The People's Lawyer:

A Look at Minnesota Attorney General Walter F. Mondale's Role in the Landmark Case, Gideon v. Wainwright

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Table of Contents

Introduction..1

I. The Roots of Mondale's Commitment to Civil Rights for All People..............2

II. Mondale as Minnesota's Attorney General...4

III. The Background of Gideon v.Wainwright...6

IV. Mondale's Role in the Gideon Decision...8

A. The Letters...8

B. The *Amicus Curiae* Brief...13

C. The Decision..19

V. After Gideon: Short- and Long-term Ramifications.......................................25

A. Reactions to Mondale's Brief and the Decision.................................25

B. The Right to Counsel After Gideon..30

Conclusion..36

Introduction

Former Vice President Walter Mondale is one of Minnesota's most famous and nationally respected politicians and public servants. From his days as Minnesota's youngest-ever Attorney General to his tenure in the United States Senate and his assent to the Vice Presidency in the Carter administration, Mondale has continually demonstrated his commitment to civil rights and justice for all. During his time as Minnesota Attorney General, Mondale established himself as "the people's lawyer" by using his position to advocate for consumer protection, civil rights, and justice for ordinary Minnesotans.[i] In this essay, I will examine a lesser-known contribution Mr. Mondale made while he was Minnesota Attorney General: his *amicus curiae* brief submitted in support of prisoner Clarence E. Gideon in the landmark United States Supreme Court case, Gideon v. Wainwright, 372 U.S. 335 (1963). I will consider the factors that led to Mondale's position that all indigent defendants charged with felonies have a fundamental right to be appointed counsel. I will briefly discuss the background of the Gideon case and provide a framework from which to examine the decision and Mondale's role in that decision. I will then analyze the arguments both in the Supreme Court's opinion and in Mondale's *amicus curiae* brief and I will discuss the short-term and long-term ramifications of the Gideon decision. Finally, I will present my conclusion that Mondale's *amicus curiae* brief provided the Supreme Court with a solid, sound, and fair

way to overrule its own precedent and to hold that the Constitution requires that states provide appointed attorneys to indigent criminal defendants.

I. The Roots of Mondale's Commitment to Civil Rights for All People

From Mondale's earliest days in Elmore, Minnesota, his parents instilled in him "a deep compassion for the underprivileged"[ii] and the understanding that he had a duty to reach out to those less fortunate. While growing up, "the Mondales assisted the needy in their community, welcoming into their home anyone who was temporarily homeless, passing through town, or had fallen on hard times."[iii] These actions exemplify that Mondale was part of a family that recognized the humanity of all people. From his parents' teaching and example, Mondale "developed visceral political values that endured for a lifetime"[iv] and set Mondale on a path to working to ameliorate injustices in society.

Armed with core populist beliefs, Mondale chose to enter law school after graduating from college. Mondale's time at the University of Minnesota Law School brought into greater focus the profound disparities that existed between the power elite and the poor. Mondale's notes from his Constitutional Law course reveal his anger at reading Supreme Court opinions that disregarded what Mondale saw as fundamental Constitutional values. For example, in Palko v. CT, the Supreme Court held that the Fifth Amendment right against double jeopardy did not apply to the states.[v]

When discussing this case in law school, Mondale suggested in his notes that this unwise decision placed individuals "in continued jeopardy" and rendered the Fifth Amendment hollow.[vi] Indeed, if individuals could be subjected to double jeopardy, it made no practical difference whether they must face the charge multiple times in state court or federal court. As a law student, Mondale recognized that the Fifth Amendment to the United States Constitution is fundamental and that Palko v. CT violated the Constitution. In 1969, the Supreme Court overruled Palko v. CT as inconsistent with protecting Fifth Amendment rights, making clear that Mondale had been a progressive and forward-thinking legal mind by suggesting the same principles nearly two decades before.

Mondale's interpretation of the Bill of Rights and its application to the states is also manifested in his notes on Adamson v. People of California, a case in which the Supreme Court held that the Fourteenth Amendment did not protect the Constitutional right against self-incrimination.[vii] Again, such a proposition undermines the fundamental right against self-incrimination because, for the suspect attempting to preserve his Fifth Amendment rights, it matters little to him whether he is in a state or federal courtroom. Mondale's law school notes on this case focused heavily on the arguments made by the dissent. In bold handwriting, Mondale wrote that "the first eight amendments [are part of] national citizenship."[viii] That is to say, the individual rights espoused in the Bill of Rights are so essential that the states

should not be able to stray from them. The Supreme Court overruled Adamson in 1964 with its decision, Malloy v. Hogan.[ix]

The idea that certain Constitutional rights are fundamental and may not be varied from state to state, even in state courts, was a minority view when Mondale was a law student. This position, however, is tied to the belief that the Bill of Rights is intended to protect individuals from the government abuses, whether perpetuated by state or federal governments. Mondale's notes demonstrate a legal mind committed to individual rights and equality, despite being trained as a lawyer during a time where legal precedent perpetuated inequality. Mondale's outrage at what he saw as the Supreme Court refusing to give the Bill of Rights meaningful application to individuals would follow Mondale long after he graduated from law school and into his career as an advocate.

II. Mondale as Minnesota's Attorney General

In 1960, when Minnesota Attorney General Miles Lord announced his retirement, Governor Orville Freeman appointed Walter Mondale as Lord's replacement.[x] Governor Freeman's appointment made Mondale the "youngest attorney general in the nation" and the youngest attorney general Minnesota had ever had.[xi] This, however, did not dissuade Mondale from taking strong positions on important issues and standing up for individuals. Mondale declared himself "a strong advocate of civil liberties and rights for

all citizens [and promised to] 'scrupulously protect' the right to 'criticize the government."[xii] As Attorney General, Mondale established departments within his office devoted to consumer protection, antitrust, and civil rights.[xiii] In doing so, he "transformed that Attorney General's office from a remote and secluded bureaucratic post into a high-profiled hub of legal and political activity." [xiv]

Mondale ran for reelection in 1962. During the campaign, he further made clear his conception of the role of Attorney General. In Mondale's response to a questionnaire by the League of Women Voters, he wrote that "the Attorney General is a separate constitutional officer empowered to advise, counsel, and protect the public, even against the government itself."[xv] This writing indicates that Mondale, even as a politician and head of a government agency, did not consider himself merely an agent of that government. Rather, he understood his role as being an advocate for individuals, regardless of race, class, status, or party loyalties. Mondale also described the role of the Attorney General in a "Betty Wilson" questionnaire from the 1962 campaign. He wrote that the "basic issue of this campaign is the concept of the Attorney General…he has a direct responsibility to the people to look after their interests."[xvi]

Mondale, however, was not without its critics. His opponent in the 1962 campaign for Minnesota Attorney General was Robert Kunzig. In a July 1962 press release to a Fairmont, Minnesota radio station, Kunzig stated

that he disapproved of "...the practice of justice by press releases. It isn't simply the function of the Attorney General to issue official pronouncements from his lofty and powerful position."[xvii] Others disagreed with Kunzig's assessment of how the Attorney General's office operated under Mondale. In a newspaper advertisement published during the 1962 campaign, myriad Minnesota attorneys announced "Lawyers Endorse Mondale" and based this endorsement on the fact that Mondale "worked tirelessly to prevent abuses of individual rights" and was "truly the people's lawyer."[xviii] As such, Mondale, "the people's lawyer," was reelected Minnesota Attorney General in the 1962 election.

