



Dialogue on
John Adams
& His Legacy

Resource Guide

for Lawyers, Judges, and Other Dialogue Leaders



How to Do a Dialogue in the Classroom and in the Community

If you are a lawyer, judge, or other leader interested in conducting a *Dialogue on John Adams and His Legacy* at a school or in your community, follow these steps to help ensure a meaningful experience, for you and participants alike.

A note to teachers or community group leaders: If you are initiating the program, please review these steps with legal professionals who you have asked to conduct a Dialogue.

Step 1. Identify a school or community group. Contact a school where you or your friends' children are students, a school in your neighborhood, or a school where you know members of the teaching staff. You might also contact community groups, for youth and adults, such as the YMCA, Girl Scouts, Kiwanis Club, or League of Women Voters. Friends and co-workers might also recommend a school or community group that would like to participate in the Dialogue program.

Step 2. Set up an appointment for your visit. Contact the school principal, department head (social studies, history, government, or civics), or community group leader. Explain the program to them and offer them a copy of the *Dialogue Resource Guide*. Ask if they would be willing to schedule a date and time to conduct the Dialogue. They should set aside somewhere between 45 and 90 minutes.

Step 3. Discuss your visit with the teacher or community group leader. Discuss the ages and experiences of partici-

pants. Determine what part of the Dialogue you would like to focus on and provide the teacher or community leader with the *Resource Guide*, focusing on the parts you wish to discuss. In addition, consult with the teacher or community leader about background materials that might help participants. Request that name tags or tent cards be printed with the participants' names. Request equipment you will need (e.g., an LCD projector, screen, flip chart, or microphones).

Step 4. Prepare participants for your visit. Ask the teacher or community leader to distribute any materials or assign any background readings you want participants to discuss, at least one day before your visit.

Step 5. Prepare yourself for your Dialogue. Know your subject. Review the *Resource Guide* before you go and think of additional follow-up questions that may help the participants explore the issues raised by the Dialogue. Using the step-by-step directions and questions in the *Resource Guide*, map out where you would like the discussion to go, but be prepared to be responsive to participants' questions and provide background information, if needed. As appropriate, personalize the topic by referring to your own experiences.

Step 6. Follow up after the Dialogue. Write a thank-you note to the teacher or community leader. Make yourself available to answer questions participants may raise following the Dialogue.





John Adams & His Legacy

A Resource Guide for Lawyers, Judges, and Other Dialogue Leaders

The *Dialogue on John Adams and His Legacy* is designed for use by lawyers, judges, and other leaders in the classroom and with youth and community groups.

It pays tribute to John Adams—the first American lawyer-president and one of our nation’s greatest founders—and his enduring legacy. It is an opportunity for Americans to reflect on the legal legacy of John Adams—the enduring meaning of “a government of laws, and not of men” and the vital importance of our legal institutions, including citizen juries and independent courts, in a constitutional democracy. In this *Dialogue*, special focus is on the role that lawyers play in representing those accused of crimes in an adversarial legal system and constitutional guarantees of procedural protections to the accused, including the right to legal counsel.

This *Resource Guide* is an educational complement to the 2011 Law Day theme of “John Adams and His Legacy: From Boston to Guantanamo.” The three topics selected to represent this theme are designed to inform and engage Dialogue participants in vigorous and challenging discussions.

Part 1 introduces the story of **John Adams’s** role in representing the British officer and soldiers accused in the 1770 “**Boston Massacre**” trials. It explores why Adams, then a 35-year-old Massachusetts lawyer and a prominent leader in the American colonial resistance to British parliamentary authority, took on the cases. His role in the trials has come to be seen as a lawyerly model of adherence to the rule of law and zealous defense of the rights of the accused, even in cases where advocates may represent unpopular clients and become involved in matters that generate public controversy.

Part 2 explores the story of the **Scottsboro Boys** and their defense lawyer, **Samuel Leibowitz**. It is the story of nine young black men arrested in Scottsboro, Alabama, in 1931 and accused of raping two white women. The ensuing tale of a struggle for racial justice spanned nearly two decades, trials and retrials, and two landmark Supreme Court decisions on procedural protections, including one guaranteeing criminal defendants a right to counsel in capital cases.

Part 3 continues the story of interpreting the Sixth Amendment right to assistance of counsel and applying it to the states through the Fourteenth Amendment. When do criminal defendants have a right to be represented by lawyers when they cannot afford one? To answer this question, it tells the story of **Clarence Gideon**, a poor Florida man, whose petition to the Supreme Court to hear his case resulted in the 1963 landmark decision in *Gideon v. Wainwright*.

Make sure to go online to www.lawday.org for more resources to conduct the Dialogue. You can download ready-to-use PowerPoint® presentations for each of the three parts of the Dialogue, which include key graphics and text.

In consultation with the teacher or community group leader, decide which parts of the Dialogue would be most interesting and appropriate for your group. Step-by-step directions and discussion questions throughout this *Resource Guide* can help you discuss these topics with participants.

Note: Text in italics in Parts 1–3 represents information and instructions you need to facilitate the Dialogue.

