

3-18-2013

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Joanna L. Grossman

Maurice A. Deane School of Law at Hofstra University

Leon Friedman

Maurice A. Deane School of Law at Hofstra University

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Recommended Citation

Joanna L. Grossman and Leon Friedman, *A Lawyer for All: The 50th Anniversary of Gideon v. Wainwright Verdict* (2013)

Available at: https://scholarlycommons.law.hofstra.edu/faculty_scholarship/969

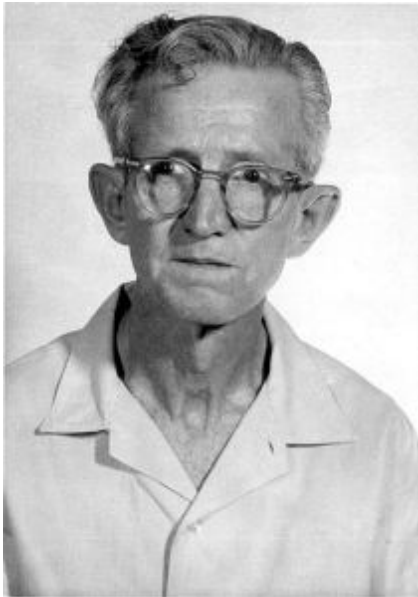
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Verdict

March 18, 2013

Joanna L. Grossman and Leon Friedman

A Lawyer for All: The 50th Anniversary of *Gideon v. Wainwright*



March 18, 2013, marks the 50th anniversary of the Supreme Court's decision in *Gideon v. Wainwright* (<http://supreme.justia.com/cases/federal/us/372/335/case.html>), the landmark case establishing the right to counsel for indigent defendants in all felony cases.

The notion that a criminal defendant ought to have the benefit of a lawyer—paid for by the government, if necessary—when facing the possible loss of liberty seems unremarkable today. The Miranda warnings, which are a staple of television and movie scripts, as well as a requirement of real-life custodial interrogations by the police, are a constant reminder of the right to appointed counsel. But when Clarence Earl Gideon stood trial for burglary, his repeated requests for a lawyer fell on deaf ears. He was convicted and sent to prison for five years. But he didn't give up. He wrote a letter to the U.S. Supreme Court, insisting that the constitution guaranteed him the right to counsel. His persistence would change the face of criminal justice in the United States.

In this column, we'll recall the state of the law before the ruling in *Gideon*, the arguments that persuaded the Court to declare a right of appointed counsel, and the meaning of the ruling.

Clarence Earl Gideon: A Petty Thief Who Changed the World

Gideon was arrested in Panama City, Florida on a charge of breaking and entering into a poolroom with intent to commit petty theft. This was burglary, and a felony, even though the perpetrator made off only with five dollars in change and a few bottles of beer and soda. A local man told police that he saw Gideon leave the pool hall, clutching a bottle of wine, with pockets full of change. Based on this witness's statement, Gideon was arrested in a local bar.

Gideon appeared in criminal court, broke and without a lawyer. In a famous colloquy with the trial court judge, he asked for one:

The 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.

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

After his request was denied, Gideon defended himself. But despite his pleas of innocence, the jury did not believe him. From the very beginning of his prison sentence, Gideon began to study the law. He was convinced, as he wrote in **his handwritten petition** (<http://research.archives.gov/description/597554>) to the Supreme Court, that the denial of counsel violated his constitutional rights.

The Law Before *Gideon v. Wainwright*

Before the ruling in *Gideon*, the Supreme Court had held, in 1932, that a lawyer was necessary in a criminal case only if the defendant was facing the death penalty. The case that established that principle, ***Powell v. Alabama*** (<http://supreme.justia.com/cases/federal/us/287/45/case.html>) (1932), involved the famous Scottsboro boys case where nine young black teenagers were accused of raping two young white women on a train near Scottsboro, Alabama. The teenagers were tried within twelve days of the crime; all were found guilty; and all, except one 13-year-old, were sentenced to death. The judge appointed “all the members of the local bar” to represent the boys, but only one lawyer actually appeared in court on their behalf on the day of the trial, without any preparation.

