Answering Gideon’s Call Outside the Courtroom:
Policy Reform Strategies to Protect the Right to Counsel

Re: Gideon v. Cochran
No. 1011 October Term, 1961
Formerly No. 890 Misc. October Term, 1961

I do desire the Court to appoint a competent attorney to represent me in this Court. Because I do not know the procedure nor do I have the ability to do so, I make this formal request to the Supreme Court of the United States to appoint me a attorney.

Very truly yours,
Clarence Earl Gideon

Gideon v. Wainwright
Case Materials

MARCH 18, 2013
AMERICAN UNIVERSITY
Gideon’s 50th Anniversary Symposium

Answering Gideon’s Call Outside the Courtroom: Collaborative Policy Reform Strategies to Protect the Sixth Amendment Right to Counsel and Ensure A Fair and Equitable Justice System

Monday, March 18, 2013
American University
Founders Hall, School of International Service
Main Campus
Washington, D.C.

REFERENCE/BACKGROUND MATERIALS

SUMMARY

NOTE: DOCUMENTS REFERENCED IN NO. 1 ARE ATTACHED IN HARD COPY. DOCUMENTS REFERENCED IN NOS. 2 – 5 ARE PROVIDED ELECTRONICALLY ON THE ACCOMPANYING USB DRIVE


PLEADINGS, HISTORICAL DOCUMENTS:
- CASE ABSTRACT
- OPINION (EXCERPT) WITH LINK TO FULL OPINION
- LINK TO ORAL ARGUMENT
- PLEADINGS


2. **Key Pre and Post Gideon Cases Relating to the Right to Counsel**

**November 7, 1932: Powell v. Alabama**, 287 U.S. 45 [established right to counsel in capital cases]

The case involved nine black men tried for raping two young white women. The defendants were only given access to their lawyers immediately prior to the trial, leaving little or no time to plan the defense. The ruling was appealed on the grounds that, among other issues, the group was not provided adequate legal counsel. The Alabama Supreme Court ruled 6-1 that the trial was fair (the strongly dissenting opinion was from Chief Justice Anderson). This ruling was then appealed to the U.S. Supreme Court which reversed and remanded the decision of the Alabama Supreme Court, holding that due process had been violated. The ruling was based on three main arguments: "(1) They were not given a fair, impartial and deliberate trial; (2) They were denied the right of counsel, with the accustomed incidents of consultation and opportunity for trial; and (3) They were tried before juries from which qualified members of their own race were systematically excluded."


**March 18, 1963: Douglas v. California**, 372 U.S. 353 [established right to counsel on appeal for indigent defendants]

Case involved an indigent convicted defendant who requested the appointment of counsel for the first appeal as a matter of statutory right. California’s system was to appoint counsel for indigent cases only when an independent investigation of the record determined merit. Supreme Court held that where the merits of the one and only appeal an indigent has as of right were decided without benefit of counsel in a state criminal case, there has been a discrimination between the rich and the poor which violates the Fourteenth Amendment.

March 1, 1966:  *Miranda v. Arizona*, 384 U.S. 436. [extends right to counsel to custodial interrogation]

The Court held that prosecutors could not use statements stemming from custodial interrogation of defendants unless they demonstrated the use of procedural safeguards "effective to secure the privilege against self-incrimination." The Court noted that "the modern practice of in-custody interrogation is psychologically rather than physically oriented" and that "the blood of the accused is not the only hallmark of an unconstitutional inquisition." The Court specifically outlined the necessary aspects of police warnings to suspects, including warnings of the right to remain silent and the right to have counsel present during interrogations.

*MIRANDA v. ARIZONA*. The Oyez Project at IIT Chicago-Kent College of Law. 13 March 2013.  

May 15, 1967:  *In Re Gault*, 387 U.S. 1 [extends right to counsel to juveniles]

The Court held that proceedings for juveniles had to comply with the requirements of the Fourteenth Amendment which included adequate notice of charges, notification of both the parents and the child of the juvenile's right to counsel, opportunity for confrontation and cross-examination at the hearings, and adequate safeguards against self-incrimination. The Court found that the procedures used in Gault's case met none of these requirements.

*IN RE GAULT*. The Oyez Project at IIT Chicago-Kent College of Law. 12 March 2013.  

June 22, 1970:  *Coleman v. Alabama*, 399 U.S. 1 [extends right to counsel to “critical stages”, including preliminary hearing]

The court held that the preliminary hearing is a "critical stage" of the prosecution, therefore requiring constitutionally that counsel be furnished.

http://supreme.justia.com/cases/federal/us/399/1/.


The unanimous Court extended that right to counsel established in *Gideon* under the Sixth and Fourteenth Amendments to indigent defendants charged with misdemeanors who faced the possibility of a jail sentence. Justice Douglas's plurality opinion described the intricacies involved in misdemeanor charges and the danger that unrepresented defendants may fall victim to "assembly-line justice." Thus, in order to guarantee fairness in trials involving potential jail time, no matter how petty the charge, the Court found that the state was obligated to provide the accused with counsel.

*ARGERSINGER v. HAMLIN*. The Oyez Project at IIT Chicago-Kent College of Law. 10 March 2013.  

