GIDEON, ESCOBEDO AND MIRANDA: HOW THREE SUPREME COURT JUSTICES WAGED THE IDEOLOGICAL BATTLE AGAINST COMMUNISM

The following faculty members have examined the final copy of this thesis for form and content, and recommend that it be accepted in partial fulfillment of the requirement for the degree of Master of Arts, with a major in History.

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DEDICATION

To my parents, without whom none of this would be possible
The Constitution was not made the supreme law of the land so that it might guarantee justice. This is not because justice is unattainable, but because it is unascertainable. The Constitution guarantees only that the result, whatever it may be, has been reached in a fair way. The quintessence of this guarantee is that the possibilities of ascertaining the truth have been exhausted to the utmost, and this result depends on the adversary system. This process cannot demand absolute equality in the skill of counsel for the contending parties but it must demand equality in the right of counsel itself.

-Edward B. Endsley III
ACKNOWLEDGEMENTS

The library staff at The Library of Congress Manuscript Reading Room, Wichita State University, University of Kansas Law Library, The University of Iowa Main Library, and The University of Iowa Law Library. Thanks to Professors Robert Owens and Silvia Carruthers who agreed to read my thesis in a very short amount of time. Thanks to Professor Judy Johnson who did not let me give up and kept after me to get this done, despite my love of the passive voice. Thanks to my Professors at The University of Iowa who constantly reminded me to get this done. A special thanks to my proofreaders Bethany Templeton and Erin Sehorn-Elwell for their attention to detail and moral support. To Côte du Rhône. And a very special thanks to Kathleen Regan, who, along with the army of others, told me that I could do this but had to put up with my constantly bad attitude while writing.
ABSTRACT

The United States Supreme Court was at the center of criticism in the 1960s. Unpopular Court decisions, such as expanding the rights of the criminally accused, brought the Court a lot of attention. The Court is the most removed body of government in the United States, being that members are appointed, not elected. Thus this separation from the Court created the need to explain its behavior, i.e. why it produced the opinions it did. This paper explores three Court decisions, *Gideon v. Wainwright* (1963), *Escobedo v. Illinois* (1964), and *Miranda v. Arizona* (1966) and argues that the decisions in each case were due to the individual Justices experience with communism, than with any other of the theories behind the Court’s action.
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CHAPTER 1
INTRODUCTION

“No person shall. . . be compelled in any criminal case to be a witness against himself.”

Hugo Black, Arthur Goldberg, and Earl Warren occupy a unique part of United States history. All three were members of the United States Supreme Court during a paradigm shift in how the country viewed civil liberties and those charged with criminal activities. These justices also made contributions in the shift towards a greater understanding of how civil liberties fit into the judicial landscape of the United States, particularly related to the criminally accused. These actions sparked strong debate among a variety of citizens. For example, the detractors of the Warren Court came from all backgrounds, from apartment managers to the President of the United States. Explaining the actions of the Warren Court has become a pastime for historians and legal scholars. During the era itself (1953-1969) legal writing acknowledged the court as continuing a trend towards a wider interpretation of civil liberties. After the Warren era ended, academics found a new way to describe the behavior of the court as “activist.” The Vagueness of the term gave it power. The reasons for the Warren Court’s action in expanding the civil liberties are thus broken down into two possibilities: either it was a natural progression of the interpretation of the Constitution or the Court was just activist. The natural progression of the Constitution has a considerably larger amount of evidence to support it, but that still does not fully explain why Justices Black, Goldberg, and Warren wrote opinions such as *Gideon v. Wainwright* (1963), *Escobedo v. Illinois* (1964), and *Miranda v. Arizona* (1966). One

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1 U.S. Const. amend. V.
explanation has been overlooked in the creation of these opinions, that each of the justices, who wrote the respective opinion, did so because of the ongoing ideological battle between democracy and communism.

*Gideon v. Wainwright* began with the arrest of Clarence Gideon on the charge of burglary. Gideon was arrested in Florida, which was one of only three states that did not appoint counsel for all defendants at trial. Since the sum of money stolen was under $500 the Florida Court did not deem it necessary to grant Gideon his request for representation at trial. He hand wrote an *writ of certiorari* to petition his case before the Supreme Court. After oral arguments the Court ruled that all defendants had the right to legal counsel, regardless of the severity, or lack thereof, of the charges.

*Escobedo v. Illinois* was a more serious case that dealt with murder. Danny Escobedo was repeatedly questioned about the murder of this brother-in-law. Despite having retained counsel Escobedo was repeatedly denied access to his lawyer. After several hours of interrogation Escobedo made an incriminating statement and was arrested as an accomplice in the murder. The Supreme Court ruled that Danny Escobedo was denied proper protection as guaranteed under the Constitution and that his confession was not admissible in court.

*Miranda v. Arizona* was the culmination of what the previous two cases built towards with regards to the understanding of how the Constitution protects the accused. Ernest Miranda was convicted of rape after having confessed to the crime. During interrogation Miranda was not informed that he had a Constitutional right to have a lawyer present. Subsequently he confessed and was quickly convicted. The Supreme Court ruled that the Fifth Amendment protects citizens against self-incrimination and that law enforcement officials must inform the accused that they have a right to the presence of a lawyer acting on their behalf.
Initially, positive reactions followed *Gideon, Escobedo* and *Miranda*. A cursory look at the writing in journals which focused on legal issues of the time shows that legal scholars felt that these cases were overdue in appearing before the court. Initially, *Gideon* drew little attention as only three states denied the right to counsel in non-capital crimes. *Gideon* granted indigent defendants the right to counsel at trial. However, *Gideon* received considerably more attention when followed by *Escobedo* and *Miranda*. *Gideon* continued to resonate through the American legal system and legal scholars believed that its outcome was due to the Court’s desire to clarify the accused’s right to counsel.²

Soon after *Escobedo* was decided by the Court, many law journals revisited *Gideon*. Repeatedly articles questioned what took the Court so long to fully incorporate the Sixth Amendment and give every defendant the right to legal counsel.³ The incorporation of the Sixth Amendment was actually a major issue in much written legal discourse and a source for debate over the court’s motivation to do so. One of the ambiguities of *Gideon* was when, exactly, did the right to counsel begin. Again legal scholars echoed this sentiment.⁴

*Gideon* was a popular decision. Few were willing to attack the right of the poor to have legal counsel provided to them. Civil libertarians viewed *Gideon* as a high point in the development of the treatment of the accused.⁵ On the horizon, however, was another case that had as great an impact when the Court heard argument in *Escobedo v. Illinois*. The origins of that case rest in the experience of Danny Escobedo who retained counsel and repeatedly tried to

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have that counsel present during his interrogation. After several hours Danny Escobedo inadvertently confessed to the crime of murder he was implicated in. The Court decided *Escobedo* approximately one year after *Gideon*. *Gideon* was primarily mentioned in law journals in the current law section that discussed changes to the legal system. *Escobedo*, in contrast, was the focus of full-length articles discussing the Court’s approach to the incorporation of the Fifth and Sixth Amendments.

