



Gideon v. Wainwright, 372 U.S. 335 (1963)

Notes for Teachers and Facilitators

Gideon is such a well-established case that this moot court will require students to truly embrace and understand the concept of state rights under the Tenth Amendment as well as the concept of right to counsel under the Sixth Amendment. The case as decided by the United States Supreme Court was unanimous.

Suggested guidance for those representing Wainwright:

- Remind students that they are actually representing the State of Florida.
- Discuss the importance of state sovereignty:
 - The Constitution as originally written contained few restraints of federal power.
 - The need for a guarantee of the right of each state to govern itself was a strong force behind the demand for the creation of the Bill of Rights.
- Encourage students representing Wainwright to brainstorm on the nature of state rights and the role of state law versus federal law in everyday life.

Suggested guidance for students representing Gideon

- For students representing Gideon, walk them through the criminal justice process.
- Ask them to consider why we have lawyers representing defendants in the criminal justice system at all.
- Brainstorm this concept in other areas: What would it be like if a hospital said you have to treat yourself if you cannot afford a doctor?
- Ask students to consider why counsel needs to be paid counsel.

Suggested guidance for students playing Justices:

- Explain that justices must be experts in both sides of the case.
- Consider breaking the group in two with each group to come up with 2-4 questions for each side. Feel free to extend the number of questions on the judge's worksheet.
- Stress that it is important that judges explain their reasoning for the decisions they make.

What happened to Gideon?

Following the Supreme Court decision Gideon was given a new trial and was represented by an appointed lawyer. After deliberating for twenty minutes, the jury acquitted Gideon. Following the acquittal Gideon was never arrested again.

Additional resources:

About Gideon v. Wainwright:

[United States Courts Facts on Gideon v. Wainwright](#)

[Oyez: *Gideon v. Wainwright*](#)

[United States Courts 3-minute podcast on Gideon v. Wainwright](#)

[United States Courts: Court Shorts: Video on the Right to Counsel](#)



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Summary “You have a right to an attorney...”

This moot court exercise is based on the landmark United States Supreme Court case *Gideon v. Wainwright*. Today, most people know the *Miranda* rights which include the lines,

“You have a right to an attorney, If you cannot afford an attorney one will be appointed for you,” but while the Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right. . . to have the Assistance of Counsel for his defense,” it does not mandate that a person who cannot afford “the assistance of counsel” should have such assistance paid for by the State.

In fact, at one time, the Supreme Court held that the right to paid counsel was not a fundamental right. This moot court asks you to go back to the days when the question of the right to counsel was truly at issue and to take sides in a basic issue inherent in our government structure--that of the division of power between the states and federal government.

Our Cast of Amendment Characters:

To understand *Gideon*, we must first turn to several concepts found in Constitutional Amendments. Specifically, we will be looking at:

- The Tenth Amendment which guarantees state sovereignty
- The Sixth Amendment right to counsel
- The Fourteenth Amendment due process clause which applies to the states
- The Fifth Amendment due process clause which applies to the federal government

The 10th Amendment and a Question of Federalism

The concept of federalism is basic to our system of government. In a nutshell, it means that there are two government structures, the state and the federal or national government. The powers of states are expressly preserved in the Tenth Amendment to the Constitution which states:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people."

Recall that the Constitution as originally drafted did not include what we now call the “Bill of Rights.” Its addition was to satisfy the concerns, particularly of those called Ant-Federalists, that the Constitution created an all too-powerful national government that would threaten both the rights of individual Americans and the states. Explicit protection of states' rights was so important it necessitated the Tenth Amendment which established the concept of “reserved powers” or police powers as distinguished from the “delegated powers” of the federal government.

The sovereignty of each state continues in importance today. Much of the law and regulation that govern our everyday life comprises state and not federal law. For example, if a couple wishes to get married, they will have to obtain a license and follow whatever procedure, such as blood tests and waiting periods, the state in which they wish to wed requires. Likewise, if they wish to end their marriage years later, the laws on divorce which vary from state to state will govern. Some states may assert a fault-basis for divorce while others recognize only no-fault divorce.

Criminal law presents the broadest area of state power. What is a crime, what are the defenses and what are the punishments for crime vary from state to state. For example, a person charged with murder may raise an insanity defense in Connecticut but not in Montana. A person convicted of murder may be sentenced to death in Texas, but not in New York which has abolished the death penalty. Not only criminal law but court procedure is largely up to each state. The very structure of the court system varies from state to state as does the precise process that a criminal defendant may experience.