May 20, 2002:  *Shelton v. Alabama*, 535 U.S. 654 [clarifies that right to counsel in a misdemeanor cases extends to all cases in which there is a possibility of imprisonment, including where a sentence of imprisonment is imposed and suspended]

In a 5-4 opinion delivered by Justice Ruth Bader Ginsburg, the Court held, according to Argersinger, that a suspended sentence that may "end up in the actual deprivation of a person's liberty" may not be imposed
unless the defendant was accorded "the guiding hand of counsel" in the prosecution for the crime charged. The Court reasoned that, because in this case the invocation of the suspended incarceration would constitute a prison term imposed for the assault offense of which defendant was convicted without the assistance of counsel, the Constitution required the provision of counsel. Justice Antonin Scalia, with whom Chief Justice William H. Rehnquist and Justices Anthony M. Kennedy and Clarence Thomas joined, dissented. Justice Scalia argued that the Court's prior decisions emphasized actual imprisonment as the touchstone of entitlement to appointed counsel.


June 23, 2008: Rothgery v. Gillespie County, 554 U.S. 191 [extends right to counsel to initial appearance proceedings whether or not a prosecutor is involved in the appearance]

In an 8-1 ruling, the Court held that: a criminal defendant's initial appearance before a judge marks the beginning of the proceedings against him and triggers the defendant's Sixth Amendment right to counsel whether or not a prosecutor is aware of or involved in that appearance. This right to counsel applies whenever a defendant learns of the charges against him and has his liberty subject to restriction. The opinion was penned by Justice David Souter. Justice Clarence Thomas wrote the only dissent, arguing that the phrase "criminal prosecution" as used in the Sixth Amendment should not include a defendant's initial appearance in the absence of a prosecutor. Chief Justice John G. Roberts, joined by Justice Antonin Scalia, chose to write a concurring opinion pointing out the validity of Thomas' argument but reasoning that Court precedent required him to agree with the majority. Justice Samuel Alito also filed a concurring opinion, stating that Rothgery's right to counsel certainly arose at the time of his appearance but reserving judgment on whether the County's actions infringed on that right in this case.


3. BACKGROUND/REFERENCE MATERIALS


Bennett H. Brummer. The Banality of Excessive Defender Workload: Managing the Systemic Obstruction of Justice. 22 St. Thomas L. Rev. 104 (Fall 2009)

Jim Bucermann. Rethinking Broken Window. The Police Foundation on NPR. The Kojo Nnamdi Show on WAMU 88.5, D.C.'s NPR station. [The discussion is about new research that challenges the impact on crime reduction of tactics used in NYC and elsewhere over the last two decades.]

Link to the article that was the catalyst for the show. http://www.theatlanticcities.com/politics/2013/02/was-nypd-really-responsible-new-yorks-famous-drop-crime/4616/

Link to live recording: http://thekojonnandishow.org/audio-player.


4. POWERPOINT PRESENTATIONS AND INFORMATION RELATING TO ATTENDEES’ ORGANIZATIONS

- Powerpoints

Cait Clarke and Mark Houldin: Assessing Gideon – Brief Overview of Indigent Defense Today

Robert Durant. Conditions for Effective Policy Implementation

- Other

Confederated Salish and Kootenai Tribes of the Flathead Nation. Mission Statement and Description of Tribal Defenders Office.

5. INFORMATION: PARTNERING ORGANIZATIONS

- Mission Statements
- Justice Programs Office, School of Public Affairs, American University: Brochure
- Fact Sheet: School of Public Affairs, American University
- Fact Sheet: Washington College of Law, American University
- Fact Sheet: American Council of Chief Defenders
- Fact Sheet: National Legal Aid and Defender Association

Pleadings, Historical Documents

Case Abstract
Gideon v. Wainwright

Docket: 155

Citation: 372 U.S. 335 (1963)

Petitioner: Gideon

Respondent: Wainwright

Abstract

Oral Argument: Tuesday, January 15, 1963

Decision: Monday, March 18, 1963

Issues: Criminal Procedure, Right to Counsel

Categories: criminal, right to counsel, sixth amendment

Advocates

Abe Fortas (Argued the cause for the petitioner)

Bruce R. Jacob (Argued the cause for the respondent)

George D. Mentz (Argued the cause for the State of Alabama, as amicus curiae, urging affirmance)

J. Lee Rankin (By special leave of the Court, argued the cause for the American Civil Liberties Union as amici curiae, urging reversal)

Facts of the Case

Gideon was charged in a Florida state court with a felony for breaking and entering. He lacked funds and was unable to hire a lawyer to prepare his defense. When he requested the court to appoint an attorney for him, the court refused, stating that it was only obligated to appoint counsel to indigent defendants in capital cases. Gideon defended himself in the trial; he was convicted by a jury and the court sentenced him to five years in a state prison.

Question

Did the state court's failure to appoint counsel for Gideon violate his right to a fair trial and due process of law as protected by the Sixth and Fourteenth Amendments?

