ALABAMA JUSTICE: CASES AND FACES THAT CHANGED A NATION
CONSTITUTIONAL ISSUES CURRICULUM:

Persistent Issue: What should society do to promote fairness and justice for people who live within its jurisdiction?
Central Question: Are public defenders providing “effective counsel?”

Curriculum:
For similar curriculum, email Dr. Jada Kohlmeier, kohlmj@auburn.edu, about becoming a member of the Persistent Issues in History Network of teachers.

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Supreme Court: Right to Counsel Unit

Persistent Issue
What should society do to promote fairness and justice for people who live within its jurisdiction?

Central Question
Are public defenders providing “effective counsel?”

Overview
In this unit, students will deliberate and decide the outcome for Supreme Court cases exploring the right to counsel as stated in the 6th Amendment of the United States Constitution. Each court case will have its own Constitutional question to be answered. In the final lesson, or culminating activity, students will deliberate as to whether or not the public defender system of the United States is providing “adequate” counsel.

Unit Components
Lesson 1: Grabber

Lesson 2: Powell v Alabama, 1932

Lesson 3: Gideon v Wainwright, 1966

Lesson 4: Culminating Activity
Supreme Court: Right to Counsel Unit
Lesson 1: Grabber

Estimated Lesson Time: 10 minutes

Persistent Issue: What should society do to promote fairness and justice for people who live within its jurisdiction?

Central Question: Are public defenders providing “effective counsel?”

Lesson Materials:
• Student Handout 1: Smoky Mountains Fire Scenario

Lesson Narrative:
The teacher will pass out Student Handout 1, a scenario based on real life events in the Great Smoky Mountains that led to one of the largest forest fires in that area in history to students. At teacher discretion, students may either work individually on the assignment or pair with a partner. Individually or with their partner, students should reflect on the questions at the bottom of the story and record their thoughts. After giving students time to read the story and consider the accompanying questions, the teacher should lead the class in the whole class in a discussion to include whether or not they would need a lawyer and when would they want a lawyer.

The teacher should conclude the class discussion by introducing the unit including the Persistent Issue and Central Question. Explain to the students that they will wrestle with three critical Supreme Court cases involving the right to counsel and when and if the taxpayers should pay for defendants to have attorneys appointed for them. What is in the Constitution? What is fair? To better understand, the students will become lawyers preparing to take on the role of Supreme Court justices. In this role, they will need to know the history of the law and critical Constitutional principles on the issue of the right to counsel.
Right to Counsel Unit Grabber
Lesson 1: Student Handout 1
Smoky Mountains Fire Scenario

You and a friend are hiking in the Smoky Mountains National Park. You are goofing around and lighting matches. You are tossing them into the brush alongside the trail and at some point you see smoke. You try to put out the fire, but it starts to get out of control so you have to get out of there and call in the fire. Unfortunately for you, this fire grows into the worst forest fire in the history of the Smoky Mountain National Park burning thousands of acres and destroying hundreds of homes and property. You are charged with arson.

1) Would you want a lawyer? Why or why not?

2) Do you need a lawyer?

3) When would you want the assistance of a lawyer?
   - When you are put under arrest?
   - When you are in jail?
   - When you get to trial?
   - Before your trial starts? How long before the trial begins?

4) What if you can’t afford a lawyer? Should the taxpayers pay for you to have a lawyer? Why or why not?
Supreme Court: Right to Counsel Unit
Lesson 2: Powell v Alabama, 1932

Estimated Lesson Time: 75 Minutes

Persistent Issue: What should society do to promote fairness and justice for people who live within its jurisdiction?

Central Question: Are public defenders providing “effective counsel?”

Lesson Focus Questions: Were the Scottsboro boys provided counsel? Were they given a fair trial?

Lesson Objectives:
1. Students will apply the principles in the 5th, 6th, and 14th amendments to the trial of the Scottsboro boys to argue whether the defendants received “counsel.”
2. Students will produce a ruling on the Lesson Focus Questions.
3. Students will record the outcome of the Supreme Court Case.

Lesson Materials:
- Video 2: Emory University’s The Hidden History of The Quest for Civil Rights, The Scottsboro Boys (https://youtu.be/TmsYLMqx3wg)
- PowerPoint 2: Powell v Alabama
- Teacher Handout 2: Whole Class Discussion Questions
- Student Handout 2.A: Supreme Court Academic Language Handout
- Student Handout 2.B: U.S. Constitution Right of the Accused Language Handout
- Student Handout 2.C: Lecture Notes & Scottsboro Boys Trial excerpt from Steven P. Brown, Alabama Justice: The Cases and Faces that Changed a Nation
- Student Handout 2.D: Supreme Court Scaffold

Lesson Narrative:
PRIOR TO BEGINNING LESSON: The teacher should put students into small response groups of 3-5 students. Students in groups should vary in their ability. Odd number is essential because they are becoming a Supreme Court. The teacher should ensure students understand academic language and provide a brief lecture on the 6th Amendment to the Constitution and its history. Student Handout 2.A: Supreme Court Academic Language Handout is beneficial for lower ability learners to keep track of meanings. Student Handout 2.B: U.S. Constitution Right of the Accused Language Handout on the 5th, 6th, and 14th Amendments will benefit student understanding through interpretation.

