

THE SWORD & THE SCALES

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Dup

FINAL REPORT

Subcontract No. Sub 74-4 (S74-21)

between

HUMAN RESOURCES RESEARCH ORGANIZATION (HumRRO)

and

THE NELSON COMPANY

prepared by

JC Alexander

THE SWORD AND THE SCALES

A Television Series

developed by

THE NELSON COMPANY

in association with the

AMERICAN JUDICATURE SOCIETY

and the

FEDERAL JUDICIAL CENTER

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Points of view or opinions stated in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

THE NELSON COMPANY

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CONTENTS

Summary	I-1
I GENERAL	
A. Objective	I-1
B. Method	I-2
C. Episode Subjects	I-2
D. Subcontract Final Report Requirements and "Transfer Package"	I-3
II SERIES PRINCIPALS AND SUPPORT ORGANIZATIONS	
A. Mr. Philip Abbott	II-1
B. Mr. Norman Lessing	II-1
C. Professor Richard B. Morris	II-2
D. Professor Lawrence M. Friedman	II-2
E. Federal Judicial Center	II-3
F. American Judicature Society	II-3
III FILMScript AND SERIES ESTIMATED PRODUCTION COSTS (13 EPISODES)	
A. "Fire Out of the Rock: The Case of Clarence Earl Gideon" by Norman Lessing	III-2
B. Series Estimated Production Costs (13 Epi- sodes)	III-91
IV TWO DETAILED EPISODE OUTLINES	
A. Detailed Episode Outline of "Fire Out of the Rock: The Case of Clarence Earl Gideon"	IV-1
B. Detailed Episode Outline of "Case for the Prosecution: The Homer S. Cummings Story"	IV-13
V ELEVEN SUMMARY EPISODE OUTLINES	
A. The Trial of John Peter Zenger	V-1
B. <u>Marbury v. Madison</u>	V-5
C. The Impeachment of Associate Justice Samuel Chase	V-8
D. The Trial of Aaron Burr	V-11
E. The Parkman Murder Case	V-15

Contents

F.	Slavery and the Court: Dred Scott and the Fugitive Slave Laws	V-18
G.	The Mormon Polygamy Trials	V-22
H.	The Trial of Charles Guiteau	V-26
I.	<u>Yick Wo v. Hopkins</u>	V-30
J.	Stephen J. Field	V-33
K.	Mapp, Escobedo, Miranda: A Trilogy of Cases	V-37
VI	PLANS FOR OBTAINING SPONSOR/FINANCIAL SUPPORT AND PLACEMENT ON NETWORK TELEVISION	
A.	General	VI-1
B.	Methods	VI-1
VII	"TRANSFER PACKAGE"	
A.	General Purposes of the Series	VII-2
B.	"Fire Out of the Rock: The Case of Clarence Earl Gideon"	VII-2
	1. Purpose of the Film	VII-2
	2. Objectives of Viewers	VII-2
C.	"Case for the Prosecution: The Homer S. Cummings Story"	VII-3
D.	"The Trial of John Peter Zenger"	VII-3
	1. Purposes of the Film	VII-3
	2. Objectives of Viewers	VII-3
E.	<u>"Marbury v. Madison"</u>	VII-4
	1. Purposes of the Film	VII-4
	2. Objectives of Viewers	VII-4
F.	"The Impeachment of Associate Justice Samuel Chase"	VII-4
	1. Purposes of the Film	VII-4
	2. Objectives of Viewers	VII-5
G.	"The Trial of Aaron Burr"	VII-5
	1. Purpose of the Film	VII-5
	2. Objectives of Viewers	VII-5

Contents

H.	"The Parkman Murder Case"	VII-5
	1. Purposes of the Film	VII-5
	2. Objectives of Viewers	VII-6
I.	"Slavery and the Court: Dred Scott and the Fugitive Slave Laws"	VII-6
	1. Purpose of the Film	VII-6
	2. Objectives of Viewers	VII-6
J.	"The Mormon Polygamy Trials"	VII-7
	1. Purpose of the Film	VII-7
	2. Objectives of Viewers	VII-7
K.	"The Trial of Charles Guiteau"	VII-7
	1. Purpose of the Film	VII-7
	2. Objectives of Viewers	VII-7
L.	" <u>Yick Wo v. Hopkins</u> "	VII-8
	1. Purpose of the Film	VII-8
	2. Objectives of Viewers	VII-8
M.	"Stephen J. Field"	VII-8
	1. Purpose of the Film	VII-8
	2. Objectives of Viewers	VII-8
N.	"Mapp, Escobedo, Miranda: A Trilogy of Cases"	VII-9
	1. Purposes of the Film	VII-9
	2. Objectives of Viewers	VII-9

FINAL REPORT

Subcontract No. Sub 74-4 (S74-21)

between

Human Resources Research Organization (HumRRO)

and

The Nelson Company

Summary

The Nelson Company, Tarzana, California, acting under the terms of a subcontract with the Human Resources Research Organization (HumRRO), Alexandria, Virginia, has developed a proposed television series, The Sword and the Scales, designed to offer the public accurate and detailed information about the United States judiciary system that describes past and current aspects of American judicature and law. Nelson's presentation consists of a complete episode filmscript, a detailed outline of it, another detailed episode outline, and 11 summary episode outlines, a total of 13, the required minimum number for a television series. Also provided are cost estimates for the series, episode purposes and viewer objectives, and contemplated plans for obtaining sponsor support and network placement.

I

GENERAL

A. Objective

The objective of Subcontract No. Sub 74-4 (S74-21) between the Human Resources Research Organization (HumRRO), Alexandria, Virginia, and The Nelson Company, Tarzana, California, was to develop a television series designed to provide the public with detailed and accurate information about the United States judiciary system that describes past and current aspects of American Judicature and law.

B. Method

To achieve the objective of the subcontract, The Nelson Company has developed the preliminary details of a television series it has titled The Sword and the Scales. Included is a complete film script, "Fire Out of the Rock: The Case of Clarence Earl Gideon," 1963, a detailed outline of this script, a detailed outline of "Case for the Prosecution: The Homer S. Cummings Story," c. 1924, and summary outlines of 11 other episodes:

- 1) The Trial of John Peter Zenger (1735)
- 2) Marbury v. Madison (1803)
- 3) The Impeachment of Associate Justice Samuel Chase (1805)
- 4) The Trial of Aaron Burr (1807)
- 5) The Parkman Murder Case (1849)
- 6) Slavery and the Court: Dred Scott and the Fugitive Slave Laws (1857)
- 7) The Mormon Polygamy Trials (c. 1875-1880s)
- 8) The Trial of Charles Guiteau (1882)
- 9) Yick Wo v. Hopkins (1886)
- 10) Stephen J. Field (c. 1848-1890)
- 11) Mapp, Escobedo, Miranda: A Trilogy of Cases (1961-1966)

C. Episode Subjects

The 13 episode subjects (the minimum number required for a television series) were chosen as the result of story conferences held at various times, usually in the Dolley Madison House, Washington, D.C., with members of the Federal Judicial Center, the American Judicature Society, the Law Enforcement Assistance Administration and the National Institute for Law Enforcement and Criminal Justice, both of the United States Department of Justice, and HumRRO. Included among those attending these story conferences were the Hon. Judge Arlin

M. Adams, Philadelphia; Hon. Donald E. Santarelli, LEAA; Hon. Glenn R. Winters, Executive Director, American Judicature Society; Hon. Judge Alfred P. Murrah, Director, Federal Judicial Center; Richard Green, Esq., Assistant to the Director, Federal Judicial Center; William B. Eldridge, Esq., Federal Judicial Center; Mr. Philip Abbott, President, The Nelson Company; Mr. JC Alexander, The Nelson Company; Mr. Norman Lessing, television playwright; Mr. Harold Cohen, television producer and editorial consultant; and others.

During the development of the subjects, historical accuracy and guidance were provided by Richard B. Morris, Gouverneur Morris Professor of History, Columbia University, and Professor Lawrence M. Friedman, Stanford Law School.

D. Subcontract Final Report Requirements and "Transfer Package"

The various requirements specified in the Subcontract under paragraph 4, "Report and Documentation," subparagraph c, "Final Report" (per Modification No. 1, 17 July 1974), are integrated with or are intrinsic to the presentation of the filmscript included herein, its outline, and the other outlines. The "transfer package" required by paragraph A, "STATEMENT OF WORK," subparagraph 3, "Tasks," "Task 4," was developed by Nelson with the assistance of Dr. William H. Melching, Senior Staff Scientist, HumRRO, The Presidio, Monterey, California.

II.

SERIES PRINCIPALS AND SUPPORT ORGANIZATIONS

A. Mr. Philip Abbott



Philip Abbott is President of The Nelson Company. Mr. Abbott is well-known as an actor. A costar of "The FBI" television series for nine years, he has appeared in starring roles on most major television series, on Broadway, and in films. He has directed many network television episodes and films, including a successful educational mini-series he produced (in association with the Law Enforcement Assistance Administration, United States Department of Justice, and the National Education Institute, with support from the National District Attorneys Association), directed, and co-authored. The mini-series, titled "Under the Law," is being distributed by Walt Disney Educational Media Company. Mr. Abbott is also the author of the play "Robert Frost: Promises to Keep," and a stage adaptation of Thomas Wolfe's The Web and the Rock, both produced successfully. Mr. Abbott was a co-founder of Theatre West/Club Theatre and Chairman of the Board for several years. He has been Honorary Sheriff and is now in his third term as Honorary Mayor of Tarzana, California.

B. Mr. Norman Lessing



Norman Lessing is author of the filmscript "Fire Out of the Rock: The Case of Clarence Earl Gideon" and the detailed outline of "Case for the Prosecution: The Homer S. Cummings Story." Mr. Lessing's professional writing career includes more than 300 television plays for major television series (for many of which he served as Story Editor or Head Writer), many motion pictures, stage, and radio plays. Currently he is a Senior Lecturer in Drama at the University of Southern California where he conducts a post-graduate course in Playwriting. In addition to his successful career as a playwright, Mr. Lessing has been four times American Senior Chess Champion. His book The World of Chess (Random House) was published in 1974.

C. Professor Richard B. Morris



Richard B. Morris, Gouverneur Morris Professor of History at Columbia University, is one of America's most distinguished historians. He has authored innumerable books about the history of the United States, including The Peacemakers: The Great Powers and American Independence (winner in 1966 of the Bancroft Prize in History), The LIFE History of the United States (in two volumes), and Seven Who Shaped Our Destiny: The Founding Fathers as Revolutionaries. Professor Morris was Visiting Professor at the University of Hawaii, Princeton University, and Distinguished Professor, Free University of Berlin. He was a Fulbright Research Scholar, Sorbonne, and has lectured at universities in Yugoslavia, Iran, and Afghanistan, and in 1974 was invited by the Academy of Sciences of the USSR to lecture at the Institute of General History in that country. Professor Morris prepared summary outlines for the episodes concerning John Peter Zenger, Marbury v. Madison, the impeachment of Associate Justice Samuel Chase, the trial of Aaron Burr, the Parkman murder case, and the case of Clarence Earl Gideon.

D. Professor Lawrence M. Friedman



Lawrence M. Friedman, Professor of Law, Stanford Law School, currently a fellow at the Center for Advanced Studies in the Behavioral Sciences, Stanford, California, is author of A History of American Law, a National Book Award nomination in 1973 and winner in the same year of the annual Scribes award for the best book on law. Professor Friedman, following admission to the Illinois bar, after graduating in law from the University of Chicago, did graduate work in English legal history. After serving with the US Army, he practiced law in Chicago. In 1957 he entered the teaching profession. He has taught at St. Louis University and the University of Wisconsin. Professor Friedman has written more than thirty articles in legal and associated journals as well as Contract Law in America: A Social and Economic Case Study (1965), Government and Slum Housing: A Century of Frustration (1966), and was co-editor of Law and the Behavioral Sciences (1969). Professor

Friedman prepared summary outlines for episodes about Dred Scott and the Fugitive Slave Laws, the Mormon polygamy trials, the trial of Charles Guiteau (President Garfield's assassin), Yick Wo v. Hopkins, Stephen J. Field, and the Mapp, Escobedo, Miranda trilogy of cases.

E. Federal Judicial Center

The Federal Judicial Center, located in the Dolley Madison House, Washington, D.C., was created by act of Congress approved December 20, 1967 (81 Sta. 664; 28 U.S.C. 620). The activities of the Center are supervised by a Board composed of the Chief Justice of the United States, who is the permanent Chairman of the Board, two judges of the United States courts of appeals and three judges of the United States district courts, and the Director of the Administrative Office of the United States Courts, who is a permanent member of the Board. The purpose of the Federal Judicial Center is to further the development and adoption of improved judicial administration in the courts of the United States.

F. American Judicature Society

The American Judicature Society, founded in 1913, is a national and international organization of over 45,000 lawyers, judges, and laymen, in all 50 states, Canada, and 58 other countries of the world. The purpose of the Society is to promote the efficient administration of justice. Its activities include publishing a monthly journal and other books and literature; conducting meetings, institutes, conferences, and seminars. It maintains an information and consulting service, conducts major empirical research studies with respect to all aspects of the administration of justice and its improvement. The desire of the Society, under the guidance and direction of its recently-retired executive director, the Hon. Glenn R. Winters, to develop a suitable television treatment of the American judiciary, past and present, in association with the Federal Judicial Center, led to the development of The Sword and the Scales.

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

III

FILMSCRIPT AND SERIES ESTIMATED PRODUCTION COSTS (13 EPISODES)

- A. Filmscript "Fire Out of the Rock: The Case of Clarence Earl Gideon" by Norman Lessing

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

III-2

THE SWORD AND THE SCALES

"Fire Out of the Rock:
The Case of Clarence Earl Gideon"

written by

Norman Lessing

THE NELSON COMPANY
Suite 1040, 18321 Ventura Boulevard
Tarzana, California 91356

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"Fire Out of the Rock:
The Case of Clarence Earl Gideon"

CAST

Principals

Marshal	of the Supreme Court of the United States
Host	Narrator
Willis	Prisoner with Gideon
Dave	Prisoner with Gideon
Ruth Gideon	Gideon's wife
Michael Rodak, Jr.	Assistant Clerk, Supreme Court
Richard W. Ervin	Attorney General, State of Florida
Bruce Jacob	Ervin's assistant
Chief Justice Earl Warren	United States Supreme Court
Justice Black	Associate Justice, Supreme Court
Judge Robert L McCrary, Jr.	during Gideon two Florida trials
William E. Harris	Assistant State Attorney General, State of Florida
Aide	of Harris's
Ira Strickland	Owner Bay Harbor Poolroom
Henry Cook	Witness
Henry Berryhill	Deputy Sheriff
Preston Bray	Cab driver
Mrs. Irene Rhodes	Witness; problem drinker
Mrs. Velva Estelle Morris	Owner Bay Harbor Hotel

CAST
(Cont., 2)

Jury Foreman	Gideon Trial No. 1
Reporters (2)	at Bulletin Board, Supreme Court
Phillipe	of Dallas supper club
Abe Fortas	prominent Washington lawyer assigned by Supreme Court to argue Gideon's case
Edward J. McCormack, Jr.	Attorney General, State of Massa- chusetts
Assistant	to McCormack
Junior Partner	in Fortas law firm
Staff Member 1	Florida Attorney General's office
Staff Member 2	Florida Attorney General's office
George D. Mentz	Assistant Attorney General, State of Alabama
Member	of posh Georgetown club
Justice Douglas	Associate Justice, Supreme Court
Clerk	US Supreme Court
Justice Harlan	Associate Justice, Supreme Court
Justice Stewart	Associate Justice, Supreme Court
Justice Brennan	Associate Justice, Supreme Court
Voice	over Prison Loudspeaker
Newscaster	voice over Dave's radio
Tobias Simon)	Attorneys from ACLU, Gideon Trial No. 2
Irwin J. Block)	
W. Fred Turner	Panama City attorney chosen by Gideon to represent him, Trial No. 2

CAST
(Cont., 3)

Reporter	Male; Gideon Trial No. 2
Jury Foreman	Trial No. 2
Reporter	Female; Trial No. 2

Extras

Associate Justices (3)	of United States Supreme Court
Guards	Florida State Prison
Convicts	Florida State Prison
Boys	in group -- Still Photo
Young Gideon	in group -- Still Photo
Young Bride	Gideon's first wife -- Still Photo
Baby Boys (2)	Gideon's first two children -- Still Photo
Men	at Gideon's dining room table -- Still Photo
Children	Gideon's first two and his third -- Still Photo
Judge	in Still Photo
Personnel	Mail Sorting Room, Supreme Court
Secretary	Female; Supreme Court
Courthouse Hangers-on	Panama City, Florida
Jurymen (6)	White; Gideon Trial No. 1
Court Reporter	Female; Trial No. 1
Clerk	Trial No. 1
Spectators	Trial No. 1

CAST
(Cont., 4)

Deputy Sheriff	Trial No. 1
Individuals	at Bulletin Board, Supreme Court
Young Lawyer	with Fortas law firm
Clerk	with Fortas law firm
Golfers	accompanying Attorney General McCormack
Friends and Relatives	of Bruce and Ann Jacob at their wedding
Members	of posh Georgetown club
Spectators	at Supreme Court
Lawyer	at Supreme Court rostrum
Another Lawyer	at table adjacent to rostrum
Wives and Girlfriends	visiting prisoners
Jurymen (5)	White; Gideon Trial No. 2 (sixth is Foreman, above)
Spectators	Trial No. 2
Newsmen	Trial No. 2
Assistant	to Harris, Trial No. 2

THE SWORD AND THE SCALES

"Fire Out of the Rock:
The Case of Clarence Earl Gideon"

written by

Norman Lessing

ACT I

FADE IN

1 THE FIGURE OF JUSTICE

TIGHT ON the sword. PAN UP and HOLD on the scales.
WIDEN FOR FULL SHOT and SUPERIMPOSE series title:
THE SWORD AND THE SCALES.

2 EXT. US SUPREME COURT BUILDING - DAY

MOVE IN on carved message at top: EQUAL JUSTICE
UNDER LAW.

3 INT. MAIN HALL - DAY

CAMERA is conducting a tour, SLOWLY PANS the marble
columns, PICKS UP busts of Chief Justices Hughes,
Stone, Vinson, and Warren, CLOSES IN on Courtroom
door.

4 INT. COURTROOM - DAY

CAMERA DOLLIES TOWARD the nine empty seats of the
Supreme Court bench with the pillars and red curtains
in BG, RAISES and HOLDS for a suspenseful moment.
Sharp sound of a gavel OS.

MARSHAL (OS)

(announcing)

The Honorable, the Chief Justice
and the Associate Justices of the
Supreme Court of the United States!

Simultaneously, the nine JUSTICES appear through open-
ings in the red curtains and approach their chairs.

SMASH CUT TO:

5 CU - MARSHAL OF THE COURT

SHOOTING UP for dramatic effect to accentuate height.

MARSHAL

Oyez! Oyez! Oyez! All persons
having business before the Honorable,
the Supreme Court of the United States,
are admonished to draw near and give
their attention, for the Court is now
sitting. God save the United States
and this Honorable Court!

6 ECU - GAVEL POUNDING DESK

just once, with a loud report

QUICK CUT TO:

7 INT. SPIRAL STAIRCASE - DAY

Dramatic ANGLE FROM BELOW. CAMERA PANS UP the handsome marble steps to create effect of ascending the staircase.

8 INT. THIRD FLOOR READING ROOM OF BUILDING - DAY

LONG SHOT. CAMERA DOLLIES SLOWLY down length of room toward HOST, who waits under woodcarving of Justinian, behind table far end right, as you face screen.

9 MEDIUM CLOSE - HOST

HOST

Hello. I'm _____,
and I'm talking to you from the
Reading Room on the third floor of
the Supreme Court building. It's
quite a place . . . holds over two-
hundred thousand law books and
journals for the Justices and members
of the Supreme Court bar . . .
(smiles, points)
That gentleman over the door is Solon
. . . .

10 CU - WOODCARVING OF SOLON

over doorway to HOST'S right.

(CONTINUED)

10 (CONTINUED)

HOST (VO)

. . . a New Dealer six hundred years before the birth of Christ. During a severe depression in Greece, he passed as many laws as Franklin Delano Roosevelt did to combat our own great depression. Right over my head is Justinian . . .

WHIP PAN TO:

11 CU - WOODCARVING OF JUSTINIAN

HOST (VO)

He lived about a thousand years later . . . the Emperor who collected and organized all Roman law into the famous Justinian codes . . .

12 INT. HOST SET - DAY

A matching permanent studio set including the woodcarving of Justinian and representing this corner of the Reading Room.

HOST

Clarence Earl Gideon lived in our time. He, too, in his own way, was a maker of laws. He was a convicted felon, petty thief, and gambler, yet one who, like his biblical namesake, became the willing instrument of a cause larger than himself. You remember that the biblical Gideon was a humble man who in the time of his tribulation pleaded for a sign of God's recognition. "Then the angel of the Lord put forth the end of the staff that was in his hand, and touched the flesh and the unleavened cakes; and there rose up fire out of the rock . . . "

13 EXT. FLORIDA PRISON COMPOUND - DAY

SHOT from outside . . . a bleak, wire-fenced enclosure.

(CONTINUED)

13 (CONTINUED)

HOST (VO)

Clarence Earl Gideon, Prisoner
Number 003826, also made an offer-
ing and received a sign -- a sign
from the Supreme Court of the United
States.

SUPERIMPOSE episode title: FIRE OUT OF THE ROCK:
THE CASE OF CLARENCE EARL GIDEON. LAY IN credits
as CAMERA PANS enclosure.

HOST (VO)

State Prison, Raiford, Florida . . .

14 EXT. INSIDE PRISON YARD - DAY

GUARDS with shotguns patrolling. PAN TO large fenced
runway with hounds baying and yelping. PAN TO barracks-
like cell building.

15 INT. CELL BLOCK - DAY

Through the bars we see WILLIS, a heavy-set convict,
reading the back-page comics of a newspaper. [All
of the convicts are white -- this is a segregated
prison.] The front-page headline FACING CAMERA
reads: JFK FAVORS KHRUSCHEV SUMMIT and underneath
a subhead: Urges Test Ban. There is a newsphoto
of President Kennedy and Jackie at airport emerging
from Air Force One. CAMERA PANS in direction of
radio music, the sound swelling. DAVE, a youngish
convict in the next cell, holds a transistor radio
near his ear. We hear Elvis Presley singing "Hound
Dog." PAN THRU BARS to next cell where GIDEON sits
hunched over a crate that serves as a desk, carefully
and laboriously printing in pencil a letter to the
Supreme Court. Gideon is a slight, stooped man of 52,
many of those years spent in prison. He wears thick
glasses, looks over them into the next cell as the
music interferes with his concentration.

GIDEON

(mildly)

Mind turnin' that down?

DAVE

(heavy Southern accent)

What's buggin' you, Clarence? Don'
y'all like Elvis?

(CONTINUED)

15 (CONTINUED)

GIDEON

I'm plumb crazy about Elvis, son.
Only right now, he's interferin'
with my concentration.

DAVE

Why, Dad, you jes' tell that l'il
ol' gal you writin', you in here
listenin' to "Hound Dog" and it
reminded you of her. You make a
hit for sure.

GIDEON

That "l'il ol' gal" I'm writin' is
the Supreme Court of the United
States, and they ain't about to
make no ruling on no hound dogs.

DAVE

(shaking his head)
Clarence, ah'm sorry for you, ah
truly am. You expect them big boys
t'take time to read that?

GIDEON

(quietly)
No, 'spect not.

The cell doors are open. PAN WITH Dave as he exits
to corridor. We get a glimpse of other CONVICTS.
Dave shakes his head, calls over to Willis

DAVE

You hear this, Willis? Clarence is
writin' the Supreme Court.

WILLIS

Stamp only costs a nickel.

DAVE

Beats all . . .

He enters Gideon's cell, looks over his shoulder.

16 ECU - GIDEON'S PETITION

on prison stationery with the heading: Division of
Corrections, followed by six printed rules under:
Correspondence Regulations. The penciled printing

(CONTINUED)

16 (CONTINUED)

is neat and easy to read. Underneath the blank spaces for Prisoner's name and number, institution and cell number, the petition reads:

In the Supreme Court of the United States
Washington, D.C.
Clarence Earl Gideon)
Petitioner)
vs.)
H.G. Cochran, Jr, as)
Director, Divisions)
of corrections state)
of Florida)
Petition for a writ
of Certiorari directed
to the Supreme Court
state of Florida

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 proper
person, and appearing as his own counsel. . . .

The rest cannot be seen. Dave's finger comes into shot,
pointing to the words "Petition for a writ of certiorari."

DAVE (OS)
What's this here mean?

17 BACK TO SCENE

GIDEON
(smug)
This here's a petition for a writ
of . . .
(mispronouncing)
. . . certi-o-rari, which means I'm
asking the Supreme Court of the
United States to hear my case against
the Supreme Court of Florida.

DAVE
Hear that, Willis? Florida Supreme
Court tells him to kiss off, but that
ain't good enough. Lord, he thinks
they're gonna let him outta here . . .

