

Betts v. Brady: Hugo Black's Forgotten Dissent

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Supreme Court Justice Hugo Lafayette Black is remembered for his many landmark decisions defending equal rights and the constitution. Black wrote the eloquent and powerful majority decision in the 1940 case of *Chambers v. Florida* that saved four condemned African-Americans from execution.¹ In the 1942 case of *Betts v. Brady*, Black presented a stunning dissent against the court majority in dealing with right to counsel cases.² Finally, in 1963 he wrote the unanimous decision in *Gideon v. Wainwright* that overturned *Betts v. Brady* and stands as one of the most vivid and sweeping Supreme Court decisions of the twentieth century.³ The most vital aspect of these three Black decisions is that *Gideon v. Wainwright* would not have been possible without the earlier setback of *Betts v. Brady*. Many of the fundamental facets of Black's *Gideon v. Wainwright* decision can be seen in the earlier *Betts v. Brady* dissent. The historical significance of these cases is immeasurable in the course of Civil Rights scholarship. However, *Betts v. Brady* is largely ignored by modern historians studying the Civil Rights movement. This gap in scholarship is surprising after the details surrounding Hugo Black and the case itself are studied in detail.

Hugo Black commonly said, "I'm just a Clay County hillbilly."⁴ The humble surroundings of Clay County, Alabama provided the setting for Hugo Black's birth on February 27, 1886 in the small town of Harlan. Black originally chose, as his father had, to become a doctor, but later changed his plans and enrolled in the University of Alabama School of Law, graduating in 1906. Over the next two decades, Black held several elected positions in the Birmingham area, including County Solicitor and Prosecuting Attorney of Jefferson County. In addition, Black practiced law from his Birmingham office. In 1926 Black reached the pinnacle

¹ *Chambers v. Florida*, 309 U.S. 227 (1940).

² *Betts v. Brady*, 316 U.S. 455 (1942).

³ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁴ Roger K. Newman. *Hugo Black: A Biography*. (New York: Pantheon Books, 1994), page 3.

of his political career, winning election to the United States Senate. Black's early career in Alabama and his eleven-year senatorial tenure greatly shaped the literalist constitutional philosophy that governed his later Supreme Court decisions.⁵ As he stated in 1968 at Columbia Law School, "The Constitution is my legal bible [...] and I personally deplore even the slightest deviation from its least important commands."⁶ This literal interpretation of the Constitution led to such well-known Black decisions as *Chambers v. Florida*.

In 1940 the Supreme Court examined the case of four condemned African-American men. The case of *Chambers v. Florida* dealt with the murder of Robert Darcy in Pompano, Florida, on May 13, 1933. Within the subsequent twenty-four hours, officials arrested, without warrants, at least twenty-five African-Americans for the murder. Broward County officials questioned the men constantly, until May 21 when the four suspects of the case supposedly "broke" and confessed to the murder. All four were found guilty and sentenced to death in accordance with Florida state law. The Florida Supreme Court upheld the lower court's ruling that the men's confessions were entirely legal despite the questionable tactics employed by law enforcement officials. Upon appeal to the Supreme Court, Thurgood Marshall argued the case for the defendants, and the verdict was overturned in a unanimous decision. Surprisingly, the Hughes Court gave Justice Black the task of writing the court's opinion.⁷

Justice Black's unanimous decision in *Chambers v. Florida* is an eloquent testimony of his personal faith in the equality set forth in the United States Constitution, and a deep examination of his words provides thoughtful insight into the bedrock of his morality and ethical beliefs. Black wrote that, "Today, as in ages past, we are not without tragic proof that the exalted power of some governments to punish manufactured crime dictatorially is the handmaid

⁵ *Hugo Black: A Biography*, pages 3, 17, 20, 29, 37, 119.

⁶ *Hugo Black: A Biography*, page 583.