LESSON: Teacher should lecture on the background of the case using the PowerPoint2: Powell v Alabama. Student Handout 2.C: Lecture Notes & Scottsboro Boys Trial excerpt from Steven P. Brown, Alabama Justice: The Cases and Faces that Changed a Nation can also assist the teacher. Shortening, supplementing, or elaborating may be done to the lecture guide as seen fit. At the end of the lecture, the teacher should show the Video 2: Emory University’s The Hidden History of The Quest for Civil Rights, The Scottsboro Boys.
Boys YouTube video until the 5:13 mark to quickly give visual background on the arrest of the 9 Scottsboro Boys (the rest will be shown after the students decide the case). Next, the teacher should have the students read the Scottsboro Boys Trial excerpt from Student Handout 2.C: Lecture Notes & Scottsboro Boys Trial excerpt from Steven P. Brown, *Alabama Justice: The Cases and Faces that Changed a Nation*. Before reading remind students of precedent: Bill of Rights only applies to federal law and the 14th Amendment language “no state shall abridge…” After the students finish reading, the teacher should provide the students with Student Handout 2.D: Supreme Court Scaffold with the Constitutional questions facing them as the Supreme Court. Using the scaffold, instruct students to discuss and record their arguments and decisions on the scaffold. When all groups have made a final decision, have the small groups report to the class their decision and legal reasoning. The teacher should record shared responses on the board. When all groups have shared, the teacher should lead a whole class discussion using the Teacher Handout 2: Whole Class Discussion Questions.

Report to the class the Supreme Court’s final decision and have students record for precedent the following information which will be needed in the next cases:

- Denied right to counsel
- Violated 14th Amendment’s due process clause
  - “certain circumstances … shocking to the universal sense of justice” might constitute denial of the 14th Amendment’s due process clause.
  - Does not mean that the 14th Amendment applies to state laws.
  - In capital cases, defendants should be provided counsel regardless if they can pay for it.

Finish the lesson by having students finish the remaining few minutes of Video 2: Emory University’s *The Hidden History of The Quest for Civil Rights, The Scottsboro Boys* YouTube video from the 5:13-7:41 mark.
**Right to Counsel Unit**

**Lesson 2: PowerPoint 2**

**Powell v Alabama**

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### History of Right to Counsel

- **1695** England: Parliament granted defendants right to counsel at own expense – only in cases of treason – others had to defend themselves.
- **1641** Massachusetts Body of Liberties: “Every man that doth himself not to be able to answer for his own cause… shall have liberty to employ any man…” to help him.
- **1790** Federal Crimes Act – all 13 states required counsel to be provided for all accused of capital crimes.
- **1831** Alabama law required counsel be appointed for all capital crimes.
- **1925** Gitlow v. New York – free speech case – SC ruled for first time that 14th Amendment incorporated the freedoms in the 1st Amendment to state laws, not only federal laws.
- **1931** 6th Amendment (part of Bill of Rights) applied only to federal laws – not state laws.

### U.S. Constitution

- **5th Amendment:** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the admiralty courts.
- **6th 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 charge, 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.
- **14th Amendment:** 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.

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### Scottsboro Case: Powell v. Alabama

- This case will go to the Supreme Court and ask two Constitutional Questions:
  1. Did the trials violate the Due Process Clause of the Fourteenth Amendment?
  2. Should the 6th Amendment apply to state laws or be limited to federal laws?

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March 25, 1931 - Arrest

March 31, 1931 - Trial

Did the defendants receive counsel?

- What does “Right to counsel” entail?
- Members of the bar sufficient?
- When should someone receive counsel? At time of trial sufficient?
- Mr. Roddy - was he “counsel?”

Did the Scottsboro trials violate the due process clause of the 14th amendment?

Should the 14th amendment apply to state laws?

Supreme Court Decision

- 7-2 Ruled against Alabama - Justice Sutherland
- Scottsboro Defendants did NOT receive adequate counsel. Violated 14th Am.
- “appointment of counsel was little more than an expansive gesture, imposing no substantial or definite obligation upon anyone.”
- Counsel is essential for due process of law (14th amendment)
  - “The necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of counsel was likewise a denial of due process within the meaning of the 14th amendment.”
- Court does not apply 6th Amendment (Bill of Rights) to state laws.

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Right to Counsel Unit
Lesson 2: Teacher Handout 2
Whole Class Discussion Questions

What does “right to counsel” entail?
- What does “right to counsel” entail?
- Was Judge Hawkins assigning of members of the bar sufficient?
- When should someone receive counsel? Is at the time of trial sufficient?
- Was Mr. Roddy sufficient counsel?
- Who should provide counsel if a defendant can’t afford one?
- Were the defendants capable of assisting in their defense?

Was this a fair trial?
- How important was the speed of the trial?
  - Judge Hawkins argued he was providing the defendants with their right to a speedy trial.
- Was the Judge treating the two sides fairly in his questioning and allowing for attorneys to object to each other, cross-examine witnesses, etc.?

What about the venue, place of the trial?
- Could these defendants have truly received a fair trial in Scottsboro?
- Should the trial have been moved to another venue? (Pros? Cons?)