Key Issue: In summary the right of a state to define its own rules and laws and to establish its own procedures is so crucial that the Tenth Amendment explicitly preserves those state powers. These states' powers are interpreted as broadly as possible. In *Gideon*, this issue becomes whether the states have the power to determine if indigent or poor defendants in criminal cases should be provided free counsel.

Federalism meets the Right to Counsel

The right of a defendant in a criminal case to have an attorney is embedded in the Sixth Amendment to the United States Constitution which, in relevant part, states:

"In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defense."

It is important to note that the right to counsel articulated above does not state that the accused has a right to have counsel paid for him by the government. However, does that right apply to the states? We need to parse out some additional concepts to get to this question.

Which parts of the Bill of Rights Apply to the States?

The issue of the Fourteenth Amendment and Incorporation

The Bill of Rights as Originally Adopted:

The Bill of Rights, the first ten amendments to the Constitution, were adopted to protect the people from the government, specifically the federal government and, in the case of the Tenth Amendment, to protect the individual states from the federal government. In other words, as originally envisioned, drafted and adopted, the Bill of Rights did not protect individuals from state governments. The *federal* government could not establish religion and had to guarantee freedom of speech and press and the *federal* government was required to provide due process in taking life, liberty and property. State governments were simply not constrained by the provisions of the federal Bill of the Rights and not constitutionally mandated to provide due process of the laws. However, in almost all cases, there were specific state bills of rights.

The Fourteenth Amendment and Incorporation

To understand how major provisions of the Bill of Rights became applicable to the states, we need to bring the Fourteenth Amendment into the discussion. The Fourteenth Amendment, which is one of the amendments passed on the heels of the Civil War, explicitly applies to the states and provides in pertinent part:

"No State shall. . . 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."

The phrase "due process of law" is the exact expression used in the Fifth Amendment, which says in pertinent part:

"No person shall. . . be deprived of life, liberty, or property, without due process of law. . . ."

Thus, we have two amendments with an identical phrase, "due process." Is the Constitution just being redundant? No! Remember that the Fifth Amendment is part of the Bill of Rights and, as such, was originally intended to apply only to the *federal* government. In the same way the Fourteenth Amendment was intended to apply to the states and not to the federal government.

In summary, we start out with the states having to follow the due process clause of the Fourteenth Amendment and the federal government having to follow the due process clause of the Fifth Amendment. It's like the two government structures are in two different sports leagues, each with its own due process rule.

But our story doesn't end there. Beginning in the 1920's the United States Supreme Court, which is the ultimate interpreter of the United States Constitution, began to take a deeper look at the very meaning of the phrase, "due process."

Due Process and Incorporation

In looking more deeply at the meaning of the phrase, "due process," the Supreme Court has held that the clause found in the Fourteenth Amendment and which applies to the states incorporates many, but not all, of the protections found in the Bill of Rights and makes them applicable to the states. Through that interpretation, your state must now constitutionally protect your free speech rights and freedom of religion, etc. In a sense, the due process clause in the Fourteenth Amendment "grabs" all of the key provisions found in the Bill of Rights and makes them applicable to the states. (Incidentally, the due process clause in the Fifth Amendment also "grabs" the equal protection clause found in the Fourteenth Amendment through reverse incorporation and makes it applicable to the federal government. It is mutual Constitutional right grab-fest!)

Which rights are incorporated?

Many United States Supreme Court cases have considered which rights should be made applicable to the states and, generally, for a right to be made applicable it must be considered to be a fundamental right.

Key Issue: Is the right to counsel a fundamental right which applies to the states? And if it is, does that right outweigh state sovereignty (the right of each state to make its own laws and govern itself)? Does the right to counsel require the state to provide counsel for indigents? If so, for all criminal defendants, whether accused of a felony or a misdemeanor? What about civil cases, for example, landlord-tenant cases?

Of course, as we noted above, the right to counsel in the Constitution does not say that paid counsel is required. At the time of *Gideon*, the Supreme Court had held previously that, at least with respect to the federal government, the right to counsel found in the Sixth Amendment requires that indigent criminal defendants charged with a felony be provided with attorneys. Prior to *Gideon* the Court had also ruled that due process required appointed counsel for indigents charged with a capital crime or one in which there were "special circumstances," *i.e.*, a complicated defense.

Summary: The Key Battle in Gideon

Gideon v. Wainwright presents the battle of the Sixth Amendment versus the Tenth Amendment.