Conclusion

In a unanimous opinion, the Court held that Gideon had a right to be represented by a court-appointed attorney and, in doing so, overruled its 1942 decision of Betts v. Brady. In this case the Court found that the Sixth Amendment's guarantee of counsel was a fundamental right, essential to a fair trial, which should be made applicable to the states through the Due Process Clause of the Fourteenth Amendment. Justice Black called it an "obvious truth" that a fair trial for a poor defendant could not be guaranteed without the assistance of counsel. Those familiar with the American system of justice, commented Black, recognized that "lawyers in criminal courts are necessities, not luxuries."
Gideon v. Wainwright (No. 155)
Reversed and cause remanded.

SUPREME COURT OF THE UNITED STATES

372 U.S. 335

Gideon v. Wainwright

CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 155 Argued: January 15, 1963 --- Decided: March 18, 1963

Charged in a Florida State Court with a noncapital felony, petitioner appeared without funds and without counsel and asked the Court to appoint counsel for him, but this was denied on the ground that the state law permitted appointment of counsel for indigent defendants in capital cases only. Petitioner conducted his own defense about as well as could be expected of a layman, but he was convicted and sentenced to imprisonment. Subsequently, he applied to the State Supreme Court for a writ of habeas corpus, on the ground that his conviction violated his rights under the Federal Constitution. The State Supreme Court denied all relief.

Held: The right of an indigent defendant in a criminal trial to have the assistance of counsel is a fundamental right essential to a fair trial, and petitioner's trial and conviction without the assistance of counsel violated the Fourteenth Amendment. Betts v. Brady, 316 U.S. 455, overruled. Pp. 336-345.

Pleadings, Historical Documents

Opinion (Excerpt)

For Full Opinion, see:


For Oral Argument, go to:


T

[Click on the part 1/part 2 and it will play. It will also show a transcript of the argument.]
BLACK, J., Opinion of the Court

SUPREME COURT OF THE UNITED STATES

372 U.S. 335

Gideon v. Wainwright

CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 155 Argued: January 15, 1963 --- Decided: March 18, 1963

MR. JUSTICE BLACK delivered the opinion of the Court.

Petitioner was charged in a Florida state court with having broken and entered a poolroom with intent to commit a misdemeanor. This offense is a felony under [p337] Florida law. Appearing in court without funds and without a lawyer, petitioner asked the court to appoint counsel for him, whereupon the following colloquy took place:

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.

Put to trial before a jury, Gideon conducted his defense about as well as could be expected from a layman. He made an opening statement to the jury, cross-examined the State's witnesses, presented witnesses in his own defense, declined to testify himself, and made a short argument "emphasizing his innocence to the charge contained in the Information filed in this case." The jury returned a verdict of guilty, and petitioner was sentenced to

serve five years in the state prison. Later, petitioner filed in the Florida Supreme Court this habeas corpus petition attacking his conviction and sentence on the ground that the trial court's refusal to appoint counsel for him denied him rights "guaranteed by the Constitution and the Bill of Rights by the United States Government." Treated as a habeas corpus petition, the problem of a defendant's federal constitutional right to counsel in a state court has been a continuing source of controversy and litigation in both state and federal courts. To give this problem another review here, we granted certiorari. Since Gideon was proceeding in forma pauperis, we appointed counsel to represent him and requested both sides to discuss in their briefs and oral arguments the following: "Should this Court's holding in Betts v. Brady, 316 U.S. 455, be reconsidered?"

The facts upon which Betts claimed that he had been unconstitutionally denied the right to have counsel appointed to assist him are strikingly like the facts upon which Gideon here bases his federal constitutional claim. Betts was indicted for robbery in a Maryland state court. On arraignment, he told the trial judge of his lack of funds to hire a lawyer and asked the court to appoint one for him. Betts was advised that it was not the practice in that county to appoint counsel for indigent defendants except in murder and rape cases. He then pleaded not guilty, had witnesses summoned, cross-examined the State's witnesses, examined his own, and chose not to testify himself. He was found guilty by the judge, sitting without a jury, and sentenced to eight years in prison. Like Gideon, Betts sought release by habeas corpus, alleging that he had been denied the right to assistance of counsel in violation of the Fourteenth Amendment. Betts was denied any relief, and, on review, this Court affirmed. It was held that a refusal to appoint counsel for an indigent defendant charged with a felony did not necessarily violate the Due Process Clause of the Fourteenth Amendment, which, for reasons given, the Court deemed to be the only applicable federal constitutional provision. The Court said:

> Asserted denial [of due process] is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, and in the light of other considerations, fall short of such denial.

316 U.S. at 462. Treating due process as "a concept less rigid and more fluid than those envisaged in other specific and particular
provisions of the Bill of Rights," the Court held that refusal to appoint counsel under the particular facts and circumstances in the Betts case was not so "offensive to the common and fundamental ideas of fairness" as to amount to a denial of due process. Since the facts and circumstances of the two cases are so nearly indistinguishable, we think the Betts v. Brady holding, if left standing, would require us to reject Gideon's claim that the Constitution guarantees him the assistance of counsel. Upon full reconsideration, we conclude that Betts v. Brady should be overruled.