III. The Background of Gideon v. Wainwright

During the time of Walter Mondale was running for reelection as Minnesota Attorney General, a man named Clarence Earl Gideon was sitting in a Florida prison. Gideon was a drifter and had spent a substantial portion of his adult life serving time for minor crimes.[xix] Gideon had been convicted of breaking and entering with intent to commit a misdemeanor in Florida state court in August of 1961.[xx] Gideon was a poverty-stricken man and, when brought before the trial judge, requested appointed counsel to represent him.[xxi] The trial judge refused Gideon's request, pursuant to the United States Supreme Court's rule in Betts v. Brady that states were only required to appoint counsel to indigent defendants in non-capital cases if the

defendant could prove "special circumstances" affecting the "fundamental fairness" of the trial.[xxii] Such "special circumstances" could include mental illness, youth, and the complexity of the charge, among other factors specific to a particular defendant.[xxiii] While Gideon was not an educated man, he did not necessarily meet the "special circumstances" required by Betts.[xxiv] Based on the trial court's ruling and application of Supreme Court precedent, Gideon was required to present his own defense without the assistance of an attorney and was convicted. The judge sentenced Gideon to the maximum time allowable, five years.[xxv]

After the Florida Supreme Court summarily rejected Gideon's request for review, Gideon petitioned the United States Supreme Court *in forma pauperis*[1] to review his case.[xxvi] On receiving the petition, the Supreme Court requested a reply from Florida Attorney General Richard Ervin.[xxvii] Attorney General Ervin's reply argued that Gideon had failed to assert that his case presented any of the "special circumstances" required by Betts and that, as such, "the presumption must be indulged that the trial proceedings were fair and just."[xxviii] Gideon received a copy of Attorney General Ervin's brief and submitted a pencil-written response in which he stated:

"Petitioner cannot make any pretense at being able to answer the learned Attorney General of Florida...The respondent claims that a citizen can get a

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[1] *In forma pauperis literally means "in the poor way or form."* Such petitions do not require statements of jurisdiction, lower court opinions, trial transcripts, copies of briefs, or that briefs adhere to the format usually required by the United States Supreme Court. The Supreme Court accepts *in forma pauperis* petitions from indigent people not represented by counsel.

equal and fair trial without legal counsel...[but] if the petitioner would have had an attorney there would not have been allowed such things as hearsay, perjury of Bill of attainer against him...It makes no difference how old I am or what color I am or what church I belong to...The question is I did not get a fair trial...I requested the court to appoint me attorney and the court refused."[xxix]

Despite Gideon's imperfect grammar and lack of eloquence, the Supreme Court clearly found merit in his argument. On reviewing Gideon's petition and brief and Attorney General Ervin's response, the Supreme Court granted Gideon's petition for certiorari, appointed Gideon an attorney for the Supreme Court proceedings, and requested formal briefs from Gideon's attorney and Attorney General Ervin.[xxx] In the briefs and oral arguments, the question to be discussed was "Should this Court's holding in Betts v. Brady, 316 U.S. 455, be reconsidered?"[xxxi] The eventual answer would be "yes," but there were many steps to take before the Supreme Court would reach their decision.

IV. Mondale's Role in the Gideon Decision

A. The Letters

Florida Attorney General Ervin had appointed a young, inexperienced assistant attorney general named Bruce Robert Jacob to take charge of preparing the Gideon brief and oral argument.[xxxii] One of Jacob's first decisions in readying for the Gideon case was to invited the Attorney General of the 49 other states to support Florida's position by submitting an *amicus curiae* brief on behalf of Florida.[xxxiii] The letter, written by Jacob and signed

by Ervin, suggested that, if Betts was overturned "[s]tates will, in effect, be mandatorily required to appoint counsel in all felony cases. Such a decision would infringe on the right of the states to determine their own rules of criminal procedure."[xxxiv]

When Mondale received Jacob and Ervin's letter, he was so angered by the inequity that Florida's Attorney General aimed to perpetuate that he "crumpled it up and threw it away."[xxxv] The original copy of Jacob and Ervin's letter that Mondale received is not among the other relevant correspondence in Mondale's Attorney General Office papers, and may very well have gone out with the trash on the day Mondale first received the letter. One reason for Mondale's strong reaction to Ervin's letter was that Minnesota had long provided counsel to all indigent defendants accused of felonies and Mondale "had seen that it worked just fine [to have a public defender system] and that a guy couldn't get a fair trial without a lawyer."[xxxvi]

Mondale, however, did not let his outrage stop him from taking affirmative steps on behalf of Gideon and the plight of all indigent criminal defendants. Again showing himself as the true "people's lawyer," Mondale prepared a reply letter to Attorney General Ervin on August 15, 1962.[xxxvii] Mondale wrote: "I believe in federalism and states' rights too. But I also believe in the Bill of Rights."[xxxviii] Quoting Justice William Brennan, Mondale continued that "federalism should not be raised to the plane of an absolute,

not the Bill of Rights be reduced to a precatory trust."[xxxix] This language indicates that Gideon v. Wainwright was about much more than Mr. Gideon. Indeed, the case was about more than the rights of criminal defendants. The opposing positions taken by Mondale and Ervin represented a nationwide battle in the Civil Rights movement: federalism and states' rights versus the civil rights of individuals and the authority of the federal government to enforce them.

The United States was founded on principles of federalism, in which the federal government is one of limited powers and powers not enumerated are reserved to the states[xl]. However, many politicians and lawmakers opposed to civil rights perverted the ideals of federalism to resist civil rights for black Americans. Throughout the 1950s and 1960s, southern states relied on a strict adherence to federalism and notions of states' rights to argue that the federal government had no authority to prohibit racial segregation, enforce voting rights, and ensure that states upheld the federal constitution. Mondale, however, had long been an unwavering advocate of civil rights and equality for all people.[xli] Mondale knew that, "in a time of great progress in civil rights," he had a duty to be part of that progressive movement by speaking out on behalf of Gideon.[xlii]

Thus, while the correspondence between Mondale and Ervin discussed concepts beyond Gideon's situation, Mondale brought his focus back to how Gideon was affected by the injustice thrust upon him and the

violation of what Mondale considered fundamental Constitutional rights. Mondale continued to Ervin: "[n]obody knows better than we [Attorneys General] do that rules of criminal law and procedure which baffle trained professionals can only overwhelm the uninitiated…"As chief law enforcement officer of one of the 35 states which provide for the appointment for indigents in all felony cases, I am convinced that it is cheap—very cheap—at the price."[xliii] This language demonstrates Mondale's lifelong commitment to speaking on behalf of those with no voice and his "instinctive concern for society's outcasts."[xliv] While Mondale recognized that Gideon v. Wainwright was a case about complex Constitutional interpretation, it was also about one man sitting in prison for five years without having had a real chance to defend himself, merely because he lacked the economic means to pay for a lawyer. This reality was repugnant to Mondale's sense of justice and his firm belief that all people should be equal under the law. He closed his letter by saying that "any person charged with a felony should be accorded a right to be represented by counsel regardless of his financial condition."[xlv]

Upon receipt of Mondale's passionate letter refusing to join in Florida's argument, Jacob was "irritated" and wrote to clarify his and Ervin's position.[xlvi] The letter, again signed by Ervin, suggested that Mondale "did not fully understand [their] position in the matter."[xlvii] The letter emphasized that the Florida Attorney General had been "placed in the position of an advocate… [and that] personal feelings on whether Betts v.