The ABA Dialogue Program

The *Dialogue on John Adams and His Legacy* is the ninth annual edition of the ABA Dialogue program. This Resource Guide for Dialogue leaders can be used for Law Day and throughout the year. The ABA Dialogue program provides lawyers, judges, teachers, and other civic leaders with the resources they need to engage students and community members in discussions of fundamental American legal principles and civic traditions. Supreme Court Justice Anthony Kennedy introduced the first Dialogue program, the *Dialogue on Freedom*, at the 2002 ABA Midyear Meeting in Philadelphia. Subsequent Dialogues have addressed *Brown v. Board of Education*, the American jury, separation of powers, youth and justice, the rule of law, Lincoln and the law, and law in the 21st century. All Dialogues are available at www.lawday.org.



John Adams & the Boston Massacre Trials

Most, if not all, U.S. history textbooks give some coverage to the “Boston Massacre.” Dialogue participants should be somewhat familiar with that historical event. But what about the trials that followed it? What really happened? What was John Adams’s role in those trials? What is its significance for American law and history?

Start the Dialogue by asking participants:

Who was John Adams? What do you know about him?

Elicit responses. Focus on Adams’s accomplishments beyond his role in the Boston Massacre. Provide basic information as needed. Adams was our nation’s second president and became our first lawyer-president in 1797. He was a resistance leader, political activist, patriot, advocate, diplomat, constitutional theorist, and, of course, lawyer and statesman. Adams developed one of the largest legal practices in colonial Massachusetts—by 1770, he was one of the most prominent lawyers in Massachusetts. Adams is famously associated with the phrase, “a government of laws, and not of men.” It expressed his firmly held belief in the rule of law as the foundation for republican government and political liberty.

Distribute the Handout for Part 1. Ask participants to read “The Boston Massacre: What Happened?” You may either ask them to read it silently or call on participants to read the two paragraphs.

Ask participants:

What was the “Boston Massacre”? What happened?

Follow up to elicit responses:

When and where did it occur? What caused it to happen? Who was involved and what did they do?

Elicit answers from participants. If you receive answers that are inaccurate, incomplete, or uncertain, ask other participants to respond. Fill in omissions or information or (tactfully) make corrections, as needed. But don’t let participants provide too many details—just be sure they have the basic facts covered in the “Student Handout: The Boston Massacre” before continuing the Dialogue. Limit discussion to the events of March 5, 1770, not to the trials that followed.

Next, ask:

Imagine you are back in the year 1770.

The place: the city of Boston. Remind participants that, for more than three years, there has been unrest resulting from the Townshend Acts. Tensions, general distrust, and even hatred exist between the British soldiers and the colonists. Remind participants, however, that 1770 is five years before the American Revolutionary War begins and even colonists resisting British tyranny are not yet thinking of independence from rule by the British crown.

On March 5, the “Boston Massacre” occurs, greatly escalating tensions and animosity between Bostonians and the British military occupiers. British Captain Preston and soldiers under his command are arrested and indicted. They are placed on trial in Boston courts for killing the five colonists. Many lawyers in Boston are reluctant to represent the accused. Who would defend them? Captain Preston asks John Adams—a prominent Boston lawyer and outspoken critic of the British occupation—to take his case as his lawyer

Ask:

Why do you think Captain Preston and the soldiers need a lawyer? Could they have gone to trial without lawyers representing them? Should we assume that they are probably guilty because they were arrested? Why or why not?

Emphasize that our legal system, even back to colonial times, relies on an “adversarial process,” in which two sides in a courtroom proceeding have the opportunity to introduce evidence (according to prescribed rules of admissibility) and witnesses to present their side of the case. They can question their own witnesses and those of the other side. Critical to this process is a “right to counsel,” which means that, in a criminal proceeding, defendants (the accused) have the right to be represented

by legal counsel, who present their case against that made by the prosecutor, who represents the state. An adversarial legal system assumes certain procedural protections (due process of law)—one of the most important and fundamental of these is a presumption of innocence in criminal proceedings (whether in 1770 Boston or today).

Refer to the Handout,

“Deciding to Take the Case: Josiah Quincy, Jr.”

Select two participants.

Ask them to read the excerpts from the father and son, respectively.

Now ask:

Why does the father say he is “anxious and distressed?” Why does the son argue that “people will one day rejoice” that he has become an advocate for the accused?

Should lawyer John Adams take the case? Should he defend the accused British officer and soldiers?

What did Adams have to lose in taking the case? What might he gain? If they were in John Adams’s place, would they take the case? Why or why not? On what would they base their decision?

Of course, John Adams did agree to take on the defense of both Captain Preston and the British soldiers.

Discuss:

It is October 21, 1770. The trial for Captain Preston is about to begin. Upon learning that the court had determined that Captain Preston would be tried separately from them, the soldiers object. They write a letter to the court, arguing:

“We poor distressed prisoners beg that ye would be so good as to let us have our trial at the same time with our Captain, for we did our Captain’s orders, and if we do not obey his command should have been confined and shot for not doing it.”

Ask a participant to read this letter aloud.