Immediately after the decision of *Escobedo*, law journals published a flood of literature evaluating the case. As before with *Gideon*, legal scholars viewed *Escobedo* as a natural progression of the rights of the accused and the manner that the accused are afforded rights during interrogation.6 Others stated that *Escobedo* was a foregone conclusion and that the Court intended to go as far as it did in *Escobedo* (and perhaps even farther) in the expansion of the rights of the accused at a later time.7 The academic writing stopped short of calling for an outright ban on confessions entirely. Yet scholars recognized that the Warren Court was willing to expand the due process of law clause in the Fourteenth Amendment in ways that previous Courts would have never considered.

Legal academics were aware of the numerous disadvantages that non-lawyers have while under police interrogation. After *Escobedo*, many in the legal community believed that the expansion of civil liberties was entering a golden era in constitutional history and that eventually the right to counsel would be universal and that every defendant in legal custody would have an

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attorney present. The Court showed through *Escobedo* that without the presence of counsel during interrogation there was little, if any, assurance that the accused would be able to properly defend themselves from police interrogation.

The tone of legal writing changed after *Escobedo*. Legal academics viewed Gideon as a necessary step for the legal system of the United States; the same was true for *Escobedo*. However, voices from outside of the legal academic world did not view *Escobedo* in the same way. After *Escobedo* police unions targeted the Court with unrelenting criticism. The legal academic community showed the need for *Escobedo* in the U.S. criminal justice system. Similar reactions occurred after *Miranda*.

Where police unions were upset by *Escobedo*, society was outraged by *Miranda*. Congress suggested a flood of legislation to counter the ruling of the Court in *Miranda*, but none came to pass. One major critic of the Court was Senator Sam Ervin (D-North Carolina) who wanted to pass legislation to limit the Court’s role in criminal justice cases: for this Senator Ervin was the target of considerable legal criticism. In a scathing attack on Senator Ervin, Alvin H. Goldstein Jr. (a retired municipal court judge) stated that to repeal *Miranda* would do nothing to safeguard society. Goldstein, on the ability of the police to interrogate, wrote “Of course, this is a seductive argument for those who do not acknowledge that it is the rules prohibiting arbitrary police procedures that differentiates our free society from the closed society represented by fascist and Communist nations.”

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11 Ibid., 176
The criticism from Washington, and the threat of legislative action, resulted in very compelling historical arguments from the legal writing of the time. The importance of *Miranda* persisted throughout the close of the decade. Defense of *Miranda* ranged from the need of protection against undue police intrusion to constitutional history. “*Miranda* and *Escobedo* are the Court’s responses to the continuing assertion of substantial claims that confessions were extracted during police detention by physical and mental coercion and overreaching.”\(^\text{12}\) Support from the greater legal community was important to maintaining the legitimacy of *Miranda*: this was despite the strong legal standing that the Court exercised in writing *Miranda*.

Legal scholars had strong support for the historical development against self-incrimination as well that resulted in *Miranda*. The absence of freedom in the colonies resulted directly in the founding of the United States.\(^\text{13}\) Additionally, legal scholars viewed the importance of *Miranda* to be on the same level of *Brown v. Board of Education* (1954), that *Miranda* represented a seminal point in the transformation of American jurisprudence.\(^\text{14}\) The acceptance of *Gideon*, *Escobedo*, and *Miranda* by the legal community would only last so long. Eventually the increasingly conservative nature of the United States legal system would need a new interpretation of the court reasoning in these cases that transformed the treatment of the civil liberties of the accused.

The conservative climate of the American political culture found little comfort in the words of The Founders. Alexander Hamilton did his best to tame the fear that the Supreme Court would be too powerful, “the judiciary. . .will always be the least dangerous to the political

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\(^{14}\) Ibid., 185.
If Hamilton was correct in *Federalist 78* then he surely could not imagine the turmoil generated by the Supreme Court during the tenure of Earl Warren. During the 1960s the Warren Court tremendously expanded the scope of the Bill of Rights to help protect all citizens of the United States against violations of their civil liberties. Despite the equality this expansion gave to the country, many felt that the Court was overstepping its role in government. Some went so far as to suggest that the Court was under communist influence and demanded the impeachment of Earl Warren. In trying to explain the Warren Court’s expansion of criminal rights many historians have pointed to “judicial activism;” and left it at that.

Regardless of the validity of the term, historians and political scientists have repeatedly labeled the Warren Court as activist. However, activism is too simplistic an explanation for the actions of the Court. The importance of the Warren Court was not the activism, but what its actions or decisions said about the Supreme Court as an institution. In 1787 a political process began to incorporate the Bill of Rights to the Constitution. The idea that people have rights, regardless of their position in society has always troubled social structures, especially those in the class above the ones getting new found rights. The Warren Court’s expansion of criminal rights challenged those structures.

Countless nameless defendants suffered at the hands of overzealous authorities before the current rights enjoyed by those accused of a crime materialized. As stated above, through cases like *Johnson v. Zerbst* (1938) the Supreme Court limited the accused right to counsel. However, the accused were free from open acts of torture as ruled in *Brown v. Mississippi*. The

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15 *Federalist 78.*
17 Notably the John Birch Society. In addition to threats of impeaching Warren, William O. Douglas was impeached once with two other threats to do so from the House of Representatives.
expansion of civil liberties was a continual process during the twentieth century and no other Court in this nation’s history did more to expand that right than the Warren Court.

Three cases in particular highlight the uniqueness of the Warren Court when examining the role of the rights of the accused; *Gideon v. Wainwright* (1963), *Escobedo v. Illinois* (1964) and *Miranda v. Arizona* (1966). These three cases each incorporated parts of the Fifth and Sixth Amendments to the entirety of government in the United States. These three cases are also often viewed as a result of the Court’s activism: they do not, however, represent the entirety of the activist-labeled decisions. That label did not begin with the Warren Court’s expansion of criminal rights in these three cases, but instead with the first ruling of the new Court under Chief Justice Warren.