⁷ *Chambers*

of tyranny.”⁸ This excerpt offers a perfect example of Justice Black’s belief in the importance of history and its teachings upon current society. Justice Black’s personal library relied heavily on historical texts, and he often included historical analogies to show how the span of human existence could provide inexorable support for his decisions.⁹ The most significant aspect of Black’s *Chambers v. Florida* decision is his undaunted courage to point out inequalities inherent in the American judicial system when applied to minorities.

Above all, Justice Black believed in the United States Constitution and its solemn duty to protect the citizens of the country. In *Chambers v. Florida* the constitution was ignored, and Black supported this point with poetic fervor. “Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement.”¹⁰ Black set out to extend the Supreme Court’s veil of protection to the unrepresented segments of society. This particular choice of words is specifically important when one examines the facts surrounding Black’s political position at the time of the decision.

President Franklin Roosevelt nominated Black for the Supreme Court in 1937. Black was serving his second senatorial term when he received the nomination to serve on the nation’s highest court. The Senate confirmation process proved somewhat difficult when stories of Black’s former membership in the Ku Klux Klan arose. However, allegations subsided as the confirmation hearings continued and Black’s nomination proved successful. After Black took the oath of office and became an Associate Justice of the Supreme Court several newspaper articles surfaced; including an exposé printed in the *Pittsburgh Post Gazette* by Ray Sprigle, elaborating on Black’s membership in the Klan. following a moderate public outcry, Black

⁸ Ibid.

⁹ Daniel Meador. *Mr. Justice Black and his Books*. (Charlottesville: University Press of Virginia, 1974), page 31.

¹⁰ *Chambers v. Florida*.

made a public address in October 1937 in which he explained his reasons for joining the Klan and his objections to many of their policies. Despite this radio address, the stigma of membership and the possible effects it could have on Justice Black's performance on the court did not disappear.¹¹

The New York Times published both Black's decision and an adjoining article entitled "High Court Saves 4 Doomed Negroes," in its February 13, 1940 edition.¹² The article provides a well-written and detailed account of the events surrounding the case and the judicial precedents that Black set forth in his decision. One portion of the article offers excellent insight into the 1940 contemporary views of Justice Black. As author Frederick Barkley wrote, "...[the decision] was voiced eloquently by Justice Black, who admitted, after his nomination to the high bench, that he had once been a member of the Ku Klux Klan."¹³ Apparently, Barkley felt a strong need to include Black's background in the Ku Klux Klan and its impact on the decision itself. He elaborates further:

The drama of the occasion, due to the date of the opinion, the background of the justice rendering it, the defense of constitutional principles and the broad overtones of the court's denunciation of the exercise of dictatorial power by any government, was not lost upon the audience which crowded the great marble court chamber.¹⁴

Obviously Barkley, who attended the proceedings, believed that the events surrounding Black's confirmation, most notably his relationship to the Ku Klux Klan, had a direct correlation to the public's opinion of him. *Chambers v. Florida* greatly affected both Black's career and the public perception of his judicial credibility.

¹¹ Elizabeth & Hugo Black. *Mr. Justice and Mrs. Black: The Memoirs of Hugo and Elizabeth Black*. (New York: Random House, 1986), 71-72.

¹² Frederick Barkley. "High Court Saves 4 Doomed Negroes." *The New York Times*, LXXXIX (February 13, 1940), 1:4.

¹³ *Ibid.*

¹⁴ *Ibid.*

Neither history, nor Black, forgot the importance of the *Chambers v. Florida* decision. Justice Black believed that the decision represented his best writing.¹⁵ The case proved so important to Black that his widow wrote, “Hugo felt so strongly about the *Chambers* case that he could never read aloud from his opinion without tears streaming down his face.”¹⁶ President Roosevelt chose the case as the perfect opportunity to justify his appointment of Black to the Supreme Court, calling his contacts at various newspapers and asking if they were, “not now ashamed of themselves for making such an outcry against Hugo’s appointment.”¹⁷ *Chambers v. Florida* proved to be an intriguing case in which a former Ku Klux Klan member from Alabama showed his true judicial philosophies of equality and constitutional freedoms to the nation. It was an important step in the direction of the *Betts v. Brady* dissent two years later.