Then ask:

Should the British officer and soldiers be tried separately or together?

Why would a combined trial be to the soldiers’ advantage? Would it be to Captain Preston’s advantage? Do you think the soldiers were all telling the truth when they said they were simply following orders?

The Trials and the Verdicts

Explain that the court did not agree to the soldiers’ request. They proceeded with two trials, one for Captain Preston (Rex v. Preston) and a second for the soldiers (Rex v. Wemms, et al). Preston’s trial began in October 1770. Ably defended by Adams, who cast doubt as to whether Preston gave orders to shoot, the jury acquitted the British captain. The trial of the eight soldiers began in late November. Adams argued that the soldiers had fired in self-defense and that the protestors were an unruly mob. The jury acquitted six of the soldiers and found the other two, who had been proven to have fired their weapons, guilty of manslaughter. Their punishment was to have their thumbs branded.

Have participants look closely at Paul Revere’s engraving of the Boston Massacre.

Ask:

What does the engraving depict? Tell me everything you see? What story is being told? From what you know, is it accurate? Why or why not?

Point out that the engraving shows the British officer raising his sword and evidently giving an order to shoot. Adams cast doubt on this and Preston was acquitted. Remind participants that Revere’s engraving represents a particular point of view and interpretation of the events. According to the Boston Massacre Historical Society, it is “long on political propoganda and short on accuracy or aesthetics.” See www.bostonmassacre.net/gravure.htm.

Refer participants to Handout “John Adams Reflects.” Point out that this handout includes three excerpts dated March 5, 1773, from the diary he kept. That date was exactly three years after the Boston Massacre. In these entries, he reflects on that event.

Have participants review the handout. As an alternative, you may wish to select three participants and ask them each to read one of the three diary entries aloud.

Ask:

By his own account, why did John Adams defend the British? Why would he feel it was his duty to defend them?

How did it affect him? Did he think he did the right thing?

Do you think his reasons were good and his decision right? What does he say about his wife’s and the public’s reaction to his taking the case?

Why is John Adams's role in the Boston Massacre trial significant today?

Explain that John Adams's role in the Boston Massacre trials has come to be seen as a notable model of adherence to the rule of law and defense of the rights of the accused, even in cases when advocates may represent unpopular clients and become involved in matters that generate public controversy.

For a contemporary illustration of this, 19 prominent lawyers signed an open letter in March 2010 supporting the role of lawyers in defending Guantanamo detainees by declaring, "The American tradition of zealous representation of unpopular clients is at least as old as John Adams's representation of the British soldiers charged in the Boston massacre."

Sources

Primary sources in this Dialogue are available at the two sites listed below. They also provide other useful information about the Boston Massacre, including the trials.

Boston Massacre Historical Society
www.bostonmassacre.net/

Famous Trials: Boston Massacre by Douglas Linder
www.law.umkc.edu/faculty/projects/ftrials/bostonmassacre/bostonmassacre.html



Paul Revere's engraving of the Boston Massacre

The Boston Massacre: what Happened?

American colonies were under the rule of the British crown. Massachusetts colonists had actively resisted what they considered unfair taxes imposed by the British Parliament with the 1767 passage of the Townshend Acts. Protests ranged from the halls of the Massachusetts House of Representatives to the shipyards of Boston Harbor to city streets. Beginning in 1768, British troops began arriving in Boston to enforce order. By 1770, they numbered 4,000. Boston then had just 20,000 residents. The Boston Massacre took place five years before the American Revolutionary War began.

On the evening of March 5, 1770, British soldiers fired into a crowd of protesters who had gathered near the Customs House on King Street in Boston. The soldiers were under the command of Captain Thomas Preston. Five colonists died, including Crispus Attucks, a man of Native American and African American descent. The term *massacre* quickly became associated with the event, which others characterized as a riot—depending on the point of view as to what happened and why. Some argued the soldiers were provoked with hurled insults, snowballs, oyster shells, and other objects. Others claimed the soldiers violently overreacted. Captain Preston and eight of his men were arrested and indicted for murder.

Deciding to Take the Case: Josiah Quincy, Jr.

Joining John Adams on his defense team was a young attorney by the name of Josiah Quincy, Jr. The letter Quincy received from his father in 1770 suggests the dilemma that John Adams also faced in deciding whether to defend the accused British soldiers. Excerpts from their correspondence follow:

The Father's Letter: "My dear Son, I am under great affliction, at hearing the bitterest reproaches uttered against you, for having become an advocate for those criminals who are charged with the murder of their fellow-citizens. Good God! Is it possible? I will not believe it ... Your anxious and distressed parent, Josiah Quincy."

The Son's Reply: "Honored Sir, ... I refused all engagement, until advised and urged to undertake it, by an Adams, a Hancock, a Molineux, a Cushing, a Henshaw, a Pemberton, a Warren, a Cooper, and a Phillips ... I dare affirm, that you, and this whole people will one day REJOICE, that I became an advocate for the aforesaid "criminals," charged with the murder of our fellow citizens. I am, truly and affectionately, your son, Josiah Quincy Jun."