Reversing the convictions, the Supreme Court wrote:

[I]n the light of the facts outlined in the forepart of this opinion—the ignorance and illiteracy of the defendants, their youth, the circumstances of public hostility, the imprisonment and the close surveillance of the defendants by the military forces, the fact that their friends and families were all in other states and communication with them necessarily difficult, and above all that they stood in deadly peril of their lives—we think the failure of the trial court to give them reasonable time and opportunity to secure counsel was a clear denial of due process.

The teenagers were retried a number of times and found guilty each time. But eventually, they were pardoned by the Alabama governor.

Thereafter, the Court held that lawyers were necessary in a capital case both when the defendants were sentenced (***Townsend v. Burke*** (<http://supreme.justia.com/cases/federal/us/334/736/>)) and when they were arraigned (***Hamilton v. Alabama*** (<http://supreme.justia.com/cases/federal/us/368/52/case.html>)). But what happens when a defendant is not charged with a capital offense, but still faces a possible life sentence?

In a 1942 case, ***Betts v. Brady*** (<http://supreme.justia.com/cases/federal/us/316/455/case.html>), a divided Court held that a court must appoint a lawyer only if there are “special circumstances” requiring one. But what, exactly are special circumstances? Age, mental condition, prior criminal record? The courts had great difficulty defining what special circumstances might be.

The Arguments Before the Supreme Court in *Gideon v. Wainwright*

When the Court agreed to review Gideon’s case, it did so expressly to reconsider the ruling in *Betts*, which had, in the Court’s words in *Gideon*, “been a continuing source of controversy and litigation in both state and federal courts.” The defendant in *Betts* had been in a situation very similar to Gideon’s.

The first thing that the Court did was to appoint a lawyer for Gideon—the very thing he was fighting for. Abe Fortas, a powerful Washington, D.C. lawyer who would later be appointed to the Supreme Court himself, was appointed to represent Gideon.

The American Civil Liberties Union (ACLU) submitted a friend-of-the-court brief on Gideon’s behalf, pointing

out that state courts were very reluctant to find special circumstances no matter how difficult the case, and how limited the education of the defendant. Out of a total of 139 cases, state courts found “special circumstances” in only 11 of them. The Supreme Court itself was very unsympathetic to these claims.

The ACLU brief described some of the cases where the Supreme Court itself found that lawyers were not necessary:

Assistance of counsel has also been denied even though it was clear that appointment was necessary in view of the defendant’s age, mental condition and education, the complex nature of the charge, and the likelihood that the trial would be unfair under all circumstances. Thus, in *Moore v. Michigan*, (<http://supreme.justia.com/cases/federal/us/355/155/case.html>) the petitioner, a 17-year-old Negro with a 7th grade education and possible mental defects, was arrested for the murder of an elderly lady. The petitioner was questioned for two days until he orally confessed. The next morning he was arraigned. Without counsel to assist him, he pleaded guilty, was adjudged guilty of murder in the first degree, sentenced to life imprisonment, and transferred to prison immediately. Similarly, in *De-Meerleer v. Michigan*, (<http://supreme.justia.com/cases/federal/us/329/663/case.html>) the petitioner, also 17 years of age, was charged with murder, arraigned, tried, convicted, and sentenced to life imprisonment all on the same day. He was without legal assistance throughout these proceedings and was never advised of his right to counsel. (citations omitted)

The problem was not unique to the South. Courts in both Pennsylvania and Maryland also regularly refused counsel to teenagers, and to illiterate or mentally deficient defendants, who were facing serious criminal charges.

The Landmark Case of *Gideon v. Wainwright*

In 1963, the Supreme Court reexamined the problem of deciding when criminal defendants were entitled to a lawyer at the government’s expense. The Justices learned of Gideon’s plight when they received his handwritten petition for certiorari. In a unanimous decision, issued just two months after the case was argued, the Court held that counsel had to be appointed. The right was rooted in the Sixth Amendment, and because the right to counsel was deemed “fundamental and essential to a fair trial,” it applied with equal force to the states through the Fourteenth Amendment.

Quoting from the *Powell* decision from three decades earlier, the Court in *Gideon* found that lawyers are necessary in all serious cases:

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

The Court did not just reverse its ruling in *Betts*. It also described *Betts* as an aberration—a case that “made an abrupt break” with the Court’s “well-considered precedents.” *Gideon* was thus not a new rule, but a return to “these old precedents, sounder we believe than the new.” The provision of counsel to felony defendants, the Court explained, would “restore constitutional principles established to achieve a fair system of justice.” Thus, Gideon’s insistence in his original petition that the Supreme Court had already ruled that he had to be provided a lawyer was in some sense vindicated.

