, 1961
No. 890 Misc.
Clarence Earl Gideon, pet.*



Gideon v. Wainwright

National Association of Criminal Defense Lawyers



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