If you are arguing for Gideon, you are arguing that the Sixth Amendment right to counsel must trump a state's right to its own sovereignty under the Tenth Amendment. If you are arguing for the state, you are arguing that the right of a state to govern itself under the Tenth Amendment is paramount over the Sixth's Amendment right to counsel.

The precedent of *Batts v. Brady* supports the state of Florida in holding that the state was not required to provide paid counsel for an indigent defendant unless special circumstances existed. If you are arguing for Gideon, you **must** argue that the Batts case should be overturned and if you are arguing for Wainwright (Florida) you **must** argue that the precedent should stand.

Case Summary

Clarence Earl Gideon was arrested and charged with breaking and entering and intent to commit petty larceny as a result of a break-in at a pool hall in Florida at 4:30 a.m. A witness told the police that he saw Gideon leaving the pool hall with wine, money and soda. The total worth of the goods taken was no more than \$100.

Gideon could not afford a lawyer and in court, when the judge asked him if he was ready for trial, he responded that he wanted a lawyer appointed. The judge informed Gideon that under Florida state law he could not provide him with a lawyer.

Gideon defended himself at trial. He made an opening statement, cross-examined witnesses and presented evidence but was found guilty by a jury and sentenced to 5 to 7 years in prison by the judge.

Gideon filed a petition for writ of *habeas corpus* with the Florida Supreme Court, contending that his right to counsel was violated by the trial judge's refusal to appoint a lawyer for him. The Florida Supreme Court denied his petition and Gideon filed a petition for writ of *certiorari* with the United States Supreme Court which was granted.

Procedural Notes:

Writ of Habeas Corpus

The document filed by Gideon is called a "petition for writ of *habeas corpus*." Literally, that means a petition (or request) to a court to "produce the body." In other words, Gideon asked the court to bring him (his body, his person) before it to determine if his imprisonment was legal. Gideon contends his imprisonment is not legal because of the trial court's denial of his right to counsel under the Sixth Amendment. Florida (Wainwright) contends that its rights under the Tenth Amendment mean that it does not have to provide counsel and that is the reason the Florida Supreme Court denied his petition.

Petition for Writ of *Certiorari*

Because Gideon claimed that the state of Florida denied him a constitutional right, after obtaining a judgement from the state supreme court, he could procedurally then file with the United States Supreme Court. The document used to file with the Supreme Court is called a petition for writ of *certiorari*. That document is designed to convince the Supreme Court that the case is a significant one and worth hearing. The Supreme Court today has total discretion as to what cases it will hear. In fact, the Supreme Court agrees to hear less than 3 percent of the cases requested.

In forma pauperis

If Gideon could not even afford a lawyer at trial, how did he appeal to the United States Supreme Court? Gideon requested in his hand-written petition¹ that the Supreme Court allow him to proceed *in forma pauperis*, that is, in the form of a pauper or poor person and the Court granted his request. The Court then appointed counsel for him in accordance with federal rules. Abe Fortas, who later would become a Justice of the Supreme Court, represented Gideon.

A Note about the Name of the Case:

The case name is *Gideon v. Wainwright*. Wainwright was the Florida Secretary of Corrections -- he was the public servant in Florida responsible for Gideon's imprisonment. If you are arguing for Wainwright, you are arguing the case for the State of Florida.

Are we ready to form arguments?

Before brainstorming the arguments in this case be sure you understand the following:

- Sixth Amendment Right to Counsel
- Tenth Amendment and federalism
- Due process in the Fifth and Fourteenth Amendments
- Fourteenth Amendment and incorporation of due process

Our Mission in this Moot Court

Our moot court begins at the point that the United States Supreme Court has agreed to resolve the issue of whether the "right to counsel" is a fundamental right which supersedes the right of a state to determine its own criminal procedure rules. This case concerns several Constitutional Amendments.

¹Gideon's handwritten petition can be seen here: [Gideon's handwritten petition. National Archives](#)

Brainstorming

Break into three groups:

Group 1: Attorneys representing the Gideon

Group 2: Attorneys representing Wainwright

Group 3: Justices who will ask probing questions and decide the case.

Each side will have 15 minutes to present their arguments. Those representing Gideon will go first and may reserve 5 minutes for rebuttal. Justices who hear the case will interrupt the arguments with questions.

Hints for Attorneys representing Gideon: You must directly argue that the *Betts v. Brady* case be overturned. Think about why paid right to counsel matters. Why do defendants need attorneys in criminal cases? What should due process and the right to counsel mean in criminal cases?