Brady is a good rule or not are of no consequence."[xlviii] This statement, bordering on defensive, indicates that the Florida Attorney General's office was taken aback by the force of Mondale's letter. Jacob and Ervin's letter also reinforced their position that "states themselves should be entitled to set up their own rules of criminal procedure, and that the states themselves should be allowed to decide when to require automatic appointment of counsel in felony prosecutions."[xlix] This second appeal to federalist notions, however, did not address the crux of Mondale's position: that, in balancing federalism and the Bill of Rights, attorneys and the criminal justice system have a duty to ensure that states do not trample the fundamental rights of citizens.

While many may have ignored Ervin and Jacob's second letter, Mondale did not. Rather, Mondale took the time to write a concise reply to Ervin and Jacob. In this reply, Mondale wrote that he understood and respected their "position as an advocate."[l] In doing so, Mondale diffused the defensive nature of Ervin and Jacobs' letter and affirmed that he did not consider the argument a personal attack on the Attorney General of Florida. Rather, Mondale's position was based on a "strong belief in the doctrine that every person, regardless of financial resources, should have a right to counsel."[li] For Mondale, this exchange of letters was not about changing the Florida Attorney General's mind or convincing Ervin that his position was wrong. Rather, Mondale's letters demonstrate that he wrote because he felt

deeply that Gideon had suffered a grave injustice and that, as Minnesota's Attorney General, it would be a dereliction of duty to remain silent.

Due to his firm belief that he had an affirmative duty to speak out for Gideon and on behalf of all people's Constitutional rights, Mondale did not merely mail his letters to Ervin and Jacob. Indeed, Mondale was compelled to forward the letter outlining his position to several others, including his friend, Massachusetts Attorney General Edward McCormack.[lii] When McCormack read Mondale's letter to Ervin and Jacob, he agreed with Mondale. McCormack concluded that the Attorneys General who truly believed in protecting the fundamental Constitutional must convey to the United States Supreme Court that they, in Mondale's words, "would welcome the courts' imposition of a requirement of appointment of counsel in all felony prosecutions." And the way that McCormack and Mondale would do that was an *amicus curiae* brief.

B. The *Amicus Curiae* Brief

Based on the core principles Mondale laid out in his letter to Ervin and Jacob, McCormack spearheaded a brief-writing effort that included professors from the law school at Harvard University, Professor Yale Kamisar from the University of Minnesota, and several other legal scholars and students.[liii] According to Gillon, Mondale "agreed to join the cause and helped others to enlist to join."[liv] By writing letters and making phone calls explaining his position and the importance of the Gideon case, Mondale was

able to garner the support of numerous other Attorneys General who signed onto the McCormack-Mondale brief.[lv]

In a letter to Mondale accepting his invitation to join in the brief supporting Gideon, Missouri Attorney General Thomas Eagleton wrote that he believed that "the distinction drawn by United States Supreme Court between capital and non capital cases in determining the right to appointed counsel is an artificial one. The Fourteenth Amendment guarantees due process of law, whether it be life, liberty or property of which a person is to be deprived."[lvi] Eagleton's comments echoed Mondale's constitutional interpretation laid out in his original letter to Ervin and Jacob. The letter is an example of the support Mondale and McCormack received from Attorneys General all over the United States. From Missouri to Maine; from Washington to West Virginia; from Hawaii to Alaska, twenty-three states signed on to McCormack and Mondale's amicus brief. Eagleton concluded his letter to Mondale by writing that he hoped "the amici brief which you propose will assist the court to [the conclusion that due process of law requires counsel be made available to every defendant charged with a felony and that Eagleton "was pleased to add the name of the State of Missouri to it."[lvii] Mondale's ability to bring together attorneys general from states with "sharp variances in their criminal procedures…in furtherance of [the commonly held objective" of ensuring that the right to counsel exists

regardless of economic status allowed Mondale and McCormack to present a strong, unified brief to the United States Supreme Court.[lviii]

While Mondale worked to secure the support of Attorneys General, the brief-writing process continued. The argument was divided into four sections: 1) that Betts v. Brady ran counter to modern notions of due process; 2) that the Constitutional rights must not be tied to economic status; 3) that the Betts v. Brady standard was not practicably workable or able to be uniformly applied; and 4) that the imposition of a new rule requiring the appointment of counsel to indigent defendants would not be unduly burdensome.[lix]

The first argument relied on the core belief that the Constitution is a living document and that "due process is not a sterile and fixed conception."[lx] That is to say, in order to ensure that individuals receive due process required by the Constitution, the Supreme Court must look beyond the original intent of the framers and consider the current realities facing United States society. Arguing that Constitutional interpretation requires more than merely looking back to what the framers' reality was, the brief pointed out, as an example, that "[t]he secret ballot, unknown in the eighteenth century, is a constitutionally protected liberty in the twentieth."[lxi] Similarly, while the framers may not have conceived of appointed counsel to indigent criminal defendants, the concept of due process changes with time and the increasing complexity of society and the legal system. To this day,

Mondale acknowledges that "there is little in history to suggest providing counsel [free of charge] to all indigent criminal defendants."[lxii] This, however, did not mean that in Gideon's claim that the Constitution afforded him the right to counsel, despite ability to pay, was unmeritorious. On the contrary, the brief relied on Mondale's belief that "the Constitution is a living document...we to breathe new meaning into broad concepts and every generation has a right, even a duty, to look at [the Constitution.]"[lxiii]

Mondale and McCormack did not shirk this duty. Indeed, in the first section of the amicus brief, the authors stated plainly that "due process is an evolutionary concept subject to the changing influences of society" and that the Betts v. Brady rule was inconsistent with due process.[lxiv] Citing the fact that at least thirty-five states, including Minnesota and Massachusetts, required the appointment of counsel to indigent defendants, the brief argued that "such a solid majority...indicates that the principle is indeed a fundamental part of the concept of due process of law."[lxv] In presenting this argument, Mondale knew that there was "great openness in the Warren Court"[2] in constitutional interpretation and that the Supreme Court understood the Constitution as a living document. [lxvi]

Understanding due process as a fluid concept meant that Mondale and McCormack would next have to show that Gideon had been denied due process and a fair trial due to his inability to pay an attorney. The middle

[2] "The Warren Court" refers to the time, from 1953 to 1969, during which The Honorable Earl Warren was Chief Justice of the United States Supreme Court. Many landmark decisions protecting and extending civil rights and individual Constitutional rights were decided during Chief Justice Warren's tenure.

sections of the brief did just that. Quoting Powell v. Alabama, the Supreme Court case that held that indigent defendants charged with capital crimes are entitled to appointed counsel, Mondale and McCormack argued that "[t]he 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 and small and sometimes no skill in the science of law."[lxvii] The middle section of the brief, while still sophisticated in its legal arguments, is an appeal to the blatant injustice suffered by indigent defendants unable to procure legal counsel due to their limited financial resources. The brief quotes a law review article that states:

"I have witnessed the agonizing scene in which an unrepresented defendant is asked by the court of the district attorney if he wishes to cross-examine a witness for the prosecution. Instead of asking a question of the witness in the proper form, the accused, startled and confused, makes a statement contradicting the testimony of the prosecuting witness…This…brings forth sharp official rebuke which quickly ends the defendant's abortive attempt at cross-examination."[lxviii]

This language, emotional and disturbing, is a vivid illustration of Mondale's purpose in first writing to Ervin and Jacob, and then being part of an amicus brief to the United States Supreme Court. For Mondale and McCormack, Gideon's case was about fairness and about rejecting the notion that justice is tied to ability to pay for it.