II

The Sixth Amendment provides, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." We have construed [p340] this to mean that, in federal courts, counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived. [33] Betts argued that this right is extended to indigent defendants in state courts by the Fourteenth Amendment. In response, the Court stated that, while the Sixth Amendment laid down

no rule for the conduct of the States, the question recurs whether the constraint laid by the Amendment upon the national courts expresses a rule so fundamental and essential to a fair trial, and so, to due process of law, that it is made obligatory upon the States by the Fourteenth Amendment.

316 U.S. at 465. In order to decide whether the Sixth Amendment's guarantee of counsel is of this fundamental nature, the Court in Betts set out and considered

[r]elevant data on the subject . . . afforded by constitutional and statutory provisions subsisting in the colonies and the States prior to the inclusion of the Bill of Rights in the national Constitution, and in the constitutional, legislative, and judicial history of the States to the present date.

316 U.S. at 465. On the basis of this historical data, the Court concluded that "appointment of counsel is not a fundamental right, essential to a fair trial." 316 U.S. at 471. It was for this reason the Betts Court refused to accept the contention that the Sixth Amendment's guarantee of counsel for indigent federal defendants was extended to or, in the words of that Court, "made obligatory upon, the States by the Fourteenth Amendment." Plainly, had the Court concluded that appointment of counsel for an indigent criminal defendant was "a fundamental right, essential to a fair trial," it would have held that the Fourteenth Amendment requires appointment of counsel in a state court, just as the Sixth Amendment requires in a federal court. [p341]
We think the Court in Betts had ample precedent for acknowledging that those guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgment are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment. This same principle was recognized, explained, and applied in Powell v. Alabama, 287 U.S. 45 (1932), a case upholding the right of counsel, where the Court held that, despite sweeping language to the contrary in Hurtado v. California, 110 U.S. 516 (1884), the Fourteenth Amendment "embraced" those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions," even though they had been "specifically dealt with in another part of the federal Constitution." 287 U.S. at 67. In many cases other than Powell and Betts, this Court has looked to the fundamental nature of original Bill of Rights guarantees to decide whether the Fourteenth Amendment makes them obligatory on the States. Explicitly recognized to be of this "fundamental nature," and therefore made immune from state invasion by the Fourteenth, or some part of it, are the First Amendment's freedoms of speech, press, religion, assembly, association, and petition for redress of grievances.\[^4\] For the same reason, though not always in precisely the same terminology, the Court has made obligatory on the States the Fifth Amendment's command that private property shall not be taken for public use without just compensation,\[^5\] the Fourth Amendment's prohibition of unreasonable searches and seizures,\[^6\] and the Eighth's ban on cruel and unusual punishment.\[^7\] On the other hand, this Court in Palko v. Connecticut, 302 U.S. 319 (1937), refused to hold that the Fourteenth Amendment made the double jeopardy provision of the Fifth Amendment obligatory on the States. In so refusing, however, the Court, speaking through Mr. Justice Cardozo, was careful to emphasize that

immunities that are valid as against the federal government by force of the specific pledges of particular amendments have been found to be implicit in the concept of ordered liberty, and thus, through the Fourteenth Amendment, become valid as against the states,

and that guarantees "in their origin . . . effective against the federal government alone" had, by prior cases,

been taken over from the earlier articles of the federal bill of rights and brought within the Fourteenth Amendment by a process of absorption.

302 U.S. at 323, 325, 326.

We accept Betts v. Brady's assumption, based as it was on our prior cases, that a provision of the Bill of Rights which is "fundamental and essential to a fair trial" is made obligatory upon
the States by the Fourteenth Amendment. We think the Court in Betts was wrong, however, in concluding that the Sixth Amendment's guarantee of counsel is not one of these fundamental rights. Ten years before Betts v. Brady, this Court, after full consideration of all the historical data examined in Betts, had unequivocally declared that "the right to the aid of [p343] counsel is of this fundamental character." Powell v. Alabama, 287 U.S. 45, 68 (1932). While the Court, at the close of its Powell opinion, did, by its language, as this Court frequently does, limit its holding to the particular facts and circumstances of that case, its conclusions about the fundamental nature of the right to counsel are unmistakable. Several years later, in 1936, the Court reemphasized what it had said about the fundamental nature of the right to counsel in this language:

We concluded that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process of law clause of the Fourteenth Amendment, and among them the fundamental right of the accused to the aid of counsel in a criminal prosecution.

Grosjean v. American Press Co., 297 U.S. 233, 243-244 (1936). And again, in 1938, this Court said:

[The assistance of counsel] is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. . . . The Sixth Amendment stands as a constant admonition that, if the constitutional safeguards it provides be lost, justice will not "still be done."

Johnson v. Zerbst, 304 U.S. 458, 462 (1938). To the same effect, see Avery v. Alabama, 308 U.S. 444 (1940), and Smith v. O'Grady, 312 U.S. 329 (1941). In light of these and many other prior decisions of this Court, it is not surprising that the Betts Court, when faced with the contention that "one charged with crime, who is unable to obtain counsel, must be furnished counsel by the State," conceded that "[e]xpressions in the opinions of this court lend color to the argument. . . ." 316 U.S. at 462-463. The fact is that, in deciding as it did -- that "appointment of counsel is not a fundamental right, [p344] essential to a fair trial" -- the Court in Betts v. Brady made an abrupt break with its own well considered precedents. In returning to these old precedents, sounder, we believe, than the new, we but restore constitutional principles established to achieve a fair system of justice. Not only these precedents, but also reason and reflection, require us to recognize that, in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish
machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. 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 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 before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. A defendant's need for a lawyer is nowhere better stated than in the moving words of Mr. Justice Sutherland in Powell v. Alabama:

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.