Historical attention to the Supreme Court case of *Betts v. Brady* is seriously lacking. Conceivably, this neglect is due to the fact that the decision simply upheld previous laws. Perhaps it is due to the lack of attention it was given at the time of its ruling. However, it is more likely that *Betts v. Brady* is ignored because of the attention given to *Gideon v. Wainwright*, which reversed the previous case in 1963. Nonetheless, the powerful dissent that Justice Black delivered in 1942 is worthy of attention.

Betts v. Brady originated in Carroll County, Maryland, when the county court convicted Smith Betts, a poverty-stricken farm hand, of robbery.¹⁸ This conviction came after Betts was denied legal counsel by the Maryland court in accordance with a state law that allowed court-appointed attorneys in capital cases only.¹⁹ Betts carried out his own defense after electing to be tried without a jury. He cross-examined the state’s witnesses, called upon his own, and finally

¹⁵ *Black and Black*, 73.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Lee Epstein & Thomas Walker. *Constitutional Law for A Changing America: Rights, Liberties, and Justice*. (Washington D.C.: CQ Press, 2004), page 584.

¹⁹ Under Maryland law only those accused of rape and murder were granted court-appointed counsel.

refused to take the witness stand himself. The court found Betts guilty and sentenced him to a term of eight years in prison. Betts appealed the case with two separate writs of habeas corpus. His appeal eventually reached the Supreme Court in 1942, but the Justices deeply disagreed on the correct manner for judging Betts's appeal.²⁰

On June 1, 1942 Associate Justice Owen Roberts delivered the Court's majority decision to uphold the original Maryland court's verdict. Chief Justice Harlan Stone and Associate Justices Forman Reed, Felix Frankfurter, James Byrnes, and Robert Jackson joined Roberts in the decision. This majority opinion must be considered before Black's dissent can be examined in detail. On the subject of incorporation and constitutional jurisdiction, Roberts's judicial philosophy differed greatly from Black's. Not only did Roberts believe that the Sixth Amendment did not apply to state cases, but he also held strongly that, "The due process clause of the Fourteenth Amendment does not incorporate, as such, the specific guarantees found in the Sixth Amendment."²¹ Roberts, along with the concurring justices, believed that incorporation of the Bill of Rights through the Fourteenth Amendment was a violation of constitutional precedence and law. However, the Justices were not completely against the right to counsel in all state cases; they stated "Its application is less a matter of rule. Asserted denial is to be tested by an appraisal of the totality of facts in a given case."²² This ruling created the "Betts Rule" which stipulated the circumstances under which states could provide counsel to indigent petitioners. Roberts's closing paragraph lays the foundation for Black's stirring dissent:

²⁰ *Betts v. Brady*, 316 U.S. 455 (1942).

²¹ *Ibid.*

²² *Ibid.*

As we have said, the Fourteenth Amendment prohibits the conviction and incarceration of one whose trial is offensive to the common and fundamental ideas of fairness and right, and while want of counsel in a particular case may result in a conviction lacking in such fundamental fairness, we cannot say that the amendment embodies an inexorable command that no trial for any offense, or in any court, can be fairly conducted and justice accorded a defendant who is not represented by counsel.²³

The majority ruled that the United States Constitution protected freedoms, but that it did not create an enforcing rule upon the states that counsel be provided in all cases. Their basis came from the belief in the lack of true and complete incorporation of the Bill of Rights through the Fourteenth Amendment, which Black so strongly believed in.