Mondale and McCormack, however, knew that it was not enough to show that due process was offended by the Betts v. Brady rule or to show how indigent defendants could not receive a fair trial without an attorney.

They were acutely aware that practical concerns would play a large role in the decision, as well. Indeed, in Ervin and Jacob's second letter to Mondale suggested the possibility that overturning Betts v. Brady would lead to "states [being required] to appoint counsel in misdemeanor cases as well as in felonies."[lxix] Certainly, then, cost and other practical considerations had to be addressed. In response to the notion that a rule requiring the appointment of counsel to indigent defendants in all felony cases would be extended to cover misdemeanor charges, Mondale and McCormack wrote that "the question of the right to obtain counsel in misdemeanor cases might be foreseen as the troublesome next step…[But] the experience of the states justifies the restriction of the right to serious charges."[lxx]

In "carefully [confining the brief] to advocating provision of counsel in felony cases," the brief aimed to make the adoption of a new rule as practicable as possible.[lxxi] While some may have believed that the right to appointed counsel for indigent defendants should attach for all criminal charges, Mondale stated that "we wanted to make it easy for the court to overrule Betts."[lxxii] While Mondale does not remember his personal opinion at the time regarding whether the right to an appointed attorney should extend to misdemeanor cases, it did not matter.[lxxiii] In order to present the strongest argument for what Mondale and McCormack considered a fundamental Constitutional right and a matter of basic fairness and justice in

criminal court, the brief opposed extending the proposed new rule to misdemeanor cases.

Mondale and McCormack's brief concluded "[t]hat in the world of today a man may be condemned to penal servitude for lack of means to supply counsel for his defense is unthinkable" and that due process and equal protection required the overruling of Betts v. Brady."[lxxiv] While their argument was passionate, well-articulated, and presented a unified front of twenty-three state Attorneys General, after it was submitted on November 23, 1962, they would have to wait several months to learn the impact their effort would have.

C. The Decision

Upon submission of the party briefs and those of the amici curiae, the case of Gideon v. Wainwright was set for oral argument before the Supreme Court. Justice Harlan, a staunch federalist and clearly hesitant to overrule Betts v. Brady, challenged Fortas on several of his arguments before the Court.[lxxv] Even upon acknowledging the "administrative difficulties" courts found in applying the Betts "special circumstances" rule, Justice Harlan suggested that perhaps it was not the Supreme Court's role to intervene because "the states are recognizing that."[lxxvi] Justice Harlan's statement indicated to Fortas that the Supreme Court would not lightly overturn its precedent if the states could manage to fashion their own workable rules regarding the right to appointed counsel.

Fortas, however, seized on Justice Harlan's implication that the states could resolve the problems with Betts by addressing Mondale and McCormack's amicus brief. Of the brief signed onto by twenty-three states, Fortas told the Supreme Court that he was "proud of this document as an American." [lxxvii] Fortas went on to argue that "we can confidently say that overruling Betts versus Brady at this time would be in accord with the opinions of those entitled to opinions…We may be comforted in this constitutional moment by the fact that what we are doing is a deliberate change after twenty years of experience – a change that has the overwhelming support of the bench, the bar, and *even of the states.*"[lxxviii]

During a time in which many people believed the Supreme Court was changing laws and reinterpreting the Constitution at a faster pace than the states and citizens wanted, Fortas relied on Mondale and McCormack's brief to show that the case before the Court was not one of those instances. That is to say, Fortas did not merely argue the righteousness of the Constitutional right to appointed counsel. Rather, because of Mondale and McCormack's brief and that vast support it received from the states, Fortas was able to provide concrete evidence that overturning Betts v. Brady was the right decision at the right time. It was not merely the content of Mondale and McCormack's brief that strengthened Gideon's argument; it was also its existence. The brief informed the Supreme Court that overruling Betts would not cause a nationwide uproar due to states being unwilling to comply

with the rule, and thus, made it that much easier for the Supreme Court to back away from its precedent.

On March 18, 1963, several weeks after the oral arguments, on March 18, 1963, the Supreme Court handed down its opinion in Gideon v. Wainwright. Justice Black, who had written the dissent in Betts v. Brady, delivered the opinion of the Court.[lxxix] To reject the case-by-case analysis provided for in Betts v. Brady in favor of a bright line rule, Justice Black stated that "this Court has looked to the fundamental nature of original Bill of Right guarantees to decide whether the Fourteenth Amendment makes them obligatory on the States."[lxxx] The Betts court had concluded that the Sixth Amendment guarantee of counsel was not one of those rights that Justice Cardozo described as "implicit in the concept of ordered liberty." [lxxxi] To argue the contrary in Gideon v. Wainwright, Justice Black knew that his majority opinion would have to rely on history and precedent.

Just as Mondale and McCormack had cited Powell v. Alabama in their brief arguing that the right to appointed counsel is fundamental, so too Justice Black pointed to the case. In his argument that the Betts v. Brady decision had been wrong from its inception, Justice Black wrote that "[t]en 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 aide of counsel is of this fundamental character.'"[lxxxii] Relying on this tenet, Justice Black went on to construct the Court's decision in Gideon not

as the forging of a new path, but rather as a return to previous decisions. Justice Black argued that the Supreme Court's holding that the right to appointed counsel was not fundamental was actually "an abrupt break with its own well-considered precedents" and that the Supreme Court's decision in Gideon served to "restore constitutional principles established to achieve a fair system of justice."[lxxxiii] By holding as such, Justice Black and the Supreme Court turned away from the Betts v. Brady holding that was characterized by Mondale and McCormack as an errant and unconstitutional determination that "experience points to a contracting rather than an expanding meaning of the right to counsel in a democracy in the twentieth century." [lxxxiv] Rejecting Betts interpretation of history and precedent, the Supreme Court instead agreed with Mondale and McCormack that "the requisites of an ordered liberty are fare more multi-farious and complex in 1962 than they were when the Bill of Rights was enacted or the Fourteenth Amendment adopted"[lxxxv] and that modern interpretations of due process make the right to appointed counsel unquestionably fundamental.