Hints for Attorneys representing Wainwright: You are representing the state of Florida and must argue the *Betts* case should control. Think about the guarantees of the Tenth Amendment and what that means to state sovereignty. Consider that there is a review process in place that enables higher courts to consider whether a criminal trial is fair.

As the side bringing the case, remember that you can reserve five minutes for rebuttal, which means you can have the last word to counter what the other side says.

Hints for Justices: Your job is to think about both sides of the case and develop questions for each side. Good questions will dig deeper into the arguments made and help clarify both sides.

Hints for Everyone: The arguments on the page 8 (verify pg no.?) the definitions and background on the previous pages will be helpful.

Summary of tasks:

1. Engage in general brainstorming of arguments for your side or if you are a justice of questions to ask.
2. As part of that brainstorming, review and consider the arguments on the Argument Sheet.
3. Attorneys: Write out a bullet point list of the arguments you want to make and begin with the most persuasive. Use the Attorney Worksheet.
4. Attorneys: Think of counters to those arguments and develop answers.
5. Justices: Fill out the Justice worksheet
6. Attorneys: Designate the person to make the argument (All attorneys can answer questions posed by the Justices.)



Argument Sheet

Look over these arguments. Decide whether they help Gideon or Wainright (the state of Florida). Or does the argument help both sides or neither side?

_____ Gideon had been arrested, tried and convicted on two prior occasions.

_____ Florida state law provided that a lawyer would be appointed for an indigent defendant in “special circumstances”, such as where the defendant was shown to have mental deficiency or some other impediment to representing himself at trial.

_____ At Gideon’s trial he called witnesses, presented an opening statement and cross-examined the prosecutor’s witnesses.

_____ The Judge and the prosecutor at trial did their best to help Gideon understand the procedural law of the trial.

_____ In *Betts v. Brady*, an earlier case, the Supreme Court held that the Fourteenth Amendment requires a fair trial but does not require that a state offer free counsel, except in special circumstances where the defendant would have difficulty defending himself.

_____ Sixty-five percent of the prisoners in Florida prisons had represented themselves because they could not afford a lawyer.

_____ In Florida, in criminal proceedings, a judge makes an inquiry to determine if any special circumstances exist that would impair a defendant in representing himself at trial, and if such circumstances exist, the judge appoints counsel free of cost to the defendant.

_____ In Florida, all capital cases (cases where the death penalty is possible) if the defendant cannot afford counsel, one is appointed free of charge.

_____ In only one case has the Florida Supreme Court ever found that a defendant was improperly denied free counsel because special circumstances exist.

_____ The Tenth Amendment says the powers not specifically given in the Constitution to the federal government are reserved to the states or the people.

_____ The Court held in *Betts v. Brady* that the refusal of the state court to appoint counsel under facts and circumstances, virtually identical to those in *Gideon*, was not so "offensive to the common and fundamental ideas of fairness" as to amount to a denial of due process.

_____ *Stare decisis* is a principle which holds that a court, including the United States Supreme Court should respect the precedent established by prior decisions.

_____ *Stare decisis*, while requiring a court to give great deference to prior decisions, allows a court to overturn one of its own precedents only where a strong reason for doing so exists.

_____ The Sixth Amendment has been interpreted to mean that a defendant in a **federal** criminal prosecution has the right to have counsel appointed if the defendant cannot afford counsel.

4. What will the other side argue? How will you counter those arguments? (Again, think of your own and use the argument sheet which follows.)

5. List your arguments to present. Begin by saying:

“May It Please the Court, I’m _____ and I represent _____ in this matter.” [If you are representing the United States and wish to reserve five minutes for rebuttal, state that after introducing yourself.]



Justice Brainstorming Worksheet

You are a Supreme Court justice hearing *Gideon v. Wainwright*. Please answer the following questions. Be sure to reference the facts and the relevant cases on the argument sheet.

1. Pretend that you are listening to the oral arguments of the attorneys representing the Gideon. What two questions would you ask?

A.

B.

2. Pretend that you are listening to the oral arguments of the attorneys representing Wainwright. What two questions would you ask?

A.

B.

3. At the conclusion of hearing the case, you have to write a court opinion ruling either in favor of Gideon or Wainwright. Remember that you need to weigh the needs of the criminal justice system to obtain evidence against the needs of the executive branch for confidentiality in performing its duties.

_____ Gideon

_____ Wainwright

4. Prepare a bullet point list of your reasons. Include why you rejected the losing side's arguments.