The tenure of the Warren Court began with *Brown v. Board of Education* (1954). *Brown* was the first case viewed as the result of the actions of an activist court. What exactly activist meant was unclear but the comment was not positive. *Brown* overturned 60 years of legal precedent by ruling that, “in the field of public education the doctrine of separate but equal has no place. Separate educational facilities are inherently unequal.”¹⁸ *Brown* represented the Court’s decision to reject precedent. *Plessy v. Ferguson* (1896) stipulated that separate but equal accommodation admissible for the races by the different state governments, such as Mississippi, Alabama, and Georgia. *Plessy* was the first time that a law regarding the separation of races reached the Supreme Court. The subsequent ruling by the court, that tolerated separate but equal, created the precedent that *Brown* set out to overturn. The Warren Court, in *Brown*, ruled that such precedent had no place in modern society.¹⁹ *Brown’s* ruling directly conflicted with *Plessy*. *Plessy* stated that legally the races could be separated. *Brown*, consequently, stated that to

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¹⁹ *Brown* 347 U.S. at 496.
separate the races under the guise of the law had no place in the American legal system. Hence the Court ignored precedent to correct a racist stance of a bygone era, the disregard for precedent gave critics of the Court something to grasp and develop.20

“Activist” can be considered an adjective for the Warren Court. Overruling precedent alone does not satisfy what it means to be activist. If historians are implying that activism simply means overruling previous Court precedent then it would be easy to identify activist decisions. However, where one academic sees activism, another may not. Scholars, writing on the Warren Court, have stated that its activism only increased as time went on, approaching its height in the late 1960s.21 The decisions of the late 1960s concentrated on issues such as states’ laws regarding birth control and school prayer: in essence it was not precedent but the “states’ rights” argument that created the activist adjective.

So we now have two possibilities for what activism means. The first is the Court ignores precedent and the second is the overruling of states laws in favor of federal authority. There is also a third argument: that the Warren Court was simply looking for a fight. In other words, that nearly every decision made by the Court was activist and that that label is undisputed.22 Another scholar takes the position that the behavior of the Warren court was simply the appeasement of liberal activist groups.23 At this point it becomes clear that activist/activism is used to describe the court when it takes action that elicits some kind of controversy. As we shall see, few rulings upset U.S. society more than those that dealt with expanding the rights of the accused.

The Warren Court evolved during a unique time in the history of the United States, and this fact helps explain why the label of “activist” was (and is) so readily applied. On the surface, the country was the master of the universe with many American citizens believing that the United States had single-handedly won the Second World War. In addition the people of this country believed that since slavery had been abolished for more than one hundred years, the nation now stood as the great shining example of democracy.\textsuperscript{24} However true such statements might have been in the eyes of the citizens, the issues were not as black and white. The victory of World War Two was due in part to the United States but also largely to the Soviet Union. Slavery was no longer legal but African Americans were still treated as second class citizens in the United States as a whole. This situation created a paradox as the country had just help defeat racist regimes in both Europe and Asia. Thus the Warren Court was the judicial branch for a nation of contradictions.

Conservative critics attached the activist label to the Court at a time of introspection in the United States. The internal struggles of states’ rights over the federal government was solved somewhat by the Civil War and the country now looked to the rest of the world for the next challenge. The attention of the government was no longer close-minded isolationism, but looked outward to the rest of the world to prevent threats to western Democracy.\textsuperscript{25} With the attention of both the Legislative and Executive branches outward, it was left to the Supreme Court to finally realize its power and make adjustments to the national landscape in the only way it could, through applying the Constitution to every citizen, not just the privileged. The Warren Court’s expansion of rights for the accused was at the heart of a greater agenda for the Court: that the


United States needed to show the world that it was not above its own propaganda and that democracy stood to empower everyone in society.

The expansion of rights for the accused by the Warren Court was an attempt by its members to realize the greater need in the United States to live up to the claims of freedom that the country made when combating the spread of communism. Thus, these pivotal criminal rights cases exemplified the Warren Court’s ideological battle against communism through the expansion of rights for the accused: *Gideon v. Wainwright*, *Escobedo v. Illinois* and *Miranda v. Arizona*. These were not the only cases dealing with criminal rights that the Warren Court ruled on, but they all carried the common thread of equality of representation. These cases also contributed to the trend of labeling the court as activist. Examining these three cases allows a detailed look at how the Warren Court functioned. That the Warren era was not an activist Court singing in unison to liberal ideals but as a liberal Court confronting the ideological battle of the West to communism.

Different Justices wrote all three of these decisions; *Gideon* by Justice Black, *Escobedo* by Justice Goldberg, and *Miranda* by Chief Justice Warren. Each of these men authored their respective decisions in the manner they did because unique circumstances in their lives propelled them to contribute in the fight against communism. As seen above scholars have been quick to point out that the Warren Court’s rulings were the actions of liberal activism despite the fact that liberal activism is never fully defined by the scholars making the claim. The overreaction to label these decisions as activist and move on has been accepted by numerous historians and legal scholars writing about the court in an attempt to look at the jurisprudence of the decisions themselves, or the legal doctrine that developed. Examining the greater judicial philosophy of the Supreme Court is an important endeavor. It is perhaps unwise to lump the Court’s behavior
into one ill-defined term and then move on to the development of legal philosophy without looking at the individual justice’s reasoning. Instead, it is better to look at how these decisions were developed first in the minds of the justices. The impetus for the founding of the United States was centered around the fact that a group of wealthy white males did not want to pay their taxes.\textsuperscript{26} That is the unfortunate truth of the political heritage of the United States. The Founding Fathers managed to use language in the Constitution that would allow future generations to expand freedom to a majority of the population, regardless of how selfish their reasons were for writing it. In order to discuss what these freedoms mean to the United States, and the rest of the world, a brief a look at some of the technicalities established within the Constitution and Constitutional law throughout history will provide greater clarity and understanding.

The Founders created the Supreme Court to ensure a check against the power of the Legislature and the Executive.\textsuperscript{27} The exact power of the Court was unclear then and still is to some degree today. The role of the Court in the new government of the United States was so ambiguous that there was little for it to do in the first years of the republic. Marbury v. Madison (1803) was the first decision that helped to define the Supreme Court as an institution. In Marbury John Marshall stated that the Congress did not have the right to expand the jurisdiction of the Supreme Court by means of the Judiciary Act of 1789. Marshall defined a key power of the Court in Marbury: judicial review of congress. The political atmosphere of the early republic was hostile. The Federalists battled the Anti-federalists over what the Constitution meant. Was there a right to a national bank? Alexander Hamilton thought so. Additionally there was a question about the relationship between the States (dealing primarily with trade issues) which

\textsuperscript{26} Charles A. Beard, \textit{An Economic Interpretation of the Constitution of the United States} (New York: The Macmillan Company, 1939) 29.
resulted in numerous court cases. The problem with these confrontations was that they involved many of the men who wrote the Constitution of 1787: in essence even the Founders disagreed over their interpretation of what the Constitution meant. Questions dealing with the nature of the young republic and how it was to function eventually ended up before the Supreme Court. It was there that John Marshall made his mark on government. Unfortunately for Marshall, he was the last of a dying political party and faced numerous attacks from states’ rights-oriented Jeffersonians and later Jacksonian Democrats.