287 U.S. at 68-69. The Court in Betts v. Brady departed from the sound wisdom upon which the Court's holding in Powell v. Alabama rested. Florida, supported by two other States, has asked that Betts v. Brady be left intact. Twenty-two States, as friends of the Court, argue that Betts was "an anachronism when handed down," and that it should now be overruled. We agree.

The judgment is reversed, and the cause is remanded to the Supreme Court of Florida for further action not inconsistent with this opinion.

Reversed.

Later, in the petition for habeas corpus, signed and apparently prepared by petitioner himself, he stated, "I, Clarence Earl
Gideon v. Wainwright

Gideon, claim that I was denied the rights of the 4th, 5th and 14th amendments of the Bill of Rights."


Pleadings, Historical Documents (cont.)

Pleadings

Petition for Writ of Habeas Corpus

I, Clarence Earl Gideon, in the County Court of the State of Florida, respectfully ask for a writ of habeas corpus on the grounds that I am a prisoner within the State of Florida, and that I am being held in violation of my constitutional rights.

On the 2nd day of June 1961, A.D., I was arrested and charged with the crime of burglary and theft, and found guilty of the same. I was sentenced to 5 years imprisonment in the State of Florida.

I, Clarence Earl Gideon, number 003836, respectfully ask for a writ of habeas corpus to be issued on my behalf, so that I may be released from prison and have my name cleared from the records.

Respectfully submitted,

Clarence Earl Gideon
State Penitentiary, Tallahassee, Florida

Supreme Court
State of Florida
DIVISION OF CORRECTIONS
CORRESPONDENCE REGULATIONS

MAIL WILL NOT BE DELIVERED WHICH DOES NOT CONFORM WITH THESE RULES

No. 1 -- Only 2 letters each week, not to exceed 2 sheets letter-size 8 1/2 x 11" and written on one side only, and if ruled paper, do not write between lines. Your complete name must be signed at the close of your letter. Clippings, stamps, letters from other people, stationary or cash must not be enclosed in your letters.

No. 2 -- All letters must be addressed in the complete prison name of the inmate. Cell number, where applicable, and prison number must be placed in lower left corner of envelope, with your complete name and address in the upper left corner.

No. 3 -- Do not send any packages without a Package Permit. Unauthorized packages will be destroyed.

No. 4 -- Letters must be written in English only.

No. 5 -- Books, magazines, pamphlets, and newspapers of reputable character will be delivered only if mailed direct from the publisher.

No. 6 -- Money must be sent in the form of Postal Money Order only, in the inmate's complete prison name and prison number.

INSTITUTION

NAME CLARENCE EARL SLOCUM

NUMBER 003826

CELL NUMBER D-9

May 14, 1984

Dear Dad,

I cannot say I do not feel a bit nervous and somewhat lonely without my attorney. But my attorney promised me a hearing in the Superior Court of the State of Texas on May 16th. I have heard that if I am not successful in this hearing I may be transferred to another place. I am not sure exactly where.

I am looking forward to the day when the record of the case will be made public. It has been almost three years since I have been in prison. I am looking forward to the day when the truth will be known and I can start my life over again.

With love,

Clarence Earland Slocum
DIVISION OF CORRECTIONS
CORRESPONDENCE REGULATIONS

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No. 6 -- Money must be sent in the form of Postal Money Orders only. In the inmate's complete prison name and prison number.

INSTITUTION: State Union P.O. Box 123
NAME: James Smith
NUMBER: 000382

State of Florida
County of Union

Subscribed and sworn to before me, a Notary Public, this 5th day of October, A.D., 1961. 

NOTARY PUBLIC

[Signature]

[Notary Seal]

[Notary Public's Seal]
Pleadings, Historical Documents (cont.)

Pleadings (cont.)

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A.D. 1961

MONDAY, OCTOBER 30, 1961

CLARENCE HURL GREEN,

Petitioner,

VS.

H. G. COCHRAN, JR., Director,
Division of Corrections,

Respondent.

The above-named petitioner has filed a petition for writ of habeas corpus in the above cause, and upon consideration thereof, it is ordered that said petition be and the same is hereby denied.

A True Copy

TEST:

Clyde P. Hobard,
Clerk Supreme Court.

Pleadings, Historical Documents (cont.)

Pleadings (cont.)

3. *Petition of Clarence Earl Gideon to the U.S. Supreme Court for Writ of Certiorari to Florida Supreme Court to review order and judgment denying petitioner's writ of Habeas Corpus.* January 5, 1962. No. 890. October 1961 Term. U.S. Supreme Court
IN THE SUPREME COURT OF THE UNITED STATES
WASHINGTON D.C.