As shown in *Chambers v. Florida*, Justice Black held the protections of the Constitution as his primary concern in judicial practice. Black's dissent in *Betts v. Brady*, endorsed by Associate Justices William Douglas and Frank Murphy, followed this pattern of judicial philosophy. Early in the dissent Black made his own view of constitutional law paramount to his disagreement with the majority. He stated, "I believe that the Fourteenth Amendment made the Sixth applicable to the states. But this view, although often urged in dissents, has never been accepted by a majority of this Court."²⁴ Justice Black had no difficulty disagreeing openly with the court majority. In fact, upon Black's ascension to the bench in 1937, Chief Justice Charles Evans Hughes encouraged Black to dissent whenever he felt the need.²⁵ Thus, Black followed his conscience when dissenting in *Betts v. Brady*.

The poetic fervor and ideals seen in *Chambers v. Florida* are also present in Black's *Betts v. Brady* dissent. Just as in *Chambers v. Florida*, Justice Black believed that an underrepresented and impoverished member of society had been taken advantage of through flaws in the American judicial system. He stated, "A practice cannot be reconciled with 'common and fundamental

²³ Ibid.

²⁴ Ibid.

²⁵ Black and Black, 71.

ideas of fairness and right,' which subjects innocent men to increased dangers of conviction merely because of their poverty."²⁶ The phrase "common and fundamental ideas of fairness and right" was borrowed from Roberts's majority decision in the case. Whereas Roberts, along with the court majority, believed that a court case could be conducted without appropriate counsel for the defendant and not violate their fundamental fair rights, Black believed this to be impossible. In fact, Black held that this case in particular could not have been conducted fairly due to the circumstances of the defendant.

In his dissent, Justice Black made sure that the defendant's lack of mental prowess was apparent. Undoubtedly this technique was designed to gain a measure of sympathy for his task and in turn for the cause of Betts himself. Black immediately used the case record to note that although Betts had "an ordinary amount of intelligence," he was undoubtedly a man possessing limited knowledge.²⁷ This portion of the dissent came after Black's initial, but short, description of the court proceedings in which Betts made statements, called witnesses, and refused to take the stand himself. Black supported disapproval of a trial conducted by an unrepresented layman by saying, "Whether a man is innocent cannot be determined from a trial in which, as here, denial of counsel has made it impossible to conclude, with any satisfactory degree of certainty, that the defendant's case was adequately presented."²⁸ This important point showed that Betts's innocence or guilt was not about the true reason for his dissent. Rather, Black's dissent focused on the idea that a layman, uneducated in judicial practice and precedence, could not adequately show his possible innocence, and thus, not receive a fair trial. Justice Black completed his

²⁶ *Betts*.

²⁷ *Ibid*.

²⁸ *Ibid*.

dissenting argument by supporting his case with historical fact by using such cases as *Powell v. Alabama* and an obscure nineteenth century state Supreme Court decision.²⁹

As in *Chambers v. Florida*, Justice Black chose to include some sweeping historical facts in his dissent against the court majority. “Denial to the poor of the request for counsel in proceedings based on charges of serious crime has long been regarded as shocking to the ‘universal sense of justice’ throughout this country.”³⁰ Black supported this bold statement with multiple examples of state court proceedings supporting the right to counsel and the infamous case of *Powell v. Alabama*. One of Black’s best excerpts came from an 1854 case of the Indiana Supreme Court, “It is not to be thought of, in a civilized community, for a moment, that any citizen put in jeopardy of life or liberty should be debarred of counsel because he was too poor to employ such aid. No Court could be respected, or respect itself, to sit and hear such a trial.”³¹ A state court wrote these words almost one hundred years before Black took up the fight to make counsel a fundamental right for all citizens. Justice Black used the renowned 1932 case of *Powell v. Alabama* as a major basis for contending that the right to counsel in all cases is fundamental.