Political strife in the country eventually found its way to the Supreme Court with John Marshall doing what he could to keep the country together. One dispute before the Court came from the questionable jurisdiction of the first ten amendments to the Constitution. The Bill of Rights were a last minute addition on to the Constitution. The Founders worried about the power of the federal government and the possibility of tyranny. The survival of the 1787 Constitution depended on the states’ ratification of it. The Federalists waged a propaganda war, arguing for ratification in the Federalist Papers. Additionally, the Founding Fathers in Philadelphia added ten amendments to the Constitution that came to be known as the Bill of Rights. These amendments would guarantee a degree of personal freedom, doing their part to keep the federal government in its place and out of the private affairs of the States with their respective citizens. However, it was not clear if these amendments applied to the States as well as the federal government.

The question of the applicability of the Bill of Rights to the laws of the states was dealt with swiftly by the Marshall Court in *Barron v. Baltimore* (1833). John Barron sued the mayor of Baltimore over a river diversion that resulted in making Barron’s wharf unusable. At issue

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was the Fifth Amendment’s clause that the government cannot take land from citizens without just compensation. Marshall, writing for the majority, stated that, “The Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states.”

Despite the beliefs of Federalists like Marshall and Hamilton, who both believed in a strong central government, Marshall wrote *Barron* to help bridge the growing differences among the states. Whether the states were sovereign political bodies or beholden to the federal government was an argument that lasted in the United States until the Civil War.

The jurisdiction of the Bill of Rights would remain limited until the twentieth century. Key events in the nation’s history immediately after the Civil War would allow that change to happen. Congress passed the 13th, 14th, and 15th Amendments to the Constitution to create a number of Civil Rights for the newly freed slaves. Important language in the Fourteenth Amendment allowed the Supreme Court, years later, to incorporate the Bill of Rights into the State governments. “Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” On their own these words seem innocuous, but in the hands of a Supreme Court Justice could be taken to mean many different things.

It was with the pen of Chief Justice Harlan Stone in 1938 that the Fourteenth Amendment came to be realized as one of the most powerful legal writings in the history of the United States. *U.S. v. Carolene Products Company* (1938) concerned the rights of companies to ship containers of milk interstate. The importance of *U.S. v Carolene Products* is in a footnote of the opinion that deals with the Bill of Rights, “There may be narrower scope for operation of the

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30 U.S. Const. amend. XIV § 1.
presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth.”31 Essentially, this footnote created the precedent for future Courts to incorporate the Bill of Rights in both the federal and state government.

In one footnote of an opinion dealing with the legality of shipping milk across state lines Chief Justice Harlan changed the course of legal history in the United States. For almost 120 years the citizens of the United States had only been guaranteed the Bill of Rights where the federal government was concerned.32 Until this decision the State of New York could have declared Buddhism its official State religion and the Court would not have been inclined to change it. Only the federal government guaranteed freedom of religion, not the States, via the First Amendment. Unfortunately the full incorporation of the Bill of Rights to the States did not happen overnight. Up to 1938 there were small glimpses of the application of the Bill of Rights to the states, but they were few and far between. Throughout the next forty years a majority of the Bill of Rights would be incorporated to apply to all the State governments.33

Another judicial evolution played out during the same time as Stone’s Footnote Four: the idea that torture had no place in the United States criminal system. The Constitution guarantees a right against cruel and unusual punishment via the Eighth Amendment. The application of the Bill of Rights came slowly for the federal government. Torture was often used in obtaining

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31 Footnote Four U.S. v. Carolene Products Company (1938).
32 There were several cases that ruled the Bill of Rights applied to the States but no definitive opinion from the court, such as this, that stated clearly that those rights in the first ten Amendments applied to the State governments.
33 With the exception of the Second, Third, and Seventh.
numerous “convictions” in the South against African American men for one crime or another.\textsuperscript{34} One particular case was \textit{Brown v. Mississippi} (1936). The facts of the case are these: three African American suspects were charged and convicted of the murder of a white sales clerk. Upon their trial the African Americans were convicted of murder and sentenced to death; the main evidence against them was signed confessions of guilt.

The first man who confessed to the crime did so under the following circumstances. After the police apprehended him, the Sheriff’s deputy suspended the suspect from the limb of a tree repeatedly to try and get a confession out of him.\textsuperscript{35} Eventually, when that tactic did not work, the suspect was tied to a tree and whipped, and was still pleading his innocence to the crime.\textsuperscript{36} The defendant was released only to be apprehended again the next morning by the same deputy. On the way to the court house, “the deputy stopped and again severely whipped the defendant, declaring that he would continue the whipping until he confessed, and the defendant then agreed to confess to such a statement as the deputy would dictate, and he did so, after which he was delivered to jail.”\textsuperscript{37} Once in court the deputy openly admitted to whipping the defendant, crassly stating that the beating was, “‘Not too much for a negro; not as much as I would have done if it were left to me.’”\textsuperscript{38}

The issue in \textit{Brown} was the admissibility of confessions and the nature under which they were obtained. The Court stated, “that contention rests upon the failure of counsel for the accused, who had objected to the admissibility of the confessions, to move for their exclusion

\textsuperscript{35} \textit{Brown v. Mississippi} 297 U.S. at 281 (1936).
\textsuperscript{36} \textit{Brown} 297 U.S. at 281.
\textsuperscript{37} \textit{Brown} 297 U.S. at 282.
\textsuperscript{38} \textit{Brown} 297 U.S. at 284.
after they had been introduced and the fact of coercion had been proved.”39 Brown was one of the first steps in bringing rights to the criminally accused. However small this decision might seem in comparison to the greater oppression that the accused faced in the early twentieth century, it was a beginning.

For every triumph in cases such as Brown there were countless others that did nothing to help the accused. In Johnson v. Zerbst (1938) and again in Betts v. Brady (1942) the Court ruled that the right to counsel extended only so far in criminal cases. A young Hugo Black was a constant reminder to the rest of the Court that the rights of the accused were guaranteed by the Constitution to include representation at trial.40 However, Justice Black was only one member on a court of nine and did not have enough influence to grant the rights to criminals that he wanted.

Concern for the expansion of civil liberties for the accused continued to gain support from the Court over the next two decades. It was not until a unique group of justices sat on the Court that the realization of the rights of criminals could take place. The reason for this transition and how the jurisprudence of the Justices influenced this change are what concerns this study.

