

Black History: Civil Rights & Legal History

JUST MERCY



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A Long Path to Justice

Enduring Understandings

- While the 14th Amendment to the Constitution guaranteed equal rights under the law to all citizens, the realities of the legal system often fell short, particularly for Black citizens in Southern states.
- Later Supreme Court cases gradually extended equal protections in the judicial system to all citizens.
- There are three main bodies of laws and regulations: laws established by Congress; regulations established by federal agencies; and common law from previously decided court cases.

Essential Questions

- What are some important court cases that extended the rights of people in the judicial system?
- How and why do law students brief cases?
- What are the main sources of law?

Notes to the Teacher

The 13th, 14th, and 15th Amendments were passed shortly after the Civil War, ending slavery, guaranteeing equal rights to all citizens, and stating that the right to vote should not be denied because of race, color, or previous condition of servitude. Still, in spite of the good intentions of these Amendments, injustices persisted. Although legal slavery had been abolished by the 13th Amendment, involuntary servitude still existed in the form of forced labor in the prison system. Those who were incarcerated, particularly in the South, often found themselves on “chain gangs,” doing hard manual work for long days, often building roads or clearing fields, while chained together to prevent escape. People serving time in prison could even be “leased out” by local farms and businesses for uncompensated labor.

Similarly, the 14th Amendment was supposed to guarantee equal treatment under the law. However, in the American South after Reconstruction, segregation was hardened by local and state laws, called “Jim Crow” laws. [“Jim Crow” was a character that appeared repeatedly in 19th century minstrel shows; it was a way of stereotyping and mocking Black people. The term was applied to laws that strengthened and supported the custom of segregation.] Separate and unequal school systems left Black children with small, poor one-room schoolhouses and inadequate study materials. Public facilities including restaurants, hotels, and gas stations often served whites only; there was actually a Green Book that listed the relatively few safe accommodations available to Black travelers. Restrooms and water fountains were marked with signs designating the race that could use them. Racial discrimination also limited Black citizens’ right to vote, supposedly guaranteed by the 15th Amendment, and caused unfair representation in the judicial system.

It is important that students be made aware that segregation and injustice were not limited to the South. In other regions

of the country, segregation was enforced, not by law, but by more subtle means. Neighborhoods were segregated by economic and social forces and therefore schools were segregated as well. Racial disparities existed everywhere in the criminal justice system, where Black offenders often served longer terms than white ones for similar offenses and were more often given the death penalty. We are currently seeing a crisis in policing in this country because of a series of police killings of unarmed Black individuals, now often documented with videotape and body cameras.

The three court cases featured in this lesson have great significance in the fight for equal justice under the law. The first, *Maryland v. Brady* (1963), the one cited by Bryan Stevenson in the film, held that any exculpatory evidence must be turned over to the defense. In the same year, *Gideon v. Wainwright* held that the court must allow the defendant to have an attorney and provide one if the defendant cannot afford one. The third case, *Batson v. Kentucky* (1986), held that a lawyer could not use a peremptory challenge (a move to exclude a juror without a stated reason) to exclude a potential juror solely on the basis of race. More information about each case can be found on **Teacher Resources 1, 2 and 3** at the end of this lesson.

An excellent resource for additional information is Oyez (pronounced OH-yay) at <https://www.oyez.org/>. This is a multimedia archive of Supreme Court cases, a project of Cornell's Legal Information Institute (LII), Justia, and Chicago-Kent College of Law. Another is the Bill of Rights Institute at <https://billofrightsinstitute.org/founding-documents/bill-of-rights/>. For students interested in contemporary issues of police and judicial reform, see the American Civil Liberties Union website at <https://www.aclu.org/issues/criminal-law-reform>.

If students have already worked with Lesson 1 of this guide, they will be familiar with the extent of *de jure* segregation in the South. In this lesson, they will review some of the basic rights granted in the Constitution and assess how closely they were followed in Walter McMillian's case. They will then focus on these three important court cases that helped to make the system more just for all accused persons. They will learn what a court ruling looks like and how to prepare a legal brief based on that ruling. They will also consider the implications of that ruling for future cases (precedent).