Powell v. Alabama, the celebrated case of the “Scottsboro Boys,” established the federal precedent that defendants must have counsel in all capital court cases.³² Black believed that the precedents set forth in *Powell v. Alabama* had a direct and indispensable correlation to the *Betts v. Brady* case. He quoted one of the more powerful portions of *Powell v. Alabama* to show the necessity of including it in his dissent:

An historical evaluation of the right to a full hearing in criminal cases and the dangers of denying it were set out in the Powell case where this Court said: ‘What ... does a hearing

²⁹ Ibid.

³⁰ Ibid.

³¹ *Betts v. Brady*, 316 U.S. 455 (1942). Original source: *Webb v. Baid*, 6 Indiana 13, 18 (1854).

³² *Powell v. Alabama*. 287 U.S. 45 (1932).

include? Historically and in practice, in our own country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. ... Even the intelligent and educated layman ... lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel in every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.³³

Black believed that the current court had forgotten the true principles established in *Powell v. Alabama* and *Palko v. Connecticut*.³⁴ Black held that the judicial ideals set forth in the two cases stipulated a need for counsel in all cases. To conclude his dissent, Black chose words that echoed the same justice and emotion that fueled his *Chambers v. Florida* decision two years earlier. “Most of the other states have shown their agreement by constitutional provisions, statutes, or established practice judicially approved which assure that no man shall be deprived of counsel merely because of his poverty. Any other practice seems to me to defeat the promise of our democratic society to provide equal justice under the law.”³⁵ Once again Black used the ideal of democracy to describe his judicial philosophy and to close his poignant dissent against the court majority.

The value of Justice Black’s dissent against the court majority is evident in the immediate judicial attacks against the new “Betts Rule.” A divided court set the stage for a two decade period of vigorous fighting over the validity of the new judicial decree from the time of its inception. Several subsequent cases before *Gideon v. Wainwright* identified problems with the “Betts Rule,” and the need for a proper court decision outlining the principles of fundamental counsel.³⁶

³³ *Betts v. Brady*, 316 U.S. 455 (1942). Original source: *Powell v. Alabama*, 287 U.S. 45 (1932).

³⁴ *Palko v. Connecticut*. 302 U.S. 319 (1937). A 1937 Supreme Court case that dealt with selective incorporation of the Fifth Amendment to protect victims of Double Jeopardy at the state level that also introduced “fundamental rights” into the judicial process.

³⁵ *Betts v. Brady*, 316 U.S. 455 (1942).

³⁶ Daniel J. Meador. *Preludes to Gideon*. (Charlottesville: The Michie Company, 1967), 5.

Contrary to the front-page attention received by *Chambers v. Florida*, *Betts v. Brady* largely fell on deaf ears in the journalistic world. Only a short, two-paragraph article announced the case to the public.³⁷ Similarly Black's dissent received virtually no attention in the brief article. Only a succinct portion of a sentence, "Justices Black, Douglas, and Murphy vigorously dissented," showed any rumblings of disagreement on the verdict.³⁸ The term "vigorously" does offer some insight into the contemporary feelings on Black's dissent, but the lack of journalistic awareness of Black's opinion is noteworthy nonetheless. Unlike *Betts v. Brady*, *Gideon v. Wainwright* remains ever-present in the journalistic, judicial, and academic worlds.

Gideon v. Wainwright, along with *Brown v. Board of Education* and *Roe v. Wade*, stands as one of the most recognized Supreme Court decisions of the twentieth century. *Gideon v. Wainwright*'s scope is apparent in both historical and judicial scholarship. However, the case extends into the popular public eye with the book and subsequent movie entitled *Gideon's Trumpet*.³⁹ Unlike *Betts v. Brady*, *Gideon v. Wainwright* serves as a rare example of a popularly taught Supreme Court decision. However, a more obscure fact is that *Betts v. Brady* played an essential role in the success of *Gideon v. Wainwright*.