**Explaining the Court’s Behavior**

The members of the Warren Court had diverse philosophies for what the law meant to them. Each justice brought his own degree of ego to the bench. In the twentieth century the Supreme Court was beginning to define its place in the government of the United States. Rarely had the Court stepped into the businesses of the state governments, or the federal government,

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39 Brown 297 U.S. at 286.
40 Dissent in Powell and Johnson
until the Civil War only two acts of Congress had been declared unconstitutional. The reluctance of the Court to oversee the government can be explained by a number of factors, including confusion as to the actual purpose of the Supreme Court. However, that is not of concern here. What is of concern is why these Justices wrote the way that they did with regard to the expansion of rights for the accused.

Each of these Justices were all too aware of the threat of communism. Black was a gentleman of the South. Born into a middleclass family in Alabama he was able to enjoy a secure life, one free from want. Known as an individual who was constantly doing something, he had no desire for complacency. Working first as a Police Court judge, then as a District Attorney, Black had made numerous political connections in Alabama that would enable him to further his career. After being elected to the United States Senate Black became a close advisor to Franklin Delano Roosevelt who rewarded Black’s loyalty and absolute dedication to the principles of civil liberty with an appointment to the United States Supreme Court. His early career on the Supreme Court involved Black’s constant struggle to expand civil liberty while the government was doing all it could to oppress those who did not believe in the “American Way.”

Goldberg, the youngest of the three, was the son of hard-working Jewish immigrant parents who put himself through law school and rose through the ranks of various labor organizations. Ultimately Goldberg engineered the merger of the American Federation of Labor (AFL) and Congress of Industrial Organizations (CIO) and later served as Secretary of Labor under President John F. Kennedy. Until his appointment to the Supreme Court Goldberg served organizations, such as the AFL-CIO, that were constantly scrutinized for their ties, real or

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41 Judiciary Act of 1789 and the Missouri Compromise.
42 Newman, 18.
43 Suits, 463.
44 Stebenne, 253.
imagined, to communism. However, Goldberg’s dedication to ridding the labor movement of communism cannot be questioned as he took every opportunity to re-write union laws so that they forbid communists from becoming members. As the author of *Escobedo v. Illinois* Goldberg was seen as a friend to the criminally accused.

Earl Warren was one of the most accomplished politicians in the nation by the time he became Chief Justice in 1953. Also the son of immigrant parents (Lutheran Swedes) Warren was taught the value of hard work by his mother and father. As a student in the California University system Warren did nothing too spectacular to distinguish himself from his peers. However, his political career was outstanding. Working as first the Alameda County District Attorney (1920-1925) and later the Attorney General of California (1939-1943) Warren ushered in a new era of clean government.\(^4\) During Warren’s time as a prosecutor he was all too zealous with regards to the prosecution, indictments, and convictions of communists in the 1930s. After serving as Attorney General, Warren was elected governor of California three times, the only governor of that State to achieve that distinction. A testament to the popularity of Warren was that he won the gubernatorial nomination of both the Republican and Democratic parties of that state in 1946. His record as a prosecutor and his insistence that the accused be granted legal representation demonstrated a dedication to equality before the law that few could challenge. This was evident with Warren’s 1966 opinion in *Miranda v. Arizona*.

Each of these justices brought their own unique life experiences to the Court. Black’s absolute dedication to the principles of civil liberty gave him an unshakable view of the Bill of Rights and their application to the government and that no defendant should go to trial without representation regardless of the crime. Goldberg’s experience in labor negotiations and intricate

\(^4\) Cray, 67 & 82.
knowledge of contracts created a belief for him that the rules should be evenly applied to everyone in society. Warren’s years as a prosecutor and politician gave him a unique view of the powers that the state had over the accused. This experience gave him insight into the conditions of a police station and the realization that the accused needed to be aware of their rights from the moment they were arrested.

While each justice had his own maxims that dictated how he wrote his respective opinions there was another issue at hand: that each of these men were all too aware of the threat of communism to democracy. Each of these opinions dealing with the expansion of rights for the accused was influenced by not only life experiences but also by the growing threat of communism. To these justices the battle for the hearts and minds of the rest of the world lay not in the defeat of communism throughout the world, but in the constant adherence to the principles of justice that the United States identified with its self. Black, Goldberg, and Warren realized that the United States had to be consistent in the application of justice regardless of who was accused of a crime. No advances in democracy were possible if people were denied basic rights guaranteed by the Constitution. This would include the type of crime they committed or the color of their skin.

These justices were visionaries, not activists. Gideon, Escobedo, and Miranda all served as a reminder to the world that the United States was a country of laws, and not of mob justice. Through the consistent application of justice for the expansion of rights for the accused in the United States the Warren Court established a rule of law that was truly democratic.
“You Justice Black are a senile, shallow minded fuzzbrain [sic] who is totally incompetant [sic] to sit on the supreme court. Resign at once! And hope (and pray) that you are replaced by someone who has a little common sence [sic] and by someone who has at least a slight idea of what our fore fathers had in mind when they drew up the constitution.”

Hugo Black was a formidable figure in United States history. Serving as a District Attorney, United States Senator, Associate Justice of the Supreme Court, and advisor to two Presidents, Black’s powerful and long lasting influence on the history of the twentieth century in the United States was tremendous. Throughout his life Black adhered to an absolute dedication to the principles of civil liberty, leading to some of his biggest confrontations and greatest victories. A dedicated student and vigorous reader, Black had no desire for intellectual acquiescence. His intellectual drive served him well during his tenure on the Supreme Court where his unwavering dedication to civil liberty was visible in his writings for over 34 years.

Hugo Black was born into a middle class family in Clay County, Alabama, on February 27, 1886. Unlike Earl Warren and Arthur Goldberg, Black’s family was well established in the United States. His fraternal uncle served in the Civil War and his maternal uncle was a major player in California politics. Black’s father, LaFayette, was a prosperous store owner who provided well for his family and afforded young Hugo a luxury unknown in the greater South: stability of income and higher education.

As a young boy, Black and his friends would go to the court house to listen to the legal proceedings. The court room performance of lawyers persuaded him to study the law. Before entering law school Black followed the career path of his older brother, who was a medical

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doctor. After studying for one semester at the Birmingham Medical School, Black decided to attend the University of Alabama School of Law. He never received an undergraduate education and entered law school at the age of 18. Legal studies fascinated him, furthering his eagerness in the world of law. Promptly after graduation Black started his own law practice, which floundered for over a year. He eventually gave up trying to strike out on his own and joined a series of law firms, beginning a rather prosperous career as a defense attorney, specializing in personal injury.

