

# *Gideon v. Wainwright* at Fifty: Lessons for Democracy and Civics

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*You are brought to court alone. You've been in legal trouble before but this time you are accused of a crime you did not commit. You ask the judge for a lawyer but he says if you cannot afford a lawyer, you cannot have one. The trial begins. You try your best to defend yourself, but you are unsure of the process and the terms that the prosecutor and judge are using. Now, imagine you are convicted of the crime and sentenced to five years. You sit in jail. No one has been an advocate for you and you have limited resources. What do you do?* This is how Clarence Earl Gideon must have felt while sitting in a Florida jail wrongfully convicted of breaking and entering in 1961.

March 18, 2013, marked the 50<sup>th</sup> anniversary of the Supreme Court's unanimous 1963 decision in *Gideon v. Wainwright*. *Gideon* was the seminal Supreme Court case that ruled that defendants in criminal cases have the right to an attorney even if they cannot afford to hire one. The concepts in *Gideon* are now such an entrenched part of our criminal justice system, it is hard to believe that there was a time before *Gideon*—when many poor defendants were forced to represent themselves. The story of how we got to that decision is not just a story about lawyers and judges, but an exemplification of what justice really means.

In 1963, then Attorney General Robert F. Kennedy likened *Gideon* to a demonstration of an individual's power in a democracy:

If an obscure Florida convict named Clarence Earl Gideon had not sat down in prison with a pencil and paper to write a letter to the Supreme Court; and if the Supreme Court had not taken the trouble to look at the merits in that one crude petition among all the bundles of mail it must receive

every day, the vast machinery of American law would have gone on functioning undisturbed. But Gideon did write that letter; the court did look into his case; he was re-tried with the help of competent defense counsel; found not guilty and released from prison after two years of punishment for a crime he did not commit. And the whole course of legal history has been changed. I know of few better examples than that of a democratic principle in action.

By 1961, Clarence Gideon, a modest man of average intelligence, had spent most of his life as a petty criminal cycling in and out of prison. Born in Hannibal, Missouri, in 1910, he lived there until he ran away from home in the eighth grade. When he was 18, Gideon was married but had just lost his job at a local shoe factory. Soon after, the Missouri police arrested Gideon for his first serious offense and, in accordance with Missouri law, a lawyer was appointed to represent him. Gideon was sentenced to 10 years for burglary, but was paroled after three years. This early encounter with the criminal courts led Gideon to believe that it was right and

fair to be appointed a lawyer if accused of a crime and unable to pay for an attorney.

*You are brought to court alone. You've been in legal trouble before but this time you are accused of a crime you did not commit. You ask the judge for a lawyer but he says if you cannot afford a lawyer, you cannot have one. The trial begins.* Early in the morning on June 3, 1961, someone broke a door at the Bay Harbor Pool Hall in Panama City, Florida. The thief made off with money and cigarettes and damaged the pool hall's record player and cigarette machine. A witness later came forward, telling police that he saw Clarence Gideon leaving the pool hall with wine and cash. Florida police arrested Gideon on suspicion of breaking and entering. When the trial started, Gideon requested that the court appoint counsel to represent him.

"Your Honor," I said, "I request this court to appoint counsel to represent me in this trial."

The judge replied, "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."

Gideon persisted, "The United States Supreme Court says I am entitled to be represented by counsel."

Gideon was wrong about what the Supreme Court said. The law at the

time said that Gideon was not entitled to a lawyer, but his assertion of what he believed to be just would eventually revolutionize the criminal justice system.

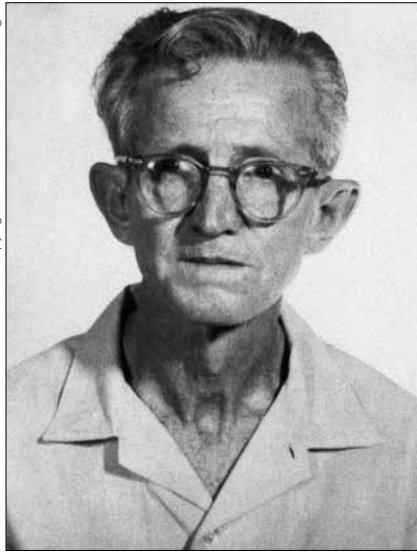
*You try your best to defend yourself, but you are unsure of the process and the terms that the prosecutor and judge are using. Now imagine you are convicted of the crime and sentenced to five years. You sit in jail. No one has been an advocate for you and you have limited resources. What do you do?* At trial, Gideon was forced to represent himself. He claimed he was innocent of the charges. To the best of his ability, he cross examined witnesses, and gave opening and closing arguments. Despite his efforts, he was convicted of felony breaking and entering, and misdemeanor theft. The court sentenced him to five years in prison. While incarcerated in Florida State Prison, Gideon used the prison library to research how to appeal his conviction. He learned how the appeals process is structured and where to make his initial appeals. He first appealed to the Florida Supreme Court arguing that he was unfairly denied counsel at trial. The Florida Supreme Court turned down his petition. He then submitted a handwritten petition on prison stationery to the United States Supreme Court, asking the Court to review his case. Gideon again argued that his Sixth Amendment right to assistance of counsel was denied. The Supreme Court agreed to hear his case and on January 15, 1963, the Supreme Court heard oral arguments in *Gideon v. Wainwright*.