John Adams Reflects

Read the following two diary entries by John Adams concerning his involvement in the Boston Massacre trials. Both entries date from March 5, 1773, three years after the Boston Massacre.

Diary Entry 1: "I ... devoted myself to endless labour and Anxiety if not to infamy and death, and that for nothing, except, what indeed was and ought to be all in all, a sense of duty. ... The Part I took in Defence of Captain Preston and the Soldiers, procured me Anxiety, and Obloquy [bad-mouthing] enough. It was, however, one of the most gallant, generous, manly and disinterested Actions of my whole Life, and one of the best Pieces of Service I ever rendered my Country. Judgment of Death against those Soldiers would have been as foul a Stain upon this Country as the Executions of the Quakers or Witches, anciently. As the Evidence was, the Verdict of the Jury was exactly right.

Diary Entry 2: "... In the Evening [of the trials] I expressed to Mrs. Adams all my Apprehensions: That excellent Lady, who has always encouraged me, burst into a flood of Tears, but said she was very sensible of all the Danger to her and to our Children as well as to me, but she thought I had done as I ought, she was very willing to share in all that was to come and place her trust in Providence.

Diary Entry 3: "[Eighteen Guineas was] ... all the pecuniary Reward I ever had for fourteen or fifteen days labour, in the most exhausting and fatiguing Causes I ever tried: for hazarding a Popularity very general and very hardly earned: and for incurring a Clamour and popular Suspicions and prejudices, which are not yet worn out and never will be forgotten as long as History of this Period is read."

www.law.umkc.edu/faculty/projects/ftrials/bostonmassacre/diaryentries.html



Paul Revere's engraving of the Boston Massacre

Scottsboro: The Right to Counsel



Defendant Heywood Patterson with Lawyer Samuel Leibowitz

This Dialogue explores the story of the “Scottsboro Boys,” the complex and important case from the 1930s. It is a primary example of a gross miscarriage of justice in our country’s history but also shows the struggle for racial justice and the fight to guarantee fair trial rights, including a right to counsel, for all Americans.

Make sure participants read the Handout for Part 2, “The Scottsboro Case,” in advance or at the beginning of the Dialogue. It briefly tells the story of the Scottsboro Boys, focusing on courtroom trials and judicial appeals.

Begin by asking participants:

What do you know about the United States in the 1930s? Have you heard the term *Jim Crow*? What does it mean?

You might wish to offer some general “time and place” information. For instance, Franklin Roosevelt was president of the United States (from March 1933 on) and the United States was in the “Great Depression.”

*Explain that in the 1930s “Jim Crow” was in effect in the United States, especially in the South. “Jim Crow” is a shorthand term that describes legally sanctioned (de jure), systemic racial segregation. In 1954 the Supreme Court would declare in *Brown v. Board of Education* that, “Separate but equal is inherently unequal.” “Jim Crow” is generally dated from the end of Reconstruction (1877) until the Civil Rights and Voting Acts of the mid-1960s.*

*More broadly, “Jim Crow” signifies practices of institutionalized racism and the assertion of “white supremacy.” Laws criminalizing marriage or, even, sexual relations between people of different “races” (known as “anti-miscegenation laws”) were in effect for this same period, first being ruled unconstitutional at the state level in 1948 and at the federal level in 1967 (*Loving v. Virginia*).*

During “Jim Crow,” many African Americans were also “lynched,” a form of extrajudicial (outside the law) murder by mobs or so-called vigilantes, typically by hanging. Some estimates indicate that more than 3,000 African Americans were lynched during the Jim Crow era.

Ask:

What were the charges against the Scottsboro Boys in their first trials in 1931?

Elicit basic facts covered in the Handout.

Ask a participant to read the text of the Sixth Amendment to the U.S. Constitution aloud.

Sixth 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 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 defence.

Point out that the Sixth Amendment says that “the accused shall enjoy the right to a speedy and public trial.”

Ask:

Do you think the Scottsboro defendants received a “speedy” trial as guaranteed by the Sixth Amendment? Did they “have the Assistance of Counsel?” Why or why not?

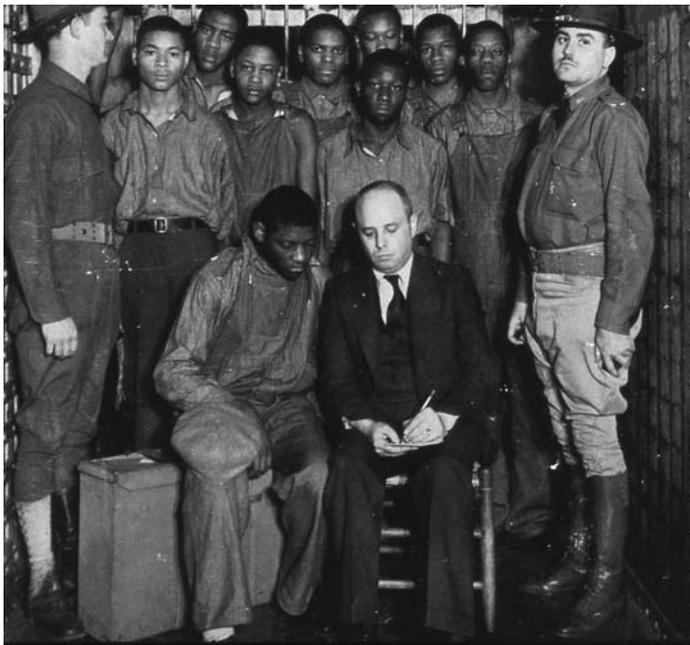
*Questioning whether the trials were “speedy” is, of course, playing the role of a devil’s advocate. They were too “speedy.” That Sixth Amendment provision is a right of the accused to preclude undue delay in resolving criminal charges or, at an extreme, indefinitely detaining suspects. In the case of the 1931 trials of the Scottsboro defendants, the Supreme Court specifically (and eloquently) addressed this issue in *Powell v. Alabama* (1932):*