Charged with breaking and entering with intent to commit a misdemeanor, Clarence Earl Gideon appeared in a Florida court without a lawyer due to insufficient funds to hire counsel. Gideon requested that a court-appointed attorney be provided for his defense. The court denied his request on the grounds that Florida law allowed court-appointed counsel in capital cases only. Forced to conduct his own case, Gideon defended himself with the expected ability of an uneducated defendant. He called his own witnesses, cross-examined the prosecution's witnesses,

³⁷ "Not 'Inexorable Command.'" *The New York Times*, XCI (June 2, 1942), 15:3.

³⁸ *Ibid.*

³⁹ Anthony Lewis. *Gideon's Trumpet*. (New York: Random House, 1966). Movie directed by Robert Collins and produced in 1980.

and made a closing statement declaring his innocence. However, the jury returned a guilty verdict and Gideon was sentenced to a term of five years' imprisonment.⁴⁰ As Gideon served his prison term, his appeal began its path to the Supreme Court.

Gideon first presented a writ of habeas corpus to the Florida Supreme Court. Upon denial by the Florida Supreme Court, Gideon mailed his now famous hand-written appeal to the United States Supreme Court where it was greeted with open ears and minds. One year earlier, the Court, now headed by Chief Justice Earl Warren, came close to overturning *Betts v. Brady* in the 1962 case of *Carnley v. Cochran*. However, the court proved divided on whether the specifics of the case supported a full reversal of *Betts v. Brady*. William Douglas and Black were the only justices remaining from the original Supreme Court case. An original dissenter with Justice Black in *Betts v. Brady*, Douglas again threw his support behind Black to overturn *Betts v. Brady* as soon as possible. However, due to the notorious facts of the *Carnley v. Cochran* case and dissents within the court, Warren and the other justices decided to postpone the reversal of *Betts v. Brady*.⁴¹ In 1963 *Gideon v. Wainwright* presented the best option for overturning the previous case.⁴²

Future Supreme Court Justice Abe Fortas expertly argued the defendant's case in *Gideon v. Wainwright*.⁴³ Thus, the Warren Court decided unanimously to overturn the case, thereby reversing the *Betts v. Brady* decision. Not surprisingly, Warren assigned the decision to Justice Black. Twenty-one years after the setback of *Betts v. Brady* Justice Black finally received his opportunity for vindication, and happily stated, "When *Betts v. Brady* was decided, I never

⁴⁰ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁴¹ The defendant in the case was found guilty of incest.

⁴² Bernard Wartz. *Inside the Warren Court*. (Garden City: Doubleday & Company, Incorporated, 1983), pages 178-179.

⁴³ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

thought I'd live to see it overruled."⁴⁴ Black rose to the occasion with the same fervor and emotion that fueled his original dissent.

Handed down on March 18, 1963, the *Gideon v. Wainwright* decision stands equally alongside *Chambers v. Florida* for its eloquence and graceful style. Throughout the decision Justice Black never allowed his purpose for overturning *Betts v. Brady* to escape him, stating "Since 1942, when *Betts v. Brady* was decided by a divided Court, the problem of a defendant's federal constitutional right to counsel in a state court has been a continuing source of controversy and litigation in both state and federal courts." Justice Black refused to let the past years of turmoil caused by the "Betts Rule" simply slip away. Once Gideon's appeal reached the Supreme Court, the case became so focused on *Betts v. Brady* that the Court instructed the litigators on both sides to ask themselves, "Should this Court's holding in *Betts v. Brady* be reconsidered?"⁴⁵

Justice Black saw *Gideon v. Wainwright* as the perfect opportunity for overturning *Betts v. Brady* due to parallels between the two cases. He stated, "The facts upon which Betts claimed that he had been unconstitutionally denied the right to have counsel appointed to assist him are strikingly like the facts upon which Gideon here bases his federal constitutional claim."⁴⁶ Black proceeded from this point with a summary of the stirring facts of the Betts case. Both cases dealt with poor defendants who attempted to defend themselves in the best manner they possibly could as laymen. Both Gideon and Betts faced conviction without the aid of counsel. Thus, Black identifies a direct correlation between the cases. "Since the facts and circumstances of the two cases are so nearly indistinguishable, we think the *Betts v. Brady* holding if left standing would require us to reject Gideon's claim that the Constitution guarantees him the assistance of counsel.