Before class, prepare the handouts for distribution. A special note on **Handout 3**: Although the handout has spaces for students to write about concurring opinions and dissenting opinions as defined in **Handout 2**, in these particular Supreme Court cases, these opinions are often about technical issues and do not add much to students' understanding of the case. You may wish to omit these two items when you prepare the handout.

This lesson presents an ideal opportunity to invite a lawyer to speak to your class, particularly one with an interest in legal rights, such as someone from the American Civil Liberties Union. You can find your local ACLU office at <https://www.aclu.org/about/affiliates>. It may also inspire your students to investigate the requirements and advantages of a career in the legal profession as a lawyer or paralegal.

Some students may find, after viewing this film and working through these lessons, that they wish to know more about the criminal justice system. You may wish to engage them in research on such topics as:

- Mass incarceration. Why does the United States have more people in prison as a percentage of the population than any other developed country?² What happens to them and their families as a result, even after they are released? [Resources: The Brennan Center for Justice at <https://www.brennancenter.org/issues/end-mass-incarceration> and the Equal Justice Initiative at <https://eji.org/>]

2- <https://worldpopulationreview.com/country-rankings/incarceration-rates-by-country>



- Prison conditions. Escalating violence in prisons, understaffing, a failure to provide adequate medical care, and other causes have allowed deteriorating conditions in the nation's prisons. For-profit prisons are run by corporations that make money by encouraging long prison terms and blocking criminal justice reform efforts. [Resources: EJI at <https://eji.org/issues/prison-conditions/> and the Human Rights Watch Prison Project at <https://www.hrw.org/legacy/advocacy/prisons/u-s.htm>.]
- Re-entry challenges. According to the National Institute of Corrections, three-quarters of state offenders are re-arrested within five years of leaving prison.³ What happens when someone is released from prison into society? What resources are available to help this person make a transition to a normal life and prevent recidivism? [Resources: <https://nicic.gov/offender-re-entry-transition> and EJI's re-entry program at <https://eji.org/news/eji-supports-clients-re-entry-services/>.]

Common Core Standards addressed by this lesson

CCSS.ELA-LITERACY.RH.9-10.1

Cite specific textual evidence to support analysis of primary and secondary sources, attending to such features as the date and origin of the information.

CCSS.ELA-LITERACY.RH.9-10.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.

CCSS.ELA-LITERACY.SL.9-10.4

Present information, findings, and supporting evidence clearly, concisely, and logically such that listeners can follow the line of reasoning and the organization, development, substance, and style are appropriate to purpose, audience, and task.

CCSS.ELA-LITERACY.WHST.9-10.1.D

Establish and maintain a formal style and objective tone while attending to the norms and conventions of the discipline in which they are writing.

³ <https://nicic.gov/offender-reentry-transition>



Duration of Lesson

3 or 4 class periods

Assessment(s)

One or more case briefs

Materials

Photocopies of:

Handout 1: The Civil War Amendments

Handout 2: What Is a Case Brief?

Handout 3: Case Brief Template

Computer access for research

Procedure

1. Begin the class by asking students what an amendment to the Constitution is. (A change to the Constitution. It must be supported by a 2/3 vote of each house of Congress and then ratified by 3/4 of the states.) Explain that in the film *Just Mercy*, there are several rights guaranteed by Constitutional amendments that were ignored in Walter McMillian's case.

2. Distribute copies of **Handout 1: Your Rights Under the Constitution**. Read through the six amendments listed there and discuss each with your students to be sure that they understand the protections the amendments guarantee. Then ask them to underline the provisions of the amendments that were ignored or violated in Walter McMillian's case.

Suggested answers:

6th Amendment: "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

7th Amendment: "nor shall [a person] 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."