Did the trial violate the 14th Amendment?
If it did violate the 14th Amendment, should the court apply the Bill of Rights to state laws or only to federal laws?
**Right to Counsel Unit**  
**Lesson 2: Student Handout 2.A**  
**Supreme Court Academic Language**

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition/Explanation</th>
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<tbody>
<tr>
<td>Prosecution</td>
<td></td>
</tr>
<tr>
<td>Defendant</td>
<td></td>
</tr>
<tr>
<td>Majority Opinion</td>
<td></td>
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<tr>
<td>Dissenting Opinion</td>
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<tr>
<td>Accused</td>
<td></td>
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<tr>
<td>Counsel</td>
<td></td>
</tr>
<tr>
<td>Bill of Rights</td>
<td></td>
</tr>
<tr>
<td>6&lt;sup&gt;th&lt;/sup&gt; Amendment – Right to Counsel</td>
<td></td>
</tr>
<tr>
<td>14&lt;sup&gt;th&lt;/sup&gt; Amendment – Due Process of Law</td>
<td></td>
</tr>
<tr>
<td>State v. Federal Law</td>
<td></td>
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<tr>
<td>Capital Offense (rape/murder)</td>
<td></td>
</tr>
<tr>
<td>Writ of Certiori</td>
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</table>
Right to Counsel Unit
Lesson 2: Student Handout 2.B
U.S. Constitution Right of the Accused Language

5th Amendment: “No person shall be held to answer for a capital, or otherwise infamous crime, … nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law…”

6th Amendment: “… in all criminal prosecutions, the accused shall enjoy the right to … have the assistance of counsel for his defense.”

Who is responsible for securing counsel?

14th Amendment: “… 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.”

Does the 14th Amendment mean the 5th and 6th Amendments should also apply to state laws or only federal laws?
Right to Counsel Unit
Lesson 2: Student Handout 2.C
Lecture Notes & Scottsboro Boys Trial excerpt from Steven P. Brown, Alabama Justice: The Cases and Faces that Changed a Nation

Arrest
- March 25, 1931 – 9 young black men (ages 13-20) pulled from a freight train in Paint Rock, Alabama.
- Train was going west from Chattanooga, Tennessee. People were riding the rails looking for work. Boys were from Tennessee and Georgia.
- Fight broke out between rail hoppers – blacks vs. whites. Not sure what started it.
- Whites either jumped or were pushed off the train.
- Train met by mob, two white women found on train accused the 9 boys of raping them. Sherriff protects the accused and puts accused in jail. Called the Governor to nationalize National Guard. (Makes the accused seem even more dangerous.

Trial
- March 31 – (6 days after arrest) accused indicted by a grand jury. Judge Hawkins set trial date for April 6. Judge appointed counsel for the young men. Alabama law required defendants have counsel (lawyer) appointed in capital crimes. Rape is an executable offense.
- Counsel was appointed: Judge appointed all seven members of the local bar as counsel for the young men, but no lawyer specifically. Six lawyers could not serve due to helping prosecution or other obligations. This left one lawyer, Milo Moody. Mr. Moody was described as “extremely unreliable, senile, doddering, losing whatever ability he once had.”
- An additional lawyer was present. Families of accused young men found out about their situation from the explosive newspaper coverage in Chattanooga. Parents were afraid to come to Alabama on their behalf so sent Stephen R. Roddy, a local white attorney, about going to observe the trial.
- Mr. Roddy served both black and white clients as a real estate lawyer and agree to observe the case. He had virtually no knowledge of the case.
- By April 6, the story had broken across the nation and national newspapers were sending reporters. Chicago Tribune reported over 10,000 people had comet to town (population 2,300).
- Judge asked if counsel was ready to begin the trial. Prosecution said yes. No one answered for the defense. When no one answers, Mr. Roddy stood and tried to explain his role – there to observe the trial for the parents. Mr. Roddy said he would assist whoever the Judge appointed as counsel. Judge Hawkins took that as Roddy volunteering to be the accused counsel.
Right to Counsel Unit
Lesson 2: Student Handout 2.C (Continued)
Lecture Notes & Scottsboro Boys Trial excerpt from Steven P. Brown, *Alabama Justice: The Cases and Faces that Changed a Nation*

Roddy: “Your Honor has appointed counsel, right?”
Judge responded he had appointed all the members of the Scottsboro Bar to represent the accused and expected them to continue if “no counsel appears”.
Roddy: “I don’t appear then as counsel but I do want to stay in and not be ruled out of this case.”

At least three times Roddy declared he was willing and ready to assist counsel already appointed by the court. Judge asked Moody if he would be willing to assist Roddy, which he agreed to do.
Roddy: “If I was paid down here and employed, it would be a different thing, but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now they have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama.” He went on to plead, “I am merely here at the solicitation of people who have become interested in this case without any payment or fee and without any preparation for trial and I think the boys would be better off if I step entirely out of the case according to my way of looking at it and according to my lack of preparation of it and not being familiar with the procedure in Alabama.”
Judge again asked Moody if he would be willing to help Roddy. Moody agreed. Judge proceeded to the first trial.
Right to Counsel Unit  
Lesson 2: Student Handout 2.D  
Supreme Court Scaffold

Constitutional Questions facing Supreme Court in Powell v. Alabama

What is the fate of the Scottsboro Boys during each trial:

<table>
<thead>
<tr>
<th>Trial</th>
<th>Defendant(s)</th>
<th>Verdict</th>
</tr>
</thead>
</table>
| 1     | Charlie Weems  
          Clarence Norris |         |
| 2     | Haywood Patterson |         |
| 3     | Olen Montgomery  
          Ozie Powell  
          Willie Roberson  
          Eugene Williams  
          Andy Wright |         |
| 4     | Leroy (Roy) Wright |         |

You are going to become a Supreme Court Justice deciding the Constitutional Question in this case: Did the Scottsboro Defendants receive “due process of law”? In order to answer that question, answer the following two questions based on your reading of the trial description provided.