⁴⁴ Wartz, 180

⁴⁵ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁴⁶ *Ibid.*

Upon full reconsideration we conclude that *Betts v. Brady* should be overruled.”⁴⁷ Justice Black not only wished *Gideon v. Wainwright* to overturn *Betts v. Brady*, but he also sought to show with certainty that the 1942 court made an egregious error in its decision against *Betts*.

In writing the *Gideon v. Wainwright* decision, Justice Black wisely identified the judicial philosophies that he believed were ignored in the *Betts v. Brady* decision. Black again returned to the *Betts* case writing that the 1942 Court had “ample precedent for acknowledging that those guarantees of the Bill of Rights are fundamental safeguards of liberty immune from federal abridgement.”⁴⁸ In this passage Justice Black showed the specific areas in which *Betts v. Brady* violated correct judicial philosophy. Again, as in *Chambers v. Florida* and the *Betts v. Brady* dissent, Black showed his personal judicial theory of constitutional law and how federal protections should govern the actions of state judicial practices. As in the *Betts v. Brady* dissent Justice Black again mentioned the contradictory nature of the Court’s rulings, and the previous ruling in *Powell v. Alabama*, stating “This same principle was recognized, explained, and applied in *Powell v. Alabama* (1932), a case upholding the right of counsel.”⁴⁹ In addition, Black notes that in *Powell v. Alabama*, “the Fourteenth Amendment ‘embraced’ those ‘fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.’”⁵⁰ It becomes clear that the decision in *Gideon v. Wainwright* supported Justice Black’s original belief that the precedents in *Powell v. Alabama* justified the theories of his *Betts v. Brady* dissent.

One of the strengths of Justice Black’s *Gideon v. Wainwright* decision is the continuing evidence that *Betts v. Brady* did not follow the correct line of judicial reasoning set forth in *Powell v. Alabama*. *Betts v. Brady* had the proper ideal at its core; however it was not fully

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

carried out in the spirit of *Powell v. Alabama*. As Black states, “We accept *Betts v. Brady*’s assumption, [...], that a provision of the Bill of Rights which is ‘fundamental and essential to a fair trial’ is made obligatory [...] by the Fourteenth Amendment.”⁵¹ Black argues effectively that the right to counsel is one of those fundamental protections. The *Betts* majority decision stands in stark contrast to *Powell v. Alabama* which addressed the right to counsel as being “fundamental.”⁵² *Betts v. Brady* was correct in its interpretation of the ideal of fundamental rights in the United States Constitution. However, the court made a grievous error in not declaring the Sixth Amendment as a fundamental right. This line of reasoning supporting the unanimous decision to overturn *Gideon v. Wainwright* was virtually the same argument set forth in the *Betts v. Brady* dissent. To apply this argument further, Black quoted yet another case, the 1936 decision of *Grosjean v. American Press Company*, in which the court identified fundamental rights; including the right to counsel. He stated, “We concluded that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process of law clause of the Fourteenth Amendment, and among them the fundamental right of the accused to the aid of counsel in a criminal prosecution.”⁵³ In his discussions of these cases, Justice Black established a careful and evolutionary line of thinking which highlighted the Court’s *Betts v. Brady* mistakes.

Justice Black used his skillful writing style to demonstrate why the *Gideon v. Wainwright* verdict had to be overturned and why *Betts v. Brady* should be completely reversed. “The fact is that in deciding as it did - that ‘appointment of counsel is not a fundamental right, essential to a fair trial’ - the Court in *Betts v. Brady* made an abrupt break with its own well-considered

⁵¹ Ibid.

⁵² Ibid.