CLARENCE EARL GIDEON,

PETITIONER

V.

H.C. COCHRAN, AS
DIRECTOR, DIVISIONS OF CORRECTIONS
STATE OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

U.S. SUPREME COURT

To The Honorable Earl Warren, Chief Justice of the United States

Comes now the petitioner, Clarence Earl Gideon, a citizen of the United States of America, in propria persona, and appearing as his own counsel, who petitions this Honorable Court for a writ of Certiorari directed to the Supreme Court of the State of Florida, to review the order and judgment of the court below denying the petition for a writ of Habeas Corpus.

Petitioner submits that the Supreme Court of the United States has the authority and jurisdiction to review the final judgment of the Supreme Court of the State of Florida, the highest court of the State, under Sec. 344(B), Title 28, U.S.C.A., and because the "due process clause" of the
MAIL WILL NOT BE DELIVERED WHICH DOES NOT CONFORM WITH THESE RULES

No. 1 -- Only 3 letters each week, not to exceed 2 sheets letter-size 8 1/2 x 11" and written on one side only, and if ruled paper, do not write between lines. Your complete name must be signed at the close of your letter. Clippings, stamps, letters from other people, stationery or cash must not be enclosed in your letter.

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No. 6 -- Money must be sent in the form of Postal Money Orders only. In the inmate's complete prison name and prison number.

INSTITUTION ___________________________  CELL NUMBER ___________________________

NINETEENTH AMENDMENT OF THE CONSTITUTION and the fifth and sixth artides of the Bill of Rights has been violated. Furthermore, the decision of the Court be law denying the petitioner a Writ of Habeus Corpus is also in consistent and adverse to its own previous decisions in parallel cases.

ATTACHED hereto and made a part of this petition is a true copy of the petition for a Writ of Habeus Corpus as presented to the Florida Supreme Court. Petitioner asks this Honorable Court to consider the same arguments and authorities cited in the petition for Writ of Habeus Corpus before the Florida Supreme Court. In consideration of this petition for a Writ of Certiorari

The Supreme Court of Florida did not write any opinion. Order of that court denying petition for Writ of Habeus Corpus dated October 30, 1961, are attached hereto and made a part of this petition.

Petitioner contends that he has been deprived of due process of law. Habeus Corpus petition alleging that the lower state court has decided a
Mail will not be delivered which does not conform with these rules.

No. 1 -- Only 2 letters each week, not to exceed 2 sheets letter-size 8 1/2 x 11" and written on one side only, and if ruled paper, do not write between lines. Your complete name must be signed at the close of your letter. Clippings, stamps, letters from other people, stationery or cash must not be enclosed in your letters.

No. 2 -- All letters must be addressed to the complete prison name of the inmate. Cell number, where applicable, and prison number must be placed in lower left corner of envelope, with your complete name and address in the upper left corner.

No. 3 -- Do not send any packages without a Package Permit. Unauthorized packages will be destroyed.

No. 4 -- Letters must be written in English only.

No. 5 -- Books, magazines, pamphlets, and newspapers of reputable character will be delivered only if mailed direct from the publisher.

No. 6 -- Money must be sent in the form of Postal Money Orders only, in the inmate's complete prison name and prison number.

Institution

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<th>NAME</th>
<th>NUMBER</th>
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Federal question of substance, in a way not in accord with the applicable decisions of this honorable court. When at the time of the petitioners tried, he asked the lower court for the aid of counsel. The court refused this aid.

Petitioner told the court that this court had made decision to the effect that all citizens tried for a felony crime should have aid of counsel. The lower court ignored this plea.

Petitioner alleges that prior to petitioners convictions and sentence for Breaking and Entering with the intent to commit petty larceny he had requested aid of counsel, that at the time of his conviction and sentence petitioner was without aid of counsel. That the court refused and did not appoint counsel and that he was incapable adequately of making his own defense. In consequence of which he was made to stand trial. Made a Prima Faccia showing of denial of due process of law (U.S. Const. Amend. 14). William V. Kaiser, vs. State of Missouri 65 Ct 363.

Counsel must be assigned to the accused if he is unable to employ
D I V I S I O N O F C O R R E C T I O N S
C O R R E S P O N D E N C E R E G U L A T I O N S


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--

INSTITUTION

NAME

CELL NUMBER

one and is incapable adequately of
making his own defense

Tomkins vs State Missouri 65 vet 370

on the 3rd June 1961 a b, your
petitioner was arrested for the said
crime and convicted for same, petitioner
receive trial and sentence without aid
of course, your petitioner was deprived
due process of law.

Petitioner was deprived of due
process of law in the court evidence
in the lower court did not show that a
crime of Breaking and Entering with
the intent to commit petty larceny had
been committed, your petitioner
was compelled to make his own
defense, he was incapable
adequately of making his own defense
Petitioner did not plead no contest
but that is what his trial amounted

to.
MAIL WILL NOT BE DELIVERED WHICH DOES NOT CONFORM WITH THESE RULES

No. 1 -- Only 2 letters each week, not to exceed 2 sheets letter-size 8 1/2 x 11" and written on one side only, and if ruled paper, do not write between lines. Your complete name must be signed at the close of your letter. Clippings, stamps, letters from other people, stationery or cash must not be enclosed in your letters.

