

THE CLARION CALL OF GIDEON'S TRUMPET

✘ A few days ago, on March 18, fell the 46th anniversary of a momentous day in American jurisprudence, the day the decision in *Gideon v. Wainright* was rendered. Prior to *Gideon*, criminal defendants in the United States had a right to be represented by counsel, but not the right to have counsel appointed if they could not afford their own attorney. It was a watershed moment of enlightenment that is worthy of a fresh look.

Clarence Gideon was wrongly charged with breaking and entering a pool hall that had been burglarized, all based on a false accusation. Gideon was a poor man who lived in a rooming house and literally had but \$25 to his name. From Wiki:

He appeared in court and was too poor to afford counsel, whereupon the following conversation 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.

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

Gideon was forced, therefore, to act as his own counsel and conduct a defense of himself in court, emphasizing his

innocence in the case. Nevertheless, the jury returned a guilty verdict, sentencing him to serve five years in the state penitentiary.

From his prison cell at Florida State Prison, making use of the prison library and writing in pencil on prison stationery, Gideon appealed to the U.S. Supreme Court in a suit against the Secretary to the Florida Department of Corrections, Louie L. Wainwright. He argued that he had been denied counsel and, therefore, his Sixth Amendment rights, as applied to the states by the Fourteenth Amendment, had been violated.

But what the Supreme Court gave in *Gideon* is under an attack that is destroying one of the tenets of the modern due process guarantee in the American criminal system. In a chilling opinion piece in the March 10, 2009 Washington Post, former Vice-President Walter F. Mondale, who as Minnesota Attorney General participated along with AGs from 21 other states in *amici* support of Gideon's demand for appointed counsel, details just how far the nation has regressed:

Yet states across the country routinely fail to appoint counsel to people who are genuinely unable to afford representation on their own. A report published by the Brennan Center for Justice at NYU Law School last fall, "Eligible for Justice," found that if Gideon were to face criminal charges in Florida today, he might well be denied a public defender. Under Florida law, he could be disqualified for counsel if he has assets exceeding \$2,500 (excluding a house), a car valued above \$5,000, or had posted bail of more than \$5,000, even if none of those assets permitted him to pay the retainer – often several thousand dollars – that defense lawyers routinely charge.

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Sadly, Gideon's chances of getting counsel would be worse elsewhere. In New Hampshire, he could be found ineligible for counsel if he had a home valued at more than \$20,000, even if he could not sell the home in time to finance his defense and even if selling it would leave him homeless. Courts in Virginia could deny him counsel because of the amount of money possessed by family members, even if Gideon had no power over that money.

Of course the right to counsel is under attack, what essential due process right under the Constitution isn't? We talk almost daily about illegal wiretapping, datamining and other invasions of privacy, illegal detention and torture, manipulation and intimidation of the press, parallel proceedings and intimidation of family members to circumvent individual's right against self incrimination. All under attack thanks to an increasingly hungry authoritarian state, war on terror, war on drugs and a perpetuated state of fear. It is a war on the bill of rights; a war on the citizenry.

There is plenty every day on the more hot button Constitutional attacks, today let's remember Clarence Gideon and what his story stands for. As the New York Times related last November, public defenders in every federal state and local jurisdiction are overworked, underpaid and unappreciated. In seven states, public defenders' offices are refusing to take new cases and/or suing to have their caseloads reduced; citing overwhelming workloads that they say undermine the constitutional right to counsel for the poor.

Mondale puts the bigger picture in perspective:

Many European countries provide such representation to indigent civil litigants. The backtracking that we are experiencing in the area of criminal

representation undermines these efforts to move forward in the civil area. Our justice system depends on the idea that everyone is to be treated fairly, but a lack of resources is affecting the progress the Gideon decision brought to our criminal justice system and is blocking progressive efforts to extend the right to counsel in certain civil cases.

This month marks the 46th anniversary of the ruling in *Gideon v. Wainwright*. It is crucial that the states rededicate themselves to providing competent defense counsel to all people facing criminal charges who cannot afford to pay. The federal government, too, has an important role in providing the states with technical assistance, monitoring their compliance and enforcing the constitutional right to counsel. The promise of *Gideon* is ringing hollow, both for defendants, who count on competent counsel for their freedom, and for our society, which counts on the courts to achieve fair and reliable results. We cannot move forward until we stop the erosion of *Gideon's* promise to criminal defendants.

Fritz Mondale is right to sound the call of *Gideon's* Trumpet. We all should. Due process is not a natural force of nature, it is the work of a conscious and determined society; you have to want due process, fight for it and struggle to insure its application in the most heinous cases and circumstances that test your will. The Founding Fathers planted the seed, it is time to stop leaving the fruit withering on the vine.

You live in towns, cities, counties and states that have public defender programs. They work hard and are underpaid. Give them a kind thought every now and then and vote to increase their budgets and capabilities. It is your Constitution at work.