**Did the Scottsboro Boys receive counsel during their trial? (6th Amendment)**

<table>
<thead>
<tr>
<th>Yes Arguments (Judge Hawkins)</th>
<th>No Arguments (Scottsboro Defendants)</th>
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**Did the Scottsboro Defendants receive due process of law? (14th Amendment)**

<table>
<thead>
<tr>
<th>Yes Arguments (Judge Hawkins)</th>
<th>No Arguments (Scottsboro Defendants)</th>
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Right to Counsel Unit
Lesson 2: Student Handout 2.D (Continued)
Supreme Court Scaffold

What is your final decision as a Supreme Court to the following decisions? You must have at least two legal reasons (connect to the Constitution) to support your answer and support each reason with historical evidence.

1. Did the Scottsboro trials violate the Due Process Clause of the 14th Amendment?

2. Should the 14th Amendment guarantee application of the right to counsel (6th Amendment) in state trials?
Supreme Court: Right to Counsel Unit
Lesson 3: Gideon v Wainwright, 1966

Estimated Lesson Time: 75 Minutes

Persistent Issue: What should society do to promote fairness and justice for people who live within its jurisdiction?

Central Question: Are public defenders providing “effective counsel?”

Lesson Focus Questions: Does the Constitution require the government to provide a lawyer for every criminal defendant?

Lesson Objectives:
1. Students will apply precedent from Powell v Alabama and Betts v Brady to the arguments in Gideon v Wainwright.
2. Students will list arguments for and against the government providing a defense attorney for all criminal defendants.
3. Students will articulate and defend a decision on the Lesson Focus Question.
4. Students will record the final decision by the Supreme Court and compare it to their own ruling.

Lesson Materials:
- PowerPoint 3: Gideon v Wainwright
- Student Handout 3.A: Betts v Brady, 1942
- Student Handout 3.B: Betts v Brady Decision Scaffold
- Student Handout 3.C: Gideon v Wainwright
- Student Handout 3.D: Gideon v Wainwright Supreme Court Ruling

Lesson Narrative:
PRIOR TO BEGINNING LESSON: The teacher should put students into small response groups of 3-5 students. Students in groups should vary in their ability. Odd number is essential because they are becoming a Supreme Court and deciding on a case asking whether or not the rights of a defendant should be expanded by requiring states to provide a lawyer to a defendant in a non-capital case. Have PowerPoint 3: Gideon v Wainwright on the board.

LESSON: Introduce precedent case Betts v Brady, 1942. Provide students with Student Handout 3.A: Betts v Brady, 1942, and allow them to read the handout which is the majority decision written by Justice Owen Roberts and the dissenting opinion by Justice Hugo Black. Have students take notes on Student Handout 3.B: Betts v Brady Decision Scaffold. Remind students to pay close attention to the Constitutional questions of whether or not the 14th Amendment incorporates the 6th Amendment rights into state laws. Allow students to use Student Handout 2.A: Supreme Court Academic Language Handout and Student Handout 2.B: U.S. Constitution Right of the Accused Language.
Handout from the previous lesson if needed. After giving students time to complete Student Handout 3.B, go over majority and dissenting opinions as a whole class.

Introduce the story of Clarence Gideon’s arrest and trial. Give students Student Handout 3.C: Gideon v Wainwright. It is recommended that the teacher shows the Supreme Court hearing of Gideon v Wainwright using the film *Gideon’s Trumpet* beginning with the session being called to order. The teacher should have students pay attention to the arguments Abe Fortas made for why every defendant deserves a lawyer. The teacher should pause the video after that segment and allow students to record the arguments heard. The teacher should then resume the video through the State of Florida’s attorney general’s statements and pause after to allow students to record the arguments he makes for why this would violate the state’s sovereignty and create an undue burden on state taxpayers. If time permits, the teacher may want to show the court scene early in the movie *Gideon’s Trumpet* starring Henry Fonda to show Mr. Gideon representing himself in court.

The teacher should then introduce the students to the constitutional question facing the Supreme Court, “does the 6th Amendment’s right to counsel in criminal cases extend to felony defendants in state courts?” Students will need to think about if Betts v Brady be overturned based on the below arguments:

- **Gideon:** 1.) A common person can’t defend themselves adequately. Even Clarence Darrow, one of the best criminal lawyers of his time, hired a lawyer for himself when he was accused of a crime. 2.) The judge cannot foresee all the special circumstances that might come up in a trial at arraignment and predict when a defendant will need a lawyer. 3.) The Supreme Court is having to weigh in more and more on these “special circumstances” created by case Betts v Brady. 4.) Many states have begun providing all defendants a lawyer because they recognize its fundamental importance to a fair trial.