The Sixth Amendment reads:

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.** [Emphasis added]

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Clarence Gideon's 1961 appeal to the Supreme Court led to the court ruling that anyone accused of a crime should be guaranteed the right to an attorney, whether or not he or she could afford one.

The question before the Supreme Court was whether the right to assistance of counsel meant that if a defendant could not afford counsel, counsel must be appointed to him.

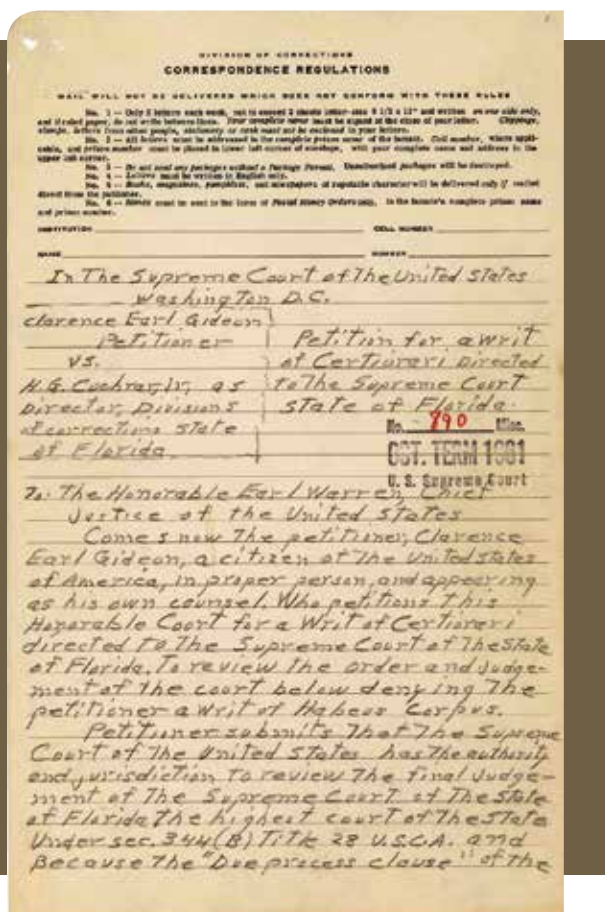
In previous cases, the Supreme Court had ruled that defendants were entitled to appointed counsel in capital cases, when the defendant showed special circumstances such as diminished capacity, and in federal criminal cases. However, when the Supreme Court decided *Betts v. Brady* in 1942, the Court held that the Constitution does not extend the right of appointed attorney to defendants in state criminal cases. In order to rule in favor of Gideon, the Supreme Court would have to overturn its own ruling in *Betts v. Brady*.

On March 18, 1963, the Supreme Court ruled that the right to appointed counsel was a fundamental right and thus, state defendants who could not afford to hire their own attorney, commonly referred to as indigent defendants,

were entitled to an appointed attorney. Regardless of your status, class, or wealth, no one accused of a crime would have to face a trial without the aid of counsel. This ruling created a new sense of what is fair in American criminal proceedings and led to the creation of public defenders, or equivalent offices, across the country.