After establishing the historical basis and underpinnings of the Court's decision in Gideon, Justice Black went on to discuss *why* the right to appointed counsel must be considered fundamental. In their amicus brief, Mondale and McCormack had stated that "to try a criminal defendant without counsel is to place him *ipso facto* in a position of prejudice and is to abandon the adversary system."[lxxxvi] Echoing this idea, Justice Black wrote that

"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 to him. This seems to us to be an obvious truth."[lxxxvii] Just as Mondale and McCormack argued, Justice Black and the Supreme Court relied on the realities of the United States criminal justice system to show how vital legal representation is to ensuring justice in criminal trials. Justice Black pointed to the vast resources spent by state and federal governments to prosecute crimes and by wealthy criminal defendants to hire attorneys to highlight the "wide-spread belief that lawyers in criminal courts are necessities, not luxuries."[lxxxviii] Justice Black's conclusions clearly agree with Mondale and McCormack's position that the maxim "he who represents himself in litigation has a fool for a client" is "most poignantly applicable in a criminal proceeding" and that criminal lawyers are an indispensable element of a fair trial.[lxxxix]

While many parallels exist between the arguments in the Mondale-McCormack *amicus curiae* brief and those Justice Black made in the Gideon opinion, perhaps the most striking example of the impact Mondale and McCormack's brief had on the Supreme Court is in the final lines of the decision. Justice Black concludes that "Florida, supported by two other

States, has asked that Betts v. Brady be left intact. Twenty-two States[3], as friends of the Court, argue that Betts was 'an anachronism when handed down' and that it should now be overruled. We agree."[xc] From these few final lines, it is evident that the Supreme Court gave substantial consideration to the Mondale-McCormack amicus brief and to the fact that such a significant majority of states supported the adoption of a bright line rule providing for the appointment of counsel to indigent criminal defendants. While it is common for *amicus curiae* briefs to be submitted to the Supreme Court when the Justices are considering cases of national impact and importance, it is a rare occurrence that the Supreme Court cites to an amicus brief in an opinion. Justice Black, however, clearly intended to emphasize the importance of state attorneys general arguing in favor of a federal Constitutional requirement that would touch all state criminal court proceedings. Mondale himself remembers being "astounded to have twenty-three states on the side of the Defendant" and Justice's Black's language indicates that the Supreme Court, too, understood the magnitude of such a strong and united front that Mondale and McCormack put forth on behalf of so many states.[xci]

Justice Black's opinion in Gideon v. Wainwright fundamentally changed the state criminal proceedings in the United States and firmly established that the Sixth Amendment right to counsel is so central to our

[3] Twenty-three states actually signed onto Mondale and McCormack's brief; however, New Jersey's signature was inadvertently omitted and added later.

notions of justice that all indigent criminal defendants facing felony charges in state court must have appointed counsel. Mondale and McCormack's amicus curiae brief undoubtedly contributed to the Supreme Court's overturning of Betts v. Brady. From Fortas's oral argument citing the overwhelming state support of Gideon's petition to the marked similarities in the legal conclusions of the Supreme Court and the Mondale-McCormack brief and to Justice Black's powerful conclusion, Mondale and McCormack's work helped provide the Supreme Court with a legally and constitutionally sound, fair, and justice-minded way to retreat from its own precedent and establish a new rule in Gideon v. Wainwright. The effects and implications of the Supreme Court's decision were far-reaching, controversial, and continue to be the subject of discussion and argument in the 21st century.

V. After Gideon: Short- and Long-term Ramifications

A. Reactions to Mondale's Brief and the Decision

The impact of Gideon could be seen even before the Supreme Court handed down its landmark decision. On December 3, 1962, Attorney General Mondale received a glowing endorsement from the St. Cloud Daily Times. Celebrating Mondale's re-election as Attorney General, the editorial staff wrote that "[w]e are most impressed by [this] aspect of [Mondale's] record. When Clarence Earl Gideon, a friendless Florida convict, appealed to the United States Supreme Court…[r]esponding for Minnesota, Mr. Mondale

not only declined to join Florida but set about organizing a friend-of-the-court brief on Gideon's behalf. In the end, 23 attorneys general joined him in his brief in the favor of right to counsel."[xcii] While the Supreme Court had not yet announced its overturning of Betts, Mondale's role in the case was clearly appreciated in Minnesota.

The St. Cloud Times recognized that Mondale's position was commendable and that the stand he had taken was an important one. Even more significantly, the Minnesota press and public felt this way even though Minnesota would not be immediately impacted by the overturning of Betts. According to Mondale, Minnesota had long "provided for counsel for indigent defendants. We had lived with it and knew it was indispensable."[xciii] Thus, regardless of the decision the Supreme Court made in Gideon's case, Minnesota law and practice would not be abruptly affected. The Minnesota press, however, appreciated that the significance of the case went beyond the actual holding. Mondale's actions in the Gideon case reaffirmed the public's perception of him as a leader among his colleagues and a public servant committed to justice for all people.

Once the Supreme Court announced its ruling in Gideon v. Wainwright, there were further complex issues to face. At the 1963 National Association of Attorneys General Meeting, Mondale had to grapple with the reactions of states that abhorred the Supreme Court's decision and what they viewed as an encroachment on their independence. The meeting was held in Seattle,

Washington in July of 1963, some four months after the Supreme Court's decision in Gideon. By that time, Massachusetts Attorney General Edward McCormack had retired.[xciv] Mondale attended the meetings of the attorneys general and spent a great deal of his time defending the arguments of the amicus brief.[xcv] Mondale remembers the attorneys general from the southern states "...slamming us. Their safe harbor was states' rights. They would fulminate about the Warren Court."[xcvi] While debates over the extent to which the Supreme Court had authority to require states to follow certain procedures in state court and over how to balance federalism with individual rights were fervent, the state Attorneys General were able to find some common ground. One of the resolutions adopted, Resolution V, appears to be a direct attempt to quell the divisiveness among the Attorneys General over what some saw as the overreaching of the Supreme Court. The Resolution states:

"The Supreme Court of the United States, because of its controversial role as the ultimate arbiter of these sensitive issues, should have the support of all citizens and most particularly lawyers and legal authorities...while this Association recognizes the right of all citizens to criticize decisions of the Supreme Court and their right to seek changes through established processes and procedures, it disagrees with any attempts to defame the Court or attempts to make radical changes in the organic structure of the federal court system..."[xcvii]

Resolution V served to ensure that the disagreements over whether the Supreme Court was right in Gideon v. Wainwright and other controversial cases maintained the level of decorum expected of

professionals and that the arguments did not descend into defamation of the Supreme Court.

The National Association of Attorneys General also addressed the practical ramifications of the Gideon decision. "Thirty-seven states provided counsel for the poor in all felony trials" before Gideon, which meant that thirteen other states did not.[xcviii] As such, many states would have to address how they would comply with the Supreme Court's ruling. Issues of funding, training, and finding lawyers to take on the role of public defender needed to be confronted. Recognizing this reality, the National Association of Attorneys General adopted Resolution XVIII on July 3, 1963. Resolution XVIII stated:

"WHEREAS, The Supreme Court has recently imposed upon the states an increased responsibility of furnishing counsel to indigent persons accused of violation of the state criminal law; and WHEREAS, The Supreme Court has indicated the necessity of furnishing counsel of sufficient capability to afford adequate defense; and WHEREAS, A number of states have no established system of providing the required counsel; NOW, THEREFORE, BE IT RESOLVED, that that 57th Annual Meeting of the National Association of Attorneys General urges the American Bar Association to make a study of the general problem of providing counsel for indigent defendants and make recommendations to the states."[xcix]

Resolution XVIII is at once an acknowledgement of the resources required to implement the Supreme Court's newly adopted rule and a possible indication of the breakdown in communication among Attorneys General with philosophical differences as to the balance between federalism and the protection of individual rights.