- **Florida:** 1.) States desire and require this freedom and flexibility in determining when a defendant needs a lawyer. The Supreme Court ruling that all defendants should be provided a lawyer would be violating the state’s sovereignty to carry out justice in its own way. 2.) This requirement of providing every defendant a lawyer would bring an undue burden to tax payers. 3.) The Supreme Court is already providing clear guidance on what special circumstances require the provision of counsel at trial.

Have students record their arguments on Student Handout 3.C Gideon v Wainwright in the two-column chart to answer the constitutional question from both sides. Allow the Supreme Court groups time to deliberate among themselves on the evidence and decide what their decision as the court should be. Instruct students to write their answers on Student Handout 3.C, and include legal reasoning to support their verdict.

After students have had time to deliberate and decide a verdict, have the groups report their verdict to the class along with their supportive legal reasoning. At this time, the teacher should be keeping track of student answers on the board while leading the whole-class discussion on key reasons. When all groups have presented, the teacher
needs to pass out Student Handout 3.D: Gideon v Wainwright Supreme Court Ruling and have students record the verdict for precedent. The verdict includes:

- 9-0: Justice Hugo Black wrote majority opinion. He wrote the dissent in Betts v Brady.
- Constitution requires government to provide defendants an attorney in both federal and state courts facing possible imprisonment, even if the defendant cannot afford one.
- The 14th Amendment requires application of 6th Amendment in all cases – incorporation of Bill of Rights into the 14th Amendment – for all laws across the United States.
- “We think the court in Betts had ample precedent for acknowledging that those guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgement are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment.”
- “Not only these precedents but also reason and reflection require us to recognize that in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”
Right to Counsel Unit
Lesson 3: PowerPoint 3
Gideon v Wainwright

GIDEON V WAINWRIGHT
Supreme Court Decision and Reasoning.

Precedent Cases
- States must provide legal counsel in death penalty cases.
- Betts v. Brady (1942) - Betts arrested for robbery and could not afford a lawyer - found guilty.
- Court ruled that in extraordinary circumstances, the state must provide counsel, but not in every situation.
- E.g., illiteracy, mental deficiency, etc.
- Gideon v. Wainwright: Should Betts be reconsidered?

Betts v Brady, 1942
- Read the majority and minority opinions.
- Record the arguments Made by Owens (Majority) and Black (Minority).

Gideon v Wainwright 1961
- You are now the Supreme Court having to decide this question:
  - Should the 14th amendment provision of "due process" apply to all state laws?
  - Should Betts v. Brady be overturned and should every defendant be provided a lawyer if they can't afford one?
- Record the arguments for Gideon and for the State of Florida on your sheet of paper.
- Make your decision on the two questions and support it with legal reasoning and factual evidence.

Supreme Court Decision
- Hugo Black (Justice who wrote dissenting opinion on Betts v Brady wrote the 9-0 decision stating two things:
  - Every defendant should be granted a lawyer if they can't afford one.
  - The 14th amendment incorporates the Bill of Rights into it and applies to state laws.

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Betts v. Brady Decision 6-3

Background: Betts had been indicted for robbery but could not afford an attorney. At the trial he asked the judge to appoint him an attorney and the judge informed him that the law did not require the state to provide a lawyer unless in cases of rape or murder. Mr. Betts plead not guilty and attempted to represent himself at trial. He said he did not want a jury trial so the judge would rule the evidence. Mr. Betts brought witnesses for himself and cross examined the state’s witnesses. He was found guilty. Mr. Betts appealed his conviction on the grounds that the 14th Amendment should require him to be appointed an attorney since he couldn’t afford one. The Supreme Court ruled 6-3 that the 14th Amendment did not require a state to provide an attorney to every defendant, regardless of situation.

Excerpted passages of the Majority Opinion written by Justice Owen Roberts:

In *Powell v. Alabama*, ignorant and friendless negro youths, strangers in the community, without friends or means to obtain counsel, were hurried to trial for a capital offense without effective appointment of counsel on whom the burden of preparation and trial would rest, and without adequate opportunity to consult even the counsel casually appointed to represent them. This occurred in a State whose statute law required the appointment of counsel for indigent defendants prosecuted for the offense charged. Thus, the trial was conducted in disregard of every principle of fairness and in disregard of that which was declared by the law of the State a requisite of a fair trial. This court held the resulting convictions were without due process of law.

In this case, there was no question of the commission of a robbery. As Judge Bond says, the accused was not helpless, but was a man forty-three years old, of ordinary intelligence and ability to take care of his own interests on the trial of that narrow issue. He had once before been in a criminal court, pleaded guilty to larceny, and served a sentence, and was not wholly unfamiliar with criminal procedure.

To deduce from the due process clause (14th Amendment) a rule binding upon the States in this matter would be to impose upon them, as Judge Bond points out, a requirement without distinction between criminal charges of different magnitude. As he says:

"Charges of small crimes tried before justices of the peace and capital charges tried in the higher courts would equally require the appointment of counsel. Presumably it would be argued that trials in the Traffic Court would require it."

As we have said, the Fourteenth Amendment prohibits the conviction and incarceration of one whose trial is offensive to the common and fundamental ideas of fairness and right, and, while want of counsel in a particular case may result in a conviction lacking in such fundamental fairness, we cannot say that the Amendment includes a command that no trial for any offense, or in any court, can be fairly conducted and justice accorded a defendant who is not represented by counsel.
Right to Counsel Unit
Lesson 3: Student Handout 3.A (Continued)
Betts v Brady, 1942

Below are excerpts from Supreme Court Justice Hugo Black’s (from Alabama) dissenting opinion which was joined by two other justices.