*Gideon* led to other Supreme Court cases that further expound upon the right to assistance of counsel. These cases raise questions that are still debated today. In *Strickland v. Washington* (1984), the Supreme Court considered the definition of *effective* assistance of counsel. What level of competence and assistance is a defendant entitled to receive from an appointed attorney? At what minimal point is an attorney's presence not helping you or even hurting you? Some state courts have held that a lawyer sleeping through trial is not ineffective assistance of counsel. Other courts have held that presenting conflicting theories of the case to juries is not ineffective assistance of counsel. Where should this line be drawn? Should the courts require attorneys to conduct themselves above a certain standard, or should courts define conduct that all attorneys should aspire to? In *Miranda v. Arizona* (1966), the Supreme Court ruled that the right to assistance of counsel is so important that you must be informed of your right to appointed counsel when you are arrested. Is the right to appointed counsel so important that people must be informed at times other than at arrest? If someone is not informed of his or her right to appointed counsel at arrest, should the charges be dropped, regardless of their severity? In *Douglas v. California* (1963), the Supreme Court ruled that indigent defendants were entitled to appointed attorneys in direct appeals of criminal cases in state court. At what point in the proceedings is the right to an appointed attorney no longer fundamental? In *Faretta v. California* (1975), the Supreme Court held that

The first page of Clarence Gideon's handwritten petition to the Supreme Court, June 5, 1962. (From the Records of the Supreme Court of the United States, Record Group 267, in the holdings of the National Archives and Records Administration)



you have the right to refuse counsel. Should defendants have the right to refuse legal help and proceed on their own terms? Even if that refusal could mean longer sentences?

The Supreme Court is still deciding cases involving the right to counsel. In 2010, in *Padilla v. Kentucky* the Court held that an attorney must inform his client if there are immigration risks related to the client entering a guilty plea. What other consequences of convictions should an attorney tell his client about? What if the conviction would cost the defendant his job? What if the conviction could cost the defendant job benefits? What if conviction made you unable to legally own a firearm, or meant that you would be discharged from the military? Most recently in a series of cases in 2012, the Supreme Court ruled that defendants were entitled to counsel when entering into plea bargains. Should the right to appointed counsel extend to defendants who have admitted their guilt? What if having the aid of an appointed attorney meant the differ-

ence of several years in a plea bargain sentence?

Many states responded to *Gideon* by creating public defender offices to address the need to appoint attorneys to indigent defendants. However, not all states fund their offices equally. The question of adequate funding is an important one to these offices and to their indigent defendant clients. Without the proper funding to investigate, it is difficult, if not impossible, for an attorney to adequately represent someone. Funding of public defender's offices is often a political issue, and many politicians do not advocate for additional funding to these offices because they might be labeled as "soft on crime."

Related to funding is the issue of case overload in public defender offices. Indigent accused make up a large percentage of the defendants in state criminal courts. An underfunded public defender office burdens individual indigent defense attorneys in the office with very large case loads. How much time should a public defense attorney

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

**1932**

*Powell v. Alabama*

The Supreme Court rules 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 Court rules that 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 rules 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*

Superseding *Betts*, the Court rules that the Sixth Amendment requires that legal counsel be provided to indigent criminal defendants in all felony cases in both federal and state courts. Since *Gideon*, this requirement has been expanded to all criminal cases involving a jail sentence, including serious misdemeanors.

spend on a case? Should it matter how serious the case is? Should it matter if the defendant has been in jail or prison before?

*Gideon* teaches us two important lessons about democracy and civics. The first is that the law is full of ideals, and these ideals have to be balanced with political, financial and other realities. The ruling reflects our culture's deep respect for the legal system and the high value we place on equality. However, these ideals often face harsh realities. States do not equally fund public defender organizations. Does the level of funding affect the spirit of the *Gideon* ruling? Should states be required to equally fund and staff their public defender offices? Would this make the system more fair? Where should this money come from?

The second lesson of *Gideon* is that individuals in a democracy have the power to make change. Gideon was an uneducated man who believed that

the criminal courts had treated him unjustly. The prosecutors and judges originally sentenced Gideon to prison, but it was Clarence Gideon's persistence and unwavering assertion that he deserved counsel that changed our legal system. Through his initiative and effort, Gideon found justice in his own case and changed America's sense of fundamental justice.

Two years after his first trial, Gideon was retried by the Florida courts. This time he was represented by appointed counsel, Fred Turner. The jury found Gideon "not guilty." 🗨️

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**KEVIN SCRUGGS** is director of the Criminal Justice Standards Project at the American Bar Association. For more than forty years, the ABA Criminal Justice Standards have guided policymakers and practitioners working in the criminal justice arena.

## Additional Resources

American Bar Association Division for Public Education, "If You Cannot Afford An Attorney..." Part 3 of "Dialogue on John Adams and His Legacy," 2010. Available: <http://goo.gl/dHHgL>

American Council of Chief Defenders, "Gideon's Legacy," 2013. Available: [www.gideonslegacy.org](http://www.gideonslegacy.org).

Lewis, Anthony, *Gideon's Trumpet*, Vintage Press, 1989.

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