

Half a century after landmark ruling, we need to ensure counsel for all

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By: Brian Gilmore

Fifty years ago this month, the U.S. Supreme Court established the absolute right to counsel in criminal cases. It's a right we must continue to defend.

The case was *Gideon v. Wainwright*, and it began in Panama City, Fla., on Aug. 4, 1961. Clarence Earl Gideon, an impoverished 52-year-old man who had been in and out of prison for most of his life, was charged with breaking and entering at a Bay City Harbor poolroom. As the trial got under way, Gideon asked Judge Robert L. McCrary Jr. to appoint him a lawyer as he could not afford one. McCrary refused. He informed Gideon that the right to a lawyer was only guaranteed in death penalty cases.

So Gideon represented himself in that trial. He gave an opening and closing statement. He presented evidence. He cross-examined witnesses. He was convicted and sentenced to five years in prison.

Gideon's fate was hardly unusual in the United States in 1961. Florida wasn't the only state to not guarantee counsel for indigent defendants charged with a crime. So didn't Alabama, Colorado, Delaware, Hawaii, Maine, Maryland, Michigan, Pennsylvania, Rhode Island, South Carolina and Vermont.

Luckily, Gideon did not take the injustice inflicted upon him sitting down. In prison, he poured over legal treatises and courageously appealed his case to the U.S. Supreme Court. He famously handwrote his letter of appeal and the court received that letter from "Prisoner 003826" on Jan. 8, 1962. Oral argument was held Jan. 15, 1963, with the legendary Abe Fortas representing Gideon. Fortas told his law clerks assisting on the case he wanted a unanimous opinion.

On March 18, 1963, Fortas received his wish when the court ruled in favor of Gideon. In the opinion, Justice Hugo Black wrote: "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."

The decision enshrined the right to a lawyer to everyone in criminal cases in the United States.

Since that decision, Gideon has been the law of the land, but there are still serious problems in applying it. States all across the country underfund indigent counsel.

In 2004, the American Bar Association found that thousands of defendants pass through the criminal justice system each year and receive either no representation at all or underfunded representation. The association described the situation as "shamefully inadequate." A 2009 report by the Constitution Project revealed the situation hadn't changed since the Bar Association report.

Today, thousands of poor defendants appear in court without counsel and never receive counsel. This is disgraceful. The right to counsel is essential in a free, democratic and civilized society. As we acknowledge the great gift bestowed on us by Clarence Earl Gideon 50 years ago, we must recommit to equal justice in the United States for all.

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