To hold that the petitioner had a constitutional right to counsel in this case does not require us to say that "no trial for any offense, or in any court, can be fairly conducted and justice accorded a defendant who is not represented by counsel." This case can be determined by a resolution of a narrower question: whether, in view of the nature of the offense and the circumstances of his trial and conviction, this petitioner was denied the procedural protection which is his right under the Federal Constitution. I think he was.

The petitioner, a farm hand, out of a job and on relief, was indicted in a Maryland state court on a charge of robbery. He was too poor to hire a lawyer. He so informed the court, and requested that counsel be appointed to defend him. His request was denied. Put to trial without a lawyer, he conducted his own defense, was found guilty, and was sentenced to eight years' imprisonment. The court below found that the petitioner had "at least an ordinary amount of intelligence." It is clear from his examination of witnesses that he was a man of little education.

If this case had come to us from a federal court, it is clear we should have to reverse it, because the Sixth Amendment makes the right to counsel in criminal cases inviolable by the Federal Government. I believe that the Fourteenth Amendment made the Sixth applicable to the states.

A practice cannot be reconciled with "common and fundamental ideas of fairness and right," which subjects innocent men to increased dangers of conviction merely because of their poverty.

Denial to the poor of the request for counsel based on charges of serious crime has long been regarded as shocking to the "universal sense of justice" throughout this country. Any other practice seems to me to defeat the promise of our democratic society to provide equal justice under the law.

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i. too poor to afford an attorney
ii. declare his trial was unconstitutional – his 6th Amendment rights were denied
iii. never to be broken or infringed upon
**Right to Counsel Unit**  
**Lesson 3: Student Handout 3.B**  
**Betts v Brady Decision Scaffold**

Why didn’t Betts have a lawyer to represent him at his trial?

<table>
<thead>
<tr>
<th>Was Betts able to represent himself adequately at trial? Why or why not?</th>
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<tbody>
<tr>
<td>Justice Roberts – Majority Decision</td>
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</table>

Does the 14th Amendment require states to provide counsel for every defendant who can’t afford one? Why or why not?

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Gideon v Wainwright Background and Case Precedent

Case Background: Clarence Gideon had an 8th grade education. He ran away from home in middle school and drifted across the country. He was very poor and was convicted of stealing clothes as a juvenile. He graduated from Juvenile Detention and then drifted across the country, committing non-violent crimes of robbery from time to time.

In 1961 he was accused of stealing some change from a cigarette machine and a bottle of liquor from a pool hall in Florida. He insisted on his innocence. When he was put on trial, he asked the judge to appoint him a lawyer because he could not afford one. The judge informed him that the Florida law did not require the state to provide him a lawyer. Mr. Gideon attempted to represent himself at trial. He cross examined a couple witnesses and brought a character witness, his land lady. However, the jury found him guilty. In prison he began reading law books and appealed his case to the Florida Supreme court. The Florida Court ruled that according to the Supreme Court in Betts v. Brady, the state of Florida was not required to provide Mr. Gideon a lawyer except in rare circumstances of such as the defendant being illiterate or mentally incompetent.

Clarence Gideon kept reading and decided to appeal his case to the Supreme Court. On a hand-written note, he wrote why he felt he had been denied due process under the 14th amendment and requested the Supreme Court review his case – a writ of certiorari.

You are a member of the Supreme Court in 1963 and have decided to grant Mr. Gideon’s writ of certiorari (you have agreed to hear this case). You must weigh the arguments for and against Mr. Gideon by reviewing past precedent cases. The two questions before you are:

1. Does the 6th Amendment apply to state laws?
2. Is a state required to provide a lawyer to every defendant, even if that can’t pay for one? (This would mean overturning the Supreme Court ruling on Betts v Brady.)

Precedent Case: Powell v Alabama, 1932 (9-0)
- Supreme Court Ruled:
Right to Counsel Unit
Lesson 3: Student Handout 3.C (Continued)
Gideon v Wainwright

Precedent Case: Betts v Brady, 1942 (6-3)
- Majority Decision ruling by Justice Roberts:

- Dissent Opinion written by Justice Black:

Arguments for Supreme Court Hearing:

<table>
<thead>
<tr>
<th>Abe Fortas for Gideon</th>
<th>Florida Attorney General for Wainwright</th>
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</table>

You are the Supreme Court. How will you rule? Why? You must write your decision on whether or not Betts should be overturned, meaning the 14th Amendment applies to state laws and every defendant must be provided a lawyer, whether they can afford to pay for one or not. Provide legal reasons and evidence to support your decision.
Gideon v Wainwright Supreme Court Decision (9-0) written by Justice Hugo Black in 1966:

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, after full consideration of all the historical data examined in Betts, had unequivocally 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, by its language, as this Court frequently does, 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.

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 right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence."

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.
Supreme Court: Right to Counsel Unit
Lesson 4: Culminating Activity

Estimated Lesson Time: 75 Minutes

Persistent Issue: What should society do to promote fairness and justice for people who live within its jurisdiction?

