

2021

AP[®] CollegeBoard

AP[®] United States Government and Politics

Sample Student Responses and Scoring Commentary Set 2

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Question 3: SCOTUS Comparison**4 points**

A. Identify the constitutional amendment in the Bill of Rights that is common to both *Gideon v. Wainwright* (1963) and *Betts v. Brady* (1942). **1 point**

- The Sixth Amendment is the constitutional amendment that is common to both cases.

B. Explain how the decision *Gideon v. Wainwright* relates to the reasoning in Justice Black’s dissenting opinion in *Betts v. Brady*.

Acceptable explanations include:

One point for **describing** relevant information about the decision in the required Supreme Court case. **1 point**

- In *Gideon*, the defendant was entitled to a court-appointed attorney or an attorney paid for by the state.

OR**OR**

Two points for correctly **explaining** how the decision in *Gideon* relates to the reasoning in Justice Black’s dissenting opinion. **2 points**

- Justice Black’s dissent in *Betts* argued that the U.S. Constitution protected the right to an attorney which influenced the decision in *Gideon v. Wainwright*.

C. Explain how the decision in *Betts v. Brady* demonstrates the principle of federalism. **1 point**

Acceptable explanations include the following:

- In *Betts*, the Supreme Court did not incorporate the Sixth Amendment to states, which reflects how in federalism many decisions are left to the states.

Total for question 3 4 points



Begin your response to each question at the top of a new page. Do not skip lines.

A.) The constitutional amendment that is common in both *Gideon v. Wainwright* (1963) and *Betts v. Brady* (1942) was the 6th amendment right to counsel.

B.) In *Gideon v. Wainwright*, ~~the~~ Gideon was arrested after being accused of ~~robbery~~ ^{robbery} in the state of Florida. He was denied his right to counsel in which he appealed to the Supreme Court. The courts ruled in his favor by incorporating ~~the~~ ^{the} 6th amendment right to counsel to the state of Florida. Justice Black, in his dissenting opinion, spoke about how *Betts* was denied his right to counsel, "procedural protection, which is his right under the Constitution. Although *Betts* was denied his protection, *Gideon* was not and the reasoning behind it aligns with Justice Black's dissenting opinion in *Betts v. Brady*, Black would've agreed with the court's decision in *Gideon v. Wainwright* since they didn't allow the state of Florida to infringe on *Gideon*'s rights. ~~The courts did not accept the argument that~~
~~was not used in *Betts v. Brady*.~~

C.) Federalism, is the powers between both state and federal government where the federal government cannot infringe upon state decision unless it is in clear violation of the Constitution. In *Betts v. Brady*, the state of Maryland used their powers as a state to deny *Betts* right to counsel since he was being tried in a state court. Since federalism allowed the states to make decisions for themselves, the federal government didn't do anything about this case. This was in clear violation but this is most likely because selective incorporation was not ~~not~~ established

Question 1 Question 2 Question 3 Question 4



Begin your response to each question at the top of a new page. Do not skip lines.

yet in the court. But overall, this case shows how much power states do have because of federalism allowing them to make their own decisions.



Begin your response to each question at the top of a new page. Do not skip lines.

- A) The constitutional amendment in the bill of rights that is common in both *Gideon v. Wainwright* and *Betts v. Brady* is the 6th amendment.
- B) The decision in *Gideon v. Wainwright* was that Gideon, who had been arrested for stealing and had been denied a lawyer by the judge because he did not have the right to counsel in a state court, actually had the right to counsel because of the 6th amendment. This relates to the reasoning in Justice Black's dissenting opinion in *Betts v. Brady*, where the court denied Betts right to a lawyer, because Justice Black argues that Betts was denied procedural protection for the trial of his crime, which is against his rights in the federal constitution, This is the same thing the supreme court decided ~~when~~ in *Gideon v. Wainwright* where they also thought having no lawyer was against his rights.
- C) The decision in *Betts v. Brady* demonstrates the principle of federalism because in federalism there are state powers and ~~not~~ national powers, ~~but the national powers are supreme law of the land, and ~~that's~~ or~~ *Betts v. Brady* shows that not everything in federal court also applies to state courts showing that powers are divided between states and the federal government.



Begin your response to each question at the top of a new page. Do not skip lines.

a) The constitutional amendment in the Bill of Rights that is common to both *Gideon v. Wainwright* and *Betts v. Brady* is the 6th amendment which mentions your right to an attorney.

b) In ~~the~~ *Gideon v. Wainwright*, Gideon was forced to represent their self and was not given an attorney. ~~They~~ Their case was brought to the Supreme Court where Gideon argued that it was their constitutional right to an attorney. The Supreme Court sided with Gideon. Justice Black used this previous Supreme Court ruling to explain that under the Federal Constitution ~~the~~ *Betts* did deserve the right to a public defender.

c) The decision in *Betts v. Brady* demonstrates the principle of Federalism through the similarity in rulings between the state ~~and~~ courts ~~and~~ and the Supreme Court. ~~The~~ The outcome of the state and Supreme Court rulings show the unity ~~is~~ between the federal and state government which is expressed in *Federalists 70*. In ~~the~~ this document the authors support unity between the federal and state government in order to avoid conflict between the two.

Question 3

Note: Student samples are quoted verbatim and may contain spelling and grammatical errors.