(CONTINUED)

17 (CONTINUED)

GIDEON

(stubborn)

I was convicted of breaking and entering without benefit of counsel and that's a violation of my constitutional rights.

DAVE

Lordy, listen to the man talk! Ain't none of us had no lawyers, Clarence. If I could 'ford a lawyer, I wouldn't have no call to steal in the first place.

WILLIS

(quietly)

Now, Dave, don't y'all be too hard on Clarence. Could be he'll get us all out of jail . . .

Dave looks quizzical but lowers the volume on his radio. CAMERA PANS TO Gideon, reading the petition in his hand.

18 ECU - PETITION

featuring the lines starting with "Comes now the petitioner," etc.

HOST (VO)

"Comes now the petitioner," wrote Gideon. The legalistic language indicates he had studied well the law tomes in the prison library.

PULL BACK TO SHOW Gideon mouthing the words as he reads the petition over.

HOST (VO)

Whatever else Gideon might have been, he was possessed of a stubborn faith. Uneducated and without assistance, he took it upon himself to write a petition to the Supreme Court of the United States, a petition whose repercussions would be greater than his wildest expectations.

DISSOLVE TO:

19 START MONTAGE OF SEPIA STILL PHOTOGRAPHS

Ext. Hannibal, Missouri, scene -- pastoral, possibly near the river, circa 1915.

HOST (VO)

What kind of man was Clarence
Earl Gideon?

20 PHOTO - HANNIBAL

PAN ACROSS PHOTO from river view to dingy factory area. ZOOM INTO group of BOYS, emphasizing YOUNG GIDEON in BG.

GIDEON (VO)

I was born August 30th, 1910, in Hannibal, Missouri, same place where Mark Twain grew up and wrote about in Tom Sawyer and Huck Finn. My father died when I was three, and I ran away from home when I was fourteen.

21 PHOTO - RAILROAD AREA

PAN RR track across snow-covered horizon to loading dock and shed. ZOOM INTO young Gideon, hatless, wearing heavy Mackinaw as he is being handcuffed by three policemen.

GIDEON (VO)

I wandered around as a hobo that year and learned that people can be good and people can be bad. It was winter when I came back home, and my mother had me put in the Hannibal jail. But I escaped the next day. Had to steal some clothes to keep from freezin'. But they caught me and I went to the reformatory. I was paroled after a year. I still have scars from the whippings I got there.

22 PHOTO - ECU ON GIDEON AND YOUNG BRIDE

WIDEN to show prison in BG as they walk away from its gates.

GIDEON (VO)

Got married for the first time when

(MORE)

22 (CONTINUED)

GIDEON (CONT'D)

I was sixteen. When I was eighteen I was sentenced to the Missouri prison for ten years for robbery, burglary, and larceny. But I was paroled after three years and four months

23 PHOTO - TIGHT ON SHOE BEING RESOLED

PAN TO Gideon, hammer in hand, who poses with smile on his face.

GIDEON (VO)

I was twenty-two in the middle of the depression, and working in a shoe factory. But then I got three years in Fort Leavenworth for stealing Government property. I done a little over two years there, but saved my money from prison jobs, which I sent to my parents 'cause they needed it.

24 PHOTO - GIDEON IN HOSPITAL WARD

GIDEON (VO)

From 1937 to 1941 I was in and out of prisons four times. Two times I escaped. In 1953, I broke down with tuberculosis. They did surgery on my right lung.

25 PHOTO - INT. PARLOR ROOM

CU on RUTH GIDEON. WIDEN and PAN TO dining room table surrounded by MEN playing poker. PAN TO two BABY BOYS sitting on floor, crying and soiled.

GIDEON (VO)

I married twice in one year, 1955. The last one being my present wife, Ruth. We had three children together. We moved to Panama City, Florida, where I started gambling to make ends meet. The Welfare Department said my children were not being taken care of proper, and they were right. My children were taken away from me and placed in foster homes. This broke my wife,

(MORE)

25 (CONTINUED)

GIDEON (CONT'D)
and I don't think she ever got over
it. But I got the kids back, and her,
too.

26 PHOTO - GIDEON AND FAMILY LEAVING CHURCH

Gideon wears contented expression on his face. PAN
INTO faces of the CHILDREN.

GIDEON (VO)
I couldn't afford no psychiatrist
fella, so we all went to the Baptist
church instead. But I got sick again,
infection in my lung. In the hospital
I was treated the best of kind -- chicken
and steak ever day, and you imagine how
I felt when I thought of my kids going
hungry. They were not entitled to wel-
fare because of my record.

27 PHOTO - WIDE ON BARGE IN RIVER

SLOW ZOOM INTO ECU on Gideon.

GIDEON (VO)
I was put to surgery. When I got out
my wife had quit the church and took
up with another man. My kids took
care of their self. Got me a job on a
spud barge. I was a very unhappy man.
Then I learnt my wife had given the
children over to the Welfare and she
was in jail for drunken driving. Also
she is pregnant.

28 PHOTO - GIDEON, BACK TO CAMERA, STANDS BEFORE JUDGE
IN COURTROOM

ZOOM INTO ECU back of Gideon's head by end of speech.

GIDEON (VO)
Went back to Panama City and worked
again as a gambler. On June 3rd, 1961,
I was arrested for breaking and entering
to comitt a misdemeanor and convicted
in a trial and sentenced to prison for
five years. I did not break into the

(MORE)

28 (CONTINUED)

GIDEON (CONT'D)
building. I don't feel like I had
a fair trial. If I had a attorney,
he could brought out lots of things
and found me innocent.

29 INT. PRISON CELLBLOCK - DAY

POV outside cellblock. Gideon approaches iron-barred gate holding a large manila envelope. He pauses, looks at envelope, then reaches through the bars toward a dirty wooden box with a slot in the top. The slot is too small and Gideon has to fold the envelope and force it through the slot.

30 EXT. SUPREME COURT BUILDING - DAY

To establish.

31 INT. MAIL-SORTING ROOM - DAY

PERSONNEL sorting mail. Stacks of bound and printed material.

32 ANOTHER ANGLE

CU cubbyhole as Gideon's letter is inserted.

33 INT. SECRETARY'S DESK - DAY

SECRETARY opens Gideon's envelope, glances briefly at contents, then clips same to envelope, putting it on top of a small stack of similar looking letters.

34 INT. SUPREME COURT CLERK'S OFFICE - DAY

Assistant Clerk MIKE RODAK, about 35, takes Gideon's letter from top of stack, leafs through petition, pauper's affidavit, and copy of the lower court decision.

HOST (VO)
On January 8th, 1962, Gideon's petition reached the desk of Assistant Clerk Michael Rodak, Jr. Ordinarily, there is a hundred-dollar fee for filing in the regular Appellate docket and forty copies of the appeal must be printed.

35 CU - PAUPER'S AFFIDAVIT

on top of other papers.

HOST (VO)

A pauper's affidavit spared Gideon this expense.

36 WIDER ANGLE

HOST (VO)

The Assistant Clerk's function is to see if petitioners have complied with the many Supreme Court rules.

Rodak stamps petition, writes in number "890."

HOST (VO)

Gideon's case was entered in the Miscellaneous Docket -- number eight hundred and ninety in the term commenced October 1961.

37 CLOSER ANGLE

as Rodak puts the Gideon material in a red folder and places the folder in a desk basket marked OUT-GOING. He picks up the next petition. CLOSE IN ON Gideon file.

38 INT. CHIEF JUSTICE'S OFFICE DOOR - DAY

CU on red file in hand of Secretary as she approaches door. WIDEN TO INCLUDE brass plate on door which reads CHIEF JUSTICE as she passes through, closing door behind her. ZOOM IN on brass plate.

HOST (VO)

Two months after Gideon's petition was received, it reached the office of Chief Justice Earl Warren. There it was examined by Warren's clerks who requested the State of Florida to file a response . . .

39 INT. FLORIDA ATTORNEY GENERAL'S OFFICE - DAY

Florida Attorney General RICHARD W. ERVIN, seated at desk, finishes reading letter, hands it to BRUCE JACOB.

(CONTINUED)

39 (CONTINUED)

HOST (VO)

Attorney General Richard W. Ervin of Florida turned the letter over to a young assistant, Bruce Jacob, who drafted a thirteen-page reply

. . .

CLOSE IN on Jacob as he studies letter.

40 INT. JUSTICES' CONFERENCE ROOM - DAY

OPEN ON painting of Chief Justice John Marshall. WIDEN AND PAN Justices in street clothes, punctiliously shaking hands with each other.

HOST (VO)

In due course, Gideon's case was given an informal preliminary analysis by the Justices in their private conference room. No one but a Justice has ever been allowed inside this room during a conference session. Nowhere in Washington is the principle of secrecy more strictly adhered to.

CHIEF JUSTICE WARREN calls the meeting to order and the Justices take their places. Warren sits at the head of the table. JUSTICE BLACK sits at the other end. The atmosphere is still informal but intense.

41 VARIOUS ANGLES ON JUSTICES AND ROOM

HOST (VO)

The issue at hand was whether Gideon's case contained a Constitutional question important enough to warrant a ruling by the Supreme Court -- a ruling that would set a new precedent, a new law of the land. Many considerations were involved, not the least involved "states rights." Before they made their determination, Gideon's conviction in the Florida court was carefully reviewed.

42 EXT. COURTHOUSE, PANAMA CITY - DAY

A hot August day, the square all but deserted. A few

(CONTINUED)

42 (CONTINUED)

COURTHOUSE HANGERS-ON doze on benches in the shade of the building. START CLOSING on Courthouse.

HOST (VO)

The original trial took place on August 4th, 1961, in the Circuit Court of the Fourteenth Judicial District of Florida, in and for Bay County, Judge Robert L. McCrary, Jr., presiding.

43 INT. COURTROOM - DAY

JUDGE McCRARY, 46, black hair, on bench; SIX MEN, all white, in jury box. A FEMALE COURT REPORTER. Assistant State Attorney WILLIAM E. HARRIS, heavy-set, tanned, Southern, and an AIDE sit at one table. Gideon all alone at Defendant's table. CAMERA SLOWLY PANS SCENE, ending with Gideon, as if to emphasize his loneliness.

44 ON JUDGE McCRARY

He raps once with his gavel, then:

JUDGE McCRARY

The next case on the docket is the case of the State of Florida, Plaintiff, versus Clarence Earl Gideon, Defendant. What says the State, are you ready to go on trial in this case?

HARRIS

The State is ready, your Honor.

JUDGE McCRARY

What says the Defendant? Are you ready to go on trial?

45 ANGLE SHOOTING DOWN FROM BENCH TO GIDEON

He seems far away, hesitates, then speaks in a low voice.

GIDEON

I am not ready, your Honor.

JUDGE McCRARY

Did you plead not guilty to this charge by reason of insanity?

(CONTINUED)

45 (CONTINUED)

GIDEON

No, sir.

JUDGE McCRARY

Why aren't you ready?

GIDEON

I have no counsel.

JUDGE McCRARY

Why do you not have counsel?
Did you not know that your case
was set for trial today?

GIDEON

Yes, sir, I knew that it was set
for trial today.

Gideon seems to choke up as he tries to speak,
mutters something that is inaudible.

JUDGE McCRARY

Come closer up, Mr. Gideon

Gideon gets up from his chair and moves directly in
front of Judge McCrary.

46 TWO-SHOT - GIDEON AND JUDGE McCRARY

JUDGE McCRARY

Now tell us what you said again,
so we can understand you, please.

GIDEON

Your Honor, I said, I request this
Court to appoint counsel to repre-
sent me in this trial.

JUDGE McCRARY

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 repre-
sent 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.

(CONTINUED)

46 (CONTINUED)

GIDEON

The United States Supreme Court
says I am entitled to be represented
by counsel.

MOVE IN FOR CU of Gideon as he says these lines. HOLD
ON his face as:

JUDGE MCCRARY (OS)

Let the record show that the Defendant has asked the court to appoint counsel to represent him in this trial and the court denied the request and informed the Defendant that the only time the court could appoint counsel to represent a defendant was in cases where the defendant was charged with a capital offense. The Defendant stated to the court that the United States Supreme Court said he was entitled to it.

PAN OFF from Gideon to Harris, who makes some joking comment to his Aide. PULL BACK as Gideon slowly makes his way back his table.

HOST (VO)

Gideon was mistaken! Indeed, the Supreme Court said just the opposite. In its 1942 decision, Betts versus Brady, it flatly rejected the contention that the US Constitution's 14th Amendment provided a guarantee of counsel in state criminal trials. So, at this time, there was little the Florida judge could have done under state law. Unknowingly, but with the strength of conviction, this simple unlettered man was asking the Supreme Court of the United States to reverse itself!

FADE OUT

END OF ACT ONE

ACT II

FADE IN

47 EXT. COURTHOUSE, PANAMA CITY, FLA. - DAY

To establish.

48 INT. COURTROOM - DAY

FAVORING Judge McCrary as he addresses the six men in the jury box.

JUDGE McCRARY

Do any of your gentlemen know this defendant here, Clarence Earl Gideon?

JURY

No. No, sir.

JUDGE McCRARY

Will you give Mr. Gideon the same fair trial and consideration, since he is not represented by counsel, that you would if he were represented?

JURY

Yes, sir. Sure will. Right, Judge.

JUDGE McCRARY

Will you be fair to him as well as to the State in rendering your verdict in this case?

JURY

Yes, sir, etc.

JUDGE McCRARY

(to Gideon)

Now Mr. Gideon, look these gentlemen over and if you don't want them to sit as a jury to try your case, just point out the one, or more, and the court will excuse them and we will call others to try your case.

GIDEON

They suit me all right, your Honor.

JUDGE McCRARY

You accept them as a jury to try your case?

(CONTINUED)

48 (CONTINUED)

GIDEON

Yes, sir.

JUDGE McCRARY

You are willing for these six men to sit as a jury and try your case, now, are you?

GIDEON

Yes, sir.

JUDGE McCRARY

Swear the jury, Mr. Clerk.

49 ANGLE FAVORING ASSISTANT STATE ATTORNEY HARRIS

He addresses the jury.

HARRIS

Gentlemen of the jury, the prosecution will prove beyond a reasonable doubt that on June 3rd, 1961, the defendant Clarence Earl Gideon did unlawfully and feloniously break and enter the building of another, to wit, the Bay Harbor Poolroom, property of Ira Strickland, Junior, lessee, with intent to commit a misdemeanor within said building, to wit, petit larceny.

WHIP PAN TO:

50 ANGLE FAVORING GIDEON

He addresses the jury.

GIDEON

I did not break into the Bay Harbor Pool room on the morning of June 3rd. I never did break open the cigarette machine and never stole no money or wine or anything else. All of which I will prove beyond a reasonable doubt.

51 IRA STRICKLAND ON THE WITNESS STAND

HARRIS

Mr. Strickland what do you do for a living?

(CONTINUED)

51 (CONTINUED)

STRICKLAND

I own the Bay Harbor Poolroom.

HARRIS

Did you own and operate it on June 3rd?

STRICKLAND

Yes, sir

HARRIS

What time did you close your business up?

STRICKLAND

Twelve o'clock, that night.

HARRIS

Did you lock and secure the place?

STRICKLAND

Yes, sir.

HARRIS

All the doors were locked and all the windows closed and fastened?

STRICKLAND

Yes, sir.

HARRIS

Now, when did you enter the building again?

STRICKLAND

The next morning about eight o'clock. I was called out and when I got there I found Deputy Pitts waiting. The entry has already been detected.

HARRIS

Did you find where entrance was made?

STRICKLAND

Through a window in the back of the building.

HARRIS

Did you find anything damaged inside?

(CONTINUED)

51 (CONTINUED)

STRICKLAND

A cigarette machine and juke box
had been broken into and some beer
and wine was missing.

HARRIS

Do you know if there was any money in
the cigarette machine and the juke box?

STRICKLAND

There was money in each of them.

HARRIS

Do you know how much?

STRICKLAND

No, sir. They were both automatic
machines and I had no way of knowing
that.

52 GIDEON CROSS EXAMINES

GIDEON

Mr. Strickland, sir, do you know
positively what merchandise was
removed from the building?

STRICKLAND

No, sir. I do know there was some wine
and beer taken out, but I can't tell
you exactly how much.

GIDEON

I wish you would tell just what was
taken out.

STRICKLAND

Well, I can't. I don't know.

GIDEON

What do you mean, "You don't know?"
Will you tell the court and jury
just what was taken including the
money you say was in the juke box
and cigarette machine.

JUDGE McCRARY

The witness has testified he did not

(MORE)

52 (CONTINUED)

JUDGE McCRARY (CONT.)

know how much beer or wine was taken. He also stated he had no way of knowing what was in the machines because they were both automatic. Do you want to ask him any more questions?

GIDEON

Did you ever go off and leave your building unlocked?

STRICKLAND

Yes, sir.

GIDEON

Overnight?

STRICKLAND

No, sir.

GIDEON

You locked your building that night?

STRICKLAND

Yes, sir.

GIDEON

You are positive of that?

STRICKLAND

I am positive.

53 HENRY COOK ON WITNESS STAND

A youth in his early 20s, pompadour, long sideburns.

HARRIS

Mr. Cook, were you near or in the Bay Harbor Poolroom on June 3rd, 1961?

COOK

Yes, sir, about five-thirty AM.

HARRIS

Did you see anything?

COOK

Well, I looked inside the pool room and saw Mr. Gideon.

(CONTINUED)

53 (CONTINUED)

HARRIS

What was he doing in the poolroom?

COOK

Standing by the cigarette machine.

HARRIS

What did you do then?

COOK

I watched for a few minutes, then he came out the back door with a pint of wine in his hand.

HARRIS

Is that all you could see on him?

COOK

His pockets bulged out, but I don't know what was in them.

HARRIS

What happened then?

COOK

He went to the phone booth on the corner and phoned for a cab.

HARRIS

How do you know?

COOK

'Cause one come by just a few minutes later and Mr. Gideon got in.

HARRIS

What did you do next?

COOK

I went back to the poolroom and saw it had been broken into through a window in the back. The front was off the cigarette machine. It was all tore up and the money box and stuff was laying on the pool table.

54 GIDEON CROSS EXAMINES COOK

(CONTINUED)

54 (CONTINUED)

GIDEON

Mr. Cook, have you ever been arrested?

HARRIS

The State objects to that question.

JUDGE

Sustained. Mr. Gideon, you can ask him if he has ever been convicted of a criminal offense. That would be a proper question.

GIDEON

Have you ever been convicted of a felony?

COOK

No, sir, I never have.

GIDEON

You never been convicted of a felony?

COOK

No, sir.

GIDEON

What was you doing in front of the pool-room at five o'clock in the morning?

COOK

I been to a dance in Apalachicola, stayed out all night.

GIDEON

Was it dark or daylight?

COOK

Dark enough that I had to put my head up to the window to see you. But I seen you.

GIDEON

Where'd you go after that?

COOK

Walked up to the corner.

GIDEON

You say I come out of the building and

(MORE)

54 (CONTINUED)

GIDEON (CONT.)

walked to the corner and called
a cab. How could you see me?

COOK

You were there about the same time
I was. It was you.

GIDEON

How far away from me were you?

COOK

About twenty yards or so.

GIDEON

How could you see me come out the
pool room where there are two build-
ings you'd have to see around if you
were standing on the corner?

COOK

I was standing on the corner before
you walked out. When I walked by you
walked out the back door.

GIDEON

That's all, your Honor.

55 ANGLE ON STATE ATTORNEY HARRIS

HARRIS

The State rests, your Honor.

56 ANGLE ON JUDGE McCRARY

JUDGE McCRARY

All right. Mr. Gideon, the State has
put on its case. Would you like to
take the stand now, or would you like
to call your witnesses first?

GIDEON

I would like to call my witnesses.

JUDGE McCRARY

Just tell the sheriff who you would
like called and he will call them.

GIDEON

Henry Berryhill, Junior.

57 GIDEON QUESTIONS BERRYHILL

HENRY BERRYHILL is a uniformed deputy sheriff in his 30s.

GIDEON

Mr. Berryhill, was the window in the back of the building broken from the inside or the outside?

BERRYHILL

It was broken from the outside.

GIDEON

How do you know?

BERRYHILL

(stifles a yawn)

If a window is broken from the outside most of the glass will be on the inside, and most of the glass was on the inside. Some of it was outside where they pulled the rest of it out after it was broken.

GIDEON

You wouldn't know about what time it was broken would you?

BERRYHILL

No, I don't know how long it had been broken.

GIDEON

Did you notify anybody then?

BERRYHILL

I called the Investigation Department, which was Lavelle Pitts.

GIDEON

That's all.

JUDGE McCRARY

Any questions by the State?

HARRIS

No questions, your Honor.

JUDGE McCRARY

Mr. Berryhill, do you work at night?

(CONTINUED)

57 (CONTINUED)

BERRYHILL

Yes, sir, I work at night.

JUDGE McCRARY

Any objection from the State or the Defendant to excusing Mr. Berryhill? He looks like he needs to get some sleep.

58 PRESTON BRAY ON THE STAND

He is in his 50s. Drives the only cab in town.

GIDEON

Preston, was it out of the ordinary for me to call a cab?

BRAY

No. You called me all the time.

GIDEON

That morning did I have any wine, beer, or whiskey with me?

BRAY

Not that I could see.

59 HARRIS CROSS EXAMINES

HARRIS

Mr. Bray, where did you take Mr. Gideon that morning?

BRAY

Uptown.

HARRIS

How much was the cab fare?

BRAY

One dollar.

HARRIS

How much tip did he give you?

BRAY

Fifty cents.

(CONTINUED)

59 (CONTINUED)

HARRIS

What kind of money did he pay you with?

BRAY

Quarters.

HARRIS

No dollar bill or anything like that?

BRAY

Nope. All quarters.

60 MRS. IRENE RHODES ON THE STAND

She is in her 30s, a problem drinker.

GIDEON

Mrs. Rhodes, on the morning this crime was committed where were you?

MRS. RHODES

On my front porch.

GIDEON

You could see up and down the street and to the public telephone booth on the corner, is that right?

MRS. RHODES

Uh-huh.

GIDEON

When you first saw me, where was I?

MRS. RHODES

You came out the alley and walked over to call a taxi.

GIDEON

This Mr. Cook. Could he have seen me come out the back door of the pool hall from where he was?

MRS. RHODES

I don't think so.

GIDEON

It would be impossible for him to see the back door from where he was, right?

(CONTINUED)

60 (CONTINUED)

MRS. RHODES

Right.

61 HARRIS CROSS EXAMINES

HARRIS

Mrs. Rhodes, did you go over to the telephone booth after Mr. Gideon called the cab?

MRS. RHODES

What?

HARRIS

Did you go to the phone booth?

MRS. RHODES

Yes.

HARRIS

Why?

MRS. RHODES

I just went over there.

HARRIS

He had put a bottle of wine down there and you went over and got it didn't you?

MRS. RHODES

It was there. I saw it and I picked it up.

(measuring with fingers)

There was about this much in the bottle.

62 GIDEON CROSS EXAMINES

GIDEON

Mrs. Rhodes, was the bottle of wine inside or outside the booth?

MRS. RHODES

Outside.

GIDEON

Would you say that was my wine?

MRS. RHODES

I don't know whose wine it was.

(CONTINUED)

62 (CONTINUED)

GIDEON

You didn't see me put it down?

MRS. RHODES

No, I didn't.

63 MRS. VELVA ESTELLE MORRIS ON THE STAND

GIDEON

Mrs. Morris, are you the owner of the Bay Harbor Hotel?

MRS. MORRIS

Yes, sir.

GIDEON

Where is your hotel located?

MRS. MORRIS

Across the street from the Bay Harbor Poolroom.

GIDEON

Isn't it true, Mrs. Morris, that I do not ordinarily use the telephone in the hotel when people are sleeping? That I use the public telephone across the street?

MRS. MORRIS

Yes, that is true. Because it disturbs the sleepers. I don't think you ever used the house phone at night.

GIDEON

When do I usually get up in the morning?

MRS. MORRIS

About six-thirty usually.

64 MRS. MORRIS CROSS EXAMINED BY HARRIS

HARRIS

Mrs. Morris, you don't know whether this man went to bed at all that night, do you?

(CONTINUED)

64 (CONTINUED)

MRS. MORRIS

Why, yes, I saw him when he went up.
About ten o'clock.

HARRIS

Was that the last time you saw him?

MRS. MORRIS

Yes. When he went upstairs.

HARRIS

But you don't know whether he went
to bed or not, do you?

MRS. MORRIS

No, I don't know it. I saw him go
up and I never heard him come down.

65 GIDEON

risers to address Bench.

GIDEON

I have just one more question I'd
like to ask, your Honor.

JUDGE McCRARY

Proceed, Mr. Gideon.

Gideon approaches to question Mrs. Morris.

GIDEON

Mrs. Morris, during the time I
lived at the Bay Harbor Hotel, did
you ever know of me being out drunk?

MRS. MORRIS

No.

GIDEON

Did you ever hear of me getting
drunk?

MRS. MORRIS

No.

66 ANGLE ON HARRIS

At prosecution table, whispers to an aide.