Central Question: Are public defenders providing “effective counsel?”

Lesson Focus Questions: Is the public defender system providing “effective counsel”?

Lesson Objectives:
1. Students will list and explain arguments on both sides of the Central Question – yes and no.
2. Students will debate the strengths and weaknesses of the public defender system.
3. Students will develop a persuasive argument for or against stronger federal oversight on the public defender system.

Lesson Materials:
- PowerPoint 4: Culminating Activity
- Student Handout 4.A: Public Defender Culminating Activity
- Student Handout 4.B: Senate Judiciary Hearing Online Sources
- Student Handout 4.C: Senate Judiciary Committee Senator Speech Directions and Rubric

Lesson Narrative:
LESSON: The teacher should explain to students that they are not becoming members of the Senate Judiciary Committee investigating and determining whether they should sponsor legislation increasing federal oversight and funding for public defenders. The teacher should also remind students of the grabber scenario and ask students “who would you want representing you at your trial? Would you want a public defender?”

Provide students with Student Handout 4.A: Public Defender Culminating Activity with instructions to use this as they investigate arguments and evidence about the strengths and weaknesses of the public defender system. The teacher should lead students through PowerPoint 4: Culminating Activity for background on the case Strickland v Washington, 1984, and the standards established for “effective counsel.” The teacher should make sure to explain the public defender’s role in the criminal justice system, the story of Strickland’s guilty plea and sentencing hearing, the issue with sentencing and counsel (questions of effectiveness), in addition to the Supreme Court decision (8-1) with the criteria established for “ineffective counsel”: 1.) fell below an objective standard of reasonableness, and 2.) reasonable probability that if counsel had performed adequately, the result would have been different.
Remind students the question before the Senate is whether or not the defendants who use a public defender are getting an equally effective counsel as someone who hires an attorney. Should the U.S. Congress take more oversight and funding of the state/county/city public defender offices and funding?

The teacher should now divide students into mixed ability groups of four. Pass out and have them read Student Handout 4.B: Senate Judiciary Hearing Online Sources. Have them read the articles in the activity using a laptop, tablet, or personal device, and record three-four reasons on the chart located on Student Handout 4.A: Public Defender Culminating Activity about whether public defenders were being effective and ineffective. The groups should then take time to reach a group decision as the Senate Judiciary Committee. Groups should share their decision with the class as the teacher leads a whole-class discussion on what if any changes should be made to the public defender program to ensure all citizens get “effective counsel.”

After the whole-class discussion, the teacher should pass out Student Handout 4.C: Senate Judiciary Committee Senator Speech Directions and Rubric, explaining each student is tasked with writing a speech as if they were truly a Senator taking a position on the public defender program.
ARE PUBLIC DEFENDERS PROVIDING “EFFECTIVE COUNSEL!”

WHAT IS A PUBLIC DEFENDER?
- Following Gideon v. Wainwright
- State/County/City government provides an attorney for anyone who can’t afford one.
- Funded by state and local taxes.
- Is this working?
- Grabber: Who would you want to represent you at trial?

WHAT IS “EFFECTIVE COUNSEL!”
- Strickland v. Washington, 1984
- Defendants must have “effective assistance” from counsel in order to receive a fair trial.
- Two criteria:
  - Counsel’s performance fell below an objective standard of reasonableness.
  - Reasonable probability that if counsel had performed adequately, the result would have been different.
Right to Counsel Unit
Lesson 4: Student Handout 4.A
Public Defender Culminating Activity

Persistent Issue: What should society do to promote fairness and justice?
Central Question: Are public defenders providing “effective counsel?”

You are a United States Senator serving on the Judiciary Committee. You are charged with investigating whether our current public defender system (which is supported by state, county, and city governments) is providing effective counsel? Are people who use the public defenders receiving a fair trial according to the 5th, 6th and 14th amendments and Strickland v Washington?

What is a public defender?

Strickland v Washington, 1984
David Washington committed a series of robberies in Florida and in the course of those robberies murdered three people. He plead guilty to all three murders and explained in his plea with the judge that he was under a great deal of stress due to the fact that he was too poor to provide housing, food, and clothing for his family. At the sentencing hearing, his attorney failed to bring any witnesses who might testify to Mr. Washington’s good character or a psychologist who might testify to his mental state. The judge sentenced Mr. Washington to death for each of the three murders. Mr. Washington’s attorney appealed the decision to the Florida Supreme court, which upheld the sentence and the U.S. Court of Appeals which also upheld the sentence.

The U.S. Supreme Court examined the transcript of the trial and ruled that the right to effective counsel (6th Amendment) is imperative in receiving a fair trial in our adversarial system of justice. They established two criteria that courts should use to determine if counsel was ineffective:

1) 

2) 

The Supreme Court sent the case back to Florida and told the judge to re-apply the new criteria to the case.
Right to Counsel Unit
Lesson 4: Student Handout 4.A (Continued)
Public Defender Culminating Activity

Is the public defender system providing “effective counsel” for all citizens? Find at least three arguments on each side from the articles in Student Handout 4.B: Senate Judiciary Hearing Online Sources.

<table>
<thead>
<tr>
<th>Effective</th>
<th>Ineffective</th>
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Discuss as a group the following questions before making your decision:
1. Should the national government takeover public defenders instead of leaving it to state and local governments? Discuss the pros/cons of this approach.

