

CONSTITUTION 101

Module 14: Battles for Freedom and Equality: Modern Battles

14.4 Primary Source

GIDEON V. WAINWRIGHT (1963)

View the case on the National Constitution Center's website [here](#).

SUMMARY

In *Johnson v. Zerbst* (1938), the Supreme Court held that the Sixth Amendment's right to assistance of counsel required the federal government to appoint counsel to an indigent defendant who could not afford one. In *Gideon v. Wainwright* (1963), a much more famous case, the Supreme Court "incorporated" this right against the state government. There, Clarence Earl Gideon was accused of a burglary at a pool hall in Florida, but he could not afford an attorney. As a result, Gideon had to represent himself in court, and he was convicted of the burglary and sentenced to five years in prison. While in prison, Gideon became a "jailhouse" lawyer—studying the Constitution, building his case, and eventually petitioning the Supreme Court to take it up. The Court took Gideon's case and ruled in his favor—concluding that he *did* have a right to an attorney. The case was part of the Warren Court's revolution in criminal procedure, whereby the Court systematically began to interpret constitutional provisions in cases such as *Miranda* and *Mapp* more favorably for criminal defendants.

[Read the Full Opinion](#)

Excerpt: Majority Opinion, Justice Black

Justice Black begins with the Sixth Amendment's text and a statement of how the Court has applied the right to counsel in the context of federal courts. The Sixth Amendment provides, 'In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.' We have construed this to mean that in federal courts counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived. . . .

The Court has incorporated many Bill of Rights provisions against the states, including the First Amendment, the Fourth Amendment, the Fifth Amendment's Takings Clause, and the Eighth Amendment's protection against cruel and unusual punishment. In many cases . . . this Court has looked to the fundamental nature of original Bill of Rights guarantees to decide whether the Fourteenth Amendment makes them obligatory on the States. Explicitly recognized to be of this 'fundamental nature' and therefore made immune from state invasion by the Fourteenth, or some part of it, are the First Amendment's freedoms of speech, press, religion, assembly, association, and petition for redress of grievances. For the same reason, though not always in precisely the same terminology, the Court has made obligatory on the

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States the Fifth Amendment's command that private property shall not be taken for public use without just compensation, the Fourth Amendment's prohibition of unreasonable searches and seizures, and the Eighth's ban on cruel and unusual punishment. . . .

We must incorporate a Bill of Rights provision if it is fundamental and essential to ensuring a fair trial. We accept . . . that a provision of the Bill of Rights which is 'fundamental and essential to a fair trial' is made obligatory upon the States by the Fourteenth Amendment. . . .

The Sixth Amendment satisfies this rule and must be incorporated against the states; poor defendants must not be denied access to a lawyer, whether in federal court or state court. [R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the wide-spread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. . . .

***Bold sentences give the big idea of the excerpt and are not a part of the primary source.**