Mondale and McCormack's brief included an entire section outlining how England and some states provided for appointed counsel to indigent defendants, including a public defender system, the expansion of Legal Aid, and the certification of supervised senior law students to represent clients in court.[c] Those states without procedures to provide counsel to indigent criminal defendants could have taken the National Association meeting as an opportunity to learn from those that did. Due to the divisiveness among Attorneys General at the 1963 meeting, though, this opportunity for meaningful sharing of practice ideas may have been lost. This is not to say that Resolution XVIII was in some way improper or unnecessary. On the contrary, Mondale and McCormack acknowledged in their brief that "State, City, and County Bar Associations in many instances will have to bestir themselves."[ci] While Resolution XVIII recognizes these things, its language also reveals the frustrations of states being required by the Supreme Court to follow new rules that they thought ought to be left to the states.

Despite differing constitutional viewpoints and some accompanying contention, however, "the reaction of the states to Gideon v. Wainwright was swift and constructive."[cii] As Mondale and McCormack predicted would be necessary, law schools and expanded legal aid agencies shouldered a substantial part of the burden.[ciii] Even in the southern states, including Florida, where counsel had not previously been guaranteed to non-capital criminal defendants, the state governments "acted quickly to adjust to the

new constitutional requirement."[civ] In the months following the Gideon decision, Florida applied the Gideon rule retrospectively, resulting in the release of nearly one thousand prisoners from Florida prisons and the re-trial of 500 more.[cv] These reactions demonstrate the profound impact of the Gideon decision on the criminal justice system. While opinions on whether the Supreme Court's decision was correct differed, its nationwide significance was irrefutable. Gideon represented "the dream of a vast, diverse country in which every man charged with crime will be capably defended, no matter what his economic circumstances."[cvi] Gideon v. Wainwright's scope, however, was not limited to the vast changes following the Supreme Court's decision. Gideon has continued to be a much discussed case and its impact has been more far-reaching that anyone could have imagined.

B. The Right to Counsel After Gideon

The fact that states responded swiftly to implement procedures that would conform to Gideon did not mean that the story ended there. As William Mitchell College of Law Professor Peter Erlinder points out, "Gideon is only a first step in addressing the massive inequities" of the United States court system.[cvii] In the more than 40 years since the Gideon decision, states have struggled to fund public defender programs, a reality that has placed into jeopardy the very rights protected by Gideon. For example, in 2003, the Minnesota legislature passed a law imposing "public defense fees" on

indigent defendants.[cviii] The effect of this law was to force criminal defendants relying on the public defender system to "choose between paying for the lawyer that a fair adversary system requires and paying the rent."[cix] Minnesota was not alone in requiring all defendants to pay a public defender fee and several other states have similar programs.[cx] Supporters of public defender fees argue that they are necessary due to fund public defenders and that the fees limit people abusing the system by using public defenders when they could afford a private attorney.

While such practical considerations are unavoidable, many legal scholars, including Erlinder, believe that these public defense fees are unconstitutional and not in the spirit of Gideon.[cxi] While the fees may seem trivial to those in the legislature, for indigent defendants facing criminal prosecution, having to pay $50 to $200 may be prohibitively expensive and cause indigent defendants to proceed without counsel. Surely a system in which indigent defendants are dissuaded from exercising their right to an attorney due to inability to pay was not what the Supreme Court had in mind when ruling on Gideon v. Wainwright. On the contrary, "Gideon's promise of a baseline level of equal justice for all has been fatally betrayed" by such systems. To some extent the judiciary has recognized this reality, and, in an effort to protect the tenets of Gideon, a Minnesota judge declared Minnesota's public defense fee statute unconstitutional in 2004.[cxii]

The lack of funding for public defense does not only place a financial burden on indigent defendants; it also undermines the mandate of Gideon v. Wainwright by its impact on the quality and completeness of appointed counsel. Without funding, public defenders cannot undertake the investigations, evidentiary challenges, and other preliminary work required for an adequate defense. According to Virginia Sloan, the president of the Constitution Project, "[t]he result can be that little or no defense is offered in a meet 'em and plead 'em system."[cxiii] Mondale also recognizes that Gideon did not solve all the problems of indigent defendants and that "many defendants still do not have adequate legal help in felony cases."[cxiv] The current system, in which indigent defendants may be counseled to plead guilty due a lack of resources to take their cases any further, undermines the equal justice envisioned by the Gideon court.

Sloan further points to the lack of uniformity as a factor undercutting the Gideon case: "Gideon gave states no guidance about how to manage their indigent defense systems. As a result, the nation has a patch work of systems that lack centralizations, uniformity, and clear standards of quality."[cxv] Certainly if the Supreme Court had imposed strict and inflexible rules regarding how states were to implement Gideon, debate over whether public defense fees can be imposed and what constitutes adequate defense may be avoided. This argument, however, ignores the delicate position the Supreme Court was in when it decided Gideon. As previously discussed,

several southern states were resistant to any Supreme Court intervention in state criminal proceedings. The South's response to Gideon was "surprisingly favorable"[cxvi] and if the Supreme Court had extended its decision beyond the necessary constitutional holding and attempted to force the states into following its chosen path for implementing Gideon, Southern states may have resisted the decision and drastically slowed the process of providing indigent defendants with appointed counsel. Thus, while it is possible that a more uniform required system would make Gideon's implementation easier in the 21st century, such a requirement may well have diluted or long delayed the "rights revolution"[cxvii] that followed Gideon when it was first decided.

Struggling to fund public defenders and ensure that the rights set forth in Gideon are meaningfully exercised are not the only long-term effects of the decision. Gideon v. Wainwright stands for the principle that even the most intelligent laypeople will find it difficult, intimidating, and perhaps impossible to navigate the complexities of the court system without legal representation. The fundamental right to counsel, though, has not been extended to habeas corpus proceedings or to civil cases.[cxviii] In Minnesota and other states, indigent inmates with constitutional claims have "no constitutional right to a lawyer to help prepare or litigate the petitions filed after direct appeals are exhausted."[cxix] This means that convicted prisoners who feel their constitutional rights have been violated, just like Gideon

himself asserted, are not constitutionally entitled to legal representation to challenge the constitutional violations. Ironically, if Gideon were sitting in a Florida prison today writing a petition to the Supreme Court, he would likely still be submitting his petition *pro se* and *in forma pauperis* and without the assistance of legal counsel. This reality is not consistent with the principles of Gideon, and many scholars believe that the right to appointed counsel should extend to post-conviction proceedings.