(CONTINUED)

66 (CONTINUED)

HARRIS

Under the law of this state,
being drunk would be a defense.
He doesn't know that.
(smiles)

67 ANGLE ON JUDGE McCRARY

JUDGE McCRARY

Gentlemen of the Jury. Clarence Earl Gideon is on trial before you upon an Information charging him with Breaking and Entering with intent to commit a misdemeanor. The Defendant has entered a plea of not guilty. He is presumed to be innocent of any offense until his guilt is established beyond a reasonable doubt. This doubt must be a substantial doubt arising out of the evidence in this case after you have given the testimony of each witness full and fair consideration. You are the sole judges of the evidence. And in weighing the testimony of this trial you should use the same sound judgment and common sense in arriving at your verdict that you would use in your everyday affairs.

68 VARIOUS ANGLES

Gideon, Harris, jurymen and SPECTATORS, listening with varying degrees of interest.

69 ANGLE ON JURY RETURNING TO JURY BOX

JUDGE McCRARY

Gentlemen of the Jury, have you reached a verdict?

FOREMAN

We have, your Honor.

JUDGE McCRARY

Read it, please.

FOREMAN

We find the defendant, Clarence Earl Gideon, guilty as charged.

(CONTINUED)

69 (CONTINUED)

JUDGE McCRARY
So say you all?

FOREMAN
So say we all.

70 FAVORING JUDGE McCRARY

JUDGE McCRARY
You are hereby remanded to the
custody of the Sheriff. Sentence
will be withheld pending receipt
of the investigative report of your
past history.

DEPUTY SHERIFF steps forward to lead Gideon off.

HOST (VO)
Three weeks later, the judge imposed
the maximum sentence prescribed by
law, five years in a state prison.
Gideon made no statement before this
stiff sentence was passed, nor did
any lawyer make one on his behalf.
Gideon had no lawyer . . .

71 ANGLE ON GIDEON

as he is led through doors at rear of the courtroom
by the Deputy Sheriff. The doors close behind them.

72 EXT. US SUPREME COURT BUILDING - DAY

To establish.

73 INT. SUPREME COURT BULLETIN BOARD

with list of Supreme Court Orders for the day. PULL BACK TO SHOW several INDIVIDUALS, including REPORTERS, as they read the posted notices.

REPORTER 1

Who's Gideon?

REPORTER 2

Some poor slob stuck in a Florida jail. Claims they denied him his constitutional rights when they wouldn't give him a lawyer.

REPORTER 1

Well, the Court's granted him certiorari.

REPORTER 2

Sure did. He made it the hard way, too. In forma pauperis.

REPORTER 1

Which means the Chief Justice will appoint a lawyer to argue his appeal.

REPORTER 2

Some bigwig, you can bet. This could be a landmark case . . . get a load of this . . .

(points to bottom of notice)

CAMERA ZOOMS IN for ECU of: "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 BE RECONSIDERED?'"

REPORTER 2 (OS)

Should this Court's holding in Betts versus Brady be reconsidered?

SMASH CUT TO:

74 INT. FLORIDA PRISON LAUNDRY - DAY

Gideon closes steam press on piece of laundry. Hot steam escapes with a loud hiss and white explosion. Dave enters room on the run.

DAVE

Hey, Clarence! Clarence!

GIDEON

What's wrong? What's the matter?

DAVE

I just heard it over my li'l ol' radio! You did it, boy, you sure as hell damn done did it! Man, you just raised your leg and made the Supreme Court of the United States move over!

Gideon is stunned. Willis and other INMATES gather round.

WILLIS

You hear that, Clarence? They're gonna hear your case!

The full impact of the news engulfs Gideon. Dave and Willis dance around, pound him on the back. He joins in a wild jig.

75 INT. SUPPER CLUB - NIGHT

ON NEWSPAPER: the Dallas Times-Herald, dateline June 22, 1962. Head reads: KENNEDY FARM BILL DEFEATED. Discreet, muted ring of telephone. SCENE WIDENS to show an elegant, intimate supper club. PHILLIPE, the proprietor, dressed in black tie, lays newspaper down, answers phone.

PHILLIPE

Good evening. Phillipe's.
(beat)

Yes, indeed. Un moment.

Phillipe crosses room, telephone in hand, to a secluded corner booth, plugs phone into wall jack. He whispers to ABE FORTAS, who is having brandy with TWO COUPLES.

PHILLIPE

Pardon, Mr. Fortas. Long distance -- the Clerk of the Supreme Court in Washington.

(CONTINUED)

75 (CONTINUED)

Fortas takes the phone with casual interest.

FORTAS

Excuse me.

(into phone)

This is Abe Fortas. How do you do, sir?

(pause)

I see. Well, I'm very flattered, of course . . . pardon?

(a pause)

No, I can't say that I have.

(looks up)

Any of you ever hear of a Clarence Earl Gideon?

(back to phone)

What's he done?

(not very enthusiastic)

I see . . . I see . . . Well, what's the issue?

(perks up)

Betts versus Brady? Hmmm . . . How much time would I have?

(pause)

That doesn't give me a great deal, does it?

(pause)

Yes . . . I understand. I accept and I'm greatly honored. Please tell the Chief Justice. Good night.

(hangs up)

How do you like that? I'm going to defend a man I never heard of before in the United States Supreme Court.

CUT TO:

76 EXT. STATE CAPITOL BUILDING, TALLAHASSEE, FLA. - DAY
To establish.

77 EXT. MATCHING LOCATION - DAY

Entrance to building. ON Bruce Jacob as he approaches. He is tall, blond, sober and modest in demeanor, carries a thin, lawyer's briefcase.

(CONTINUED)

77 (CONTINUED)

CAMERA SWIVELS TO INCLUDE ANN WEAR, waiting at doorway. From her excitement, this is evidently an auspicious occasion.

ANN

Bruce! Is it official?

JACOB

Looks that way.

ANN

(admiring)

I can't believe it -- the Supreme Court of the United States!

JACOB

(grins)

Don't say it so loud . . . I may faint.

He places an arm around her. They start to move inside.

ANN

I'm so proud! How many lawyers get to argue a case before the Supreme Court?

JACOB

Let's just pray I can win it!

78 INT. FORTAS FIRM LAW LIBRARY - DAY

Elegant and well-stocked. A YOUNG LAWYER sits at a table stacked with open and slip-marked books, culling precedents for the Fortas brief. A CLERK is gathering other books from the shelves. Fortas enters with ONE of the firm's JUNIOR PARTNERS

FORTAS

For all we know, Gideon might have been insane or otherwise unable to handle his case. He might fall under the "special circumstances" provision of Betts versus Brady . . .

JUNIOR PARTNER

But the Court's direction was, should Betts-Brady be reconsidered?

(CONTINUED)

78 (CONTINUED)

FORTAS

The Court might not have been in possession of all the facts. The Betts ruling is still the law of the land. If we can get Gideon off on that basis, so be it. Our first duty is to our client, not to some abstract principle of law.

JUNIOR PARTNER

Gideon's own petition indicates he was competent.

FORTAS

I hope so. It's the only way we can knock down Betts-Brady. But the best proof of Gideon's competence is the transcript of that Florida trial. Has it come in yet?

JUNIOR PARTNER

I'll go check.

He strides out.

79 INT. CLOSE ON DOOR

Gold lettering on door shows the seal of: "The Attorney General, State of Florida."

DISSOLVE THROUGH:

80 INT. FLORIDA ATTORNEY GENERAL'S OFFICE - DAY

Present are Ervin, the Attorney General, Bruce Jacob, and TWO other MEMBERS OF THE STAFF.

STAFF MEMBER 1

You're not in the bush leagues now, Bruce, This is a whole new ballgame.

His tone is serious. The second staff member, an older man, continues in the same tone, but we don't know how much of it is really kidding.

STAFF MEMBER 2

I argued a right-to-counsel appeal in the Supreme Court once. Strictly on

(MORE)

80 (CONTINUED)

STAFF MEMBER 2 (CONT.)
the "special circumstance" provision of
Betts-Brady. And when I got back, you
know what some of my lawyer friends
called me? They called me a son-of-a
bitch for losing.

81 ANGLE FAVORING ATTORNEY GENERAL

seated behind desk.

ATTORNEY GENERAL
This isn't an argument on one narrow
provision. This is the whole ball of
wax -- whether the Court will reverse
its own 1942 decision.

STAFF MEMBER 1
If they make it retroactive -- there are
over five thousand convicts in Florida
jails who have been tried without counsel.
They'll all be eligible for immediate
release.

STAFF MEMBER 2
If that happens, Bruce boy, you better
go into hiding. It won't be safe to show
your face around here.

JACOB
(enthusiastically)
The chief thrust of our argument must
be whether the states have the right to
determine their own rules of criminal
procedure without Federal interference.

STAFF MEMBER 1
I agree one-hundred per cent.

JACOB
All the other states are equally affected.
They have a right to make their views known
to the Supreme Court.

ATTORNEY GENERAL
How?

JACOB
I propose that we send out a letter

(MORE)

81 (CONTINUED)

JACOB (CONT.)
inviting the other forty-nine states
to file amicus curiae briefs in our
support.

ATTORNEY GENERAL
"Friends of the court" -- we can use a
few.

JACOB
I took the liberty of drawing up a rough
draft of the letter for your approval.
(takes copies from his briefcase
and hands them around)

82 INT. FORTAS LAW LIBRARY - NIGHT

Evidently very late. The table is littered with papers,
notes, old coffee cups. Fortas, in his shirtsleeves,
is reading the transcript of the Florida trial. The
junior partner, working with him, can barely keep awake.

FORTAS
This transcript proves Gideon was
competent.

JUNIOR PARTNER
(sleepily)
Oh, absolutely . . .

FORTAS
(full of energy)
The issue now is Betts versus Brady.
It never worked in the first place.
It means more Federal intervention, not
less. I want every single case on Betts-
Brady . . .

JUNIOR PARTNER
(nods sleepily)
Yes, sir . . . just as you say . . .

FORTAS
Now, point number one -- the right to
counsel is imperative to a fair hearing.
Even a lawyer wouldn't undertake his own
defense.

(CONTINUED)

82 (CONTINUED)

Completely unaware of the younger man's fatigue, Fortas plunges into the work ahead of him, scribbling furious notes. The Junior Partner is about to drop off.

83 INT. STATE PRISON CELL BLOCK - DAY

Gideon, in his cell, hand-printing another letter.

GIDEON (VO)

"Dear Mr. Fortas: Everything containing to my case is of the highest interest to me and everyone in the prison. We welcome all the information about it that is possible. I guess I am impatient but it seems to take a long time . . . "

84 INT. BRUCE JACOB'S OFFICE - NIGHT

It is a small, cramped office. Ann is typing away as Bruce paces angrily, waving a copy of a letter.

JACOB

The Attorney General of Minnesota misses the point completely. I never said a man on trial for a serious crime should not be provided with counsel. But I think the states should do it by themselves, not have it imposed on them by constitutional construction. I want you to take a letter to him right away.

ANN

What about his brief?

JACOB

It can wait.

With a sigh, Ann pushes her chair away from the typewriter and takes out her dictation pad. Bruce tosses the letter on his desk, as he tries to collect his thoughts.

JACOB

To the Honorable Walter F. Mondale, Esquire . . .

85 EXT. GOLF LINKS - DAY

A quartet of GOLFERS, their carts pasted over with

(CONTINUED)

85 (CONTINUED)

"McCORMACK FOR SENATOR" posters (Edward J. McCormack, Jr., Att. Gen. of Massachusetts). McCormack's ASSISTANT, eager to talk with him, is not playing. McCORMACK, the last to tee off, measures the ball carefully, swings in unorthodox fashion, slices the ball into the rough.

McCORMACK

Damn.

ASSISTANT

(not sincere)

Bad luck, sir.

They get into their carts. The Assistant climbs into the cart with McCormack, starts talking immediately.

ASSISTANT

Of course, we could simply ignore Florida's invitation to join them, but I think it incumbent upon the State of Massachusetts to do more. I'd like to oblige by writing an amicus brief, but for Gideon's side.

McCORMACK

Time is short.

ASSISTANT

I agree that time is short, but I've already spoken to Harvard Law School. Their Civil Liberties Research Service has volunteered to dig up all the material I need.

They reach the golf ball, which lies among heavy weeds. McCormack surveys it, worried.

McCORMACK

(more to be rid of his
assistant than anything else)

All right. If that's the way you want to handle it.

ASSISTANT

Thank you, sir.
(starts to go)

McCORMACK

(to caddie)

Hand me that six iron.

(CONTINUED)

85 (CONTINUED)

ASSISTANT

I'd use an eight if I were you, sir.

McCormack shoots him a look. The Assistant exits hurriedly.

86 EXT. CHURCH - DAY

Bruce and Ann emerge, newly married. A few FRIENDS and RELATIVES throw rice, congratulate, kiss, etc. Bruce and Ann enter car and drive off. A string of tin cans is tied to the bumper.

87 EXT. CAR - NIGHT

Bruce and Ann on their way.

88 INT. CAR (PROCESS)

JACOB

After this Gideon thing is over, we're going on a real honeymoon.

ANN

After this Gideon thing is over, you're going back to your practice and make up for lost time.

JACOB

Now it comes out! You only married me because you wanted a rich lawyer.

ANN

Uh-huh. And don't you forget it!

JACOB

You think I did the right thing?

ANN

By marrying me?

JACOB

No, by going on with the Gideon case after leaving the Attorney General's office.

ANN

Of course, you did. How could they win without you?

(CONTINUED)

88 (CONTINUED)

JACOB

(takes key from pocket)
They gave me the key to the library
of the Florida Supreme Court; that's
where I'll have to do my research. It
means driving to Tallahassee every
weekend -- over two-hundred and fifty
miles.

ANN

(after a moment)
Every weekend? Well, can I come too?

JACOB

You want to?

ANN

"For better or for worse" the man said
--

She smiles, snuggles up to him.

89 INT. FLORIDA ATTORNEY GENERAL'S OFFICE - DAY

The Attorney General, his first staff member, and Bruce.
Tension as Attorney General refers to letter in his hand.

ATTORNEY GENERAL

Now Tom Eagleton of Missouri says he
intends to go along with Massachusetts
-- file an amicus for the Gideon side.

STAFF MEMBER 1

So will others, I'm afraid.

ATTORNEY GENERAL

You're no longer a member of this office,
Bruce. If you choose to withdraw from
the case . . .

BRUCE

No chance. I'm more determined to go
through with it than ever.

ATTORNEY GENERAL

I went along with the idea of inviting
the other states to submit briefs on our
behalf. I think we might have made a
mistake.

(CONTINUED)

89 (CONTINUED)

JACOB

I think we did the right thing. The issue revolves about Federal control of state courts.

90 EXT. SUPREME COURT BUILDING - DAY

To establish.

91 INT. SUPREME COURT COURTROOM - DAY

SHOOTING UP at Marshal.

MARSHAL

(pounds gavel, announces)
The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States!

92 ANGLE ON RED CURTAINS BEHIND BENCH

as the nine Justices appear through openings in the curtains and approach their chairs.

MARSHAL (OS)

Oyez! Oyez! Oyez! All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention for the Court is now sitting. God save the United States and this Honorable Court!

HOST (VO)

On January 14th, 1963, all parties thereto having been duly notified, the Supreme Court of the United States scheduled oral argument in the case of Gideon versus the Director of the Florida Division of Corrections . . .

The Justices settle themselves in their seats during the above speech and Chief Justice Warren picks up papers, prepares to call the next case. CAMERA STARTS PULLING BACK SLOWLY

FADE OUT

END OF ACT TWO

ACT III

FADE IN

93 EXT. MAYFLOWER HOTEL, WASHINGTON, D.C. - DAY
To establish.

HOST (VO)

But the Supreme Court never reached the Gideon case that Monday. In the afternoon, Court was adjourned so that the Justices could attend President Kennedy's "State of the Union" address . . .

94 INT. BRUCE JACOB'S HOTEL ROOM

Jacob, in shirtsleeves, paces the floor as he listens to Kennedy's speech over TV.

KENNEDY'S VOICE

Little more than one hundred weeks ago I assumed the office of President of the United States. In seeking the help of Congress and our countrymen, I pledged no easy answers . . .

Phone rings. Jacob answers.

JACOB

Yes? Mr. Mentz? Good to know you're here. I think we should. Well, I'm in five-eighteen, just a few doors down. Right now would be fine. Right. 'Bye.

He hangs up, tidies the room. There is a solid knock on the door. Jacob opens it to admit GEORGE MENTZ of Alabama, gray-haired with a charming Southern manner. They shake hands.

MENTZ

Say, you look like you tied one on last night.

JACOB

It's my stomach. The flight up here yesterday was pretty rough. Still haven't settled down.

(CONTINUED)

94 (CONTINUED)

MENTZ

Nervous?

JACOB

Petrified.

MENTZ

I remember the first time I argued
a case before the Supreme Court.

JACOB

You already know how I feel about your
brief. I'm damn grateful to have you
in my corner.

MENTZ

On behalf of the sovereign state of
Alabama, it's a privilege to be here.
Damn shame there aren't more of us.

Both men laugh. Mentz indicates the TV screen.

MENTZ

There they are. As one Chief Justice
described them, "Nine black beetles in
the temple of Karnak."

95 ON-TV SCREEN

Film clip of the Supreme Court Justices in the first
row of the Congress, listening to Kennedy's speech.
Jacob's hand IN SHOT as he turns up sound.

KENNEDY'S VOICE

. . . Third, we need to strengthen
our nation by protecting the basic
rights of its citizens . . .

96 BACK TO SCENE

Jacob shrugs at Kennedy's remark.

JACOB

The political climate isn't exactly
favorable . . .

MENTZ

Hopefully, those nine gentlemen are
above politics.

They turn their attention to the TV set.

97 TV - CLOSEUP OF KENNEDY

as he continues making the point about the right to counsel in Federal courts. CAMERA PULLS BACK TO REVEAL a posh Georgetown club. Abe Fortas and a FEW OTHER MEMBERS lounge in deep leather armchairs, watching the President. Fortas sips a long cool drink topped by a sprig of mint.

KENNEDY'S VOICE

. . . The right to competent counsel must be assured to every man accused of crime in Federal court, regardless of his means . . .

98 FAVORING FORTAS

very relaxed.

CLUB MEMBER

Tomorrow, you'll be arguing that same point for the state courts, Abe.

FORTAS

(smiles, easily)
I can hardly wait.

He takes another sip of his drink.

99 INT. GIDEON'S CELL - DAY

In BG we hear the President's speech on radio. Gideon sits on his cot, head bowed, depressed.

KENNEDY'S VOICE

. . . we seek not the worldwide victory of one nation or system but a worldwide victory of man. The modern globe is too small, its weapons are too destructive, and its disorders are too contagious to permit any other kind of victory . . .

WIDEN TO INCLUDE Dave and Willis in the next cell. The speech is issuing from Dave's ever-present radio.

DAVE

(calls over)
Don't you care about the President's speech, Clarence?

(CONTINUED)

99 (CONTINUED)

GIDEON

All I care is he's got nine judges
from the Supreme Court hearin' him
when they should be hearin' my case.

WILLIS

One more day -- it don't hardly make
no difference.

GIDEON

One more day! I been in prison over
a year and a half. And there's no
tellin' how long it'll be 'fore I get
out.

DAVE

If you get out, ol' buddy.

WILLIS

(to Dave)
Don't you start poor-mouthin'!

DAVE

Even if he wins, it only means another
trial. An' the state of Florida gonna
come down on his butt with everything
they got. Ain't that right, Clarence?

GIDEON

That's right.

Gideon shakes his head hopelessly.

DISSOLVE TO:

100 INT. SUPREME COURT COURTROOM - DAY

Jacob and Mentz seated among SPECTATORS in second row.
PAN OFF to LAWYER speaking on rostrum (only his back
is visible) and back of ANOTHER LAWYER at table next
to him. The Justices are seated, listening to the
argument.

101 CLOSE SHOT - CHIEF JUSTICE WARREN

(CONTINUED)

101 (CONTINUED)

Warren finishes chatting amiably with JUSTICE DOUGLAS on his right, picks up the papers for the next case. The CLERK immediately raps his gavel for order.

WARREN

(announcing)

Number 155, Clarence Earl Gideon,
Petitioner, versus H. G. Cochran,
Junior, Director, Division of Correc-
tions, State of Florida.

102 ANGLE ON CLERK'S DESK AT LEFT OF BENCH

CLERK

(matter-of-factly)
Counsel are present.

103 NEW ANGLE

as Jacob, Mentz, Fortas, Junior Partner, and OTHER MEM-
BERS of Fortas's staff approach the two long attorneys's
tables. The small rostrum from which the advocates speak
is between these tables. Bruce and Mentz are closer,
walk faster, are settled before the others.

104 AT TABLE -- JACOB AND MENTZ

Jacob stares in surprise at something on table.

105 WHAT HE SEES

Two neatly crossed goose-quill pens before his chair and
Mentz's.

106 BACK TO SCENE

JACOB

(whispering)

Quill pens? What century is this?

MENTZ

They make nice souvenirs. Why don't
you take them?

JACOB

Is it allowed?

(CONTINUED)

106 (CONTINUED)

MENTZ

I absconded with half a dozen on
my last trip and they haven't caught
up with me yet.

BRUCE

(smiles, puts quills in his
inside jacket pocket)
Well, maybe Ann can wear them on a
hat.

Jacob looks nervously over at the opposing counsel table,
where Fortas and staff have not yet settled, then over at
the Justices.

107 FROM JACOB'S POV

The Justices chat casually, laughing and joking.

108 BACK TO JACOB AND MENTZ

Jacob reacts, astonished.

JACOB

(sotto voce)
I never expected it to be so informal.
They act as though they're having a
good time.

MENTZ

Oh, they are, they are! Let's hope
we have half as good a time.

There is a sharp rap of the gavel. Silence falls.

109 FULL SHOT

The Justices are all business now, as are opposing
counsel. It is a tense moment. Fortas walks to Rostrum.

WARREN

Mr. Fortas.

FORTAS

Mr. Chief Justice, may it please
the Court . . .
(a beat)

110 ON FORTAS AT ROSTRUM

Gesturing with horn-rimmed glasses in hand, using no notes, he continues his opening remarks.

FORTAS

This case represents a narrow question, the right to counsel unencumbered by extraneous issues. The charge was a felony, not any lesser offense. The Petitioner's indigence was conceded. He had unquestionably made a timely request for counsel, the demand was for a lawyer at his trial, not at any earlier, hence any more doubtful, point in the proceeding . . .

111 ON JACOB AND MENTZ

They listen attentively, impressed by Fortas's delivery.

112 WIDER ANGLE

TO INCLUDE Fortas and the Justices.

FORTAS

(continuing)

This record does not indicate that Clarence Earl Gideon was a person of low intelligence or that the Judge was unfair to him. But to me this case shows the basic difficulty with Betts versus Brady. It shows that no man, however intelligent, can conduct his own case adequately.

JUSTICE HARLAN

(interrupting)

That's not the point, is it, Mr. Fortas? "Betts" didn't go on the assumption that a man can do as well without an attorney as he can with one, did it? Everyone knows that isn't so.

FORTAS

(smoothly)

I entirely agree, Mr. Justice Harlan, with the point you are making: namely, that of course a man cannot have a fair trial without a lawyer, but Betts held that this

(MORE)

112 (CONTINUED)

FORTAS (CONT'D)

consideration was outweighed by the demands of Federalism . . . states rights . . . I think there is a tendency to forget what happens to these poor, miserable, indigent people in these strange and awesome circumstances. Sometimes in this Court there is a tendency to forget what happens downstairs. I was reminded the other night, as I was pondering this case, of Clarence Darrow when he was prosecuted for trying to fix a jury. The first thing he realized was that he needed a lawyer -- he, one of the country's great criminal lawyers.

(a pause for effect)

113 ON JACOB AND MENTZ

JACOB

(whispers)

He didn't answer the question. Who decides, the Federal government or the states?

MENTZ

He's coming to it.

114 FORTAS

FORTAS

Mr. Justice Harlan, I believe in Federalism . . . But I believe that Betts against Brady does not incorporate a proper regard for Federalism. It requires a case-by-case supervision by this Court of state criminal proceedings, and that cannot be wholesome. Intervention should be in the least abrasive, the least corrosive way possible.

JUSTICE HARLAN

The states are recognizing that.

PULL BACK FOR WIDER ANGLE as Fortas continues. PAN TO Jacob and Mentz. Mentz nods, gives Jacob an "I told you so" look.

115 FAVORING FORTAS

FORTAS

(nods)

As confirmed by the amicus curiae brief of twenty-three states who have joined with us in urging that Betts be overruled. I am proud of this document as an American. 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.

116 PAN OFF TO wall clock. Its hands indicate ten past eleven. SUPERIMPOSE new time: five minutes to twelve.

117 ON COURT'S MARSHAL AT RIGHT OF BENCH

He throws a switch for the white light on lectern.

118 WHITE LIGHT ON LECTERN GOES ON

119 BACK TO SCENE

JUSTICE STEWART

Mr. Fortas, are you arguing the old proposition that the Fourteenth Amendment's "equal protection" provision incorporated the Sixth's "right to counsel" as such?

Justice Black leans forward intently. Fortas hesitates before replying.

120 ON JACOB AND MENTZ

Mentz leans over to whisper to him.