Overview

This question expected students to read a case summary of a nonrequired Supreme Court case (*Betts v. Brady*) and compare it to a case required in the course (*Gideon v. Wainwright*). Students were asked to identify the constitutional amendment common to both cases. Students were then expected to explain how the decision in *Gideon v. Wainwright* relates to the reasoning in Justice Black’s dissenting opinion in *Betts v. Brady*. Finally, students were expected to explain how the decision in *Betts v. Brady* demonstrates the principle of federalism.

- The task of comparing the required case to a nonrequired case necessitated that students demonstrate increasingly higher order thinking skills, applying their substantive knowledge of case facts, reasoning and holdings, while integrating comparison skills with other course topics/concepts.
 - It was challenging for students to correctly identify the constitutional amendment common to both cases. The most common misidentified amendment was the Fifth Amendment. Additionally, many students described the right correctly (the right to counsel) without identifying the amendment itself.
 - Most students had a basic understanding of the required Supreme Court case of *Gideon v. Wainwright*. However, many students had difficulty explaining **how** Justice Black’s dissent related to the Court’s decision in *Gideon v. Wainwright*. The majority of students provided a description of *Gideon* and Black’s dissenting opinion in *Betts* without explaining how Black’s dissent influenced the Court in *Gideon*, or how the opinions are related. The more advanced students were able to take Black’s dissent and the *Gideon* decision and intersect the two in a way that demonstrated understanding beyond the information provided within the prompt, for example, showing the connection between an earlier case’s dissenting opinion and how the case that came after relied on that reasoning.
 - Finally, many students did not explain how the nonrequired Supreme Court case relates to other course content, in this case how *Betts v. Brady* demonstrates the principle of federalism by explaining how *Betts* did not incorporate the Sixth Amendment, which allowed states to decide whether to provide counsel prior to the *Gideon* ruling.

Sample: 3A

Score: 4

The response earned 1 point in part A for correctly identifying the Sixth Amendment.

The response earned 1 point in part B for describing relevant information about *Gideon v. Wainwright* by stating, “He was denied his right to counsel.” The response earned 1 point in part B for explaining how Justice Black’s dissent relates to the decision in *Gideon v. Wainwright* by stating that Justice Black “spoke about how *Betts* was denied his right to counsel ... which is his right under the Constitution.” The response further states, “Although *Betts* was denied his protection, *Gideon* was not and the reasoning behind it aligns with Justice Black’s dissenting opinion in *Betts v. Brady*. Black would’ve agreed with the Court’s decision in *Gideon v. Wainwright* since they didn’t of allow the state of Florida to infringe on *Gideon*’s rights.”

The response earned 1 point in part C for explaining that *Betts v. Brady* demonstrates the principle of federalism by stating “the state of Maryland used their powers as a state to deny *Betts* right to counsel.” Furthermore, it states that “federalism allowed the states to make decisions for themselves.” The response

Question 3 (continued)

further explains that “this case shows how much power states do have because of federalism allows them to make their own decisions.”

Sample: 3B

Score: 3

The response earned the point in part A for correctly identifying the Sixth Amendment.

The response earned 1 point in part B for describing relevant information about *Gideon v. Wainwright* by stating that “Gideon ... had been denied a lawyer.” The response earned 1 point in part B for explaining how *Gideon v. Wainwright* relates to Justice Black’s dissent. The response begins by explaining *Gideon v. Wainwright* by stating, “Gideon ... actually had the right to counsel because of the 6th Amendment.” Further, it explains the relationship between Justice Black’s dissent and *Gideon* by stating, “This relates to the reasoning in Justice Black’s dissenting opinion in *Betts v. Brady*, where the court denied Betts right to a lawyer because Justice Black argues that Betts was denied procedural protection for the trial of his crime, which is against his rights in the federal constitution. This is the same thing the supreme court decided in *Gideon v. Wainwright* where they also thought having no lawyer was against his rights.” Although the response uses a phrase from the prompt, it explains the phrase in context. Further, it continuously explains the relationship between Black’s dissent and *Gideon* in the student’s own words.

The response did not earn a point in part C because it fails to explain that *Betts v. Brady* did not interpret the Sixth Amendment to apply to the states, thus allowing the states to make decisions about providing an attorney in criminal cases. Rather, the response makes general statements about federalism and restates information provided in the prompt.

Sample: 3C

Score: 2

The response earned the point in part A for correctly identifying the Sixth Amendment as the constitutional amendment common to both *Gideon v. Wainwright* and *Betts v. Brady*.

The response earned 1 point in part B by describing relevant information that demonstrates factual understanding of the decision in *Gideon v. Wainwright* by stating, “Gideon was forced to represent their self and was not given an attorney. Their case was brought to the supreme court where Gideon argued that it was their constitutional right to an attorney.” The response did not earn another point in part B, as it fails to clearly explain how Justice Black’s dissenting opinion in *Betts* influenced or relates to the reasoning in the decision in *Gideon*. By stating, “Justice Black used this previous Supreme Court ruling to explain that under the Federal Constitution Betts did deserve the right to a public defender,” the response provides incorrect sequencing: that *Gideon v. Wainwright* influenced Justice Black’s dissent in *Betts v. Brady*. Further, the response provides statements describing the two cases rather than an explanation of the relationship or the influence that Justice Black’s dissent had on the *Gideon* decision.

The response did not earn the point in part C as the response fails to explain how the *Betts* case demonstrates the principle of federalism.