“The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result, a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense. To do that is not to proceed promptly in the calm spirit of regulated justice but to go forward with the haste of the mob.”

In Powell v. Alabama, the Supreme Court reviewed the trial proceedings of the Scottsboro defendants and concluded that while, technically speaking, they were provided with lawyers, the circumstances revealed that they were denied any reasonably “effective” assistance of counsel:

“It is hardly necessary to say that the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice. Not only was that not done here, but such designation of counsel as was attempted was either so indefinite or so close upon trial as to amount to a denial of effective and substantial aid in that regard.”

Next, remind participants that the Scottsboro defendants were charged with rape and eight of them who were convicted in the 1931 trial were sentenced to death.



Lawyer Samuel Leibowitz with Scottsboro Defendants Guarded by Soldiers

Ask:

Would anyone convicted of rape in the United States today be sentenced to death for that crime? Do you think that sentence is ever justified for someone committing rape?

The last time someone was executed for the crime of rape in the United States was 1964 (Ronald Wolfe, state of Missouri). “His execution would prove to be the end of an era. Rape had been a capital crime for much of American history, and it remained so throughout the middle decades

of the twentieth century, almost exclusively in the South. About nine of ten of those sentenced to death for rape during those years were black [men].” (David Savage, ABA Journal, April 1, 2008)

In Coker v. Georgia (1977), the Supreme Court determined that a death sentence would be a cruel and unusual punishment (and thus unconstitutional) for a rape: “We have the abiding conviction that the death penalty, which is unique in its severity and irrevocability, is an excessive penalty for the rapist who, as such, does not take human life.”

Finally, point out, as described in the handout, that the verdicts in the 1931 trials were appealed to higher courts—and ultimately, to the U.S. Supreme Court, which ruled on the case in Powell v. Alabama in 1932 and Norris v. Alabama in 1935.

Ask:

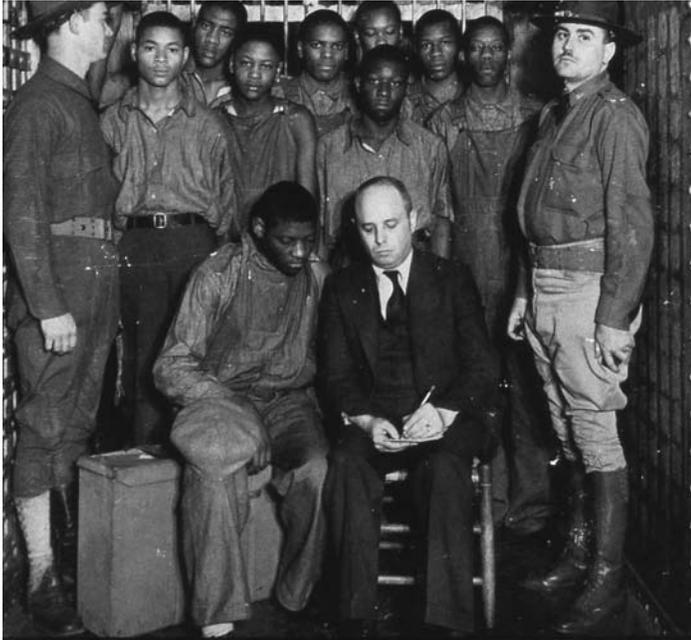
What is an appeal? What is its purpose? What would happen if judicial decisions in the United States could not be appealed? What would have happened in the case of the Scottsboro defendants?

Built into our judicial system is a recognition that humans are fallible and that mistakes and errors of law and fact can and do occur. That is why one of the defining characteristics of due process of law is the right of judicial appeal. Our judicial system has established specific procedures and rules to determine when, where, how, and why court decisions can be appealed and who can do so.