MENTZ

That's Justice Black's favorite point of view. Let's see Fortas wriggle out of this one.

121 FORTAS

decides to take the plunge, answers firmly:

(CONTINUED)

121 (CONTINUED)

FORTAS
No, sir, I am not.

122 ON JUSTICE BLACK

He looks chagrined.

JUSTICE BLACK
May I ask, Mr. Fortas, why you are
laying aside that argument?

123 FAVORING FORTAS

FORTAS
Mr. Justice Black, I like that argu-
ment you have made so eloquently. But
I cannot as an advocate make that argu-
ment because this Court has rejected it
so many times. I hope you never cease
making it.

Laughter from the Justices, in which Black joins.

JUSTICE BRENNAN
You are saying that the right to
counsel is assured by the Fourteenth
Amendment whether by absorption, in-
corporation or whatever.

FORTAS
Mr. Justice, you seem to know me well.

124 ON LECTERN

Red light goes on.

125 FULL SHOT - COURTROOM

The Justices arise, make their way out, chatting and
joking.

126 ON JACOB AND MENTZ

Jacob looks worried. They rise to go.

127 INT. VISITING ROOM IN PRISON - DAY

PAN OFF prison wall clock which reads eleven-fifty.

(CONTINUED)

127 (CONTINUED)

WIVES and GIRLFRIENDS talking to prisoners through screen divider. CLOSE IN on Gideon and Ruth, his fourth wife. She is in her late 40s, has the stamp of an alcoholic, though she still retains some of her former good looks. There is a long pause as Gideon absorbs the news she has just brought him, then:

RUTH

Charlie's been real nice to me. We have fun together. It's the best thing for both of us, Clarence.

GIDEON

(despondent)

Sure, sure . . . wish ya luck . . .

(a beat)

What about the kids?

RUTH

Well, the thing is . . . Charlie, he don't want the kids . . .

GIDEON

What you gonna do?

RUTH

I found a nice place for 'em.

GIDEON

You're not gonna leave 'em in foster homes?

RUTH

What choice have I got?

A pause.

GIDEON

Well, how 'bout my brother? He'll be back from Japan any day now, gonna retire from the army. He'll adopt the kids . . .

(a beat)

I'll get me some work, help pay the bills . . . soon as I get out.

RUTH

How soon you figger that'll be?

(CONTINUED)

127 (CONTINUED)

GIDEON

Depends.

(with vicarious pride)

They're arguin' my case in the
United States Supreme Court.

RUTH

Charlie done read somethin' about
you and the Supreme Court in the news-
papers. He don't think you got much
chance.

GIDEON

(vaguely)

Depends . . . Don't give the kids
away.

Another pause. Ruth fidgets restlessly.

RUTH

It's all arranged, Clarence. I had
to make the decision.

She rises, starts to shuffle off.

RUTH

Well, guess I better be gettin'
back. Take care of yerself, y'hear?

She leaves. CLOSE IN on Gideon. He stares after her
hopelessly.

128 INT. SUPREME COURT COURTROOM - DAY

PAN OFF to clock. Its hands point to one-fifteen.

129 NEW ANGLE

We see Jacob, who is at the speaker's rostrum.

JACOB

We question unwarranted interference
by the Federal judiciary in states
affairs.

JUSTICE BLACK

Why isn't Betts as much interference
with the states as an absolute rule?

(MORE)

129 (CONTINUED)

JUSTICE BLACK (CONT'D)

One of my reactions to Betts was the uncertainty in which it leaves the states.

JACOB

I don't think Betts is that unclear.

JUSTICE BLACK

But how can you know what the "special circumstances" are?

JACOB

Each time the Court decides a case, we know another special circumstance.

JUSTICE BRENNAN

In recent years -- in four cases I think -- we have reversed cases from your state every time.

JACOB

We still prefer case-by-case adjudication. It may not be precise, but we prefer it that way because it gives the state some freedom in devising its own rules of criminal procedure.

130 CLOSER ANGLE - JACOB

INTERCUT with Justices.

JACOB

Up until the present, the Supreme Court had never laid down any fixed rule on the right to counsel . . .

JUSTICE BRENNAN

What about Powell against Alabama? Doesn't that lay down a rule for capital cases?

JACOB

That was decided on the circumstances.

JUSTICE BLACK

What historical support have you found for the distinction between capital and non-capital cases?

(CONTINUED)

130 (CONTINUED)

JACOB

Your Honor, I can't think of any.

JUSTICE BLACK

I can't either. That's why I asked.

JACOB

There is a practical distinction between capital and non-capital cases if you want to draw the line somewhere. Everyone is fearful of being put to death.

JUSTICE BLACK

Maybe they're fearful of spending years in the penitentiary too.

131 ANOTHER ANGLE

Speed up the tempo and INTERCUTTING.

JACOB

By imposing an inflexible rule, we feel this court would be intruding into an area historically reserved to the states. It would stifle state experimentation. For example, a state might eliminate prosecutors as well as defense counsel and leave the whole trial to the judge.

JUSTICE HARLAN

Don't go too far now.

JUSTICE STEWART

Gideon would not be allowed to represent others in court.

JACOB

If a defendant asked for him, I'm sure the judge wouldn't object.

JUSTICE BLACK

(some irritation)

The local bar association might!

JACOB

I'm sorry, your Honor, that was a stupid answer.

132 CU BRUCE

JACOB

I cannot impress upon you strongly enough the grave consequences that would ensue, in my opinion, were this Court to overrule Betts versus Brady. This new doctrine wouldn't stop here, it would extend to all manner of trivial cases. The cost of providing counsel would be a tremendous burden to the taxpayers. The next thing you know, indigents would be demanding other free services -- psychiatrists, expert witnesses, and so on. In effect, this court would be requiring the states to adopt socialism or a welfare program. Finally, I must emphasize that there are 5,093 convicts now in Florida prisons who were tried without counsel and might now be eligible for release if Betts were overruled. If the Court does reverse, we implore it to find some way not to make it retroactive. We have followed Betts in good faith

. . . .

133 CU WARREN

WARREN

(quietly)

Mr. Jacob, are some of these 5,093 Florida convicts you mention illiterate?

134 FAVORING JACOB

He grasps the poisonous implication of the question, tries to squirm out.

JACOB

Mr. Chief Justice, I have no way of knowing.

WARREN

(insistent)

No, but what do you think? Do you think most of them are literate or illiterate?

(CONTINUED)

134 (CONTINUED)

JACOB
(trapped, honestly)
I don't know, but I am sure some of
them are illiterate.

JUSTICE BLACK
Then their convictions should be
reversed, in any event, under the
"special circumstances" rule.

JACOB
If they're illiterate, yes.

JUSTICE BLACK
Then Betts does not seem to have
worked. Why not substitute an
absolute rule?

JACOB
(stubborn)
We still prefer decisions on a case-
by-case basis.

CLOSE IN on red light signifying his time is up. Jacob
starts to leave rostrum.

135 MENTZ ON ROSTRUM

MEDIUM CLOSE. His manner is easy, urbane.

MENTZ
I candidly admit that it would be
desirable for the states to furnish
counsel in all legal cases. But we
Alabamians agree with the State of
Florida -- we say the states should
have the right to make that decision
themselves.

JUSTICE HARLAN
Supposing Betts is not overruled. How
many years is it going to take Alabama
to pass a law like New York and other
states?

MENTZ
I don't know, but there is a growing
feeling in our trial courts that some-
thing should be done.

(CONTINUED)

135 (CONTINUED)

JUSTICE BLACK

Until something is done, what happens to indigent defendants brought to trial?

MENTZ

The average Alabama defense lawyer is no match for the career prosecutor. In many cases, articulate defendants get their story over to the jury better than if they had counsel.

JUSTICE BLACK

That's not very complimentary to our profession.

MENTZ

(smiling)

No, sir.

JUSTICE DOUGLAS

Maybe if laymen are as effective as you say, we should get the Sixth Amendment repealed.

MENTZ

Mr. Justice, I didn't mean to go so far.

JUSTICE DOUGLAS

I'm sure you didn't.

MENTZ

I meant only that laymen are not at so great a disadvantage --

JUSTICE DOUGLAS

-- as some appellate judges think.

JUSTICE HARLAN

Would you prefer to have a succession of cases coming to this Court, every one of which was reversed by finding "special circumstances?"

MENTZ

We'd rather see them decided case-by-case.

(CONTINUED)

135 (CONTINUED)

JUSTICE HARLAN

Even though you know how all of
them will come out?

MENTZ

Hope springs eternal . . .

Laughter from Justices and spectators. WIDEN for
FULL SHOT.

WHIP PAN TO:

136 CLOSE SHOT - FORTAS ON ROSTRUM

FORTAS

(building to conclusion)

I think Betts and Brady was wrong
when it was decided. I think time
has made that clear. And I think
time has now made it possible for
the correct rule, the civilized rule,
the rule of American constitutionalism,
the rule of due process to be stated
by this Court with limited disturbance
to the states.

137 ON JUSTICES

CLOSE IN on Justice Harlan. His would appear to be
the greatest inner struggle.

JUSTICE HARLAN

What one is left with is getting
one's hands on something that has
happened in the last twenty years
. . .

138 INT. CELL MODULE PRISON - DAY

We hear loudspeaker in BG

LOUDSPEAKER

Module Six prepare for chow. "B"
row watch your gates. Gates coming
open. Step out of cell.

SCENE WIDENS as prisoners step out of cells. We see
Dave holding the radio up to his ear. Suddenly Dave
calls out:

(CONTINUED)

138 (CONTINUED)

DAVE

Clarence, listen!

Dave turns up volume on radio.

NEWSCASTER

The United States Supreme Court has by a vote of nine to nothing reversed the conviction of Clarence Earl Gideon. Florida law authorities have sharply criticized the Supreme Court decision, which overrules its earlier finding in Betts versus Brady. In other rulings announced today . . .

LOUDSPEAKER

"B" row gates closing. "C" row watch your gates. Gates coming open. Step out of your cell.

Gideon, who has heard the radio, steps out of his cell and stands next to Dave. His eyes are glistening as he suppresses an urge to holler "Whoopie!"

DAVE

You've won, baby. You sure did damn done do it!

The men start their march to chow.

HOST (VO)

The operation was a success, but what about the patient? The decision did not free Gideon, only entitled him to a new trial. And so the stage was set for one of the most bizarre moments in any courtroom . . .

FADE OUT

END OF ACT THREE

ACT IV

FADE IN

139 EXT. FLORIDA STATE PRISON - DAY

To establish.

140 INT. CELL BLOCK - DAY

Dave and Willis, wearing the ill-fitting civilian suits awarded them by the state, have come to say goodbye to Gideon, who is still in prison uniform. Dave carries his transistor radio, but for once it is turned off. He is still dazed by the turn of events, shakes his head in wonder.

DAVE

Great day in the mornin' . . .

WILLIS

Ah alus said Clarence would get us turned loose and he did.

GIDEON

I didn't turn you loose. You got your lack of education t'thank for that.

DAVE

Guess my ol' daddy was right. He don tol' me learnin' t'read was a waste of time.

GIDEON

Well, you kin thank your sweet ol' pappy fer makin' you a "special circumstance."

DAVE

Hope that don't mean like what it sounds.

GIDEON

It means you're 'lliterate, so you were entitled to a lawyer even 'fore my case was decided.

(CONTINUED)

140 (CONTINUED)

WILLIS

Ain't we all entitled to lawyers
now anyways?

GIDEON

Sure, only they hate like the dickens
to make all these cases retroactive.

DAVE

What's that mean?

GIDEON

Well, they don't like to go back
and, you know, try 'em on the merits
all over again.

(Dave looks blank. Gideon
give up.)

Whatta you care? You're out, aintcha?

WILLIS

If them high and mighty judges give
you right, Clarence, how come you're
still in jail? Don't they count for
nothin'?

GIDEON

Oh, they count! Anybody else, he'd
be outta here quicker'n a greased pig.
They puttin' me in double jepperdy is
what . . .

(picks up papers he's been
working on)

I'm filin' a motion right here t'prove
it. I'm filin' a another one fer a
change of venoo.

WILLIS

You got lawyers kin do all that fer
you now.

GIDEON

I know more'n all them Civil Liberties
fellas put together. Where were they
year'n a half ago, when I filed for a
writ of certiorari?

(he still pronounces it cert-
ee-o-rari)

(CONTINUED)

140 (CONTINUED)

WILLIS

Y'all figger you'll be gettin' out soon?

GIDEON

Depends. Florida Court's gonna try to convict me again.

(with perverse pride)

I'm what you call a symbol.

DAVE

Well, ah sure do wish you luck, in your trial, Clarence.

WILLIS

You just go in and give 'em what-fer!

Gideon nods. Dave, after undergoing an inner struggle, holds out his transistor radio to Gideon.

DAVE

Clarence . . . go on, you have it.

GIDEON

(touched)

What you gonna do without no radio?

DAVE

Ah kin pick me up another on the outside

. . .

(grins)

. . . same as I picked up this one.

Gideon nods, accepts. Then, ashamed to show he is moved, sits down, pretends to busy himself with his papers.

141 EXT. PANAMA CITY COURTHOUSE - DAY

To establish.

142 INT. JUDGE'S CHAMBERS

Present are Assistant State Attorney Harris, Judge McCrary, TOBIAS SIMON, and IRWIN J. BLOCK. The latter two are lawyers appointed by the ACLU to defend Gideon at the request of Abe Fortas. Gideon enters. He wears the same clothes he wore in his first trial.

(CONTINUED)

142 (CONTINUED)

SIMON

Good morning, Clarence.

JUDGE McCRARY

Mr. Gideon, the time is set for your new trial. I've requested your presence so we can go over some preliminary legal technicalities. Mr. Simon here, from the American Civil Liberties Union, who will be your defense counsel, has already signed some of the necessary papers.

GIDEON

What papers? He hasn't got my authority to sign any papers. I'll sign my own papers.

SIMON

These are merely technicalities, Clarence.

GIDEON

I don't want you to represent me.

JUDGE McCRARY

You've already consented to his representation.

GIDEON

No! No!

JUDGE McCRARY

Then who do you want?

GIDEON

I want to file for a change of venue. I'll never get a fair trial in this court. Everything's the same as it was two years ago. I'm not ready for trial now.

SIMON

Judge, I have here a letter signed by Mr. Gideon in which he clearly asks me to represent him. We have discussed the case privately. Now --

(CONTINUED)

142 (CONTINUED)

GIDEON

I don't want them to make a plea.
I'll make my own plea.

JUDGE McCRARY

Mr. Gideon, do I understand correctly:
you do not wish Mr. Simon and Mr. Block
to represent you?

GIDEON

I do not! I do not want them!

JUDGE McCRARY

All right. But let me make it clear
that under no circumstances will you
try your own case again. Mr. Simon,
Mr. Block, it seems your presence here
is no longer necessary. You're excused.

SIMON

I don't understand any of this, Judge.

Simon and Block gather their papers and briefcases, exit.

JUDGE McCRARY

Mr. Gideon, do you have the money to
hire a lawyer of your choice?

GIDEON

I didn't have enough money to make
\$1,000 bail since the United States
Supreme Court ruled in my favor four
months ago. I still don't have any
money. Judge -- the Supreme Court of
the State of Florida should release
me forthwith because this new trial
constitutes double jeopardy. If I'm
just going back to prison anyway, I'll
do it my own way. I'll file my own
motions and everything else.

JUDGE McCRARY

Do you know of a local lawyer you would
like to represent you?

GIDEON

(pause)

Yes, sir. Mr. W. Fred Turner.

143 INT. PRISON - DAY

W. FRED TURNER is led down corridor to recreation room. He enters as the guard points to Gideon who is sitting at a table, waiting. Turner is thin and sharp, early 40s.

TURNER

Mr. Gideon?

GIDEON

Yes, sir. Mr. Turner?

TURNER

In person.

(he sits)

You've become quite a celebrity. I read the Supreme Court's decision in your case, but I never thought I'd be defending you. Why'd you want me?

GIDEON

You've defended some of my friends. I like you.

TURNER

There are a lot of legal problems in your case.

GIDEON

That's why I needed a lawyer the first time.

TURNER

Now listen to me, Clarence. We've only got a little over two weeks to prepare this trial. I'm willing to defend you but you must trust me. I'll give you the best damn defense you've ever seen. You just do what I tell you and keep your mouth shut. Is that all right with you?

GIDEON

Fred, that's just what I hoped you'd say.

The two men smile at each other and shake hands.

144 INT. COURTROOM, PANAMA CITY, FLA. - DAY

There is a SIX-MAN, ALL-WHITE JURY. It is a hot August 5th, 1963. There are lots of SPECTATORS and NEWSMEN. An

(CONTINUED)

144 (CONTINUED)

air of excitement fills the atmosphere. Present are Judge McCrary, Assistant State Attorney Harris, the State Attorney (Harris's boss) and an ASSISTANT. Gideon and Turner sit alone at the defense table.

145 HENRY COOK ON THE STAND

TURNER

Now, Henry, you claim these two friends of yours drove you back from the dance at Apalachicola and dropped you in front of the Bay Harbor poolroom at five-thirty A.M. Is that correct?

COOK

That's right.

WIDEN TO SHOW Turner questioning Cook, Judge McCrary in BG.

TURNER

Now, where do you live in relation to the Bay Harbor poolroom?

COOK

I live right near Cherry Street, two blocks down.

TURNER

Then why did the boys put you off the car two blocks from your house?

COOK

I didn't want to go home because I was afraid my parents would get on me about coming in drinking.

TURNER

Oh, you had been drinking, eh?

COOK

Yes, sir.

TURNER

About how much had you had to drink?

COOK

Well, a beer or two, I guess.

(CONTINUED)

145 (CONTINUED)

TURNER

Hadn't you been drinking all night
with those boys?

COOK

No, not all night.

146 FAVORING TURNER

He leans familiarly toward Cook. In contrast to Gideon's attitude at the former trial, Turner seems very friendly, almost fatherly.

TURNER

Now, Henry, when was the last time you had a drink of beer before you got off the car there at that corner?

COOK

Well, it was some time before, the stores had already closed down at "Appalach" before we got there.

TURNER

Did you and your friends go into the Bay Harbor bar?

COOK

No.

TURNER

Did you all get a six-pack of beer out of there, and some wine?

COOK

No.

TURNER

You testified that you saw Mr. Gideon come out the poolhall through the back door?

COOK

Yes, sir.

TURNER

How close were you to the back of the building when you saw him?

(CONTINUED)

146 (CONTINUED)

COOK

The length of the building. 'Bout
forty or fifty feet.

TURNER

And the door opens on the back of the
building and not on the side?

COOK

Yes.

TURNER

And you were standing in front of the
building and off to the side?

COOK

Right.

TURNER

Then will you tell the jury, if you were
standing in front of the building and to
the side and if the door opens in the
back of the building, how did you see him
go out the door?

COOK

Well, I looked through the window and I
could see the door was open, and when I
walked to the side he was coming around
the corner.

TURNER

Then from where you were standing you
could not see the door you are referring
to?

COOK

No -- not from the side I couldn't see
the actual door.

TURNER

Then, did you see Mr. Gideon coming down
the alley from the back of the bar?

COOK

I saw him when he walked by.

(CONTINUED)

146 (CONTINUED)

TURNER

Did you see Gideon with six cans of beer in his hands.

COOK

No.

TURNER

Did you see him with six cans of beer in his pockets?

COOK

No.

TURNER

Did his pockets bulge and look like they had cans of beer in them?

COOK

He had something, I didn't know what. They just bulged out.

147 ANOTHER ANGLE

TURNER

Have you ever been convicted of a felony?

COOK

I stoled a car one time and got put on probation for it.

TURNER

That's what I'm talking about. The last time you testified in this case you denied that, didn't you?

HARRIS

If the Court please, this is not proper cross-examination and the State objects.

JUDGE McCRARY

Rephrase the question, Mr. Turner.

TURNER

Mr. Cook, have you ever denied, under oath, that you had been convicted of a felony?

(CONTINUED)

147 (CONTINUED)

COOK

Yes, I did.

TURNER

Where and when did you deny your criminal record, Mr. Cook?

COOK

Right here, the last time he was tried. Two years ago.

148 ANOTHER ANGLE

TURNER

Now, you testified that, looking through the front window of the poolhall, you saw Mr. Gideon inside and that the back door was open. You saw that through a darkened building forty to fifty feet long?

COOK

That's right?

TURNER

Was there not a partition in there at that time?

COOK

I don't believe so.

TURNER

You don't believe? Aren't you sure?

COOK

I don't think there was.

TURNER

What do you mean you "don't think"? Aren't you sure?

COOK

I don't think there was.

Turner flashes a significant look at the jury, turns to Harris.

TURNER

Your witness.

149 ANGLE ON TURNER AND GIDEON

at defense table. Gideon leans forward to whisper:

GIDEON

There wasn't no partition there at that time.

TURNER

Well, he's not sure -- and neither is the jury.

150 IRA STRICKLAND ON STAND

The proprietor of the Bay Harbor Poolroom, well-dressed, a business man.

TURNER

Now, Mr. Strickland, exactly how much money was there in that cigarette machine?

STRICKLAND

Some. I'm not sure how much.

Turner takes his wallet out of his pocket, holds it up in front of the witness.

TURNER

Mr. Strickland, can you tell me the number of my driver's license here in my wallet?

HARRIS

(jumps to his feet)
This is ridiculous! The State objects.

TURNER

(innocently)
What is he objecting to?

HARRIS

The question is wholly unrelated to this trial. It has nothing to do with it.

TURNER

I'll connect it if you give me an opportunity. I was cut down before I got started.

(CONTINUED)

150 (CONTINUED)

JUDGE McCRARY

Go ahead. We'll see if you're going to connect it to anything.

TURNER

Now, Mr. Strickland, looking from the outside, there's no way in the world you could know if there was any money in that cigarette machine, isn't that a fact?

HARRIS

If the Court please, I object. He's just trying to put words into the witness's mouth.

TURNER

Well, if this ain't cross-examination, there ain't a cow in Texas!

JUDGE McCRARY

He's talking about leading the witness, that's what he's objecting to.

TURNER

I can lead him, your Honor. On cross-examination I can lead him all over the lot.

HARRIS

But you can't put words into his mouth.

TURNER

I sure can. Does the Court want to hear some law on that?

JUDGE McCRARY

That won't be necessary, Mr. Turner. Proceed with your examination.

TURNER

(a triumphant smile)
Thank you, sir.

151 BRAY ON STAND, HARRIS QUESTIONING

HARRIS

Mr. Bray, on the morning of June 3rd,

(MORE)

151 (CONTINUED)

HARRIS (CONT.)

1961, when Clarence Earl Gideon called you to go to Bay Harbor and pick him up in your taxi and bring him to Panama City, did he make any statement to you?

BRAY

Yes, sir, he did.

HARRIS

What did he say to you?

BRAY

He said, "If anyone asks you where you left me off, you don't know, you haven't seen me."

HARRIS

"If anyone asks you where you left me off, you don't know, you haven't seen me"?

BRAY

That's right. That's what he said.

HARRIS

You may inquire, Mr. Turner.

Turner approaches stand.

TURNER

Mr. Bray, had you ridden Mr. Gideon to Panama City on numerous times before that morning?

BRAY

Oh, yes, sir, I had carried him to town many times.

TURNER

Had he ever made that same statement to you at other times when you let him out of your cab?

BRAY

Yes, sir.

TURNER

He had told you that same thing before?

(CONTINUED)

151 (CONTINUED)

BRAY

Yes, he had. Many times.

TURNER

Do you know why?

BRAY

I don't know exactly, but I figured it was on account of his wife -- they had lots of trouble, and they were separated at the time.

TURNER

That's all.

152 INT. CORRIDOR OUTSIDE COURTROOM - DAY

People milling about during a recess in the proceedings. Harris says something to STAFF MEMBER 1, makes his way back to the courtroom. A REPORTER approaches the staff member.

REPORTER

Mr. Washburn, as a member of the Attorney General's office, how would you assess your chances of a conviction?

STAFF MEMBER 1

Well, it's always difficult to retry a case after a lapse of two years. Witnesses aren't so positive, some can't be found . . .

REPORTER

Then you think Gideon will be acquitted?

STAFF MEMBER 1

Not at all. We expect the most damaging evidence against him will be produced after this recess.

REPORTER

What kind of evidence?

STAFF MEMBER 1

The best kind in cases of theft -- stolen property in the possession of the defendant.

(CONTINUED)

CONTINUED

1 OF 3

152 (CONTINUED)

REPORTER

(puzzled)

After two years? You mean he still
has . . . ?

STAFF MEMBER 1

No, sir. But we have the testimony
of the arresting officer at the time

A warning ring. The staff member heads for the court-
room

REPORTER

One more question: Do you expect
Gideon to take the stand?

STAFF MEMBER 1

He'd better. He has a lot of ex-
plaining to do.

153 INT. COURTROOM - DAY

Gideon on stand, Harris questioning.

HARRIS

Mr. Gideon, how much money did you
have on you when you were arrested?

GIDEON

The man said I had twenty-five
dollars.

HARRIS

Was all the money you had on you
in coins?

GIDEON

That's what the officer said.

HARRIS

Well, is it true?

GIDEON

I suppose it's true.

HARRIS

Why did you carry so much money in
coins?