Black had genuine concern for those exploited by corporations. The blue collar worker suffered financially and physically in the era of big industry. Corporations had every advantage, and the common worker little recourse to rectify ill treatment. Black, however, acted as a voice for the destitute workers of Alabama.\(^47\) He masterfully persuaded juries to award large claims against corporations for injured workers.

Black took on a number of cases involving larger corporations while in private practice. His dedication to equality before the law shone through in several cases. One case that particularly demonstrated Black’s compassion was that of John Ellenburg, a railroad worker, who lost his leg while switching out railway cars. The railroad’s defense attorney tormented Black throughout the proceeding, doing his best to discredit Black as an ambulance chaser. This tactic backfired terribly after Black called Ellenburg to the witness stand, where the jury clearly saw his empty pant leg.\(^48\) Eventually the jury awarded Ellenburg $14,500 in damages and anguish. Corporations received sympathetic treatment in Alabama, which reversed the decision

\(^{48}\) Ibid., 58.
on appeal. Despite this setback, Black continued fighting for Ellenburg until a financial settlement was reached two years later granting Ellenburg $15 per week for 300 weeks.\(^{49}\)

After several years of success in private practice Black was appointed as a police court judge. The rapid pace of the courtroom, caused by countless petty infractions of the law, only increased his awareness of the hard times affecting the working poor. He insisted that the accused be given legal counsel, no matter the offense.\(^{50}\) It was also the experience of a court judge that led him to later research possible causes of crime; eventually he concluded that poverty was the main culprit.\(^{51}\) Black never forgot the destitute and under-represented masses he saw when he was a police court judge. His experiences from this time in his life would stay with him throughout his life.

Black dealt with a hectic police court for six months before returning to private practice. He would soon again be working for the government, but this time as the district attorney of Jefferson County, Alabama. His role as prosecutor began with an administrative nightmare involving a backlog of over two-thousand cases. Alabama law paid sheriffs based on how many inmates were present in their jail facilities, thus creating a monetary reason for law enforcement to keep a large number of people awaiting trial. The congestion of an ill-equipped facility created terrible conditions for the inmates. On his first day as prosecutor, Black toured the jail only to find the conditions wholly inadequate. He also discovered that the sheriff was using only $0.10 of the $0.30 allotted for daily meals. To ensure that the sheriff spent all $0.30 on the inmates food allowance Black started taking a meal in the prison cafeteria at least once a week.

\(^{49}\) Ibid., 59.
\(^{50}\) Ibid., 59.
\(^{51}\) Ibid., 154.
Black’s time as a prosecutor and court judge broadened his view of the world. His childhood, while not one of wealth, was more comfortable than a majority of those living in Alabama at the time. This perception strengthened while working for the government. Black’s days as a prosecutor served as a reminder for the rest of his life of the inadequacies of the American legal system. In part, his study of American history confirmed his assumptions, particularly when he read *The Rise of American Civilization* by Charles and Mary Beard. That book proved to him that the government was a tool of the wealthy and served to keep the interest of the privileged above that of the common citizen.

Black’s success in politics continued with his election to the United States Senate in 1926. His days in the court room gave him great advantage on the campaign trail. Black was able to make people like him. Black’s personality was not the only factor in his winning the 1926 election. The Democratic party dominated Southern politics and as a life-long Democrat, Black likely stood to win the Senatorial election with little challenge. Also, his success probably depended in large part to his membership in the Ku Klux Klan. The Klan experienced a surge in membership during the 1920s, and Black took full political advantage. He often stated throughout his career as a Senator and later Supreme Court justice that the reason he belonged to the Klan was purely political. The Klan registered over 80,000 members in Alabama alone during the 1920s, so Black’s insistence that his membership was a political move has some credibility.

Countless attempts have been made to explain Black’s membership in the Klan as either a political necessity or as a condition of his social environment. The Klan, with a huge following in the South, could be either a powerful enemy or powerful ally. Whatever the reason, there is
little doubt that his membership in the Klan was key in his election to the United States Senate. Nevertheless, why he belonged to the Klan is not relevant. The record that Black amassed while serving on the Supreme Court is testament alone to his dedication to civil liberties for all United States citizens, regardless of skin color. The Supreme Court is the only body of the government that is not elected. Instead, justices are appointed for life. Little possibility for action against him existed once he sat on the Supreme Court. His adamant defense of civil liberties and civil rights show that he either never believed in the principles of the Klan in the first place, or he changed his mind.

Black’s Senate career began at a time when the United States—indeed the world—plunged into a deep economic depression. He understood the devastating affects poverty had on society and created legislation to ease the economic hardship. His actions during the 70th Congress focused directly at alleviating the hardships of Alabama’s unemployed, something he unsuccessfully continued to fight for the duration of his tenure as Senator. Not until the election of Franklin Roosevelt did Black have an ally that he could depend on to help change the economic turmoil of his home state. The depression was in full swing by the time of Roosevelt’s election in 1932, and Black stood fully behind the new president. Black realized that an emergency situation existed in the United States and that drastic measures were needed to fix the nation’s economy.

Despite the economic crisis, the Supreme Court continually ruled New Deal legislation unconstitutional. The Court’s jurisprudence during the Great Depression consisted of an antiquated view of how the government functioned. The justices on the Court believed that the economic rules of the eighteenth century applied in the twentieth century. They did not

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understand the complex nature of economics. Roosevelt announced a plan of attack to keep New Deal legislation working, which Black fully supported. The president wanted to appoint a new justice for every justice on the court over the age of 70. This would have brought the court to a total of fourteen justices.\textsuperscript{53} The press which quickly dubbed the president’s move as a “court-packing scheme” and the public opposed what they saw as a manipulation of the Supreme Court in order to keep New Deal legislation legal. Just when it seemed the Court and the White House were coming to blows, the Court upheld a Washington State law enforcing a minimum wage.\textsuperscript{54} Three months later Justice Willis Van Devanter resigned from the Court, and Roosevelt promptly replaced him with Hugo Black.

**The Supreme Court**

Black’s tenure on the Supreme Court was one of the longest in its history, lasting over thirty-four years. During his time on the Court, Black wrote 413 majority opinions on issues ranging from New Deal financial legislation to religious freedoms. His tenure experienced extreme change, both in terms in the makeup of the Court and the position of the United States in relation to the rest of the world. The country suffered from threats to its security both real and imagined. The imagined threat of communism led to the witch-hunt mentality of the 1950s that in-turn contributed to Black’s absolute dedication to the principles of civil liberty. Communism was never part of Black’s political evolution. The Klan-dominated South was not a hospitable place to believe in atheist communism and therefore played no part of the political system there. However, over-reactions to threats of national security were a central part in shaping Black’s jurisprudence.