8th Amendment: "the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State" and "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 law"



3. Ask students: Was it enough for Congress to pass these amendments? (No, this did not change the behavior of either individuals or states after Reconstruction ended.) If students have completed Lesson 1, briefly review the material they have learned to establish the context for this lesson. If not, ask them what they know about “Jim Crow” laws in the South in the late 19th and early 20th centuries. Fill in gaps in their knowledge with information from Notes to the Teacher.

4. Ask students what they remember about the legal system portrayed in the film *Just Mercy*. They should recall such elements as:

- Bryan Stevenson being strip-searched by a white guard when he enters the prison to meet with his client
- Johnny D’s conviction on the word of a convicted man who was trying to prevent his own execution
- The inability of Johnny D’s friends to testify that he was with them at the time of the murder and therefore had an alibi
- The all-white jury
- The execution of a black man who was clearly mentally and emotionally incapacitated by PTSD
- The presumption of guilt because Johnny D had previously had an affair with a white woman

5. Show the clip from the film at that begins at 1:28:13 (Scene 19) and stop it at 1:37:38. Ask students to recall what kinds of evidence were suppressed at the original trial (police officer’s testimony, psychiatrist, evidence of an alibi). Point out that Bryan says that this is a violation of *Brady v. Maryland*. Ask students why a previous case in Maryland would affect a trial in Alabama. Explain that this was a Supreme Court case that established a *precedent*. A precedent means that later cases across the country are expected to abide by the decision; if they don’t, they may be appealed and overturned. This is what is known as *common law*, which supplements laws made by Congress and regulations by government agencies.

6. Explain to students that they are going to research the case of *Brady v. Maryland* using a research organizer that follows the format of a case brief, a study tool that law students use to help them understand and recall a vast number of cases. **Distribute Handout 2: What Is a Case Brief?** and read through it with students so that they understand what a case brief is. Point out that this is different from the kind of brief that a lawyer submits to a judge in a case being adjudicated; this is a tool used by law students to understand and remember cases.

7. Explain to students that later court cases, beginning in the 1960s, expanded the protections guaranteed by the amendments they have read. Once a case is decided by the Supreme Court, lower courts and state courts must abide by it. Distribute **Handout 3: Case Brief Template** and ask students to look at it quickly. Tell them that they are going to brief a case the way law students would, to help them understand and remember the case.

8. Divide students into three groups and assign one of these court cases to each group to research and analyze: *Brady v. Maryland*; *Gideon v. Wainwright*; and *Batson v. Kentucky*. Write the names of the cases on the board so that students can copy them down correctly.

9. After students have had adequate time to research, initiate a class discussion on how each case expanded legal protections. Use the three Teacher Resources at the end of this lesson to guide the discussion. Ask students: Why were these cases argued starting in the 1960s? (It was the era of the civil rights movement. Other recently decided cases, such as *Brown v. the Board of Education*, had expanded rights in other areas.

10. Ask students to write in their journals or on an “exit ticket” about whether what they have learned in this lesson is still relevant today.

Handout 1

Your Rights Under the Constitution

In order to fully understand the principles that Bryan Stevenson is defending in the film, you should be familiar with the following Constitutional Amendments. Read through them all and be sure you understand them. Then underline sections of these amendments that you think were violated in the case of Walter McMillian.

From the Bill of Rights:

Sixth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Seventh 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 Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence 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; nor shall private property be taken for public use, without just compensation.

Eighth 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 defense.

14th Amendment (From the “Civil War Amendments”): All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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....

Handout 2

What is a Case Brief?

A case brief is a tool that law students use to understand and recall important cases. Bryan Stevenson undoubtedly did many of them at Harvard. They have certain key elements:

1. The Facts of the Case

Who is the plaintiff (the one bringing the lawsuit or other legal action)? Who is the defendant (the person who is sued or accused)? What events led to the dispute between the plaintiff and the defendant?

2. Legal Issue(s)

What is the legal question that is to be decided? (This should be phrased as a question that can be answered with a “yes” or “no.”)

3. The Ruling

What was the Court’s decision in this case? That is, who won?