(CONTINUED)

153 (CONTINUED)

GIDEON

I've had as high as a hundred-dollars' worth.

HARRIS

Change?

GIDEON

Yes, sir, change.

HARRIS

Carry it around in your pocket?

GIDEON

Have you ever run a poker game?

JUDGE McCRARY

Don't argue with Counsel, Mr. Gideon, just answer his questions.

HARRIS

And you walk around with a hundred dollars in change in your pockets?

GIDEON

I've had a hundred dollars in change in my pocket, yes.

HARRIS

And carry it around for a couple of days at a time?

GIDEON

Yes, sir. I sure wouldn't leave it in a sleeping room in the Bay Harbor Hotel.

154 CU - TURNER

standing before the Bench, summarizes.

TURNER

. . . Now, the only evidence the State has, and this is responsible, good testimony given by the arresting officer, the man who apprehended the Defendant, testified that when he arrested him, he had on his person twenty-five dollars and twenty-eight cents, just quarters, nickels,

(MORE)

154 (CONTINUED)

TURNER (CONT.)

dimes, and a few pennies. I am conversant with the rule that a person found in possession of recently stolen goods can be convicted of a theft. But the goods have to be identified and there are no serial numbers on coins, so how can it be said that these coins found on the Defendant point unerringly to the guilt of his taking money out of those machines? At this stage of the game, the circumstances do not prove conclusively how much money, if any money, was in those machines, nor does it prove beyond a reasonable doubt that this Defendant and no other person broke into the Bay Harbor pool hall. The State has failed to make out its charge, and I am respectfully urging the Court to direct a verdict of "Not Guilty" in favor of the Defendant.

JUDGE McCRARY

The motion will be denied.

CUT TO:

155 FULL SHOT - COURTROOM

The jury members are filing in, take their places. Every one else is already present.

156 CLOSER ANGLE

FEATURING FOREMAN of the jury, who is standing.

JUDGE McCRARY

Members of the jury, have you reached a verdict?

FOREMAN

We have, your Honor.

JUDGE McCRARY

Read your verdict, please.

FOREMAN

We, the jury, find the Defendant, Clarence Earl Gideon, not guilty.

(CONTINUED)

156 (CONTINUED)

JUDGE McCRARY
(impassive)
So say you all?

FOREMAN
So say we all.

Judge McCrary raps once with his gavel.

157 CU - GIDEON

The slow realization that he is free at last, the end of a long trail, the culmination of his own untiring efforts.

158 INT. CORRIDOR OUTSIDE COURTROOM - DAY

CU Gideon, microphones thrust into his face, besieged by reporters. WIDEN as scene continues. Turner, smiling, is at Gideon's side. A photographer's flash bulb pops.

REPORTER
Mr. Gideon, at the beginning of this trial, were you really anxious to plead your own case?

GIDEON
No, sir. Not a chance.

REPORTER
But you turned down those lawyers from Miami . . .

GIDEON
(nods)
. . . and the Public Defender, too. I didn't want anybody connected with welfare, and I didn't want the ACLU mixed in. This is still the Bible Belt. Folks 'round here don't take kindly to outsiders.

WOMAN REPORTER
What are you going to do now?

GIDEON
Well, I'm real anxious to see my kids.
(tears come to his eyes)

(MORE)

158 (CONTINUED)

GIDEON (CONT.)

They're up in Hannibal. They've got a good home there, a real good home.

(recovering his self-possession)

But first I'm gonna pay me a visit to the Bay Harbor Poolroom. Anybody here lend me ten bucks?

Turner shakes his head, hands him a ten-dollar bill.

GIDEON

Thanks. You kin add it to my bill.

Laughter from reporters and others. Turner joins in.

REPORTER

Mr. Gideon, as a result of your case and the Supreme Court decision, many people now serving time will be freed. How do you feel about that?

GIDEON

Well, they were entitled to counsel.

REPORTER

When you started this whole thing, did you have any idea it would turn out to be so successful?

GIDEON

No, sir. No idea at all.

REPORTER

What made you do it?

GIDEON

(hesitates)

Well . . . someone had to.

One of Gideon's old pals presses forward to shake his hand. Another slaps him on the back. Like the conquering Gideon in the Bible, he is now surrounded by friends and well-wishers. Lips compressed in a tight smile, he pushes through the crowd. CLOSE IN ON Gideon.

FREEZE FRAME

(CONTINUED)

158 (CONTINUED)

HOST (VO)

"Someone had to..." And yet no one
"had to." As Attorney General Robert
F. Kennedy put it:

"If an obscure Florida convict named
Clarence Earl Gideon had not sat down
in his prison cell . . . to write a
letter to the Supreme Court . . . the
vast machinery of American law would
have gone on functioning undisturbed.
But Gideon did write that letter, the
Court did look into his case . . .
and the whole course of American legal
history has been changed."

FADE OUT

THE END

B. Series Estimated Production Costs (13 Episodes)

The following estimated production costs for The Sword and the Scales are based on the 90-minute commercial television film format for "Fire Out of the Rock: The Case of Clarence Earl Gideon."

"Above-the-line" costs (scripts, producers, directors, cast, and so forth) may vary up or down, depending upon particular stars, directors, and other related factors, but the estimate presented below reflects a realistic median.

"Below-the-line" production costs are based on terms and conditions specified by the National Association of Broadcast Employees and Technicians (NABET). Detailed analyses of these estimated costs are on file in the office of The Nelson Company.

For "Fire Out of the Rock," a four-week shooting schedule is contemplated, with film locations in Washington, D.C., Florida, and Hollywood.

Total estimated costs for the 13 episodes of The Sword and the Scales may be obtained by multiplying the totals given below by 13.

Picture Budget Detail

<u>Acct. No.</u>	<u>Description</u>	<u>Totals</u>
1	Story	
2	Continuity and treatment	
3	Producer	
4	Director	
5	Cast	
6	Bits	
7	Extra	
	Subtotal	\$150,000
8	Production staff salaries	34,021
9	Production operating staff	63,654
10	Set designing	

Final Report, Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

III-92

<u>Acct. No.</u>	<u>Description</u>	<u>Totals</u>
11	Set operation expenses	\$ 36,690
12	Cutting - film - laboratory	88,204
13	Music	10,000
14	Sound	2,040
15	Transportation - studio	4,700
16	Location	46,920
17	Studio rental	16,800
18	Tests and retakes	3,600
19	Publicity	7,400
20	Miscellaneous	1,800
21	Insurance - taxes - licenses and fees	11,000
22	General overhead	17,750
	Subtotal	<u>\$344,579</u>
	Grand Total	\$494,579

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

IV

TWO DETAILED EPISODE OUTLINES

- A. Detailed Episode Outline of "Fire Out of the Rock: The Case of Clarence Earl Gideon."

The Sword and the Scales

"Fire Out of the Rock:
The Case of Clarence Earl Gideon"

Summary

Clarence Earl Gideon, a 51-year-old white prisoner in the Florida State Prison, in and out of jails and prisons much of his life, four times in for felonies, was a known gambler and petty crook. In 1962, on January 8, the United States Supreme Court received from him a handwritten communication. He petitioned for a writ of certiorari directed to the Florida Supreme Court to bring his case before the country's highest court. Gideon asserted he was serving a five-year term for breaking and entering a poolroom in Panama City, Florida, with intent to commit a misdemeanor but that his conviction violated the due process clause of the 14th Amendment because the Florida court refused to provide him with counsel.

The Supreme Court twenty years earlier had rejected the contention that the due process clause of the 14th provided a flat guarantee of counsel in state criminal cases; by subsequent cases a poor person had to show he or she was the victim of special circumstances: illiteracy, mental illness, or the special complications of the case. Gideon claimed no "special circumstances."

The Court granted Gideon's writ and named Abe Fortas, 52, a distinguished Washington corporation lawyer, as his counsel. At issue was Betts v. Brady. Florida's case opposing was put into the hands of 26-year-old Bruce Robert Jacob, an assistant attorney general who had never seen the inside of the Supreme Court much less practiced before it. Twenty-three states filed amicus curiae ("friend of the court") briefs in support of Gideon as did the American Civil Liberties Union. Only Alabama and North Carolina of the states responding sided with Florida. Jacob, who had solicited the responses

in the first place, was surprised if not shocked by this "pro-Gideon" majority.

Fortas before the Court argued that "no man, however intelligent, can conduct his own defense adequately," a fact admitted by famed Clarence Darrow, "and that one cannot have a fair trial without counsel." Since Betts v. Brady required case-by-case supervision by the Supreme Court of state criminal proceedings, Fortas contended the rule in that case was administratively unworkable. In short, the right to counsel in state criminal actions was assured by the 14th Amendment. Jacob conceded it would be desirable for the states to furnish counsel in all criminal cases, but that the states had the right to make that decision.

The Supreme Court unanimously overruled Betts v. Brady. Gideon's case was remanded to the Supreme Court of Florida, and Gideon was granted a new trial. At that trial, largely as a result of the skillful defense of his new court-appointed lawyer, W. Fred Turner, in whom Gideon had confidence, Gideon was acquitted, free at last -- an obscure Florida ex-con who had written a letter to the Supreme Court of the United States and changed the whole course of American legal history.

Step Outline

ACT I

1. Fading in on a figure of Justice, the camera shows the exterior of the Supreme Court Building, then moves inside, into the Courtroom, pointing up the nine empty seats of the Bench, the marble pillars, the red curtains behind them. Off-screen there is the sharp rap of a gavel and then the voice of the Marshal of the Supreme Court announcing the arrival of the Justices, who appear through openings in the red curtains. On camera, the Marshal announces the opening of the session, rapping his gavel sharply once more.

Camera shows the spiral staircase, effects impression of ascending it. The Court's reading room is shown from a long view, then camera dollies slowly down its length toward the Host (who acts as Narrator). Host introduces himself, explains setting, briefly reviews the historical background of law, referring to carved busts of famous lawgivers -- Solon, Justinian, etc., then into the story of Clarence Earl Gideon, about his Biblical predecessor who pleading for a sign of God's recognition saw an angel of the Lord touch his offering after which "there rose up fire out of the rock . . . "

2. Florida Prison Compound from the inside. In a cell block Clarence Earl Gideon sits hunched over a wooden crate used as a desk laboriously printing with a pencil a letter to the Supreme Court. Two adjacent cell mates, Willis and Dave, pay little attention to him until Gideon asks Dave to turn down his ever-present transistor radio. They banter and Gideon reveals he is writing to the Supreme Court of the United States. Gideon tells them what he's doing and why: petitioning for a writ of certiorari (he pronounces it "certi-o-rari") from the Supreme Court so his conviction without benefit of counsel, which he believes is a violation of his constitutional rights, by Florida's Supreme Court can be reviewed. Host's voice over scene narrates further, leading to . . .

3. A series of still photos that detail phases of Gideon's life from childhood to the present. Gideon's voice over the photos guides us.

4. Camera shows exterior of Bay Harbor Poolroom, Panama City, Florida. Host explains that Gideon, who has been ill with tuberculosis and cannot work normally, has drifted there, thinking he can make a living gambling, at which he is very adept. Two months later Gideon is arrested, charged with breaking and entering the poolroom with the intention of committing a misdemeanor, maximum sentence five years.

5. Gideon in prison holds a large manila envelope. He puts it into a slotted mail receiver outside his cell. The envelope contains his petition.

6. Gideon's petition is received at the Supreme Court, entered in its Miscellaneous Docket file by the Court Clerk. We see the file move via a secretary to the office of Chief Justice Earl Warren. Host guides us with voice-over information.

7. In the Florida Attorney General's office, Richard W. Ervin, the Attorney General, turns a letter request by the

United States Supreme Court to file a response to Gideon's petition for a writ of certiorari over to Assistant Attorney General Bruce Robert Jacob.

8. Inside the Supreme Court Justices' Conference Room. Various angles of the Justices. Host narrates-over the details of this room, that it is the most privileged of rooms in Government -- no outsider has ever been allowed in this room during conference sessions -- the room where decisions and rulings are made.

9. The Courthouse, Panama City, Florida. A hot August day. The courthouse square is nearly deserted. Camera picks up a few hangers-on dozing on benches, moves in toward courthouse. Host backgrounds the place, the date (August 4, 1961), and the persons involved. This is the time and place of Gideon's first trial.

10. Inside the Courthouse. Judge Robert L. McCrary, Jr., presides. Six white men sit in the jury box. There is a female court reporter present, and Assistant State Attorney William E. Harris with an aide. Gideon sits at the defendant's table alone. Judge announces Gideon's trial. Gideon has no counsel, asks the court to appoint one for him. Judge explains that under Florida laws he cannot, Gideon is not charged with a capital offense, his request must be denied. Gideon protests that the United States Supreme Court says he's entitled to counsel. Judge McCrary has that statement entered in the record. Host explains that Gideon is mistaken, that Betts v. Brady flatly rejected any such guarantee in state criminal courts. But that is what Gideon sought to rectify. An unlettered, simple man was asking the Supreme Court of the United States to reverse itself.

ACT II

11. Inside the Courthouse. Judge McCrary questions the jury. All six men state they'll give Gideon a fair trial. The judge tells Gideon to look them over and if there are any he doesn't like the court will excuse them and call others. Gideon accepts the jury. Harris and Gideon successively address the jury. Harris claims Gideon will be proved guilty. Gideon says he'll prove beyond reasonable doubt he never did break open the cigarette machine or juke box and never stole no money. They question and cross-examine various witnesses:

Ira Strickland, owner of the Bay Harbor Poolroom; Henry Cook (the prosecution's principal witness); Henry Berryhill, Jr., the officer who discovered the break-in at the poolroom; Preston Bray, a cab driver; Mrs. Irene Rhodes, a witness; Mrs. Velva Estelle Morris, owner of the Bay Harbor Hotel. After Harris and Gideon have finished, Judge McCrary instructs the jury. They exit, then return with their verdict: Gideon is guilty. Maximum sentence five years. Host explains that following receipt of a report of Gideon's past history, Judge McCrary imposed the maximum five-year sentence. Gideon is led away; doors close behind him.

12. An exterior shot of the Supreme Court Building, then inside to a bulletin board in front of which two reporters, among other persons, read posted notices. In dialog the reporters reveal that the Court's granted some poor slob named Gideon, in a Florida prison, a certiorari. Chief Justice Warren will appoint a lawyer to argue Gideon's appeal. One reporter points out the Court's request for counsel to discuss the question: "Should this Court's holding in Betts v. Brady be reconsidered?" The Gideon hearing, the reporter says, may turn into a landmark case . . .

13. In the Florida prison laundry, news is brought to Gideon by Dave, via his radio, that the Supreme Court is to hear Gideon's case. Willis and other inmates gather around Gideon to congratulate him. They're joyous. Dave and Willis dance around, pound Gideon on the back. Gideon, finally realizing the import of the news, joins them in a wild, happy jig.

14. Inside a Dallas supper club. Abe Fortas is with friends. The club's owner brings him a telephone. It is a call from the Supreme Court Clerk inquiring as to whether Fortas would accept assignment to a case involving the defense of an indigent. Fortas' questions bring out the name of Gideon. He agrees to take the assignment.

15. The State Capitol Building, Tallahassee, Florida. Bruce Jacob approaches. He's accompanied by Ann Wear, his fiancée. They talk, revealing that Jacob is going to argue Florida's case in front of the Supreme Court.

16. The library of Fortas' law firm. Fortas and a junior partner discuss some approaches to the Gideon case.

17. In the Florida Attorney General's office, the Attorney General, Bruce Jacob, and two staff members discuss aspects

of their views: the effects of a retroactive ruling to release Florida prisoners if Betts v. Brady were to be reversed. The point of their argument must be the right of states to determine their own rules of criminal procedure. Jacob suggests sending letters to the other 49 states inviting them to file amicus curiae (friend of the court) briefs in support of Florida's position.

18. Late at night in the Fortas law library. Fortas and the junior partner discuss the case. Primary point: the right to counsel is imperative to a fair hearing -- even a lawyer wouldn't undertake his own defense.

19. Gideon in his cell hand-printing another letter to Fortas, expressing his desire for information about the case, its urgency.

Bruce Jacob and Ann Wear in his office at night discussing a letter from Walter F. Mondale, Attorney General of Minnesota. Jacob thinks Mondale doesn't understand the point: states should be able to provide counsel, but they should not be forced by constitutional construction to do so.

On a golf course. Edward J. McCormack, Jr., Attorney General of Massachusetts, and a non-golfing assistant talk. The assistant, following along with McCormack, persuades him to approve an amicus brief -- in favor of Gideon.

In the Florida Attorney General's office there is discussion about the backfiring of Jacob's invitations for amicus briefs.

Between the McCormack scene and the scene in the Florida Attorney General's office, Bruce Jacob and Ann Wear are shown exiting from a church after being married. As they drive to their honeymoon, Jacob tells of how much work is going to be involved in preparing the Florida case. Ann supports him all the way with her help.

20. In the Supreme Court. Host's voice sets scene: it is January 14th, 1963. The Gideon case is about to begin. Chief Justice Earl Warren picks up papers, prepares to start the business of the day.

ACT III

21. But, the Host tells us, the Court did not get to Gideon's case that Monday. In the afternoon, it adjourned so the Justices could attend President Kennedy's "State of the Union" address before a joint session of Congress . . .

22. Mayflower Hotel, Washington. Bruce Jacob's hotel room. In background on television President Kennedy is delivering his address to Congress. George Mentz, Assistant Attorney General of Alabama, calls Jacob on phone and is invited to Jacob's room. They talk, revealing Jacob's nervousness about appearing for the first time in front of the Supreme Court. Kennedy is speaking about protecting basic rights of citizens. Jacob comments the political climate for their position isn't exactly favorable. Mentz remarks that the nine justices are, hopefully, above politics.

A Georgetown club. Fortas and other members watch and listen to Kennedy. Fortas' forthcoming role in the Gideon case is pointed up.

Gideon's prison cell. Gideon, Dave, and Willis listen to Kennedy over Dave's radio. Gideon is depressed -- the Justices should be hearing his case, not listening to the President.

23. In the Supreme Court. Chief Justice Warren announces the Gideon case. Various angles of Jacob, Fortas, Mentz, and their associates, their reactions, etc., establish the sense of a Supreme Court hearing, the humanness of the Justices before commencing their serious work. Gavel raps. Fortas is first to the rostrum. Justices listen as he states his case, questioning him as he proceeds. Red light on rostrum. His time is up. Justices arise, exit informally. Jacob and Mentz rise to leave. Jacob looks worried.

24. Visiting room of the Florida prison. Gideon and his wife Ruth converse. She indicates she's leaving Gideon for another man. She's placed their kids in foster homes, much to Gideon's distress. He would have liked his brother to take them, when he returns from Army duty in Japan. It's too late, Ruth says; she's made arrangements. She rises, says goodbye, leaves. Gideon stares after her hopelessly.

25. The Supreme Court. Bruce Jacob at rostrum. Various of the Justices question him. He emphasizes to them if Betts were reversed some five thousand prisoners in Florida prisons,

tried without counsel, might be eligible for release. Chief Justice Warren asks if any of them might be illiterate. Jacob is forced to admit some of them are probably illiterate. Then, even under Betts, the "special circumstances" rule would free them. Jacob is very uncomfortable. Justice Black says Betts does not seem to have worked, why not substitute an absolute rule? Jacob insists Florida would prefer decisions on a case-by-case basis.

Mentz takes rostrum. Same point is made by Justices, with Mentz giving same answer -- case-by-case decisions are preferable.

Fortas makes his concluding statement from rostrum. Betts and Brady was wrong when decided. Time has made that clear. Now that wrong can be corrected with limited disturbance to the states.

26. Prison cell module. Prisoners going to chow. Loudspeaker voice instructs particular modules to exit gates as they open. Dave is holding his radio to his ear. Suddenly he calls to Gideon to listen. He turns up volume. Newscaster reports reversal of Gideon's conviction. Backed by noise of loudspeaker voice, Gideon steps from cell and stands next to Dave. His eyes glisten as he holds himself under control. Dave exclaims, "You've won, baby. You sure did damn done do it!" The men start their march to chow.

ACT IV

27. Florida State Prison. Cell Block. Dave and Willis, dressed in civilian suits, ill-fitting, tell Gideon, still in prison uniform, goodbye. Dave, with his radio now silent, is dazed by events, shakes his head in wonderment. Gideon is praised for being the one who got them out, but Gideon says it was their ignorance, their illiteracy. They try to assure Gideon he'll be out soon. Gideon says Florida court will only try to convict him again. Dave, to assuage Gideon, offers his precious radio to him before leaving. Gideon accepts, moved but trying to conceal his feelings.

28. Panama City Courthouse, Judge McCrary's chambers. Gideon rejects two attorneys sent by the ACLU to represent him during his second trial. Gideon still doesn't have money to hire counsel. He tells the judge that a local lawyer, W. Fred Turner, is the one he wants to represent him, he's defended some

of Gideon's friends and Gideon likes him. The judge approves Turner as Gideon's counsel.

29. Prison Interior. Turner talks with Gideon, tells him there's just a little over two weeks to prepare a case. Gideon has to trust him. He'll get the best damn defense he's ever seen, but Gideon's to take directions and keep his mouth shut. Gideon likes Turner's style. They smile, shake hands.

30. Panama City Courtroom, August 5th, 1963. It is hot. Spectators, newsmen, an air of excitement. As in the first trial, Judge McCrary again presides; Assistant State Attorney Harris is also present, the State Attorney, and an assistant. Another six-man, all-white jury. Gideon and Turner sit alone at the defense table.

Turner skillfully manages Gideon's case, building during his questioning of witnesses, parrying Harris' points, that the State cannot prove beyond reasonable doubt that Gideon and no other person broke into the Bay Harbor Poolroom or even that the machines allegedly broken into contained money, or, if so, how much, nor is there any way to identify such coins, since they have no serial number identity, as those found on Gideon, who at the time explained they were for use in gambling games and that he carried them on his person to prevent them from being stolen. Turner asks Judge McCrary for a directed verdict of "Not Guilty"; it is denied.

The jury goes out, to return with a verdict: "We, the jury, find the Defendant, Clarence Earl Gideon, not guilty."

Gideon reacts to the realization that he is free at last, at the end of a long trail, the culmination of his own untiring efforts.

31. A corridor outside the courtroom. Gideon is besieged by reporters . . .

Woman Reporter
What are you going to do now?

Gideon
Well, I'm real anxious to see my kids.
(tears come to his eyes)
They're up in Hannibal. They've got a good home there, a real good home.

(MORE)

Gideon (Cont.)
(recovering his self-
possession)
But first I'm gonna pay me a visit
to the Bay Harbor Poolroom. Anybody
here lend me ten bucks?

Turner gives him the money.

Gideon
Thanks. You kin add it to my bill.

All laugh.

Reporter
When you started this whole thing,
did you have any idea it would turn
out to be so successful?

Gideon
No, sir. No idea at all.

Reporter
What made you do it?

Gideon
(hesitates)
Well . . . someone had to.

One of Gideon's old pals presses forward to shake his
hand. Another slaps him on the back. Like the conquering
Gideon in the Bible, he is now surrounded by friends and
well-wishers. Lips compressed in a tight smile, he pushes
through the crowd. The camera moves in close and the scene
is frozen in stopped action.

Over this frozen frame of film, the Host speaks:

Host
"Someone had to . . . " And yet no
one "had to." As Attorney General Robert
F. Kennedy put it:

"If an obscure Florida convict named
Clarence Earl Gideon had not sat down
in his prison cell . . . to write a
letter to the Supreme Court . . . the

(MORE)

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

IV-12

Host (Cont.)
vast machinery of American law would
have gone on functioning undisturbed.
But Gideon did write that letter, the
Court did look into his case . . .
and the whole course of American legal
history has been changed."

THE END

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

IV-13

B. Detailed Episode Outline of "Case for the Prosecution:
The Homer S. Cummings Story"

The Sword and the Scales

"Case for the Prosecution:
The Homer S. Cummings Story"

Summary

An understanding of the functioning of the Judiciary in this country is not possible without a consideration of the role played by the Public Prosecutor. Comparatively few people fully comprehend this role. In essence, our Code of Ethics states: "The primary duty of a lawyer exercising the office of a Public Prosecutor is not to convict but to see that justice is done."

The story of Homer S. Cummings, State Attorney General for Connecticut, in connection with his prosecution of a defendant for the murder of Father Dell, dramatically illustrates this precept. Boasting a one-hundred percent record of convictions, in line for high national office, Cummings had everything to gain politically in prosecuting the seemingly open-and-shut case against Harold Green. But certain facts in connection with the case disturbed him. Step by step, he set out to demolish the ten points of the case he had so carefully built up.

In a climactic courtroom denouement, he made use of the then new science of ballistics to acquit the defendant. It is gratifying that, far from ruining his career, this display of integrity led to his elevation to the highest national post a public prosecutor can hold, Attorney General of the United States, a post he occupied with distinction for eight years.

Step Outline

ACT I

1. A busy intersection in Bridgeport, Connecticut, February 4th, 1924, 7:45 p.m. Father Dell, an amiable, elderly priest, is taking his nightly stroll, greeting friends and parishioners. From the back, we see a man approach and shoot him down. Horrified reactions, excitement. The man escapes. We have been unable to see him clearly or identify him.