From the outset of his career, Justice Black sent a clear message: the curtailment of civil liberties would not be tolerated. His first opinion involved the right of the consumer protection by the government against unfair trade practices. For the majority in *Federal Trade Commission v. Standard Education Society* (1937) Black wrote, “Laws are made to protect the trusting as well as the suspicious.”\(^{55}\) Instantly, Black defined himself as a member of a new Court, one that would no longer write for the benefit of corporations but instead for the rights of citizens.

The financial turmoil of the Great Depression accounted for less of the Court’s work as the 1930s continued. New Deal legislation was safer from judicial intervention due to the growing number of Roosevelt appointees to the Court. Legal business before the Court dealt increasingly with civil liberty issues, as was the case in *Chambers v. Florida* in 1940. The defendants in *Chambers* were three African American men held on suspicion of the murder of a white store clerk. All three defendants suffered harsh interrogation tactics and held incommunicado from legal aide. Future Justice Thurgood Marshall argued the case on behalf of the three men. Black’s three years experience working as a prosecutor influenced his majority opinion. Invoking the origins of both the Fifth and Fourteenth Amendments he wrote that, “Tyrannical governments had immemorially utilized dictatorial criminal procedure and punishment to make scapegoats of the weak [and those] who would not conform and who resisted tyranny.”\(^{56}\)

For Black the question of extending the meaning of civil liberty was clear: that in any circumstance the preservation of civil liberties is of the utmost importance. *Chambers* was one of the few cases before the era of the Warren Court where Black’s absolute dedication to the principles of civil liberties was as important to him as to the rest of the Court. Regardless of the


\(^{56}\) *Chambers v. Florida* 309 U.S. 236 (1940).
fact that Roosevelt’s appointees continually took their place on the Court, the importance of civil liberties did not necessarily increase.57 Black’s voice was often in dissent over the Court’s abandonment of civil liberties. One such instance was Harisiades v. Shaughnessy (1952).

That case involved the deportation of Ignatz Mezei. Mezei was a member of the Communist Party for only a short time, approximately 20 years prior to his deportation as a communist. Harisiades was argued in 1952, a time in the United States dominated by an über patriotism. Despite brief encounters with communism and the amount of time that passed since he participated, the United States government saw fit to deport him. Black’s eloquent dissent likely provided little comfort for Mezei, but demonstrated the Justice’s adamant defense of civil liberty. Black wrote that the persecution of a man who, “Was once a communist is tainted for all time....[and that] punishment through banishment from the country may be placed upon an alien not for what he did, but for what his political views once were....is foreign to our [United States] philosophy.”58

As this case demonstrates, Black’s defense of civil liberty and freedom of speech were unchecked during the McCarthy era. His voice was so loud on the matter that J. Edgar Hoover who was director of the Federal Bureau of Investigation (FBI) not only had Black followed, but wiretapped the Justice’s home telephone.59 Black continued to assail the government’s persecution of communists despite the FBI surveillance. Vehement attacks against government policy continued in cases such as Yates v. U.S. in 1957, Scull v. Virginia in 1959 and Scales v. United States in 1961. All three of these cases were similar in that they, along with Harisiades, were responses to the fear of communism.

57 By the time of Roosevelt’s death in 1945 all but one of the Court’s current members had been appointed by him (see appendix).
59 Newman, 424.
Yates, Scull, and Virginia each dealt with the Smith Act of 1940 which grew out of a continuing distrust for communism that began in the United States after the Bolshevik revolution in 1917. The Smith Act made it illegal for persons to engage in any activity that supported or advocated the overthrow of the United States government. Additionally, the legislation outlawed membership in any organization that advocated the subversion of the government. Despite a brief decline in the popularity of communism in the 1920s, there was a renewed interest in the political philosophy during the Great Depression. This revival of communism consequently alerted the business community on Wall Street, who then pressured politicians in Washington to act.60

The Smith Act was a catch-all measure used against any organization not part of the “legitimate” American political landscape. Undesirable organizations included Communists, Marxists, and Socialists.61 The United States government targeted the actions of these so-called subversive organizations, regardless of the specifics. This fluid interpretation allowed federal prosecutors to investigate almost any member of one of these political groups as the government deemed mere membership as subversive. The contempt that the Smith Act had for civil liberties in the United States was nothing short of appalling. Few people were able, or willing, to stand up to the politicians in Washington and criticize the government for such egregious intrusions on civil liberty. Only men like Black, who enjoyed the immunity of his position on the Supreme Court, could call the Act for what it was, a tool of totalitarian government.

Yates, Scull and Scales concerned the communist presence in the United States. For example, Black wrote the dissents for Scull and Scales; his language was interchangeable

61 Sheft, 165.
between the two. “To sustain his conviction for contempt under these circumstances would be to send him to jail for a crime he could not with reasonable certainly know he was committing.” 62 Black continue to criticize the Smith Act in *Scales*, “This doctrine. . .is capable of being used to justify almost any action Government may take to suppress First Amendment freedoms.” 63 In both cases Black supported the preservation of civil liberty, a philosophy not conducive to the Smith Act.

*Yates* represented a change in the Court’s treatment of the Smith Act. The decision in *Yates* ruled many Smith Act provisions unconstitutional. The opinion was authored by Justice John Harlan with Black joining in a concurring opinion, and oddly, a dissent. Black’s concurring opinion agreed with Harlan’s; namely major problems existed with the Smith Act, but his dissent argued that the court did not go far enough in rejecting the act, “I would reverse every one of these convictions and direct that all the defendants be acquitted. In my judgment the statutory provisions on which these prosecutions are based abridge freedom of speech, press and assembly in violation of the First Amendment to the United States Constitution.” 64 Black found no excuse to permit such a law stating that, “unless there is complete freedom for expression of all ideas, whether we like them or not, concerning the way government should be run and who shall run it, I doubt if any views in the long run can be secured against the censor.” 65

Black’s years on the Supreme Court shielded him from the political tension caused by McCarthyism and the general fear of communism. Justices appointed to the Supreme Court during the 1950s and later were much more aware of the political climate than Black. He was a product of the South, where communism never had much chance of survival. To men like Black,

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domestic communism was not a threat to the country, but a threat to civil liberty because of the
government’s over-reaction to it. Because of laws like the Smith Act members of the communist
party were constantly targets of oppression and governmental surveillance. For Black, there was
no doubt where the freedom of expression stood in terms of national security: no level of security
was worth the intrusion against civil liberty.