4. The Reasoning

What were the reasons why the court decided as it did? These will be set out in the majority opinion, written by one of the judges in the majority.

5. Concurrences

Sometimes judges who agree with the majority wish to explain their own opinions further. Such an explanation is called a concurrent opinion. Which judges, if any, chose to do so? What were their main points?

6. Dissents

Sometimes judges disagree with the majority opinion and write an explanation of the reasons why they think the decision is wrong. Which judges, if any, chose to do so? What were their main points?

When you are writing a case brief, never copy the facts, opinions, etc., word for word. Remember that you want to set this information down in plain, straightforward English so that anyone can understand.

An excellent resource for researching a case is <https://www.oyez.org/>. (“Oyez” means “Hear ye” and may be used at the opening of a court case.)

Handout 3

Case Brief Template

Name of the Case _____ Date _____

1. The Facts of the Case

2. Legal Issue(s)

3. The Ruling

4. The Reasoning

5. Concurrences, if any

6. Dissents, if any



Case Brief Answer Sheet

Name of the Case: *Brady v. Maryland*, 373 U.S. 83 (1963)

1. The Facts of the Case

Defendant John Leo Brady and a companion, Donald Boblit, were convicted of first-degree murder in separate jury trials. Both men were sentenced to death. At his trial, Brady admitted participating in the crime, but said that Boblit committed the actual murder. In his closing argument, Brady's attorney conceded that Brady was guilty of first-degree murder and asked only that the jury return a verdict "without capital punishment."

Before trial, Brady's attorney had asked the prosecution to let him review Boblit's out-of-court statements. Several were shown to him, but the prosecution withheld a statement in which Boblit admitted to the actual killing. Brady did not become aware of this statement until he had been tried, convicted, and sentenced, and after his conviction was affirmed by the Court of Appeals of Maryland.

In a post-conviction proceeding, the Court of Appeals of Maryland held that the suppression of evidence denied Brady due process, but the case was only remanded for a new trial on the question of punishment since the court found that the suppressed confession would not have reduced Brady's offense below first-degree murder. Brady appealed to the Supreme Court for a new trial.

2. Legal Issue(s)

- a. Did the suppression of evidence by the State violate Brady's rights under the due process clause of the 14th Amendment?
- b. Was the Maryland Court of Appeals wrong to remand only on the question of punishment?

3. The Ruling

- a. Yes
- b. No

4. The Reasoning

Justice William O. Douglas, writing for the majority of the Court, wrote that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." The Court further stated that "[s]ociety wins not only when the guilty are convicted, but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. Judgment affirmed.

5. Concurrences, if any

Justice Byron White: The Maryland Court of Appeals did not specify whether their decision was based on the due process clause of the U.S or Maryland Constitutions. If the Maryland Court of Appeals was referring to Maryland's Constitution, the Supreme Court did not have jurisdiction as the case was an issue of state law. Because it was unclear which constitution was being invoked, the Court's due process analysis was purely advisory. The Court's due process analysis went beyond the issues raised in the lower court and that it is the role of legislators, the bench, and the bar to use the legislative or rule-making process to enact new rules concerning criminal discovery.

6. Dissents, if any

Justice John M. Harlan II: The judgment of the Court of Appeals of Maryland should have been vacated so that it could be determined whether Boblit's confession would have been admissible at Brady's trial on the issue of guilt.

Case Brief Answer Sheet

Name of the Case: *Gideon v. Wainwright*, 372 U.S. 335 (1963)

1. The Facts of the Case

Clarence Earl Gideon was charged with breaking and entering with the intent to commit a misdemeanor, which is a felony under Florida law. At trial, Gideon asked the court to appoint him an attorney because he could not afford one. The trial court denied his request because Florida law only permitted counsel to be appointed for poor defendants charged with capital crimes. Gideon represented himself but was found guilty and sentenced to five years in prison. Gideon's petition for writ of habeas corpus was denied by the Florida Supreme Court. Gideon then filed a petition for writ of certiorari.