2. The Cummings home. Cummings, his wife, and a big-wig senator, prominent in national politics, who has come to size Cummings up as a potential candidate for national office. Cummings is slated to make the keynote speech at the nominating convention. In the event of a deadlock, there's no telling what might happen. Cummings has a perfect record of 100 prosecutions, 100 convictions. Coolidge sprang into prominence as a result of the Boston Police strike, Teddy Roosevelt with his Roughriders at San Juan Hill . . . Though Cummings pooh-poohs the suggestion, he has that "White House look" in his eyes.

"It seems to require a national disaster," smiles Cummings.

"It's an ill wind that blows no one good," answers the senator.

After the senator leaves, Cummings' wife tells him the Bridgeport sheriff has called. It's about the murder of Father Dell. Cummings is struck. "An ill wind . . ." he says to himself. He springs into action, calls the sheriff, alerts all law enforcement agencies. He wants the murderer of Father Dell in 48 hours!

3. A montage of newspaper headlines attest to the national prominence of the case. The final one announces the capture of Green.

4. Green being grilled under a white spotlight. Shots of police activity, rounding up witnesses, etc.

5. Coroner's Jury. Ten major points comprise the case against Green -- nervous, ratty-looking, wears a coat with velvet collar:

a. Green was seen by an acquaintance, Millie Sexton,

within a block of the shooting, ten minutes before the murder.

b. The slayer wore an overcoat with a black velvet collar. Green was wearing such an overcoat.

c. Witness Mrs. Della Darwood saw a man wearing such an overcoat shoot the deceased and run westerly on High Street.

d. Witnesses Sarah Hilton and Frank Gale heard fatal shot and saw fleeing slayer, dressed as described.

e. Howard Storm saw Green, apparently exhausted, running at junction of Washington and Congress, observed him stub his toe on curbing.

f. All the aforementioned witnesses identified Green at police station line-up.

g. Green made a statement in writing admitting the crime.

h. Green, accompanied by members of Police Department, went over scene of crime and pointed out various spots above described.

i. The empty shell of the fatal bullet was found in Green's room.

j. Ballistics expert O. P. Hellman identified the bullet found in the head of the deceased as having been fired from Green's gun.

6. A corridor outside the courtroom. Cummings being congratulated in advance on the open-and-shut case, also his diligence in apprehending the slayer. He is flushed with victory, and the realization of what this will mean to his career.

ACT II

7. Cummings' office. The excitement mounts. Cummings receives a telegram from the senator: "You've got your ill wind. Keep it blowing." Ed Malby, Cummings' assistant and close friend, a young ambitious attorney, gets rid of the reporters,

brings in witness Mrs. Della Darwood to be interviewed. Cummings goes over her story.

First, she reminds Cummings that she is an old friend, knew him as a tyke, used to live three doors away from him in that "big yellow house on Elm Street." She's anxious for "that dirty murderer to get what he deserves."

Cummings, somewhat disturbed by her manner, questions her. She "felt this murderer rushing past me like an evil wind."

"You felt him?"

Mrs. Darwood quickly tries to make her identification more positive. "He had a kind of . . . kind of a crazy run." When she got to the station house, she recognized him at once. Cummings is bothered by this kind of testimony. Ed, who was supposed to have checked everything out, fidgets uneasily.

8. A hotel room. Cummings and Malby. Cummings snorts. "A crazy run!" Malby knows as well as he does an identification based upon such a ground is worthless

Maybe so, agrees Ed, but in conjunction with nine other strong points . . . Actually, they only need the one main point to send Green to the chair, the testimony of the ballistics expert. After all, they both know that Green is guilty. But guilt does not necessarily mean conviction. All Ed wanted to do was make sure.

"How?"

"By piling up an avalanche of evidence."

Cummings answers soberly, "I don't like to kill a man with an avalanche. I prefer the orderly judicial process."

There is a knock at the door. Sarah Hilton and Frank Gale come in, a young, attractive couple, evidently very much in love. Cummings does not doubt their probity, but again he is bothered by one circumstance -- they were unable to identify Green on their first trip to the police station, only did so after they learned he had confessed to the murder. Cummings tells them to forget the confession, just remember a man's life is at stake. Does Frank remember anything else?

"Well, I only got a quick flash as he went by. Dark complexion, brown eyes . . . "

"Mr. Gale, look at me, don't turn around. Just answer this question: What color are your fiancée's eyes -- the exact color?"

Frank is confused. "Well, they're hazel kind of . . . no, more like green."

Sarah, hurt, snaps: "They're blue!"

When Cummings gets through, both witnesses can agree on only one thing. The murderer wore a coat with a black velvet collar. Cummings excuses them. "Well, we can use it for something," says Ed uneasily.

Cummings is angry. "Yes, we can use it to convict an overcoat with a black velvet collar!"

9. Exterior Bridgeport street. 1924 cars, music of the period blasting from a store radio. Cummings is going over the ground with a police captain and witness Howard Storm. Storm describes how he saw slayer running, stubbing his toe on curb. The captain confirms that green suffered such an injury, they have a physician's statement to this effect. Cummings is willing to concede that Storm saw a man running and stub his toe, but how did Storm know he was a "slayer." Storm, a mature, honest man, seems troubled. Of course, he can't be one-hundred percent sure, but taken together with what the others saw . . . Cummings smiles -- there are always "the others."

The police captain is puzzled by Cummings' attitude. Is the DA trying to ruin his own case? Cummings assures him he is only trying to make sure of the facts. Nobody likes to be made a fool of in court. He lets Storm go, but continues to cover the ground of the slaying with the captain point-by-point, particularly in connection with what Green said when he accompanied the police over the same route. The captain is still not sure of Cummings' purpose. Cummings is poker-faced, gives no sign of what he may be thinking.

10. Evening, around dinner time. Cummings outside the crowded cafeteria where Millie Sexton, a sexy, gun-chewing blonde, works as cashier. Because of the crowd inside, the cafeteria window is misted over. There is still enough light, however, for Cummings to consult the index card he holds in his hand. Camera goes in close on card. A number of the ten abbreviated

points are crossed out. Camera zooms in for an extreme closeup of Point One. It reads: "Millie Sexton. Knows Green. Spotted him 5 min. before shooting."

Millie claims she knows Green and two of his pals well, that Green passed the cafeteria and she waved to him and he waved to her about five minutes before the shooting. She remembers she looked at the clock on the wall . . . The cafeteria was only two blocks from the scene of the crime.

Cummings asks her if the glass was frosted over as it is now? Maybe a little, but she could still see. Cummings takes her place in the cashier's stool -- a high vase of artificial fruit and flowers would seem to block the view she had of Green.

Millie also claims she knew about Green's gun. He and his pals used to go target shooting in the woods. Green had boasted to her that he would kill someone with the gun some day.

As Cummings cross-examines, she grows angry. What is this, anyway? Is he trying to cheat her out of the reward money?

Cummings reacts. What makes her think she's entitled to a reward?

It says "for information leading to the conviction of Father Dell's murderer."

Cummings pretends sympathy. "I suppose you could use a vacation."

"You can say that again. I'd sell my soul to get out of this dump."

She stares as Cummings scratches out Point One on his index card, the point that mentions her name. "What's that for?"

Cummings answers calmly, "I don't like people to sell their souls."

ACT III

11. Cummings's office. Cummings and Malby. Relations between them are strained. Malby sincerely believes Green is guilty, cannot understand why Cummings is undermining all the pre-trial

preparation Malby has done. He confides that the senator cannot understand it either. Says the senator phoned, very disturbed. Left some cryptic message about an "ill wind" being wasted. Nevertheless, Cummings announces his intention of investigating every phase of the case.

12. Bridgeport Jail. Green compulsively eating peanuts from a can; his manner is excessively ingratiating, trying to please. They are treating him swell; he has no complaints. Cummings tries to find out how confession was elicited. Green denies any force. They have given him all the cigarettes he wants, all the grub he wants. "I ain't gonna rat!"

"Rat?"

"I ain't goin' back on my confession; they been treatin' me fair and square." Green nods reassuringly at the captain, the same one who conducted Cummings on his tour. The captain smiles back. Cummings demands that the captain leave him alone with Green. The captain leaves, irritated by Cummings' unorthodox behavior.

The pattern emerges. Green is a moron who in his eager desire to please does not realize he is digging his own grave. The only way Cummings can reach him is by shocking him into this realization. He frightens Green by describing the details of his projected execution in the electric chair, finally springs the vital question: "Did you shoot Father Dell?"

"I . . . I dunno . . . "

"Why did you sign the confession?"

"They told me . . . they explained . . . I musta done it!"

Cummings goes over the trip Green took with the police to the scene of the crime. Does Green remember waving to Millie Sexton? "Who?" asks Green.

"Never mind. You must remember me, I went along on that trip with the police."

"Were you in uniform?"

"No," says Cummings ironically, "I was wearing a coat, a coat with a black velvet collar. Remember, when I pointed out that spot where you stubbed your toe?"

Yes, Green remembers. He is ready to remember anything that is suggested to him. Cummings makes his point, then denies having been there at all. Green is confused, outraged. What does Cummings want from him?"

Only to show Green how suggestible he is, how he will believe anything that's drummed into him. Green is tired, breaks into sobs. Everybody is nagging and nagging him, all the time. Why don't they let him rest?

Cummings has no intention of letting him rest. He wants Green to remember exactly where he was the night of the murder. Cummings is going to help him remember.

13. Cummings' hotel room. He has a surprise visitor -- the senator. His visit is prompted by a telephone call from Malby. The senator points out that Cummings is antagonizing a lot of people, including the police. Cummings has nothing but praise for the police -- they did their job as well as could be expected. Now Cummings has to do his job.

The senator believes in the adversary system -- that it is the duty of the Public Prosecutor to prosecute, with all the vigor at his command. The Defense Attorney defends, and the Jury decides.

Cummings hopes he is doing just that. It hinges on the definition of the word "prosecute." Webster's first definition is that it means to follow to the end, to pursue an investigation until it is completed. But "prosecute" does not mean "persecute."

The consensus is still that there is an open-and-shut case against Green.

That remains to be seen; all the avenues will be explored.

Cummings himself concedes, argues the senator, that Green is a moron, a moron with a gun. Such a man is undoubtedly dangerous. For the sake of such a fellow is Cummings willing to sacrifice his chance at the ultimate goal, perhaps the greatest honor that can happen to an American? He asks Cummings to consider carefully before he answers.

Cummings hesitates. He does not think Green will ever kill anyone -- he's not brutal or vicious; on the contrary, he's only too anxious to please.

The senator accuses Cummings of evading the question. Malby enters to lend the senator support. All the disputed points Cummings has raised are only window dressing for the general public. The incontrovertible fact is that the bullet which killed Father Dell came from Green's gun. The gun, admittedly, has never left Green's possession. Does Cummings doubt the qualifications of the ballistics expert, Captain Hellman?

"Not at all."

"Or his honesty?"

"As far as I know, he's scrupulously honest."

"Well, then?"

Cummings is only pursuing his investigation. It may very well turn out that Malby and the Senator are right. If so, Cummings will be the first to admit it. Court convenes tomorrow afternoon. He hopes the senator will be able to attend.

"I wouldn't miss it," the senator answers gruffly.

ACT IV

14. Exterior of a movie theatre, with lurid advertising posters. Oddly, Cummings is on the scene, talking with the manager. The manager supplies him with a card, which later turns out to be the kind they stick in the cashier's window, which gives the time of performances. As far as the audience is concerned at this stage, it's all very mysterious.

15. A police laboratory. Guns are being fired into a bullet-receiving drum. Cummings is on hand to ask questions of the lab technicians.

16. A montage of hectic activity on the part of Cummings, going over papers, evidence, etc. It's virtually a one-man operation, all last minute preparation for the coming trial.

17. The Trial. Briefly summarized, clearing the decks for action, so-to-speak, are some of the points Cummings had made to tear down his own case. Della Darwood, "who knew him when," is scandalized as he ridicules her testimony about identifying "a man with a funny run." The police captain is red-faced and angry.

Cummings springs a new witness, the theatre manager. Cummings has helped Green remember where he was that fatal night. He was watching a quadruple feature: "The Fighting Skipper," "The Mystery Girl," "The Ghost of the Dungeon," and "The Leather Pushers." Cummings establishes that at the exact moment of the murder, Green was watching a performance of "The Leather Pushers." Green has described the plot in his own inimitable way, also the other flicks. The quadruple bill was on for one time only.

This revocation of his confession is, of course, by no means conclusive. The chief evidence against Green is still that of the ballistics expert.

Cummings zeros in on this evidence. If Captain Hellman's opinion is well-founded, then Green is guilty no matter how much the other testimony has been discredited. Captain Hellman has called attention to three points of similarity between the bullet taken from Father Dell's head and the test bullets fired from Green's gun. Most convincing of these has been the superimposition of photographs of the fatal bullet and the various test bullets. But what Cummings has done is enlist the services of five other ballistic experts. With the aid and cooperation of Captain Hellman, they have made greatly magnified photographs of the fatal and test bullets. Superimposing a transparency of the fatal bullet upon the test bullet photos, it is obvious that although the bullets are the same approximate size and shape, the various lines made by the breach marks, the grooves and twists, do not coincide. Moreover, as all the experts testify, there is a grease mark on all of Green's bullets but none on the fatal bullet.

There can be no question, Cummings concludes, that the fatal bullet did not come from Green's gun. With the approval of the judge, Cummings enters a "nolle prosequi" in the case and asks that the defendant be released from further custody. The judge concurs.

But before Cummings concludes, he feels that he owes an explanation to those who have questioned his conduct in this case. He repeats that the primary duty of the Public Prosecutor is "not to convict but to see that justice is done." It goes without saying, he adds, that it is just as important for a State's Attorney to use the great powers of his office to protect the innocent as it is to convict the guilty. Again, the judge is in complete agreement, congratulates Cummings on his handling of the case.

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

IV-24

Also impressed is the senator. It is plain that Cummings, far from being eliminated, has solidified his position in the national scene.

THE END

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

V

ELEVEN SUMMARY EPISODE OUTLINES

A. The Trial of John Peter Zenger

The Sword and the Scales

"The Trial of John Peter Zenger"

It is an acknowledged touchstone of American democracy that few, if any, limits are imposed on public criticism of the government or its officials. Whether such criticism is informed and responsible or foolish and immoderate, the right to make it is safeguarded, save where it is not only erroneous but prompted by malice. This long-standing tradition of freedom of speech, freedom of the press, and the toleration of an organized opposition, now accepted bulwarks of the democratic way of life, has its origins in the courageous battle put up against the royal government in America by a New York printer named John Peter Zenger.

Zenger, who had come to New York in 1710 as an immigrant from the Palatinate, launched the Weekly Journal, a newspaper which attacked the administration of Governor William Cosby, an avaricious and undiplomatic fortune hunter, who dismissed Chief Justice Lewis Morris, when he would not do his bidding on the bench. Morris, himself a powerful political figure and large landowner, then ran for the New York Assembly from the town of Eastchester, and his election was considered a stinging rebuke to the governor. Morris, backed by two lawyer friends, James Alexander and William Smith, encouraged Zenger to publish in his Weekly Journal a series of savage attacks on the governor, all by innuendo. The Governor and Council on November 2, 1734, ordered that four particularly slanderous issues be burned by the common hangman, an order carried out by the sheriff, when the public hangman refused to comply. On November 17th Cosby had Zenger arrested by order of his Council and locked up in the common jail on the third floor of the City Hall. Chief Justice De Lancey, likewise a foe of Zenger, set prohibitively high bail, and, upon failing to raise it, Zenger was confined to the dungeon of the old City Hall.

When the last day of the court's term went by without the grand jury having returned an indictment against Zenger, Attorney General Richard Bradley proceeded to file an information against the prisoner, at common law a simple complaint by the officer exhibiting it. The grand jury procedure having been circumvented, Zenger was arraigned for seditious libel in April term 1735. In a preliminary move De Lancey disbarred Zenger's two attorneys, Smith and Alexander, on the ground of contempt of court, since they had the presumption to attack

the commission of the Chief Justice as having been granted during pleasure and not during good behavior, as was the commission of the King's Bench. In place of the disbarred pair the Chief Justice designated John Chambers to serve as Zenger's defense counsel, but the latter, having no itch to wear the mantle of martyrdom, trod softly, failing to move that the exceptions of Zenger's previous attorneys be made part of the record, and, instead of insisting that the accusations Zenger had levied against Cosby were the truth, pleaded for latitude of expression.

At this crucial moment in the trial, and just as Chambers was about to call his witnesses, a new lawyer moved down the aisle to take his place at the defense table. He was quickly identified as Andrew Hamilton, a leading member of the Philadelphia bar, then fifty-nine years old and in his prime as an advocate. Hamilton ran the defense case from this point on. Addressing the court, he insisted that his client had published the truth. In reply, the Attorney General argued that, since Zenger had confessed the publishing of the libels, "the jury must find a verdict for the King," for truth under the common law, as he interpreted it, was an aggravation of the crime.

This was the nub of the case. In refutation, Hamilton argued that "bare printing and publishing" did not constitute a libel, but that the Crown would have to prove that the words were false, scandalous, and seditious, "or else we are not guilty." When the Attorney General cited English cases in behalf of the Crown position, Hamilton accused him of wanting to set up Star Chamber procedures in New York. With ill-concealed partisanship, the Chief Justice denied the right of the defense to introduce the evidence of the truth of the libel. "A libel is not to be justified," he explained, "for it is nevertheless a libel that is true."

No further evidence being permitted, Hamilton turned to the jury and proceeded to deliver a summation memorable in the annals of forensic utterance. Insisting that "the suppressing of evidence ought always to be taken for the strongest evidence," Hamilton pointed out that the question before the court was not of small concern, not the cause of a poor printer, nor of New York alone, but "it is the best cause. It is the cause of liberty -- the liberty both of exposing and opposing arbitrary power." Bradley restated the Crown's case, and told the jury to do its duty. De Lancey, in his instructions to the jury, made a desperate effort to bring them back under direction and

control, but in vain. The jury retired and quickly returned with a "Not Guilty" verdict.

The trial had immediate and long-term repercussions. It provided the example for a rebellious group of colonists to defy official censorship and criticize Crown policies. It was adopted by the British Parliament in 1792, in Fox's Libel Act, which gave the jury power to render a general verdict on the whole matter put in issue, and it was made a New York law as a result of Hamilton's brilliant defense in 1802 of a New York publisher named Harry Crosswell, prosecuted for a criminal libel on President Jefferson. As a result, both in New York and most other states truth became a complete defense in criminal proceedings if published for good motives and justifiable ends.

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

V-5

B. Marbury v. Madison

The Sword and the Scales

"Marbury v. Madison"

Marbury v. Madison was a classic confrontation between a forceful jurist, whose nationalist interpretations of the Constitution were to shape the course of constitutional history down to our own time, and an equally determined foe, the President of the United States, who believed in curbing the judiciary in the interest of effective division of powers under the Constitution. The stakes: the Supreme Court as it was to evolve, with its power to declare laws unconstitutional.

Early in the administration of Thomas Jefferson the Republican (Jeffersonian) Congress repealed the Judiciary Act of 1801, which set up circuit courts, made the Supreme Court ride circuit again, and provided for annual instead of semi-annual sessions of the Supreme Court. Chief Justice Marshall, an appointee of the previous President, John Adams, realized the need for prompt and bold action if the entire Federalist program of constitutional supremacy and an independent judiciary were not to be overthrown by Jefferson's party. The opportunity came in the person of William Marbury. One of President Adams' "midnight" appointments as justice of the peace for the District of Columbia, Marbury's commission had been signed and sealed but not delivered when Jefferson took office. Under orders from the President, the new Secretary of State James Madison withheld the commission. Thereupon Marbury, acting under Section 13 of the Judiciary Act of 1789, applied to the Supreme Court for a preliminary writ to Madison to show cause why a mandamus should not be issued directing the latter to deliver the commission. When the writ was granted Madison chose to ignore it as a judicial encroachment on the Executive Department.

When the court next sat in February 1803, Marshall held that when a commission has been signed and sealed the appointment is legally complete. To withhold the commission would be a violation of a "vested right." Marshall then addressed himself to the next question: Did the laws afford Marbury a remedy? Marshall said "Yes," and that in exercising its duty the Court distinguished between discretionary acts of a political nature on the part of the President and cases where the President was directed by act of Congress to perform certain acts involving the rights of individuals. In such cases the President was "amenable to the laws for his conduct." In other words, the President was below the law, not above it.

Now we come to the point where Marshall fudged. Was the proper remedy for the applicant a mandamus issuing from the Court, he asked. Clearly the Judiciary Act of 1789, Section 13, authorized the issuance of such writs, but if the court was not authorized to do so, it would have to be because the law was unconstitutional. Then, in a strained interpretation both of the Constitution and the Judiciary Act, Marshall went to the Constitution, where the original jurisdiction of the Supreme Court was prescribed, and found therein no explicit power to issue writs of mandamus to federal officials. Furthermore, he held, Congress had no power to add to that original jurisdiction. Therefore that section of the Judiciary Act conferring such power "appears not to be warranted by the constitution." As a consequence Marbury's application for a mandamus was denied.

Having bowed to political expediency and avoided a contest with the President over holding up his predecessor's "midnight" appointments, Marshall struck out boldly in defense of the Supreme Court's power to hold acts of Congress unconstitutional. While finding no explicit provision in the Constitution conferring such power upon the court, he argued that nonetheless, since the Constitution was the "fundamental and paramount law of the nation, it was the particular duty of the courts 'to say what the law is.'" Accordingly, "a law repugnant to the constitution is void," and "the courts, as well as other departments are bound by that instrument." Jefferson's indignation over this decision continued hot until the day of his death.

Marshall had made his point, but neither he nor any later judge ventured to declare another act of Congress unconstitutional until 1857, when the Supreme Court in the Dred Scott case held the Missouri Compromise of 1820 unconstitutional. But there it was -- the great precedent on the law reports, and it was to provide later courts with the authority that has been continuously exercised for over a century, often enough stirring up storms of protest in its wake.

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

V-8

C. The Impeachment of Associate Justice Samuel Chase

The Sword and the Scales

"The Impeachment of Associate Justice Samuel Chase"

The administration of President Jefferson quickly provided tests both of the impeachment procedure set forth in the Constitution and of the independence of the judiciary from control by both the Executive and the Legislative branch of the federal government. Already in 1803, at the President's instigation, the House of Representatives had impeached Judge John Pickering of the New Hampshire District Court on charges of malfeasance and general unfitness, and the Senate, despite evidence showing that the judge was insane or senile, convicted him. Obviously his offenses had constituted neither high crimes nor misdemeanors, since such offenses implied "a vicious will" on the part of the person involved. As a result, the case was not regarded as a precedent for impeachment on the grounds of mere incompetency or incapacity in office.

The issue was raised squarely, however, in the case of Justice Samuel Chase of the U.S. Supreme Court, of all the judges the one most hated by the Jeffersonian Republicans. The impeachment of this fire-eating Federalist was prompted by the administration on grounds both of his partisan conduct on the bench in connection with trials of defendants in the Sedition Cases and a recent lengthy charge made to the Baltimore grand jury in 1803 criticizing Congress for abolishing circuit judges and thereby jeopardizing the "independence" of the judiciary, and expressing alarm at what he considered a dangerous trend toward universal suffrage and "mobocracy."

Chase was at that time 64 and had been in the practice of law for forty years. Intemperate and overbearing, Chase, while neither corrupt nor intentionally illegal, had given his political foes their chance, and they seized it gleefully. He was impeached by a strictly partisan vote of 73 to 32. No infraction of the law was alleged, merely Chase's "oppressive conduct" as a trial judge and his intemperate charge to the grand jury.

The trial got under way in the Senate in February 1805. Presiding over it was Vice-President Aaron Burr, fresh from his duel in which he had fatally shot Alexander Hamilton. Five eminent Federalists, headed by Luther Martin, a great

Jefferson-hater, defended Chase, while John Randolph of Virginia headed the managers for the conduct of the trial. Randolph took the extreme view that impeachment was not necessarily a criminal proceeding, but a constitutional means of keeping the courts in harmony with the will of the nation. Others among the managers construed "high Crimes and Misdemeanors" to include all cases of willful misconduct in office, whether indictable or not.

The Senate was composed of 25 Republicans and 9 Federalists; 23 votes were required for conviction. Jefferson and other administration henchmen now courted Vice-President Burr to use his influence to keep northern Republicans in line, but the effort failed. The administration forces obtained a majority vote for conviction on three counts (not guilty on five others), but failed to secure the two-thirds majority for conviction.

Immediately the frustrated Republican leaders introduced into both houses of Congress resolutions to amend the Constitution so as to provide for the removal of federal judges "by the President on joint address of both Houses of Congress," but the proposal was never adopted as an amendment.

The impeachment and trial of Chase had beneficial results. In the first place, impeachment was abandoned, at least as regards judges, as a political device. In fact, it was not employed as political punishment until the impeachment of President Andrew Johnson. Secondly, the trial had the effect of making judges more discreet in their professions on political and public issues, and more prone to confine their official opinions and actions to judicial matters. Above all, the failure to convict Associate Justice Chase buttressed the position of the Supreme Court as a separate and independent branch of the government and preserved the principle of separation of powers.