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INSTITUTION ___________________________   CELL NUMBER ___________________________

NAME ___________________________   NUMBER ___________________________

Wherefore the premises considered, it is respectfully contended that the decision of the court below was in error and the same should be reviewed by this court, accordingly the writ prepared and prayed for should be issued.

This respectfully submitted,

Clarence Earl Gideon
P.O. Box 221
State of Florida, Raiford, Florida
County of Union

Petitioner, Clarence Earl Gideon, personally appearing before me and being duly sworn, affirms that the foregoing petition and the facts set forth in the petition are correct and true.

Sworn and subscribed before me this 5th. day of Jan. 1962

Clarence E. Gideon
Notary Public

[Signature]

Pleadings, Historical Documents (cont.)

Pleadings (cont.)

Supreme Court of the United States

Order Granting Motion for leave to proceed in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1011. In addition to other questions presented by this case, counsel are requested to discuss the following in their briefs and oral argument:

"Should this Court's holding in Betts v. Brady, 316 U.S. 455, be reconsidered?"

June 4, 1962

Mr. Justice Frankfurter took no part in the consideration or decision of this application.

Pleadings, Historical Documents (cont.)

Pleadings (cont.)

Censored

Dear Sir:

I received your letter of the 4th of June, informing me that the Supreme Court of the United States has granted me leave to proceed in forma pauperis and the petition for a writ of Certiorari re: Gideon v. Wainwright.

No. 701, October Term, 1961
Formerly No. 870 Misc. October Term, 1961

I do desire the Court to appoint a competent attorney to represent me in this Court. Because I do not know the procedure nor do I have the ability to do so. I make this formal request to the Supreme Court of the United States to appoint me an attorney.

Very truly yours,
Clarence Earl Gideon

RECEIVED
JUN 18 1962
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Pleadings, Historical Documents (cont.)

Pleadings (cont.)

Supreme Court of the United States

No. 10114, October Term, 19

Clarence Earl Gideon,

Petitioner,

vs.

H. G. Cochran, Jr., Director, Division of Corrections

ON CONSIDERATION of the motion for the appointment of counsel,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted and it is ordered that Abe Fortas, Esquire, of Washington, D. C., a member of the Bar of this Court, be and he is hereby, appointed to serve as counsel for petitioner in this case.

June 25, 1962

Mr. Justice Frankfurter took no part in the consideration or decision of this motion.
Pleadings, Historical Documents (cont.)

Pleadings (cont.)

GREETINGS:

WHEREAS, lately in the Supreme Court of the State of Florida, there came before you a cause between Clarence Earl Gideon, petitioner, and H. G. Cochran, Jr., Director, Division of Corrections, respondent, wherein the judgment of the said Supreme Court was duly entered on the 30th day of October A. D. 1961, as appears by an inspection of the transcript of the record of the said Supreme Court which was brought into the Supreme Court of the United States by virtue of a writ of certiorari as provided by act of Congress.

AND WHEREAS, Louie L. Wainwright was substituted in the place of H. G. Cochran, Jr., pursuant to Rule 48 (3) as amended.

AND WHEREAS, in the October Term, 1962, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and was argued by counsel:

ON CONSIDERATION WHEREOF, it was ordered and adjudged on March 18, 1963, by this Court that the judgment of the said Supreme Court in this cause be reversed with costs, and that this cause be remanded to the Supreme Court of the State of Florida for further proceedings not inconsistent with the opinion of this Court.

NOW, THEREFORE, THE CAUSE IS REMANDED to you in order that such
proceedings may be had in the said cause, in conformity with the judgment of this Court above stated, as accord with right and justice, and the Constitution and laws of the United States, the said writ of certiorari notwithstanding.

Witness the Honorable EARL WARREN, Chief Justice of the United States, the twelfth ------- day of April -------, in the year of our Lord one thousand nine hundred and sixty-three.

Costs:

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clerk's costs</td>
<td>$186.96</td>
</tr>
<tr>
<td>Printing record</td>
<td>$405.56</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$592.52</strong></td>
</tr>
</tbody>
</table>

The above amount to be paid directly to the Clerk of the Supreme Court of the United States.

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No. 155, October Term, 1962

Clarence Earl Gideon,

vs

Louie L. Wainwright, Director,
Division of Corrections
IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1963

CLARENCE EARL GIDEON, ***
   Petitioner, ***
vs. ***
LOUIE L. WAINWRIGHT, Director, Division of Corrections, ***
   Respondent. ***

CASE NO. 31,116

Opinion filed May 15, 1963
Case of original jurisdiction - Habeas Corpus
Clarence Earl Gideon, in proper person, for Petitioner
Richard W. Ervin, Attorney General, and Bruce Jacob, Assistant Attorney General, for Respondent

THORNAL, J.

Following our denial of petitioner's application for a writ of habeas corpus this cause was considered by the Supreme Court of the United States on a writ of certiorari. Our judgment was reversed and the cause was remanded for further action not inconsistent with the opinion of the United States Court.