2. Legal Issue(s)

Did the trial court err in refusing to appoint an attorney for Gideon?

3. The Ruling

Yes

4. The Reasoning

Justice Hugo Black, writing for the majority, stated that the Sixth Amendment's guarantee of counsel is a fundamental right essential to a fair trial, and petitioner's trial and conviction without the assistance of counsel violated the 14th Amendment.

Reversed and remanded.

5. Concurrences, if any

Justice Tom C. Clark: The constitution makes no distinction between capital and noncapital cases.

Justice John M. Harlan II: *Brady v. Betts* should be overruled, but we should talk about its history more. This was a 1942 Supreme Court case that said refusing to appoint counsel for someone who could not pay for his own lawyer did not violate the Sixth Amendment.

Justice William O. Douglas: Discussion of the relation between the Bill of Rights and the 14th Amendment.

6. Dissents, if any

None



Case Brief Answer Sheet

Name of the Case: *Batson v. Kentucky*, 476 U.S. 79 (1986)

1. The Facts of the Case

James Batson was an African American defendant indicted for burglary and receipt of stolen goods. During jury selection (voir dire) the prosecutor used his peremptory challenges (ability to object to a potential juror without giving a reason) to remove all four African Americans from the jury pool. Before the trial began, Batson challenged the removal of these jurors as violations of his Sixth Amendment right to an impartial jury and the Equal Protection Clause of the 14th Amendment. The jury convicted Batson on both counts. Batson appealed his case to the Supreme Court of Kentucky and his convictions were affirmed.

2. Legal Issue(s)

Does the use of peremptory challenges to remove a potential juror from the jury pool based on race violate the Equal Protection Clause of the 14th Amendment?

3. The Ruling

Yes

4. The Reasoning

Justice Lewis F. Powell, Jr., writing for the majority of the Court, held that while a defendant has no right to a jury that is partially or completely composed of his own race, the prosecution may not use its peremptory challenges to exclude potential jury members simply because of their race. “The Equal Protection Clause guarantees the defendant that the state will not exclude members of his race from the jury venire on account of race or on the false assumption that members of his race as a group are not qualified as jurors.”

“The harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community. Selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice.”

Once a defendant in a criminal case is able to show that race was the reason potential jurors were excluded during jury selection, it becomes the state’s burden to provide a race-neutral explanation for the decision to exclude the potential jurors. Reversed and remanded.

5. Concurrences, if any

Justice Byron White: Because prosecutors have ignored the Court’s warnings in previous cases about the use of peremptory challenges to exclude jurors based on race, an inquiry into the reasoning behind the exclusion is warranted.

Justice Thurgood Marshall: Peremptory challenges should be eliminated in criminal proceedings so that they cannot be used to hide impermissible racial considerations. Under the current system, prosecutors can still discriminate as long as the discrimination is not blatant. It is now the trial court’s burden to determine the prosecutor’s motive.

Justice John P. Stevens and Justice Sandra Day O’Connor: Their concurrences don’t really offer anything relevant to the crux of this case. Stevens said it was permissible for the Court to rule on the Equal Protection Clause claim even though it was not initially raised by the petitioner because the respondent raised it in the defense. O’Connor agreed that this ruling would not be retroactive

6. Dissents, if any

Chief Justice Warren Burger: Peremptory challenges have had a long history in both England and pre-Revolution America. Their purpose is to allow the elimination of a particular juror without reason. Peremptory challenges are part of the framework of our jury system and they should not be casually cast aside. (Burger also talks about how the Court should not have decided the Equal Protection Clause issue because the petitioner did not properly raise the challenge.)

Justice William Rehnquist: The Equal Protection Doctrine has been misapplied. “In my view, there is simply nothing ‘unequal’ about the state using its peremptory challenges to strike blacks from the jury in cases involving black defendants, so long as such challenges are also used to exclude whites in cases involving white defendants, Hispanics in cases involving Hispanic defendants, Asians in cases involving Asian defendants, and so on.”

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