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

V-11

D. The Trial of Aaron Burr

The Sword and the Scales

"The Trial of Aaron Burr"

The trial of Aaron Burr raised some profound constitutional and legal questions. Is the Constitutional definition of treason as applied therein too strict to serve as a deterrent to traitors? Can the accused get a fair trial when the President of the United States is personally behind his prosecution? Can the government get its full case before the jury when the court is presided over by a political enemy of the President?

Under the Constitution treason against the United States was defined as consisting "only in levying war against them, or, in adhering to their enemies, giving them aid and comfort." Article III, section three, further provided that "no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court." Treason was thus strictly defined because the framers of the Constitution were convinced that it was far better that a few disloyal citizens escape punishment than that the crime of treason be used by the government as a weapon to muzzle the opposition.

The trial of Aaron Burr was a major test of the application of the Constitutional provisions reflecting treason. Only recently Vice President, Aaron Burr boasted an impeccable ancestry of theologians and educators and a splendid military record in the Revolution, but his political operations had earned him the enmity of both Thomas Jefferson and his great opponent Alexander Hamilton (whom he had only recently disposed of in a duel), both of whom regarded him as a scoundrel and "an embryo Caesar."

Despite an overwhelming mass of trial testimony and the equivocal evidence of Spanish and British archives not available at his trial, it is still impossible to define with precision Burr's ultimate objectives. That serpentine character had a well-equipped store of alternative plans. He was prepared to seize Mexico and to set himself up as Emperor, but he also talked about severing the Western part of the Union. Since the Spanish government gave him a small sum of money, it is unthinkable that Spain would have financed the former project.

The turning-point in the Burr "conspiracy" occurred on the night of October 8, 1806, which that arch double-dealer General James Wilkinson, himself secretly a pensioner of Spain, spent in New Orleans decoding a cipher message from Burr, indicating

that Burr had obtained funds, was prepared to have his forces rendezvous on the Ohio, counted on naval protection from England, and would move down from the Falls of the Ohio on November 15, 1806, with from 500 to 1000 men, to join Wilkinson at Natchez, there to determine whether it would be expedient to seize Baton Rouge. Wilkinson dispatched the letter to President Jefferson. Two days after receiving it, Jefferson issued a proclamation ordering all persons engaged in the conspiracy to be brought "to condign punishment." Burr fled to Nashville, sailed down the Ohio, only to learn that Wilkinson had openly turned against him and bottled up the lower Mississippi. The former Vice President fled, was arrested at Bayou Pierre, out-talked a grand jury, fled again, only to be captured in South Carolina.

On March 30, 1807, Burr was brought before Chief Justice John Marshall, sitting at Richmond in the United States Circuit Court of the district of Virginia. Burr was defended by a dazzling battery of lawyers, including Edmund Randolph, Attorney General under Washington, John Wickham, of the Virginia bar, and Luther Martin, the mad volcanic genius from Maryland. The government's case was handled by George Hay, the competent rather than brilliant U.S. District Attorney for Virginia (also James Monroe's son-in-law), associated with William Wirt and Alexander McRae, then Lieutenant Governor of the state. Thomas Jefferson in Washington, however, was the directing legal genius behind the prosecution at every stage, just as Aaron Burr was really chief counsel in command of his own defense.

In the trial proceedings Marshall compromised at a number of points; in others, his ruling favored the defense. He ruled against committing Burr, while increasing his bail. When the defense moved that certain allegedly incriminating papers in the President's hand be submitted and a subpoena issued against the President, Marshall ruled that a subpoena duces tecum (a writ requiring a summoned party to bring to court with him some document, piece of evidence, or other thing for use or examination) could be directed to the President on the ground that all men are equal in the eyes of the law and that a paper which the accused believed to be essential to his defense should not be withheld from him. Jefferson refused to comply with the court order on the ground of Executive independence, but he did provide the papers.

In the parade of government witnesses -- General William Eaton, Commodore Truxton, Colonel George Morgan, Jacob Albright,

a Dutch laborer on Blennerhassett's Island where the overt act was alleged to have been committed -- failed to provide solid proof of the commission of an overt act. Now Marshall ruled that the testimony of the government's star witness, General Wilkinson, was inadmissible because he could only testify to acts committed subsequent to the alleged assemblage at Blennerhassett's Island, and at a different place and in a different state. That fact of treason "must be proved by two witnesses," Marshall ruled.

The jury returned a not-guilty verdict. Burr's trial, though most unpopular with most of the country, settled the American law of treason, which remains today exactly as it was in the time of Jefferson and Marshall.

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

V-15

E. The Parkman Murder Case

The Sword and the Scales

"The Parkman Murder Case"

Dr. George Parkman, a respected Boston physician, left his Beacon Hill residence on November 23, 1849, and was never seen alive again. A leading eccentric, a queer combination of philanthropist and miser, his spare frame a perfect subject for caricature, he had only recently financed the building of Harvard's new medical college. His mysterious disappearance provoked a crop of wild rumors, but a few days later John White Webster, professor of chemistry and mineralogy at the Harvard Medical College, called on Parkman's family to inform them that on the day Parkman was reported missing he had called upon Webster, and that the latter had paid him some money he owed.

Webster's story was the first clue, but the janitor of the Medical College, Ephraim Littlefield, provided more. He noted that Webster had queried him about a basement vault used to discard remnants of corpses, that on the morning of the day Parkman disappeared, he had seen a sledgehammer behind the door of Webster's room. Later that afternoon the door to Dr. Webster's small room adjoining his laboratory was bolted on the inside. A few days later Webster gave the janitor an order to get himself a turkey, an unaccustomed act of generosity. His curiosity aroused, the janitor dug through the wall of the vault beneath the locked room, and when he broke through he found what seemed like a human pelvis and two fragments of legs, while a search of the furnace in Webster's laboratory revealed a large number of bones and a set of dentures.

The police now closed in. Webster was arrested, and while in jail, more clues were discovered in his laboratory. Tried before Chief Justice Lemuel Shaw of the Massachusetts Supreme Judicial Court, a formidable-looking Whig jurist, with a shaggy mane of hair and piercing eyes under heavy brows, Shaw lent a note of austerity to the trial. The prosecution was handled by Attorney General John H. Clifford. Rufus Choate, a leading trial lawyer of that day, declined to serve as defendant's counsel, and the defense was left in the hands of Pliny Merrick and Edward D. Sohier, assigned by the court.

To establish the corpus delicti the state called to the stand an imposing array of medical experts, including Dr. Oliver Wendall Holmes, who declined to give an unequivocal identification of the remains, and, climactically, Dr. Nathan C. Keep,

Dr. Parkman's dentist for almost a quarter of a century. Keep identified the dentures presented in evidence as the teeth he had made for Dr. Parkman in 1846, exhibiting the original plates and demonstrating to the jury that they fitted to the models of Dr. Parkman's jaws. If the establishment of the corpus delicti was highly damaging to the defense, the janitor Littlefield's testimony about Webster's meeting with Parkman and the former's subsequent conversations with Littlefield, including his feverish efforts to break through into Dr. Webster's laboratory, proved even more damaging, and the defense failed to shake his story in any material way.

An array of distinguished character witnesses were paraded in behalf of Dr. Webster, including some famous Boston Brahmins. Then Dr. William T. G. Morton, the discoverer of anesthesia, was put on the stand to refute Dr. Keep's identification of the dentures.

Chief Justice Shaw charged the jury on the law relating to circumstantial evidence, indicating that in the absence of other evidence it could be prevailing, and added the further instruction that in case of an intentional killing, where no circumstances appear to justify the act, the law presumes malice, and it rests upon the accused to refute that malice by a preponderance of the evidence. The latter ruling proved to be the target for much criticism, since it threw on the defendant the burden of proof of a fact, while all that is necessary to entitle him to acquittal is a reasonable doubt of any of the essential elements of the crime, including in the case of murder the element of malice. Today the law does not presume the worst of several possible solutions against the prisoner, but instead the one which would be most favorable to him.

After almost three hours the jury returned with a guilty verdict, and Webster was sentenced to be hanged. In a plea to the governor for clemency, Webster admitted the deed but pleaded that it was done in the heat of an argument. Webster's confession smacked of a carefully calculated effort to rebut the inference of premeditation and malice, but the governor refused to stay the sentence, and Webster was hanged on a scaffold in the prison yard.

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

V-18

F. Slavery and the Court: Dred Scott and the Fugitive Slave
Laws

The Sword and the Scales

"Slavery and the Court: Dred Scott and the Fugitive Slave Laws"

Slavery was an issue in the debates over the Constitution, and a clause (Art. IV, Sec. 2) implied a right to reclaim slaves who had run away to free states. Congress enacted a Fugitive Slave Law in 1793. It permitted a slave owner, or his agent, to "seize and arrest" the runaway, and bring him or her before any federal or local magistrate. Here the owner or agent was to offer evidence that the slave was a fugitive. The magistrate would then issue a certificate authorizing return of the slave to his home state. Anyone who harbored a fugitive, or hindered recapture, was liable to a \$500 penalty.

Over the years, the slavery question embittered north and south relationships more and more. The problem of fugitive slaves became correspondingly acute. In free states, local officials sometimes refused to cooperate in enforcing the federal law of fugitive slaves. The issue reached the Supreme Court (1842) in Prigg v. Pennsylvania. A slave, Margaret Morgan, was owned in Maryland by a woman named Margaret Ashmore. The slave escaped in 1832 to Pennsylvania. Prigg, the owner's agent, had the runaway seized by a constable in Pennsylvania, and brought before a magistrate, in 1837. The magistrate refused to take the case. Prigg forcibly removed the slave woman and her children to Maryland. (One of the children had been born in Pennsylvania). Prigg was arrested under a Pennsylvania law that made it illegal to carry away such slaves into slave states. But the Supreme Court held that the Pennsylvania law was void because it conflicted with the Federal Fugitive Slave Law.

The Prigg case aroused tremendous protest in the North. It did appear to contain a loophole, however: the Court had conceded that there was no power to force state officials to enforce the fugitive slave law. Many northern states now enacted laws forbidding their officials from enforcing that law. This in turn fomented resentment in the South. The runaway slave problem was serious for the South; in 1850 more than 1000 slaves fled to the North.

After furious debate Congress enacted a stronger fugitive slave law in 1850. Enforcement was given over to commissioners appointed by the federal courts; punishment for obstruction was strengthened. But this law was, of course, unacceptable to the

antislavery forces. When a slave named Anthony Burns was seized in Boston in 1854, the antislavery public was outraged, and a federal marshal was killed in a riot following a rally in Boston's Faneuil Hall. A slave named Joshua Glover was rescued in 1854 by a mob that broke into a Milwaukee jail. Hundreds of slaves were hunted down and returned. In 1856, eight slaves belonging to two Kentucky men escaped into Cincinnati; when recaptured, one of them, a woman named Margaret Garner, was made so desperate she killed one of her own children to save it from slavery.

While the issue of enforcement of fugitive slave laws was boiling, the famous Dred Scott case came on for decision in the Supreme Court. Dred Scott was a slave whose owner, a Dr. Emerson, had taken him from Missouri to Illinois, then into a free territory (an area now part of Minnesota), then back to Missouri. When Emerson died, his widow became the owner of Dred Scott. She was an abolitionist and arranged a fictitious sale to a resident of New York to make it easy to bring a lawsuit in federal court, on the grounds that the suit was between residents of different states. Dred Scott's lawyers argued that when the slave entered the slaveless territories, he became a free man, and remained so, despite his return to Missouri. The case dragged on for years. When it was finally decided in 1857 it was already notorious, since it seemed likely that the court would deal with the broad and explosive issue of Congress's right to regulate the spread of slavery to the territories. President Buchanan had mentioned the case in his inauguration speech, and newspapers were filled with speculations about the outcome. The decision, perhaps the most famous ever handed down by the Court, was announced on March 6, 1857. The courtroom was crowded. Chief Justice Roger B. Taney, nearly eighty, a slaveholder from Maryland, appointed by Andrew Jackson, read his opinion in a low voice for two hours. The rest of the judges read their opinions that day and the next. While no two of the Justices exactly agreed, a clear majority, led by the Chief Justice, held that a black could not be a "citizen" of the United States, and could not sue in the federal courts, and that Congress had no power to exclude slavery from the territories. Dred Scott himself, by now an old man, enjoyed his notoriety, and, although he lost the case, his new owners set him free.

Taney honestly felt that the decision, although he knew it would not be popular in the North, would settle the issue once and for all. But the case evoked a torrent of abuse from the abolitionist North, and bitterness grew even worse along party

and sectional lines. The case may even have damaged the chances for peaceful resolution of the slavery question. It certainly seriously damaged the prestige of the Supreme Court, and, in the opinion of many scholars, it was decades before the Court regained its reputation for impartiality.

After Dred Scott, the country seemed to stumble inexorably toward war. The last of the great slavery cases was almost an anticlimax. This was Ableman v. Booth, decided in 1859. It arose out of the Milwaukee riot that freed Joshua Glover. Sherman Booth, an abolitionist, was taken into custody by a United States marshal for violating the fugitive slave law. The Wisconsin Supreme Court declared the fugitive slave law unconstitutional and ordered Booth and his helpers released. The case went to the United States Supreme Court where, again under Taney's leadership, the law was upheld, the Wisconsin Court repudiated, and the supremacy of the federal government asserted.

Now it was the abolitionist North, not the secessionist South, that tried to defy the federal government, asserting states' rights, advancing claims of conscience (the immorality of slavery) against the demands of strict obedience to an unpopular law. The Vietnam protestors, in a sense, were following in the footsteps of men like Booth. Yet the Court had its own sense of duty: to uphold the supremacy of law.

The Dred Scott case may be viewed as a mistake, a usurpation, or as an attempt by the Supreme Court to ward off the conflict between North and South. But the decisions of a court dominated by slaveholders could not be expected to convince the North; the moral authority of the court was undermined by the nature of the issue. The slavery cases illustrate how community opinion can limit, politically and ethically, the power of the court.

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

V-22

G. The Morman Polygamy Trials

The Sword and the Scales

"The Mormon Polygamy Trials"

After much suffering, the Mormons arrived in Salt Lake Valley in 1847, determined to build an independent commonwealth, a kingdom free from the influence--and hostility--of the "Gentiles." That hostility had many causes, but much of it centered on one Mormon practice: polygamy. Some Mormon leaders had had two wives as early as 1847. Church leaders formally announced in Salt Lake City in 1852, at a special conference of the faithful, that "the doctrine of the plurality of wives" was part of the "religious faith" of the Latter Day Saints. Most of the Mormon leaders had more than one wife --two was the usual number, but Brigham Young had over a dozen. Relationships in Mormon families, despite what the outside world felt, were on the whole moral and harmonious.

The outside world was, however, quite hostile. Plural marriage created a storm of protests. In Congress, as early as 1862, an act was passed directed against polygamy. (Utah was a territory, and thus under direct control of Congress.) The act was not strictly enforced, and remained almost a dead-letter law for years. In 1882, however, the so-called Edmunds bill was passed, much harsher than the prior act; and it was strengthened even more in 1887 by the Edmunds-Tucker bill. These laws outlawed polygamy, and also struck at "unlawful co-habitation," which was thought to be a much easier crime to prove. The laws also attempted to destroy the political and economic power of the Mormon Church, and disenfranchise the Mormons. Men could not serve on juries, or vote, if they were polygamists; and potential voters had to swear an oath that they would uphold the laws against polygamy.

The legal struggle over validity of the antipolygamy laws turned largely on whether the laws interfered with freedom of religion. Teeth were put into the 1862 law in 1874, and Mormon leaders decided to bring a test case. George Reynolds, secretary to Brigham Young, volunteered to serve as defendant. He had been married twice, first in 1865 to Mary Ann Tudenham and the second time in August 1874 to Amelia Schofield. The trial took place in 1875. The second wife, Amelia Jane, was put on the stand and admitted the second marriage. The jury of seven Mormons and five non-Mormons found Reynolds guilty of bigamy, fined him \$300 and sentenced him to a year in prison. This case was reversed on technical grounds, and a new

trial was held in December 1875. Reynolds was convicted, once more; this time he was fined \$500 and sentenced to two years at hard labor. He appealed to the territorial Supreme Court, which upheld his conviction. From there the case was taken to the United States Supreme Court. In 1879 the Supreme Court affirmed his conviction. The Chief Justice, Morrison Waite, argued in his opinion that there were limits to religious freedom. Congress could not control thoughts; but the behavior that was criminal could be controlled even if it was part of someone's religious beliefs: "Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government . . . could not interfere?" As a consequence, Reynolds was sent to prison.

The Miles case, which followed, was a rare example of a case touched off by a jealous wife. John H. Miles had married three women: Emily, Carrie, and Julia. Carrie thought she had a promise that she would be the "first" wife. But Miles had consulted with church leaders, who suggested that he marry his wives in order of their age, the oldest first, and Miles did so. When Carrie found out her ceremony had not been the first, she went to the United States marshal in anger. Miles was arrested, and his case, too, ultimately went to the United States Supreme Court, in 1880. That court reversed the conviction on a point of evidence: a wife (Carrie) cannot testify against her husband. True, the issue was whether Carrie was a "wife" at all. If she testified that there was a prior marriage, then she was no "wife," and could legally testify; but until she testified, said the court, she was presumably a "wife." Therefore, her evidence could not be heard. Miles went free. Carrie stayed on in Washington, where she got a job, and lobbied for stronger laws against polygamy. The Edmunds-Tucker act of 1882 closed the "loophole" of the Miles case. Under this law, wives became competent witnesses in polygamy prosecutions.

After the Reynolds case, the federal government, responding to public opinion in the East (and the political ambitions of non-Mormons in Utah Territory), began to prosecute polygamy with a vengeance. Every effort was made to arrest and convict the so-called "cohabs." The President of the Mormon Church, John Taylor, in an emotional speech in the Tabernacle on February 1, 1885, recounted the sufferings of the faithful, stated he would never "disobey God" and "forsake my wives and my children"; but, in the hope that "this storm will blow past," he advised his followers to give up the overt struggle and go underground. Hundreds of "cohabs" in fact went into hiding--

including President Taylor. Some lived in hidden rooms and chambers, threatened at all times by "spotters" (informers on the federal payroll) who searched everywhere, tried to pry information out of neighbors, or questioned little children on the streets. Some Mormons fled to Mexico. Families were broken up and great hardships imposed on many wives and children. Most Mormon women, unlike Carrie Miles, stayed loyal to their husbands and faithful to the idea of plural marriage.

The federal campaign, despite the measure of defense taken by the church, had a major impact. The territorial penitentiary in the late 1880s held over 1200 "cohabs." Many Mormons had been disenfranchised, the church organization had been dismantled, and the leadership had been driven underground. It was clear that the Mormons were on the verge of losing political control of the territory. Under these circumstances, the president of the church, Wilford Woodruff, in 1890, claiming divine guidance, renounced polygamy. This act ended the persecution of the Mormons and led to the admission of Utah to the Union.

From the vantage point of today, the persecution of the Mormons seems to many unjustified. Polygamy, except in the rare cases where a woman objected, was a kind of "victimless" crime. The Mormon polygamy trials, however, were important because they forced the courts to explore and define the limits of religious freedom. They exposed in a sharp and unmistakable way the conflict between majority views of good order and morality and the rights of conscience of a small minority, zealous and devoted to their faith.

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

V-26

H. The Trial of Charles Guiteau

The Sword and the Scales

"The Trial of Charles Guiteau"

The trial of Charles Guiteau was one of the most sensational trials of the nineteenth century because of the intense public feeling that surrounded Guiteau's crime--the assassination of President James Garfield, the second President to die of an assassin's bullet in less than twenty years.

The crime took place in Washington, D.C., on the morning of July 2, 1881, while the President was in a railroad station about to leave on a trip. Guiteau shot him in the back. The President was gravely wounded. For a time it appeared as if he might recover, but in September he took a turn for the worse, and on September 19, 1881, he died.

Guiteau was immediately charged with President Garfield's murder. There was no question that he had fired the bullet that ultimately led to the President's death. The entire drama of the subsequent trial, and Guiteau's only hope of escaping the gallows, centered on the defense of insanity.

Guiteau, as even the prosecution had to concede, was a man of peculiar behavior. He was born in Freeport, Illinois, in 1841. At one time he had been deeply religious, a resident of the Oneida Community, a sect that practiced "Bible Communism." Guiteau ultimately broke with the community, became a lawyer without success, was married and divorced, drifted from city to city, running up bills, constantly devising grandiose but totally hopeless schemes for becoming wealthy and prominent.

After the election of 1880, in which the Republican James Garfield was successful, Guiteau, imagining he was eligible for a high government post, moved to Washington and badgered officials of the administration, who, of course, turned him down, partly because of his bizarre behavior. Guiteau in the capital moved from boarding house to boarding house, dodging creditors, lonely, hungry, more and more withdrawn, and without any real means of income. Finally, he bought a gun, and, claiming he had divine sanction to "remove" the President, went to meet his (and Garfield's) destiny at the train depot.

Public feeling ran extremely high against Guiteau. His brother-in-law, George Scoville, an Illinois lawyer, undertook his defense. The trial, conducted by Judge Walter Cox, was

frequently disrupted by Guiteau himself, who constantly sprang to his feet, shouting and making remarks. The courtroom was crowded every day. People also flocked to see Guiteau in prison. The judge tried, with some success, to keep the trial within the limits of decorum. The notoriety of the case, and the behavior of the defendant, made the drawn-out trial the sensation of the season in Washington, D.C.

The heart of the case was the battle between psychiatric experts for the two sides. Guiteau's expert witnesses, led by Dr. Edward C. Spitzka, represented the "progressive" wing of American psychiatry. They argued that Guiteau was suffering from hereditary insanity, that it was immoral to hold him responsible for his acts. They claimed that his prior behavior, plus such physical signs as the shape of his head, indicated that he was "morally insane" and had been that way from birth.

The prosecution countered with a battery of experts of its own, experts representing the conservative wing of American psychiatry. The most notable prosecution witness was Dr. John P. Gray, a personal enemy of Spitzka. The prosecution witnesses ridiculed the idea of moral insanity, denied that insanity was hereditary or that Guiteau was insane at all; if there were peculiarities in his behavior, they were the consequences of his own acts--his vices, his immoral behavior. The crime was simply the product of "egotism" and "depravity."

Legally, the crux of the case turned on the definition of insanity. The prosecution argued, successfully, that the case should be governed by the accepted definition of legal responsibility. This was the M'Naghten rule (after a defendant in an English case decided in 1843). This rule held a defendant responsible so long as he could tell right from wrong; that is, if he was aware of what he was doing and knew that it was considered wrong. The M'Naghten rule stressed understanding rather than emotional control over behavior. Those who defended it, like Dr. Gray, valued it precisely because they felt that under this rule few "sinners" would escape punishment for their crimes under guise of insanity.

At the close of the trial, Guiteau spoke in his own defense --a long, extremely peculiar oration, which probably did not help his cause. The judge charged the jury, reflecting the prosecution's view of insanity. After only an hour of deliberation, the jury brought back a verdict of guilty. Applause burst out in the courtroom. The judge sentenced Guiteau to be hung. The sentence enraged Guiteau, who shouted that God would

curse those who were responsible. Afterwards, Guiteau's lawyers continued their legal struggle, appealing the decision, then asking clemency of President Arthur, while Guiteau all the while sold autographs in his cell, wrote poems, and gave out interviews. All appeals failed. On June 30, 1882, Guiteau went to his death on the gallows. At the last moment, he read, in a falsetto voice, a little poem he had written that morning.

Guiteau's death was greeted with great jubilation. Few people expressed any doubts about the verdict or his sanity. Opinion, however, in the years since, has shifted. Most doctors and laymen now would probably agree that Guiteau was insane. Yet the debate over the definition of criminal insanity continues even today: how to frame a test, and how to put it into practice, that will satisfy the demands of the law that people must be held responsible for their acts while at the same time take into account the murky and difficult questions concerning mental illness and health.

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

V-30

I. Yick Wo v. Hopkins

The Sword and the Scales

"Yick Wo v. Hopkins"

The Chinese began to arrive in California soon after news of the Gold Rush reached Florida. They supplied a need for laborers, cooks, and laundry men. They worked in great gangs on the railroads. Few of the immigrants (less than ten percent) were women. The Chinese tended to live apart from whites in crowded "Chinatowns."

By 1870, the Chinese were the largest and by far the most hated minority in California. One cause of the hatred had economic roots. The Chinese were thought to compete unfairly with white labor, working long hours for low wages, which drove down wage rates. People thought the Chinese needed less to eat than whites and that "coolie" labor would ruin the working class. This fear was mixed with much prejudice and race hatred. Most Californians felt the Chinese could not and would not assimilate, that they lived in foul conditions, that they brought vice, opium, and prostitution in their wake. The hatred sometimes took violent forms. In October 1871 a mob in Los Angeles, enraged after a white man died during a feud between two Chinese groups, looted and murdered in the Chinese quarter. At least eighteen people were killed.

