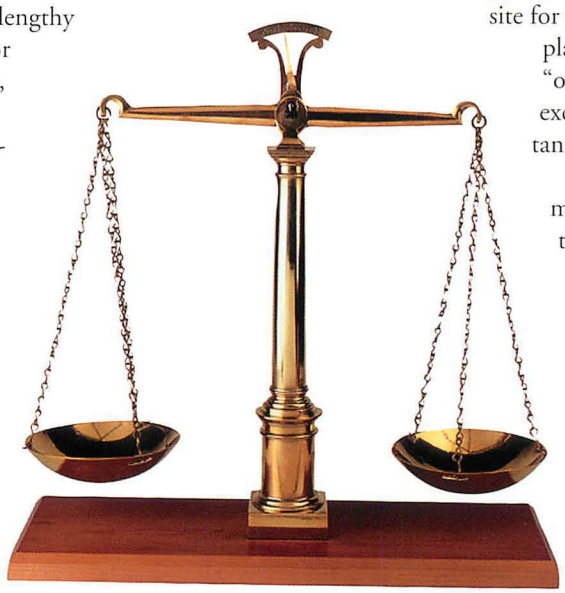
1999 Gerber Symposium: Gideon v. Wainwright

BY CHRISTINE STUTZ

The 1999 Gerber Symposium, held in March at the School of Law, examined the reality of the right to counsel. "Gideon: A Generation Later—Is the Trumpet Still Sounding?" commemorated the 36th anniversary of the landmark U.S. Supreme Court decision in the case of Gideon v. Wainwright. Decided at the peak of the civil rights movement that challenged racial and class injustice, "Gideon still ranks as a signature decision in protecting individual freedom against unjust incarceration," says Professor Doug Colbert, who organized the conference with assistance from the staff of the *Maryland Law Review*.

Gideon, a middle-aged drifter with a lengthy prison record, was arrested in 1961 for burglarizing a pool room in Panama City, Fla. At that time, the U.S. Constitution did not mandate that states provide counsel for an accused who could not afford private legal help, even when charged with a felony.



Insisting he was innocent but with no money to hire a lawyer, Gideon asked a Florida court for assistance of counsel but was denied. Acting as his own lawyer, Gideon was convicted and sentenced to the maximum five years in prison. When Florida's highest court rejected his appeal, he wrote a handwritten letter to the U.S. Supreme Court. The High Court appointed Abe Fortas and Abe Krash to argue his case, and ruled unanimously that he was entitled to counsel. At Gideon's new trial, he was represented by an American Civil Liberties Union attorney and acquitted by a jury.

For the conference, Professor Colbert assembled a panel of practicing lawyers, judges and scholars to explore whether the U.S. criminal justice system is fulfilling Gideon's promise. Speakers included Anthony Lewis, the *New York Times* columnist and Pulitzer Prize-winning author of the book *Gideon's Trumpet*; Abe Krash, and Stephen Bright, director of the Southern Center for Human Rights and a faculty member at Yale University Law School.

The second day's proceedings, which focused on the right to counsel in capital cases, was broadcast on the cable network C-SPAN. Highlights of that day's program included a presentation by Rubin "Hurricane" Carter, who was unjustly imprisoned for more than 20 years for a triple murder in which he was not involved, and a debate between Bright, a fervent and eloquent opponent of the death penalty, and the Hon. Michael J. McCormick, presiding judge of the Texas Court of Criminal Appeals. (The state of Texas has more people on death row than any other state in the nation, and has gained notoriety for recent published reports of death-row defendants losing their appeal rights because their lawyers failed to meet filing deadlines, and for appointed lawyers in capital cases falling asleep at the trial table.)

"I've gotten many, many letters from across the country from people who watched [the conference on] C-SPAN and were incredibly moved by seeing people who want to ensure equal justice for individuals in our criminal justice system," says Colbert.

"Providing people with competent attorneys is a prerequisite for ensuring fairness." Colbert calls the interplay between Bright and Judge McCormick "one of those memorable and important exchanges that hopefully will lead to important reforms in the assignment of counsel."

Colbert is extremely proud of the performance of the panelists, which also included the Hon. Andre M. Davis '78, a law school alumnus and adjunct faculty member who is a federal judge for the District of Maryland; Elizabeth A. Semel, director of the American Bar Association's Death Penalty Representation Project, and Katy C. O'Donnell, a Maryland public defender in the Capital Defense Division. "It was a program that had many important and memorable moments," says Colbert. "The participants were exceptional and presented a reality to the constitutional guarantee of what it means to provide counsel in a criminal case."

Twenty students in Colbert's spring clinical seminar, "Access to Justice and Bail," kept the spirit of Gideon alive by drafting legislation based on Colbert's pilot Lawyers at Bail (LAB) project. LAB provides pro bono representation for indigent defendants at bail hearings on misdemeanor offenses. Although the bill was narrowly defeated in the 1999 Maryland General Assembly, Gov. Parris Glendening provided $500,000 to the Public Defender's Office to provide representation for such defendants in Baltimore City.

Colbert says his students came away from the conference and their seminar experience with a renewed understanding of the importance of remaining vigilant to protect our most precious constitutional rights. It's not enough for legal protections to exist, he says: they must be passionately enforced.

Lawyers and law students are obligated to educate the public about their constitutional rights. "If we don't raise our voices," he asks, "who will?"