Conclude the Dialogue by emphasizing the significance of the Scottsboro case for Americans today. As great a miscarriage of justice as the story represents, we learn something important by remembering it as part of our nation’s history:

- *If the defendants had never had an opportunity to appeal the original verdict, they would have been summarily executed in 1931.*
- *If courageous lawyers and judges, such as Samuel Leibowitz and James Horton, had not become involved, national attention would not have been directed to the case.*
- *If the U.S. Supreme Court had not agreed to hear appeals, there would not have been landmark decisions that established precedents for an expanded right to counsel and other fair trial rights.*

The Scottsboro case



Lawyer Samuel Leibowitz with Scottsboro Defendants Guarded by Soldiers

Arrest and 1931 Trial

On March 25, 1931, nine young black men, ages 12 to 19, were arrested in Jackson County, Alabama, on a Southern Railroad freight train. Their names were Heywood Patterson, Charlie Weems, Ozie Powell, Willie Roberson, Eugene Williams, Olen Montgomery, Andy Wright, Clarence Norris, and Roy Price. They were accused of raping two white women, Victoria Price and Ruby Bates. When the men were arrested, the word of the alleged rapes quickly spread. Only with the protection of national guardsmen did they escape being lynched—a not uncommon fate of accused black men in the South at that time.

“From the time of their arraignment until the beginning of their trial, when consultation, thorough-going investigation and preparation were vitally important, the defendants did not have the aid of counsel, in any real sense. ... Until the very morning of the trial, no lawyer had been named or definitely designated to represent the defendants. ... The defendants, young, ignorant, illiterate, surrounded by hostile sentiment, haled back and forth under guard of soldiers, charged with an atrocious crime regarded with especial horror in the community where they were to be tried, were thus put in peril of their lives within a few moments after counsel for the first time charged with any degree of responsibility began to represent them. ... Defendants were immediately hurried to trial.”

Powell v. Alabama (1932), opinion of the Court.

In fact, the first of the series of trials began only six days after the defendants were indicted. It lasted only a day and a half. The jury was still deliberating in the first trial when the second began in the same courtroom. The other trials took only one day each. The two women who alleged being raped took the witness stand and gave testimony with many contradictions. The statements of two doctors who had examined the women did not find evidence of physical assault. In April 1931, eight of the nine defendants were found guilty and sentenced to death. A mistrial was declared in the case of 12-year-old Roy Wright.

Appeals

Outside Alabama there was broad public outcry about the injustice of the trial. In early 1932, the International Labor Defense (ILD) appealed the case to the Alabama Supreme Court. That appeal was rejected. The U.S. Supreme Court, then, took the case and ruled in *Powell v. Alabama* (1932) that the Sixth Amendment guarantees a right to legal counsel in capital cases (involving the death penalty) and that this right applied not only in federal courts, but also to the states through the due process clause of the Fourteenth Amendment. The Court ruled that “the defendants were not accorded the right of counsel in any substantial sense” and ordered new trials.

1933 Retrials

This time around, the nine young men received “effective assistance of counsel” when Samuel Leibowitz from New York, widely recognized as an excellent criminal lawyer, began serving as their attorney in 1933. He defended them free of charge and observed that he took the case because of his commitment to human rights. In Alabama Leibowitz, who was Jewish, encountered threats to his personal safety and vicious anti-Semitism.

In the subsequent trial, Leibowitz set the grounds for any possible appeal by raising the issue of the absence of black people in the jury pool. During the trial, he methodically chipped away at the prosecution’s case piece by piece. His last witness, one of the two alleged rape victims, denied that any rape had taken place.

The prosecuting attorney closed his summation to the jury pointing to Leibowitz while giving this inflammatory charge, “Show them that Alabama justice cannot be bought and sold with Jew money from New York.” The jury, after a short deliberation, returned their verdict: “Guilty as charged ... the punishment, death in the electric chair.”

Trial judge James Horton, a man of honor and integrity, came to regard the case against the defendants as weak and suspect and contrary to the evidence. On June 22, 1933, Judge Horton declared, “These women are shown ... to have falsely accused two Negroes. ... This tendency on the part of the women shows that they are predisposed to make false accusations. ... The Court will not pursue the evidence any further. ... It is therefore ordered and adjudged by the Court that ... the verdict of the jury in this case and the judgment of the Court sentencing this defendant to death be set aside and that a new trial ... is hereby ordered.”

Due to his courageous and principled ruling, Judge Horton lost his judgeship in the next election.



Defendant Heywood Patterson with Lawyer Samuel Leibowitz

More Appeals

Prosecutors succeeded in assigning a new judge, William Callahan, to the retrial. Callahan antagonized Leibowitz and virtually assured that defendants Patterson and Norris were convicted and sentenced to death. The racially charged trial attracted national attention. Thousands marched in support of the defendants in Washington, DC.

Defense lawyer Leibowitz appealed the case to the Alabama Supreme Court, arguing that Alabama consistently kept black people from sitting as jurors by never placing their names on the lists from which jury members were drawn. When the Alabama Supreme Court rejected that claim, Leibowitz appealed to the U.S. Supreme Court, which, in April 1935, reached its decision.

In *Norris v. Alabama*, the Court determined that although Alabama *law* technically did not keep black people off juries, Alabama *practices* effectively did. That, said the Court, was unconstitutional. The Court’s ruling helped put an end to this form of racial discrimination. It also, again, overturned the verdicts against the *Scottsboro* defendants and ordered new trials.