An even stronger outcry for the expansion of the constitutional right to appointed counsel has manifested in the situation of civil court proceedings. Legal Aid agencies provide excellent representation to indigent individuals in some cases. Nevertheless, according to Erlinder there exists "a huge unmet need of ordinary people to use the court system."[cxx] From divorce and custody issues to housing and eviction actions, "a recent [Legal Services Corporation] study showed that at least 80 percent of the civil legal needs of the poor are not being met."[cxxi] This staggering statistic has propelled myriad people in the legal community to call for the extension of Gideon v. Wainwright to the civil court context. To this day, Mondale finds it disconcerting that "Gideon doesn't apply to civil attorneys," which prevents many from utilizing the courts.[cxxii]

The Supreme Court affirmatively limited Gideon to criminal cases in Lassiter v. North Carolina.[cxxiii] In Lassiter, the Court held that the right to appointed counsel exists only when "physical liberty" is at stake.[cxxiv] Such a

limitation, however, ignores that attorneys are necessary in civil court proceedings to help litigants avoid "losing housing, healthcare and family…often far [greater losses] than the threat of incarceration."[cxxv] The spirit of Gideon, which aimed, at least to some extent, to level the playing field in America's courts and ensure that socioeconomic status does not control the level of "justice" available to people, is undermined by refusing to acknowledge the needs of indigent people in civil courts. In fact, Mondale has asserted that "the distinction between criminal and civil law seems to be some kind of legal construct unrelated to real circumstances."[cxxvi] Many states have already done away with this false distinction and recognize the right to appointed counsel for some civil proceedings, an encouraging sign to those pushing for a "civil Gideon" ruling. Mary Schneider writes: "As with Gideon, where up to 45 states provided some form of court-appointed criminal counsel at the time the case was heard, a future landmark Supreme Court case may articulate what is already a common practice at the state level."[cxxvii] Just as happened after the Supreme Court's decision in Gideon v. Wainwright, recognizing a constitutional right to appointed counsel in civil court cases will bring fundamental changes to the landscape of the courts and will meaningfully alter the access of indigent people to justice through the courts, reaffirming the noble principles of Gideon.

Conclusion

Gideon v. Wainwright is one of the pinnacle Supreme Court decisions of the 20th century, and Mondale's contribution to changing the face of the American criminal justice system was important. Garnering the unified support of 23 states with myriad legal traditions and constitutional interpretations on behalf of one lowly Florida prisoner was a righteous act that demonstrated Mondale's belief that justice does not exist at all when it is denied to some. The brief that Mondale and McCormack submitted on behalf of Gideon and his claim that the U.S. Constitution requires the appointment of counsel to indigent criminal defendants in state courts contributed to the Supreme Court's decision and its arguments remain relevant today.

Gideon v. Wainwright did not end all injustices faced by indigent people in courts. It was, however, a major step in providing equal access to justice and is the foundation for current movements toward the ideal of a court system in which all people have equal access to the courts. Mondale's amicus brief in Gideon v. Wainwright was a proud moment for Minnesota and for constitutional interpretation. The Supreme Court relied on Mondale's arguments and used his sound reasoning to fundamentally improve the criminal justice system. Perhaps even more importantly, Mondale's arguments and commitment to equal justice continue to resound as the legal community works toward fully achieving the goals of Gideon, in which no

person's access to justice is tied to his ability to pay for it and all people are entitled to competent representation in a true adversary system.

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[i] STEVEN M. GILLON, THE DEMOCRATS' DILEMMA: WALTER F. MONDALE AND THE LIBERAL LEGACY 58, 59 (1992).
[ii] Id. at 15.
[iii] Id. at 14.
[iv] Id.
[v] Palko v. CT, 302 U.S. 319 (1937).
[vi] Notes on the Bill of Rights and Case Law, Walter Mondale's Constitutional Law School Notebook, Vol. II (on file with the Minnesota Historical Society).
[vii] Adamson v. People of CA, 332 U.S. 46 (1947).
[viii] Notes on the Bill of Rights and Case Law, Walter Mondale's Constitutional Law School Notebook, Vol. II (on file with the Minnesota Historical Society).
[ix] Malloy v. Hogan, 378 U.S. 1 (1964).
[x] STEVEN M. GILLON, THE DEMOCRATS' DILEMMA: WALTER F. MONDALE AND THE LIBERAL LEGACY 53 (1992).
[xi] Id. at 54.
[xii] Id. at 54.
[xiii] Id. at 59.
[xiv] Id. at 65.
[xv] Walter Mondale's Responses to the League of Women Voters Questionnaire (Jul. 18, 1962) (on file with the Minnesota Historical Society).
[xvi] Walter Mondale's Responses to Betty Wilson Questionnaire" (1962) (on file with the Minnesota Historical Society).
[xvii] Press Release, Robert Kunzig, Press Release to Radio KSUM, Fairmont, MN (Jul. 25, 1962) (on file with the Minnesota Historical Society).
[xviii] Newspaper Advertisement, "Lawyers Endorse Mondale" clipped from original publication (1962 campaign) (on file with the Minnesota Historical Society.
[xix] ANTHONY LEWIS, GIDEON'S TRUMPET, 67-81 (1964).
[xx] Gideon v. Wainwright, 372 U.S. 335, 336 (1963).
[xxi] ANTHONY LEWIS, GIDEON'S TRUMPET, 10 (1964).
[xxii] Id. at 10, Betts v. Brady, 316 U.S. 455 (1942).
[xxiii] ANTHONY LEWIS, GIDEON'S TRUMPET, 9 (1964).
[xxiv] Id.
[xxv] Id. at 7.
[xxvi] Id. at 30.
[xxvii] Id. at 38.
[xxviii] Id. at 39.
[xxix] Id. at 40.
[xxx] Id. at 44-45, 50.
[xxxi] Id. at 45.
[xxxii] Id. at 147.
[xxxiii] Id. at 148.
[xxxiv] Id.
[xxxv] Personal Interview with Walter F. Mondale (Sept. 19, 2006).
[xxxvi] Id.