Epilogue

The Court's prophetic words came to pass for Gideon himself. After the Supreme Court decision came down, he was retried with the assistance of counsel, a Florida lawyer, named W. Fred Turner. Turner vigorously cross-examined the only witness against Gideon, pointing out all the inconsistencies in his testimony. After one hour of deliberation, the jury acquitted Gideon.

Thereafter, Anthony Lewis of *The New York Times* wrote an important book on the case, *Gideon's Trumpet*. A television movie (available [here \(http://www.youtube.com/watch?v=gAnb40298IU\)](http://www.youtube.com/watch?v=gAnb40298IU)) was made based on the book, with Henry Fonda as Gideon. (The case is also the subject of a [new documentary \(http://www.constitutionproject.org/publications-resources/defending-gideon/\)](http://www.constitutionproject.org/publications-resources/defending-gideon/) released by the Constitution Project in honor of the 50th anniversary of the decision.) As for Gideon himself, he died of cancer in 1972.

In the years since the *Gideon* ruling, the Supreme Court has greatly expanded its scope, finding that lawyers are necessary not only at the trial, but also in all preliminary hearings, as well as during sentencing and on appeal. In the famous *Miranda v. Arizona* (<http://supreme.justia.com/cases/federal/us/384/436/>) case handed down in 1966, the Court found that lawyers were also necessary after a person is arrested when he or she was questioned by the police. The Court also held that lawyers were necessary for juveniles and when defendants were tried for misdemeanors. Only in the rarest situations, such as in post-conviction proceedings, are lawyers not required, although courts often appoint them anyway.

Gideon's deeply held belief that the Constitution required that he be given a lawyer was vindicated, and his persistence has had a profound effect on the criminal justice system. The *Gideon* ruling fueled a burgeoning movement to open public defender's offices across the country to provide representation to indigent defendants. The idea of a public defender office was first proposed in 1893, by Clara Shortridge Foltz, the first woman lawyer on the West Coast. And thanks to her lobbying efforts, the first such office in the nation was opened, in Los Angeles in 1914. (The story of Foltz and her involvement in the public defender is told in Stanford law professor Barbara Babcock's [recent book \(http://www.amazon.com/Woman-Lawyer-Trials-Clara-Foltz/dp/0804786666/ref=sr_1_1?s=books&ie=UTF8&qid=1363404249&sr=1-1&keywords=woman+lawyer+babcock\)](http://www.amazon.com/Woman-Lawyer-Trials-Clara-Foltz/dp/0804786666/ref=sr_1_1?s=books&ie=UTF8&qid=1363404249&sr=1-1&keywords=woman+lawyer+babcock), *Woman Lawyer*.) But the declaration of a constitutional right to representation made her vision a widespread and permanent reality.

Criminal defendants still suffer many challenges in obtaining effective representation. Public defender offices are chronically underfunded, and the law to protect defendants from ineffective lawyering is woefully inadequate. There are also plenty of instances when a lawyer would seem essential, but is not provided. For example, child support contempt proceedings can result in jail time, but do not come with a government-paid lawyer. But without *Gideon*, the accused would be much worse off, and our justice system would be significantly less fair. Thus, Clarence Earl Gideon's legacy is an important one, which lives on through this silver anniversary.



Joanna L. Grossman, a Justia columnist, is the Sidney and Walter Siben Distinguished Professor of Family law at Hofstra University. She is the coauthor of [Inside the Castle: Law and the Family in 20th Century America](#) (Princeton University Press 2011), co-winner of the 2011 David J. Langum, Sr. Prize for Best Book in American Legal History, and the coeditor of [Gender Equality: Dimensions of Women's Equal Citizenship](#) (Cambridge University Press 2009). Her columns focus on family law, trusts and estates, and sex discrimination.

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Leon Friedman is the Joseph Kushner Distinguished Professor of Civil Liberties Law at Hofstra Law School and the editor of *Justices of the Supreme Court: Their Lives and Major Opinions* (2012).

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