⁵³ *Gideon v. Wainwright*, 372 U.S. 335 (1963). Original source: *Grosjean v. American Press Co.*, 297 U.S. 233, 234 (1936).

precedents,”⁵⁵ Justice Black stated. By presenting his argument carefully, as a direct result of the *Betts v. Brady* dissent, Black confidently showed how the *Betts v. Brady* court was wrong in its decision, and also contradicted its own precedents. Furthermore, Black asserted that a return to these principles is at the heart of the *Gideon v. Wainwright* decision. Black’s decision echoes the same principles present in the *Betts v. Brady* dissent’s defense of the economically weak and their need for counsel in our “adversary system of criminal justice.” Moreover, Black goes beyond judicial precedent saying “reason and reflection” guide the fundamental aspects of this case. In addition, he used governmental practices to support the idea that “lawyers in criminal courts are necessities, not luxuries.”⁵⁶ In effect, lawyers are in no way an elective part of our American legal system. If lawyers were merely optional, they would not be seen in such numbers inside the nation’s judicial framework.

Justice Black never forgot the necessity of history in proving a judicial precedent. In *Gideon v. Wainwright* he used historical precedents grounded in the moral fiber of the nation to finalize his personal argument for the right to counsel in all court cases:

The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.⁵⁷

Constitutions, both state and national, contain the “noble idea” of equality in the judicial sector. These noble ideas were defamed and demoralized by the lack of action in the *Betts v. Brady* case.

Black ended the *Gideon v. Wainwright* decision with one of the most powerful arguments to ever affect the general population. By 1963 “twenty-two States [...] argued that *Betts* was ‘an

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

anachronism when handed down' and that it should now be overruled."⁵⁸ When Black's vindication in the form of *Gideon v. Wainwright* finally arrived, he spoke not for a minority of the populace, but for a growing majority that agreed with his belief in the rights and equality of every citizen.

Gideon v. Wainwright immediately garnered attention as a landmark case in the history of the Supreme Court. Additionally, the case received instant public notoriety. On March 19, 1963 the leading headline of *The New York Times* read: "Supreme Court Extends Ruling on Free Counsel," and included Justice Black's decision in its entirety.⁵⁹ The article mentioned *Betts v. Brady* several times in relation to the decision. Moreover, the report recognized the overriding importance of the *Gideon v. Wainwright* decision, calling it, "one of the most important [decisions] ever made by the Supreme Court in the criminal law field."⁶⁰ *Gideon v. Wainwright* still holds this distinction in modern academic study.

Gideon v. Wainwright remains one of Justice Black's most striking judicial decisions. As Daniel J. Meador, one of the pre-eminent experts on Black, writes: "*Gideon* was indeed a great personal triumph for Black."⁶¹ Meador also notes that Black had a unique perspective, ruling on both the beginning and end of the battle over the right to counsel. *Gideon v. Wainwright* would not have been possible if not for Justice Black's earlier setback in the 1942 case of *Betts v. Brady*. Black's legacy as one of the greatest Supreme Court Justices of the twentieth century is secure. However, this heritage neglects the weight of the *Betts v. Brady* dissent. Despite the impact of *Betts v. Brady* on later cases and on Black's judicial philosophies, it has been glossed over, footnoted, or completely dismissed. Through the study of *Chambers v. Florida*, *Betts v.*

⁵⁸ Ibid.

⁵⁹ Anthony Lewis. "Supreme Court Extends Ruling on Free Counsel." *The New York Times*, CXII (March 19, 1963), 1:1.

⁶⁰ Ibid.

⁶¹ Meador, *Preludes to Gideon*, 282.

Brady, and *Gideon v. Wainwright*, one inexorable fact remains apparent: *Betts v. Brady* deserves serious historical attention in the same manner that *Chambers v. Florida* and *Gideon v. Wainwright* are appreciated. The *Betts v. Brady* dissent ranks among Justice Black's most important cases and should no longer be viewed merely as a forgotten or footnoted case.

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