The attack on the Chinese was conducted on all fronts, including the legal front. The center of anti-Chinese agitation was San Francisco, which had the largest Chinese population in the state. The city enacted a number of ordinances, whose purposes were to make life miserable for the Chinese. One ordinance provided that all prisoners in the jails of San Francisco had to have their hair clipped "to a uniform length of one inch from the scalp thereof." The Chinese wore their hair in queues. It was widely believed that the cutting off of their hair would be an intense, unbearable humiliation and a religious desecration. The Mayor of San Francisco vetoed the ordinance in defiance of public opinion, but his veto was overridden. The sheriff of San Francisco County, Mathew Nunan, put the ordinance into effect. He cut off the hair of a Chinese prisoner named Ho Ah Kow. Ho Ah Kow, however, sued Nunan for damages in the federal court. Supreme Court Justice Stephen Field, sitting as a circuit judge in California, heard the case. He declared the ordinance unconstitutional in a strong opinion: "When we take our seats on the bench," he said, "we are not struck with blindness, and forbidden to know as judges what we see as men." The ordinance, in his opinion, was clearly racist; it was cruel and oppressive,

and had no motive other than anti-Chinese hysteria. This was in 1879.

The Ho Ah Kow case was in a sense a precursor of the more famous and dramatic case of Yick Wo v. Hopkins, decided in the United States Supreme Court in 1885. This latter case arose out of another San Francisco ordinance, one also designed to make life difficult for the Chinese. Many Chinese had gone into the laundry business to fulfill the need. The city fathers tried to drive them out of business. One ordinance made it unlawful to carry on the laundry business, inside the city limits, except in a building made of brick or stone--unless the owner of the laundry obtained consent from the Board of Supervisors. Yick Wo had been in the laundry business for 22 years in San Francisco. His laundry was in a wooden building, but, he claimed, it fully complied with all health and safety regulations. He applied to the Board of Supervisors for permission to continue in business. They refused consent. More than 300 laundries were located in San Francisco. More than two-thirds of them were owned by Chinese. Virtually all of their laundries were in wooden buildings. The Board of Supervisors, under the ordinance, granted permits to Caucasians who applied for dispensations; applications from Chinese were all turned down. Yick Wo appealed to the California Supreme Court. That court upheld the ordinance. Yick Wo went further. He appealed to the United States Supreme Court.

In 1885 the Court handed down its opinion: it upheld unanimously the claim of the Chinese laundry men. Justice Stanley Matthews wrote the Court's opinion. The ordinances were applied in a way "so unequal and oppressive" as to amount to a "practical denial by the State of that equal protection of the law which is secured . . . by the . . . Fourteenth Amendment." Even though the law was fair on its face, it was applied "with an evil eye and an unequal hand." And the only motive for this unfairness was hostility to the Chinese race.

Yick Wo v. Hopkins, of course, did not end discrimination against the Chinese. Congress passed laws which put an end to Chinese immigration, and state laws continued to hamstring the economic and social rights of the coast Chinese. Yick Wo, however, served notice that there were limits beyond which the state could not go; that the federal courts would not tolerate unequal enforcement of the laws for reasons of race or ethnic prejudice. Thus the protest of a single, obscure laundry man, member of a persecuted minority, fighting for the right to wash clothes, led to the establishment of a noble and enduring principle of law.

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

V-33

J. Stephen J. Field

The Sword and the Scales

"Stephen J. Field"

Stephen J. Field, who held the record for longest service on the United States Supreme Court until Justice William O. Douglas's record recently broke it, was born in Connecticut in 1816, one of a large and distinguished family. His brother, Cyrus Field, was the entrepreneur responsible for laying the first trans-Atlantic cable. Another brother, David Dudley, was one of the most prominent lawyers and law reformers of the nineteenth century. Field's nephew, David J. Brewer, son of his sister Emily, later served with him on the United States Supreme Court.

After finishing college, Stephen Field "read law" in his brother David's office, was admitted to the bar in 1841, and went into partnership with David. After a while, however, Stephen grew restless. He ended the partnership with David in 1848 and traveled to Europe. When he returned, the gold rush fever was spreading everywhere. In 1849 Field took passage by boat to Panama, crossed the isthmus, and on the Pacific side resumed his journey by boat to California.

He arrived in San Francisco with ten dollars in his pocket; after his first breakfast in the city, he had one dollar left. He scraped up some money by selling items he had brought with him and by collecting debts owed by Californians to other Californians. With the money earned, Field rented an office and began his practice of law. He had only indifferent success.

He left San Francisco and traveled to the gold country, settling in a new town just being established called Marysville. Almost immediately Field got himself elected Alcade, a sort of justice of the peace. In the raw frontier conditions of gold rush towns Alcades exercised great power. Field's first case was between two men who both claimed a horse. They came up to Field on the street and demanded a decision. Field obliged. Marysville was a rough community. People there commonly went around armed. But Field succeeded in maintaining law and order.

In 1850, the state government was reorganized. The office of Alcalde was abolished. Field returned to the practice of law. This time he was successful, but he invested his earnings unwisely and was chronically short of cash.

Field was strong-tempered and often the center of controversy. The local district judge, William R. Turner, a violent, drunken man, conceived a hatred for Field. He tried to ruin Field's career. Field fought him in and out of court and ultimately won the contest. He was next elected to the state legislature. In 1857, he became a justice of the California Supreme Court at a salary of \$6000. He served the court with distinction.

In 1863, President Abraham Lincoln appointed Field to the United States Supreme Court. From then until he retired, he divided his time between Washington, D.C., and California, where he handled federal judicial business on circuit.

During his tenure of office on the Supreme Court, Field became known as one of the most vigorous and able members of the Court. His views were intensely conservative on economic matters. He dissented in the famous Slaughterhouse cases in 1873. The background was this: a corrupt legislature in Louisiana had given a single company a monopoly of the slaughterhouse business in certain parts of New Orleans. The legal question was whether the Fourteenth Amendment, then only five years old, could be read in such a way as to give the federal courts the right to step in and declare the legislation void. The majority of the Court read the Amendment narrowly, and upheld the statute. Field disagreed. He saw the Fourteenth Amendment as a weapon to protect property and enterprise against the incursions of state legislatures. His views, by the end of the century, became more widely accepted, when the Supreme Court intervened in a number of striking cases to upset laws regulating business or protecting organized labor.

Field's conservatism was a nineteenth century individualism --a suspicion of government, a belief in self-reliance and individual freedom, views not totally unexpected in a man who had fought his way from a penniless immigrant in California to one of the highest offices in the country. In many cases on individual rights, Field took the unpopular but libertarian view, particularly when defending the Chinese (as in Yick Wo. v. Hopkins) in California.

Field was a life-long member of the Democratic party. He did not quite give up his interest in politics when he became a member of the Supreme Court. In 1877, he served on the electoral commission which had the dramatic task of deciding whether Hayes or Tilden had won the disputed Presidential election of 1876. In 1880, Field was placed in nomination for the Presidency at the Democratic convention but no real boom developed for him.

One of the most famous incidents of Field's later life was his dispute with David S. Terry, at one time Chief Justice of the California Supreme Court, a huge and able man, but a man with a violent temper (he had killed Senator David Broderick in a duel). Terry represented a woman named Sarah Hill in a sensational lawsuit--and fell in love with and married his client. When Field ruled against the Terrys in the case a brawl broke out in the courtroom. Terry was committed to jail for contempt of court. His hatred for Field grew; he made threats; and when he was released from jail, a special deputy, David Neagle, was appointed to protect Justice Field against Terry. The Terrys boarded a train that was carrying Field to the Coast. Terry struck Field on the face, and Neagle shot him dead. It turned out that Terry was unarmed. Once more, Field was enveloped in a violent controversy. He and Neagle, however, were cleared.

Field took part in many famous cases on the Supreme Court, including the Income Tax Case of 1895, in which the new federal income tax law was declared unconstitutional. Field voted against the law. This was, in its day, one of the most bitterly criticized of all the Court's decisions. Field was at this time nearly 80. His mind began to fail, and his colleagues became anxious for him to resign. According to a well-known story, some of the Justices went to see Justice Field to persuade him to resign. They reminded him of an incident in 1869: he himself had been sent as part of a group to suggest that Justice Robert Grier, whose mind was failing, ought to resign. Field, asked if he remembered that, cried out, "Yes! And a dirtier day's work I never did in my life." Field finally resigned in 1897 after thirty-four years on the Bench. Two years later he died.

Field was extreme in many ways, a man of enormous intelligence and will. More perhaps than any other Justice after the Civil War, he left a mark on American constitutional law. He symbolized one great strand of American life of the period: that of individualism, energy, and enterprise. These qualities, with their emphasis on freedom, did nevertheless have a negative side: great hostility to economic and social reform through law. In many ways Field's philosophy, growing out of his background and career, dominated many aspects of the Supreme Court's work until the days of the New Deal.

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

V-37

K. Mapp, Escobedo, Miranda: A Trilogy of Cases

The Sword and the Scales

"Mapp, Escobedo, Miranda: A Trilogy of Cases"

Among the many bold, startling actions taken by the Supreme Court under the leadership of Earl Warren, few have been more controversial than the decisions on the rights of criminal defendants. The Court, in a number of cases, struck down old and established police practices, insisting that it was better to let the criminal go than to condone or encourage police behavior which, in the Court's view, was forbidden by the Bill of Rights. Opponents saw these decisions as unreasonable "permissiveness," leading to a breakdown of law and order, and destroying the effectiveness of local police.

Three of the most striking of these cases were Mapp v. Ohio (1961), Escobedo v. Illinois (1964), and Miranda v. Arizona (1966). The three principals who made legal history (two men and a woman) were unlikely choices for their historic roles. Each won a great victory, but none of them was able to avoid further tragedy.

In 1957, Mrs. Dolree Mapp lived in Cleveland, with her fifteen-year old daughter, on the second floor of a two-family house. Three police officers appeared, after getting a tip that a fugitive was hiding in the house and that there was a "large amount of policy paraphernalia being hidden in the home." Mrs. Mapp called her attorney, refused to let the police in without a search warrant. One of the officers held up a piece of paper that he said was a warrant, but he refused to show it. A scuffle broke out. Mrs. Mapp was handcuffed. The house was searched and some material was found that the officers claimed was obscene. Mapp was convicted of possession of "lewd" and "lascivious" materials.

It was clear that the search was illegal. No one doubted that. The question was whether evidence found during an illegal search could be used against the defendant. In 1949, the Supreme Court had held that a state court, if state law permitted, could use this illegal evidence and the federal courts would not interfere. Now the Warren court, as it was sometimes called, speaking through Justice Tom Clark, changed direction. Mrs. Mapp's conviction was reversed. An illegal search and seizure, said the Court, taints all evidence uncovered; none of it may be used in any court in the land.

Danny Escobedo was a laborer in Chicago. He was slight of build. He had often been in trouble. In 1960, when he was about 22 years old, he got into the most serious trouble of his life--a murder charge.

The dead man was Manuel Valtierra, a key-punch operator, who had been married to Danny's sister Grace. Manuel was shot in the back, in January 1960. The police felt Escobedo was involved. After grilling, one of Escobedo's friends, Benny DiGerlando, named Danny as the killer. He was arrested. He asked to see a lawyer. The police refused, but promised Danny he would be set free if he made a statement. After hours of questioning, Danny named DiGerlando as the killer and implicated his sister and himself in planning the crime. But the police did not set him free. He was indicted for murder and convicted.

After two years in jail, Danny filed an appeal. He had no money so the court appointed a young Chicago lawyer, Eugene Farrug, to defend him. Farrug in turn enlisted Barry Kroll, a young but experienced trial lawyer. Ultimately they appealed to the Supreme Court. Kroll argued the case in April 1964.

The Court was receptive. In the famous Gideon case, decided just the year before, the Court had held that a man accused of serious crime had a constitutional right to an attorney; if he could not afford one, the state must provide. Arthur Goldberg, writing the majority opinion in Escobedo, thought that the Gideon rule would be of little use if the right to a lawyer applied only to the trial. A person accused of crime needed legal advice during the period of police interrogation. Escobedo's case showed why. He had admitted that he was implicated in the murder, after the police promised he would go free--not knowing, as a lawyer would know, that his admission was "legally as damaging as an admission of firing the fatal shots." Since he had been denied the right of counsel, Escobedo's conviction, too, was reversed.

The third plaintiff, Ernest Miranda, was arrested in Phoenix, Arizona, in 1963. An eighteen-year-old girl who worked in the concession stand at the Paramount Theater accused Miranda of abduction and rape. Miranda was taken into custody, identified by the complaining witness, and then led off to be interrogated. He was not told that he had a right to have a lawyer. Two hours later, he confessed. Miranda's case, and three others that raised the same issue, went up to the Supreme Court. The Court used these cases as the occasion for deciding that every defendant must be told when arrested of his rights, particularly of

his right to remain silent and of his right to have a lawyer. Though there four of these cases, the decision carries Miranda's name, and the statement police officers must read when taking a person in custody is often called "the Miranda warning."

Despite their historic court victories, the three principals continued to have trouble with the law. Mrs. Mapp moved to New York City; there she was arrested on drug charges and in 1971 sentenced to a long term in prison. Miranda was reconvicted and sentenced to the penitentiary in Arizona where he worked in the prison barbershop. He was freed on parole in 1972.

The saddest fate was Danny Escobedo's. The Chicago police harrassed him with constant arrests. His criminal record kept him from getting good jobs. His sister remarried, and her new husband, who was close to Danny, was mysteriously killed. Danny himself was finally caught up on a narcotics charge and sentenced to prison.

These three cases evoked considerable comment as well as disagreement. On the Court itself, Justice John M. Harlan, dissenting in Escobedo's case, saw a danger that "perfectly legitimate methods of criminal law enforcement" would be "seriously and unjustifiably" fettered. Justice Byron White agreed; the rule of the case, he felt, was "wholly unworkable" unless "police cars are equipped with public defenders and . . . police informants have defense counsel at their side." Most police and administrators took this view.

The argument over "law and order" continues. There is tension between the demands of a civilized society for protection against crime and the Constitutional--and human--demands that the methods used safeguard the innocent and prevent the guilty from cruel and unfair treatment. The question is whether Mapp, Escobedo, or Miranda tilted the scale too far in the latter direction.

VI

PLANS FOR OBTAINING SPONSOR/FINANCIAL SUPPORT AND PLACEMENT ON NETWORK TELEVISION

A. General

There are assorted ways by which a proposed television series may be submitted in an effort to obtain sponsor/financial support and placement on network television. Many of these methods are fairly commonplace: submitting a presentation "package" to advertising agencies and network executives for their consideration and evaluation; personal contacts of both a social and professional nature, and other methods. The Nelson Company may utilize all of these methods, but it will also employ more particular approaches to the task.

B. Methods

The Nelson Company is fortunate to have available to it the marketing skills of Mr. Harold Cohen, a well-known television producer and program packager (who is also an attorney licensed to practice in the State of New York). As a first step, The Nelson Company plans to have Mr. Cohen present The Sword and the Scales to agencies which, in his judgment, would most likely be interested in it as a property.

Second, Nelson plans to have the Series presented by various interested persons, including members of the Select Film Committee, to corporations whose officials have already expressed interest in a series such as The Sword and the Scales; for example, Prudential Life; Sears, Roebuck; Exxon; and similar organizations. From such companies support, both moral and financial, will be solicited. Such support stimulates agency and network interest in the potential of a series.

A third area of potential marketing will be outlets such as the Corporation for Public Broadcasting, the Educational Television Network, and similar groups. The production capabilities of educational network television are in many instances extremely high. The production facilities, for example, of the Nebraska Educational Television Network, Lincoln, Nebraska, which supplies original educational network programming over a wide area of the middle west, are in every way as sophisticated and technically competent as any of the leading commercial network production centers.

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

VI-2

Every effort will be made by The Nelson Company to obtain a committment from a major film star to play the part of "Gideon" in the pilot film of the Series. Also, Nelson will try to obtain a notable actor or a member of the judiciary to assume the role of the "Host-Narrator" in the pilot film. Star names enhance the marketing potential of such a film.

The Nelson Company believes that these steps, necessarily generalized here, combined with the current topical interest in matters related to law and the judiciary, especially the federal judiciary, will provide good opportunities for the initial marketing and further commercial development of The Sword and the Scales.

Final Report/Nelson to HumRRO
Sub 74-4 (S74-21)
December 1974

VII

"TRANSFER PACKAGE"

The "transfer package" specified by the Subcontract (para. A, subpara. 3, "Task 4") has been prepared with the assistance of Dr. William H. Melching, Senior Staff Scientist, HumRRO, Western Division, Monterey, California.

Following the guidance of Dr. Melching, each of the film episodes chosen for the Series have been broken into the categories of their "Purpose(s)" and the "Objectives of Viewers."

The order of presentation follows the order in which the episodes are presented in the preceding portions of this Final Report.

A. General Purposes of the Series The Sword and the Scales

1. To increase knowledge in viewers of the role of the judiciary in American government and life.
2. To promote more positive attitudes in viewers toward the judiciary.
3. To increase respect in viewers for the judiciary and the problems it faces.
4. To show how the public might help to correct problems in the judiciary.

B. "Fire Out of the Rock: The Case of Clarence Earl Gideon"

1. Purpose of the Film

To reaffirm a right guaranteed by the Fourteenth Amendment to the Constitution; namely, the right of indigent persons to counsel in criminal actions.

2. Objectives of Viewers

- a. Demonstrate knowledge that an arrested person has the right to counsel.
- b. Support the view that an accused has the right to be represented by counsel.
- c. Inform a friend of his right to have counsel if he is arrested.
- d. Support openly against decisions of the judiciary that violate the rights of arrested persons.
- e. Speak openly against decisions of the judiciary that violate the rights of arrested persons.
- f. Given an account of a judicial act, state whether a defendant's rights to counsel have been adhered to or whether violations have occurred.

C. "Case for the Prosecution: The Homer S. Cummings Story"

1. Purpose of the Film

To emphasize that the primary duty of a lawyer exercising the office of a Public Prosecutor is not to convict but to see that justice is done.

2. Objectives of Viewers

a. Support the view that sound administration of justice is the most solid pillar of good government.

b. Support the view that it is just as important for a State's Attorney to use the great powers of his office to protect the innocent as it is to convict the guilty.

D. "The Trial of John Peter Zenger"

1. Purposes of the Film

a. To show that defamatory statements about a person are not libelous as long as the statements are true, and that they are made public for good motives and justifiable ends.

b. To demonstrate that one might be justified in creating an unfavorable impression about another person if he uses statements that are true, and that they are made public for good motives and justifiable ends.

2. Objectives of Viewers

a. Demonstrate knowledge that a statement about another person may be libelous if the statement is false.

b. Demonstrate knowledge that a statement about another person is not libelous, even though unfavorable to that person, if the statement is true and is published for good motives and justifiable ends.

c. Differentiate between good motives and justifiable ends, and motives and ends that are

malicious or not justifiable.

d. Be willing to criticize the government (or some official) when in possession of facts that justify the criticism.

e. Be willing to speak against criticism of the government when one has facts that dispute the criticism.

E. "Marbury v. Madison"

1. Purposes of the Film

a. To show that the United States Supreme Court has the power to declare acts of Congress unconstitutional.

b. To show that the President of the United States is not above the laws and the Constitution.

2. Objectives of Viewers

a. Support the idea that the duty of the Supreme Court is to say what the law is.

b. Support the view that the Supreme Court has the power to judge the constitutionality of laws.

c. Demonstrate knowledge that the Supreme Court can declare an act of Congress unconstitutional.

d. Support the idea that a law that violates the Constitution should be declared void.

F. "The Impeachment of Associate Justice Samuel Chase"

1. Purposes of the Film

a. To clarify the conditions under which impeachment of a public official is a justifiable undertaking.

b. To reaffirm the view that the Supreme Court is a separate and independent branch of government.

2. Objectives of Viewers

- a. Support the view that impeachment of a public official should not be used as a political device.
- b. Support the view that, in their capacity as court officials, judges should properly confine their opinions and actions to judicial matters.
- c. Demonstrate knowledge that the Supreme Court is a separate and independent branch of government.

G. "The Trial of Aaron Burr"

1. Purpose of the Film

To show that the constitutional definition of treason remains today as it was when initially formulated almost 200 years ago.

2. Objectives of Viewers

- a. Demonstrate knowledge that treason consists in "levying war against the United States or in adhering to their enemies, giving them aid and comfort."
- b. Demonstate knowledge that conviction of treason requires "the testimony of two witnesses to the same overt act," or, "confession in open court."
- c. Given an account of possible treason, state whether the necessary conditions for conviction of treason have been satisfied.
- d. Support the view of the framers of the Constitution that it is far better that a few disloyal citizens escape punishment than that the crime of treason be used by the government as a weapon to muzzle the opposition.

H. "The Parkman Murder Case"

1. Purposes of the Film

- a. To show that a conviction for a crime such as murder may be obtained on circumstantial evidence.
- b. To clarify that the law today assumes a defendant is not guilty unless and until proved otherwise.

2. Objectives of Viewers

- a. Demonstrate knowledge of the difference between circumstantial and direct evidence of the guilt of a defendant.
- b. Demonstrate knowledge that circumstantial evidence may prevail in the absence of other evidence.
- c. Demonstrate knowledge that, whereas the law formerly placed on the defendant the burden of proof of a fact, the law today does not presume the worst of several possible solutions against the defendant but, instead, the one which would be most favorable to him.
- d. Support the view that a defendant should be assumed innocent until he is proven guilty.

I. "Slavery and the Court: Dred Scott and the Fugitive Slave Laws"

1. Purpose of the Film

To show how the attitudes and opinions of the community can limit the power of the court if the law that the court is seeking to uphold is unpopular with a large segment of the community.

2. Objectives of Viewers

- a. Demonstrate knowledge that unpopular laws, even though constitutional, are not easily enforceable.
- b. Demonstrate knowledge that the constitutionality of the law does not ensure acceptance of the law.
- c. Demonstrate knowledge that compliance with the law is directly related to the perceived morality of the law.

d. Demonstate knowledge that, when courts follow rigid interpretations of the law, and these interpretations are in conflict with a sizable number of people, social forces will likely emerge to bring about sweeping changes in the society.

J. "The Mormon Polygamy Trials"

1. Purpose of the Film

To examine the question of what constitutes religious freedom.

2. Objectives of Viewers

a. Demonstrate knowledge that a wife cannot testify against her husband.

b. Demonstrate knowledge that while Congress cannot control thought, behavior that is criminal can be controlled even if it is part of someone's religion.

c. Accept the well-known fact that the views of the majority may conflict sharply with the views of a small minority.

K. "The Trial of Charles Guiteau"

1. Purpose of the Film

To illustrate the difficulty in defining criminal insanity; that is, in deciding the question of a person's moral and legal responsibilities for his acts.

2. Objectives of Viewers

a. Demonstrate knowledge that, even today, psychiatrists do not readily agree on the criteria for judging whether a person is legally responsible for his acts.

b. Accept the fact that a defendant may be morally responsible for an act but not legally responsible.

c. Accept the fact that attitudes and interpretations of acts of persons tend to change over time, so that

an act at one time may be viewed as depraved and subsequently viewed as an expression of mental illness.

d. Demonstrate knowledge of the accepted definition of legal responsibility: a defendant is responsible for his acts so long as he can tell right from wrong.

L. "Yick Wo v. Hopkins"

1. Purpose of the Film

To emphasize the right guaranteed by the Fourteenth Amendment to the Constitution; namely, the right to equal protection of the law regardless of the cultural or ethnic background of a citizen.

2. Objectives of Viewers

a. Demonstrate knowledge that the right of equal protection of the law is guaranteed by the Constitution regardless of the cultural or ethnic background of a citizen.

b. Support the idea that persons should have equal protection of the law regardless of their cultural or ethnic background.

c. Admit the fact that the courts may sometimes apply the law with an unequal hand or with prejudice.

d. Speak openly against the courts when they apply the law with an unequal hand or with prejudice.

M. "Stephen J. Field"

1. Purpose of the Film

To show the dedication of one person to the law and the judiciary, from the wild frontier to the United States Supreme Court.

2. Objectives of Viewers

a. Demonstrate knowledge that judges could dispense justice in frontier communities with a minimum amount

of the usual trappings of civilization.

b. Demonstrate knowledge that not all frontier judges resorted to catastrophic punishments (for example, hanging) in meting out justice.

N. "Mapp, Escobedo, Miranda: A Trilogy of Cases"

1. Purposes of the Film

a. To illustrate that illegal searches and seizures may not be used in any court in the land because they taint all the evidence that may be uncovered.

b. To emphasize that every defendant must be told, when arrested, of his rights, particularly his right to remain silent and his right to have a lawyer.

2. Objectives of Viewers

a. Demonstrate knowledge that an admission of guilt of a crime may not be used as evidence if the admission is made before the accused is informed of his rights and has had an opportunity to obtain a lawyer.

b. Indicate why a person accused of a crime needs legal advice during the period of police interrogation as well as at the time of his trial.

c. Demonstrate knowledge that searches made of private property by police officers who do not have search warrants are illegal.

d. State the conditions under which a search of private property may be legally made.

e. Support the view that evidence obtained during an illegal search should not be used against the defendant.

f. Support the view that a confession of a crime made prior to receiving advice and counsel from a lawyer cannot be accepted as evidence.

END

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