[xxxvii] Letter, from Minnesota Attorney General Walter F. Mondale to Florida Attorney General Richard W. Ervin (Aug. 15, 1962) (on file with the Minnesota Historical Society).
[xxxviii] Id.
[xxxix] Id. (original citations omitted.)
[xl] U.S. Const, Amend. X.
[xli] STEVEN M. GILLON, THE DEMOCRATS' DILEMMA: WALTER F. MONDALE AND THE LIBERAL LEGACY 63 (1992).
[xlii] Personal Interview with Walter F. Mondale (Oct. 17, 2006).
[xliii] Letter, from Minnesota Attorney General Walter F. Mondale to Florida Attorney General Richard W. Ervin (Aug. 15, 1962) (on file with the Minnesota Historical Society).
[xliv] STEVEN M. GILLON, THE DEMOCRATS' DILEMMA: WALTER F. MONDALE AND THE LIBERAL LEGACY 71 (1992).
[xlv] Letter, from Minnesota Attorney General Walter F. Mondale to Florida Attorney General Richard W. Ervin (Aug. 15, 1962) (on file with the Minnesota Historical Society).
[xlvi] ANTHONY LEWIS, GIDEON'S TRUMPET 153 (1964).
[xlvii] Letter, from Florida Attorney General Richard W. Ervin to Minnesota Attorney General Walter F. Mondale (Aug. 21, 1962) (on file with the Minnesota Historical Society).
[xlviii] Id.
[xlix] Id.
[l] Letter, from Minnesota Attorney General Walter F. Mondale to Florida Attorney General Richard W. Ervin (Sept. 10, 1962) (on file with the Minnesota Historical Society).
[li] Id.
[lii] STEVEN M. GILLON, THE DEMOCRATS' DILEMMA: WALTER F. MONDALE AND THE LIBERAL LEGACY 64 (1992).
[liii] ANTHONY LEWIS, GIDEON'S TRUMPET 155 (1964), Personal Interview with Walter F. Mondale (Sept. 19, 2006).
[liv] STEVEN M. GILLON, THE DEMOCRATS' DILEMMA: WALTER F. MONDALE AND THE LIBERAL LEGACY 64 (1992).
[lv] Id.
[lvi] Letter, from Missouri Attorney General Thomas F. Eagleton to Minnesota Attorney General Walter F. Mondale (Oct. 24, 1962) (on file with the Minnesota Historical Society).
[lvii] Id.
[lviii] Brief for the State Government Amici Curiae Presented by Attorneys General Edward McCormack, Walter Mondale, et al. Supporting Petitioner, Gideon v. Wainwright, 372 U.S. 335 (1963) (No. 155), 1962 WL 115122.
[lix] Id.
[lx] Id. at 4.
[lxi] Id. at 5.
[lxii] Personal Interview with Walter F. Mondale (October 17, 2006).
[lxiii] Id.
[lxiv] Brief for the State Government Amici Curiae Presented by Attorneys General Edward McCormack, Walter Mondale, et al. Supporting Petitioner, Gideon v. Wainwright, 372 U.S. 335 (1963) (No. 155), 1962 WL 115122, 9.
[lxv] Id. at 10.
[lxvi] Personal Interview with Walter F. Mondale (October 17, 2006).
[lxvii]), Brief for the State Government Amici Curiae Presented by Attorneys General Edward McCormack, Walter Mondale, et al. Supporting Petitioner, Gideon v. Wainwright, 372 U.S. 335 (1963) (No. 155), 1962 WL 115122, 16, quoting Powell v. Alabama, 287 U.S. 45, 68-69 (1932)
[lxviii] Brief for the State Government Amici Curiae Presented by Attorneys General Edward McCormack, Walter Mondale, et al. Supporting Petitioner, Gideon v. Wainwright, 372 U.S. 335 (1963) (No. 155), 1962 WL 115122, 15, quoting Pollock, "Equal Justice in Practice," 45 Minn. L. Rev. 737 (1961).
[lxix] Letter, from Florida Attorney General Richard W. Ervin to Minnesota Attorney General Walter F. Mondale (Aug. 21, 1962) (on file with the Minnesota Historical Society).
[lxx] Brief for the State Government Amici Curiae Presented by Attorneys General Edward McCormack, Walter Mondale, et al. Supporting Petitioner, Gideon v. Wainwright, 372 U.S. 335 (1963) (No. 155), 1962 WL 115122, 21.
[lxxi] ANTHONY LEWIS, GIDEON'S TRUMPET 156 (1964).

[lxxii] Personal Interview with Walter F. Mondale, (Oct. 17, 2004).
[lxxiii] Id.
[lxxiv] Brief for the State Government Amici Curiae Presented by Attorneys General Edward McCormack, Walter Mondale, et al. Supporting Petitioner, Gideon v. Wainwright, 372 U.S. 335 (1963) (No. 155), 1962 WL 115122, 24-25.
[lxxv] ANTHONY LEWIS, GIDEON'S TRUMPET 180-182 (1964).
[lxxvi] Id. at 180.
[lxxvii] Id. at 180-181.
[lxxviii] Id. (emphasis added).
[lxxix] Gideon v. Wainwright, 372 U.S. 335, 336 (1963).
[lxxx] Id. at 341.
[lxxxi] Palko v. CT, 302 U.S. 319 (1937).
[lxxxii] Gideon, 372 U.S. at 342-343, quoting Powell v. Alabama, 287 U.S. 45, 68 (1932).
[lxxxiii] Gideon , 372 U.S. at 344.
[lxxxiv] Brief for the State Government Amici Curiae Presented by Attorneys General Edward McCormack, Walter Mondale, et al. Supporting Petitioner, Gideon v. Wainwright, 372 U.S. 335 (1963) (No. 155), 1962 WL 115122, 5.
[lxxxv] Id.
[lxxxvi] Id. at 14.
[lxxxvii] Gideon, 372 U.S. at 344.
[lxxxviii] Id.
[lxxxix] Brief for the State Government Amici Curiae Presented by Attorneys General Edward McCormack, Walter Mondale, et al. Supporting Petitioner, Gideon v. Wainwright, 372 U.S. 335 (1963) (No. 155), 1962 WL 115122, 14.
[xc] Gideon, 372 U.S. at 345.
[xci] Personal Interview with Walter F. Mondale (September 19, 2006).
[xcii] Editorial, *Other Editor: In the Minnesota Pattern*, St. Cloud Daily Times, re-printed from the St. Louis Post-Dispatch, Dec. 2, 1962.
[xciii] Personal Interview with Walter F. Mondale (September 19, 2006).
[xciv] Personal Interview with Walter F. Mondale (October 3, 2006), Roster, State Attorneys General (Jan. 1963) (on file with the Minnesota Historical Society).
[xcv] Id.
[xcvi] Id.
[xcvii] "The Constitutional System." Resolution V of the National Assn. of Attorneys General, 57th Annual Meeting (Jul. 3, 1963) (on file with the Minnesota Historical Society).
[xcviii] ANTHONY LEWIS, GIDEON'S TRUMPET 181 (1964).
[xcix] "Legal Counsel for Indigent Defendants." Resolution XVIII of the National Assn. of Attorneys General, 57th Annual Meeting (Jul. 3, 1963) (on file with the Minnesota Historical Society).
[c] Brief for the State Government Amici Curiae Presented by Attorneys General Edward McCormack, Walter Mondale, et al. Supporting Petitioner, Gideon v. Wainwright, 372 U.S. 335 (1963) (No. 155), 1962 WL 115122, 23-24.
[ci] Id. at 24
[cii] ANTHONY LEWIS, GIDEON'S TRUMPET 212 (1964).
[ciii] Id. at 211.
[civ] Id. at 213.
[cv] Id.
[cvi] Id. at 215.
[cvii] Personal Interview with Peter Erlinder (December 1, 2006).
[cviii] Peter Erlinder, Muting Gideon's Trumpet: Pricing the "Right to Counsel" in Minnesota Courts, 60-DEC Bench & B. Minn. 16 (2003).
[cix] Id.
[cx] Id.
[cxi] Id.
[cxii] State v. Tennin, 674 N.W.2d 403 (2004).

[cxiii] Virginia E. Sloan, et al., Gideon's Unfulfilled Mandate: Time for a New Consensus., 31-WTR Hum. Rts. 3 (2004).
[cxiv] Personal Interview with Walter F. Mondale (October 17, 2006).
[cxv] Id.
[cxvi] ANTHONY LEWIS, GIDEON'S TRUMPET 213 (1964).
[cxvii] Personal Interview with Peter Erlinder (December 1, 2006).
[cxviii] Peter Erlinder, Muting Gideon's Trumpet: Pricing the "Right to Counsel" in Minnesota Courts, 60-DEC Bench & B. Minn. 16 (2003).
[cxix] Id.
[cxx] Personal Interview with Peter Erlinder (December 1, 2006).
[cxxi] Mary Deutsch Schneider, *Trumpeting Civil Gideon: An Idea Whose Time Has Come?,* 63-APR Bench & B. Minn. 22 (2006).
[cxxii] Personal Interview with Walter F. Mondale (October 3, 2006).
[cxxiii] Lassiter v. North Carolina, 452 U.S. 18 (1981).
[cxxiv] Id.
[cxxv]Mary Deutsch Schneider, *Trumpeting Civil Gideon: An Idea Whose Time Has Come?,* 63-APR Bench & B. Minn. 22 (2006).
[cxxvi] Id.
[cxxvii] Id.