The matter now recurs for consideration pursuant to the mandate of the Supreme Court of the United States.

By his post-conviction petition for a writ of habeas corpus, Gideon alleged that at his trial on a felony information he was insolvent and requested the assistance of counsel. His request was denied. His petition failed to allege that he was unable to defend himself adequately because of a lack of
intelligence or ability or because of any complications arising out of the charge and a lack of familiarity with minimal essentials of criminal procedure. In the absence of these allegations we originally denied the writ on the authority of Betts v. Brady, 316 U. S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595. As noted by the United States Court in its opinion in the instant case, there is a marked factual similarity between this case and Betts. In view of the Betts precedent which we have followed since its announce-ment in 1941, we felt obligated to follow its pronouncements in this instance. In consequence of this view, we initially concluded that the petition was fatally insufficient to motivate the issuance of a post-conviction writ. Johnson v. Mayo, 158 Fla. 264, 28 So. 2d 585, cert. den. 329 U. S. 804, 67 S. Ct. 492, 91 L. Ed. 637.

By its instant opinion the Supreme Court of the United States has expressly receded from the long-established rule announced in Betts v. Brady, supra. We are now confronted with the responsibility of taking note of the belatedly recognized federal organic right to counsel authoritatively announced by the United States Supreme Court in its Gideon opinion.

In order to meet this judicial responsibility we have promptly undertaken to establish appropriate procedures that will accord to prisoners an effective forum in which they may expeditiously obtain a hearing and any relief to which they might be entitled. We have taken judicial cognizance of the large number of felons incarcerated in the state prison who potentially have claims to relief because of absence of counsel at the time of their trial and conviction. The task of reviewing these claims, if and when asserted, appeared to be of such magnitude that it was essential to establish an effective procedural remedy that would distribute the judicial responsibility, while simultaneously according to the prisoner an expeditious and complete opportunity to obtain relief. Roy v. Wainwright. Opinion filed April 10, 1963.
In meeting the full measure of our responsibility we turned to federal criminal procedures for a precedent. It appeared to us that the most effective procedural remedy that could be provided under the circumstances would be to adopt as a criminal procedure rule the express language of 28 USC, Section 2255, which had been enacted by the Congress in 1948, and has since been employed in the federal system in many cases. Under our constitutional rule-making power, Article V, Section 3, Florida Constitution, we promulgated, on April 1, 1963, Criminal Procedure Rule #1. Except to the extent necessary to adapt the language of the statute to the Florida courts, the rule which we have promulgated is identical with the federal statute. Roy v. Weinwright, supra.

Under the rule which we have announced, post-conviction relief can be obtained where there is a claimed denial of some fundamental or organic right in the course of the trial. The relief available is coextensive with that which would be available in habeas corpus. The rule, however, minimizes the difficulties encountered in habeas corpus hearings and affords the same rights in a more convenient forum and one best prepared to consider the claims of a prisoner convicted in that very forum. Hill v. U. S., 368 U. S. 424, 82 S. Ct. 469, 7 L. Ed. 2d 417; Machibroda v. United States, 368 U. S. 487, 82 S. Ct. 510, 7 L. Ed. 2d 473; United States v. Hayman, 342 U. S. 205, 72 S. Ct. 263, 96 L. Ed. 232. See also Parker, Limiting the Abuse of Habeas Corpus, 8 FRD 171.

We took this action prior to receipt of the mandate of the Supreme Court of the United States in the instant case in prompt fulfilment of our judicial obligation which was indicated in the opinion of that Court.

Inasmuch as it was not announced until April 1, 1963, the existence of our Criminal Procedure Rule #1, was naturally not made known to the United States Supreme Court in the course of the Gideon proceeding. Nevertheless, we consider the promulgation of
that rule as being "action not inconsistent" with the Gideon opinion. In fact, we confess it to be action taken pursuant to the directive of the Gideon Judgment. In view of that Court's consistent recognition of the effectiveness of a post-conviction motion under 28 USC, Section 2255, we feel justified in assuming that a motion under the Florida rule would receive similar endorsement. In accord with the decision of the Supreme Court of the United States in the instant matter and pursuant to its mandate, we therefore hold that Gideon has asserted claims which, if established, would entitle him to relief under Criminal Procedure Rule #1. Inasmuch as he can obtain such relief promptly and effectively under the cited rule, and in furtherance of the directive of the United States Supreme Court, we therefore hold that the petitioner is entitled to proceed under that rule. Having provided the petitioner with an efficient, expeditious and effective forum within which the claimed relief can be obtained, we decline to issue a writ of habeas corpus but expressly without prejudice to any rights which the petitioner might assert in the Circuit Court of Bay County, pursuant to the provisions of Criminal Procedure Rule #1.

In further consequence of the mandate of the Supreme Court of the United States the costs of the Clerk of that Court in the amount of $186.96, and the cost of printing the record in that Court, in the amount of $405.56, are ordered to be paid by Bay County Florida directly to the Clerk of the Supreme Court of the United States. See Carnley v. Cochran, 143 So. 2d 327.

It is so ordered.

ROBERTS, C.J., DREW, O'CONNELL and HOBSON (Ret.), JJ., concur.