Back to the Alabama Courts

Over the next two years, new trials were held, new verdicts of guilty for five of the nine were found, and new appeals were made. Charges for four were dropped. The remaining five went to jail for their convictions and lost their final appeals. Three of them served an additional 6 years sentence and one a total of 19 years before being released.

Although the *Scottsboro* case undeniably represented miscarriages of justice for the defendants, none were ever executed—the sentences handed down for eight of them in the original 1931 trial.

The trial of Tom Robinson in *To Kill a Mockingbird* is widely believed to have been inspired by those of the *Scottsboro* Boys.

This summary is adapted from “Does the Constitution Protect the Despised?,” Richard L. Roe, Lee Arbetman and Rick Morey, Update on Law-Related Education, American Bar Association Division for Public Education, Winter 1984.

Sixth 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 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 defence.

“If You Cannot Afford An Attorney ...”



Discuss with participants:

“You have the right to remain silent. Anything you say or do can and will be held against you in the court of law. You have the right to speak to an attorney. If you cannot afford an attorney, one will be appointed for you. Do you understand these rights as they have been read to you?”

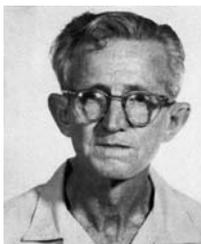
Ask participants if they recognize these words, and from where. Explain that this is known as the “Miranda Warning” (from *Miranda v. Arizona*, 1966), read to persons in police custody in the United States. Focus discussion on “If you cannot afford an attorney, one will be appointed for you.” Elicit responses from participants about this constitutional right, and what it means.

Ask participants:

Poor persons accused of a crime deserve to have a lawyer represent them for free. Do you agree or disagree?

Elicit responses from participants about whether they agree or disagree and why. Explain that the U.S. Supreme Court addressed this question in a famous Supreme Court decision, *Gideon v. Wainwright*, and that you are going to learn about that case and the story behind it. It’s the story of one man, Clarence Gideon. Ask participants if they have heard of him. If yes, ask them what they know. Fill in details as needed.

Explain:



In 1961, a poor man, Clarence Earl Gideon, was arrested in Panama City, Florida, accused of breaking into the Bay Harbor Pool Room and stealing five dollars, several beers, and a few bottles of soda. He went to court but could not afford a lawyer. He asked the court to appoint a lawyer to defend him for free,

since he had no money to hire one. We’re going to act out a portion of Gideon’s criminal trial.

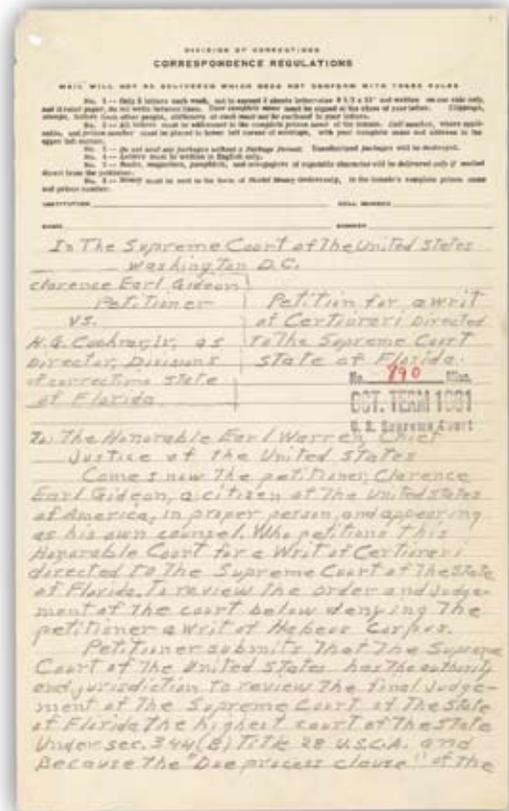
Refer participants to the handout, select three participants for the listed roles, and read aloud.

The judge denied Gideon’s request for a lawyer. He was convicted, and issued the maximum sentence possible for his crime, five years in prison.

Ask:

Does this seem fair? What problems could arise if someone accused of a crime does not have a lawyer?

Elicit responses from participants, focusing discussion on their knowledge of the law, courts, procedures, possible wrongful conviction, and Gideon’s sentence.



Gideon’s petition to the U.S. Supreme Court. Image courtesy of the National Archives and Records Administration.

Explain:

Gideon refused to accept his sentence without a fight. He began reading law books at the prison library. He believed that the U.S. Constitution gave him the right to have a lawyer defend him. It hardly seemed fair to Gideon that some people should have lawyers and others not. So he wrote a plea to the U.S. Supreme Court.

Direct participants to the photo of Gideon’s handwritten petition to the U.S. Supreme Court.

Gideon's case was a longshot. The Supreme Court, however, accepted Gideon's petition and agreed to hear his case. A prominent lawyer, Abe Fortas, agreed to represent Gideon for free. Several months later, on March 18, 1963, the U.S. Supreme Court issued its decision. It was unanimous: the Court agreed with Gideon. We can read what the Court said.