2. Is this system disadvantaging citizens from racial minority groups? Why or why not?

3. Does the system require improvements? Why or why not?

Make your final decision as a group and write on a separate piece of paper your answer to the question is the public defender system providing “effective counsel” to all citizens? Defend your answer with factual information and constitutional reasoning from the articles, cases, and the Constitution itself.

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Right to Counsel Unit
Lesson 4: Student Handout 4.B
Senate Judiciary Hearing Online Sources

As a Senator on the Judiciary Committee, you are investigating whether or not our public defender system is providing “effective counsel” to people accused of crimes. On Student Handout 4.A: Public Defender Culminating Activity, record arguments that the system is effective and ineffective based on the readings from the websites listed below. For each website be sure to “source” the information by asking:

1. What organization created this site?
2. What is the purpose of the organization?
3. Can I detect any bias on the issue from this source?

PBS Documentary Series on Public Defenders: Research the System
https://www.pbs.org/kqed/presumedguilty/3.2.0.html

Pros/Cons of Public Defenders

NBC News: Public Defenders, Overworked & Underfunded
Right to Counsel Unit
Lesson 4: Student Handout 4.C
Senate Judiciary Committee Senator Speech Directions and Rubric

Are public defenders providing “effective counsel” to defendants?

Case Precedent:
- Powell v Alabama, 1932 – States must provide legal counsel in death penalty cases.
- Betts v Brady, 1942 – In extraordinary circumstances the state must provide counsel, but this does not apply to every situation.
- Gideon v Wainwright, 1966 – All defendants facing imprisonment must be provided counsel.
- Strickland v Washington, 1984 – Right to “effective counsel” is imperative, two criteria on ineffective counsel provided.

Using your materials from the previous cases, historical information about the counsel defendants have and are receiving, 6th and 14th Amendments language, and evidence about public defenders and their clients, you are to write a speech as a Senator on the Judiciary Committee answering the question: are public defenders providing “effective counsel” to defendants?

- Paragraph 1: Argue public defenders are providing “effective counsel” citing at least three Supreme Court cases as evidence for your legal reasoning.
- Paragraph 2: Argue public defenders are not providing “effective counsel” citing at least three Supreme Court cases as evidence for your legal reasoning.
- Paragraph 3: Take a position as a Senator and explain your position, including what should be done about public defenders. Cite historical evidence and use Supreme Court cases for support.

See attached rubric.
### Right to Counsel Unit

#### Lesson 4: Student Handout 4.C (Continued)

#### Senate Judiciary Committee Senator Speech Directions and Rubric

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Exemplary = 5</th>
<th>Competent = 3</th>
<th>Limited = 1</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Paragraph I clear position</strong></td>
<td>Clear position, logical argument, historically possible</td>
<td>Position is mostly clear and logical, but has some inconsistencies</td>
<td>Position is unclear, implausible, or inconsistent.</td>
<td></td>
</tr>
<tr>
<td><strong>Paragraph I use of evidence</strong></td>
<td>Has more than minimum # of facts and facts fit well with reasons</td>
<td>Has minimum # of facts and they fit well with reasons</td>
<td>Does not have minimum # of facts and seem chosen at random</td>
<td></td>
</tr>
<tr>
<td><strong>Paragraph II clear position</strong></td>
<td>Clear position, logical argument, historically possible</td>
<td>Position is mostly clear and logical, but has some inconsistencies</td>
<td>Position is unclear, implausible, or inconsistent.</td>
<td></td>
</tr>
<tr>
<td><strong>Paragraph II use of evidence</strong></td>
<td>Has more than minimum # of facts and facts fit well with reasons</td>
<td>Has minimum # of facts and they fit well with reasons</td>
<td>Does not have minimum # of facts and seem chosen at random</td>
<td></td>
</tr>
<tr>
<td><strong>Paragraph III clear position</strong></td>
<td>Clear position, logical argument, historically possible</td>
<td>Position is mostly clear and logical, but has some inconsistencies</td>
<td>Position is unclear, implausible, or inconsistent.</td>
<td></td>
</tr>
<tr>
<td><strong>Paragraph III use of evidence</strong></td>
<td>Has more than minimum # of facts and facts fit well with reasons</td>
<td>Has minimum # of facts and they fit well with reasons</td>
<td>Does not have minimum # of facts and seem chosen at random</td>
<td></td>
</tr>
<tr>
<td><strong>Clear and Persuasive</strong></td>
<td>Decision persuades the reader to take their side</td>
<td>Decision is somewhat convincing but leaves reader hanging</td>
<td>Decision is unconvincing.</td>
<td></td>
</tr>
<tr>
<td><strong>Grammar, mechanics</strong></td>
<td>Spelling, punctuation, and conventions are accurate.</td>
<td>A few minor mistakes in spelling or conventions.</td>
<td>Spelling and convention mistakes are distracting.</td>
<td></td>
</tr>
<tr>
<td><strong>Organization</strong></td>
<td>Decision follows the assigned organization and goes beyond minimum expectations.</td>
<td>Decision follows directions but merely meets requirements.</td>
<td>Decision does not follow directions for organizations and does not meet minimum standards.</td>
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Name_________________________ Total Score ____________/45 ____

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