Refer participants to the excerpted opinion on the hand-out. Study the opinion with participants and answer any questions about what it means.

Following the Supreme Court decision, Gideon's conviction was overturned, so he was released from prison. He did, however, face a new trial. This time, he had a lawyer, Fred Turner. At the end of the new trial, the jury acquitted Gideon within one hour. Gideon was released. Gideon died January 18, 1972, an ordinary man whose name is known today because out of his story came a new understanding of the constitutional right to counsel. In fact, the epitaph on his tombstone reads: "Each era finds an improvement in law for the benefit of mankind."

Ask:

Why do you think the Supreme Court agreed with Gideon?

Elicit responses from participants, and discuss.

Even if Gideon had been found guilty in his second trial, do you think he deserved to have a lawyer represent him at no cost? Do you think that courts should have to provide a lawyer, free of charge, to every person accused of a crime?

Introduce conditions, such as severity of crime (ones leading to potential jail time versus those that would not),

socioeconomic status of the accused person (whether they are "indigent" or not) and elicit participants' responses.

What problems might arise if the court has to appoint counsel to all persons who have requested it? Should state taxpayers have to pay for the legal counsel of accused persons?

Bring out challenges, including funding, use of tax dollars, and availability of lawyers.

Should deciding whether a poor (indigent) defendant has the right to free legal counsel be left to the federal government or to individual states to determine?

Highlight that in a "federalist" system of shared powers between the national and state governments, some matters are left to states to decide for themselves (states' rights). Also highlight the fact that possible disparities among states might lead to inconsistent and inequitable provision of appointed lawyers.

Ask:

Remember the statement at the beginning of this Dialogue? Poor persons accused of a crime deserve to have a lawyer represent them for free. Do you agree or disagree?

Poll participants. Ask if anyone has changed his or her opinion and why. Emphasize that there is no "right" answer, but you are interested in hearing participants' viewpoints and whether this Dialogue discussion has informed their understanding of the constitutional right to counsel. Review current law (see Gideon summary in "U.S. Constitutional Right to Counsel Leading to Gideon").

U.S. Constitutional Right to Counsel Leading to *Gideon*

1932 *Powell v. Alabama*

The Court ruled that the Sixth Amendment guarantees a right to legal counsel in capital cases (involving the death penalty) and that this right applied not only in federal courts, but also to the states through the Due Process clause of the Fourteenth Amendment.

1938 *Johnson v. Zerbst*

The Sixth Amendment requires that lawyers be appointed in all federal cases for criminal defendants too poor to hire their own.

1942 *Betts v. Brady*

The Court ruled that the Due Process clause of the Fourteenth Amendment does not require the provision in *Johnson v. Zerbst* be extended to state courts, except in cases where the defendant demonstrates "special circumstances."

1963 *Gideon v. Wainwright*



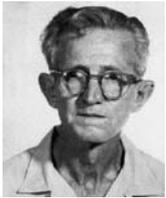
The Sixth Amendment requires that legal counsel must be provided to indigent (poor) criminal defendants in all felony cases in both federal and state courts. (This decision superseded *Betts*.) Since *Gideon*, this requirement has been expanded to all criminal cases involving a jail sentence, including serious misdemeanors.

Justice Hugo Black (1886–1971) wrote the opinion in *Gideon v. Wainwright*. Photo courtesy of the Library of Congress.

"If You Cannot Afford An Attorney ..."

Reader's Theater

Cast: Court Judge Robert L. McCrary, Jr.
State Assistant State Attorney,
Mr. William E. Harris
Defendant Clarence Earl Gideon
Time: August 25, 1961
Place: Circuit Court of the Fourteenth Judicial Circuit,
Bay County, Florida



The following is an actual excerpt from the criminal trial transcript when Gideon requests the court to appoint a lawyer to represent him.

COURT: 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?

STATE: The State is ready, your Honor.

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

DEFENDANT: I am not ready, your Honor.

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

DEFENDANT: No, sir.

COURT: Why aren't you ready?

DEFENDANT: I have no counsel.

COURT: Why do you have no counsel? Did you not know that your case was set for trial today?

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

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

Defendant answers the question, but mumbles, so it is not audible.

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.

Defendant rises from his chair and walks to stand directly in front of the bench, facing the judge.

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

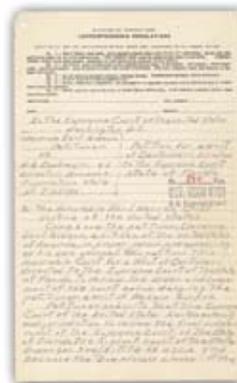
DEFENDANT: Your Honor I said: I request this court to appoint counsel to represent me in this trial.

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.

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

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.

Excerpted opinion from *Gideon v. Wainwright* (1963)



"That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with a 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 ... in which every defendant stands equal before the law. This noble ideal cannot be realized if [a person] charged with crime has to face his accusers without a lawyer to assist him."

Eduardo Roberto Rodriguez
Chair, ABA Standing Committee on Public Education

Kim Askew
National Law Day Chair

Mabel McKinney-Browning
Director, ABA Division for Public Education

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