**Gideon**

The voluminous court writing of Black provides countless examples of his beliefs
regarding the protection of civil liberties. *Gideon v. Wainwright* started the Court down the path
towards the full protection of the criminally accused that eventually resulted in *Miranda*. Black
had a philosophical disagreement with the Court’s treatment regarding the rights of the accused
since he first sat on the Bench in the 1930s with cases such as *Johnson v. Zerbst* and *Betts v.
Brady*. *Gideon* is a difficult case to examine. On the surface it appears to be the work of a Court
all too sympathetic to the hand written *writ of certiorari* delivered to the Court from Florida’s
prison mail system.66

The Court’s interest pertaining to the right to counsel at trial began with *Powell v.
Alabama* in 1932. This case involved the Scottsboro boys from Alabama. In 1931 the state of
Alabama charged nine black youths with raping two white women. The jury convicted the nine
despite incredibly weak evidence and sentenced them to death. Alabama law stated that all those
accused in a capital offense had the right to counsel at trial.67 The State of Alabama appointed
two lawyers to defend the accused and after one week, during which time the lawyers had no

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66 Gideon’s letter was written in his own hand as opposed to typed, the accepted format for a *writ
of certiorari*.
contact with the nine accused, the trial proceeded. The Supreme Court found that while the state of Alabama did appoint counsel, the action of that counsel was wholly inadequate. 68

When the case reached the Supreme Court Justice George Southerland delivered the opinion, stating that Alabama violated the accused’s Fourteenth Amendment right to due process: “(1) They were not given a fair, impartial and deliberate trial; (2) they were denied the right of counsel, with the accustomed incidents of consultation and opportunity of preparation for trial; and (3) they were tried before juries from which qualified members of their own race were systematically excluded.” 69 Powell was a first step in the process of providing counsel to all defendants, although this case dealt exclusively with capital crimes such as rape and murder as opposed to non-capital crimes like petty larceny. Additionally, the Court merely ruled that state constitutions had to be enforced lawfully.

Alabama’s two-tiered legal system was the larger issue in Powell. The fact that the nine accused were black was a factor in the case, even if it was never mentioned. Sutherland’s majority opinion never once referred to the racism that permeated Southern society, but instead relied on sound legal reasoning of the Fourteenth Amendment’s assurance of every citizen’s right to due process.

Powell started a new era in American jurisprudence. Every defendant facing a capital offense was now entitled to representation at trial regardless of the jurisdiction, either state or federal. For example, Johnson v. Zerbst was a federal case concerning the right for defendants to have counsel appointed to them for trial. Mr. Johnson was arrested for passing counterfeit money, which was a federal crime and a capital offense. At trial the defendant asked for, and was denied, the assistance of counsel. A long-standing sentiment existed in the American legal

68 Powell v. Alabama 287 U.S. at 57 (1932).
69 Powell 287 U.S. at 50 (1932).
profession that indigent defendants should have counsel appointed for them at a cost to the government.\textsuperscript{70} Black, writing for the majority in \textit{Johnson}, stated that there was no question as to the right of the accused to have counsel present at trial. “This is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty.”\textsuperscript{71}

In 1942 \textit{Betts v. Brady} dealt with similar issues: that a lawyer should be appointed for the accused when legal counsel was not within the financial means of the defendant. Black, writing in dissent, believed the Constitution gave anyone accused of a crime access to legal counsel. “A practice cannot be reconciled with common and fundamental ideas of fairness and right, which subjects innocent men to increased dangers of conviction merely because of their poverty.”\textsuperscript{72} Black’s opinion echoed the sentiments of civil libertarians in the United States: “It embodies a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty, wherein the prosecution is presented by experienced and learned counsel.”\textsuperscript{73} Unfortunately for \textit{Betts}, the \textit{Johnson} precedent applied only to cases tried in the federal government, leaving the states to make their own laws.

Cases involving the presence of counsel were uncommon at the Supreme Court’s level of justice. Those acting on behalf of the accused were more concerned about the use of torture in police investigations. \textit{Johnson} was a major victory for civil libertarians. The current law entitled any defendant in a federal court to legal representation. \textit{Betts v. Brady} originated in state court, similar to the situation in \textit{Johnson} that the defendant’s offense was non-capital. \textit{Betts} required legal defense for the accused only when a capital crime occurred. Black’s majority opinion in

\textsuperscript{70} Bussiere., 125.
\textsuperscript{71} \textit{Johnson v. Zerbst} 304 U.S. 462 (1938).
\textsuperscript{72} \textit{Betts v. Brady} 316 U.S. 476 (1942).
\textsuperscript{73} \textit{Johnson} 304 U.S. 463 (1938).
Johnson, and decent in Betts, stated that the accused should be given legal defense even if their crimes were considered petty. Black wrote the Betts dissent during a time when the rights of the accused were not high on national priority. After a number of Supreme Court justices retired, the Court was finally composed of men who believed in a broad interpretation of the rights of the accused, including the right to counsel. The Supreme Court in the spring of 1963 was ready for the landmark decision that would finally make legal counsel available to all defendants in all cases, with regard to all crimes.

Black and the other members of the Warren Court were all too eager to overturn the ruling in Betts. Anthony Lewis’ book Gideon’s Trumpet told Clarence Gideon’s story like a fairy tail: that a convict going against all odds was able to convince the court to hear his case. This was absolutely untrue. The law clerks of Black, Warren, and Douglas were all actively looking over the writs received daily at the Court for a case that would overturn Betts. Once Gideon was singled out as a potential case, the Court approached Abe Fortas of Fortas, Arnold, & Porter to defend the accused. Fortas was not an average lawyer picked off the street to defend Clearance Gideon, but instead was considered one of the greatest attorneys in the United States at the time and tremendously well-respected. Fortas made a name for himself in post-war years as a private attorney, namely his defense of Owen Lattimore in front of Senator Joseph McCarthy’s (R-Montana) Tiddings Committe.

Clarence Gideon was convicted of breaking into a pool hall and stealing change from the cash register. At trial he asked the judge to appoint counsel for his defense. Florida state law did

\[\text{\footnotesize{\textsuperscript{74}} Several interdepartmental memos among the Justices highlighted Gideon as a “possible case you are looking for.” Manuscript Collection Earl Warren Box 151, Library of Congress.}\]

\[\text{\footnotesize{\textsuperscript{75} Abe Fortas would later be nominated to the Supreme Court to take the seat of Justice Goldberg.}}\]

\[\text{\footnotesize{\textsuperscript{76} Laura Kalman Abe Fortas (New Haven: Yale University Press, 1990): 145.}}\]
not provide legal counsel for any crime other than capital offenses. Mr. Gideon proceeded to
cross-examine witnesses as best he could, having no more than a sixth-grade education. He was
found guilty and sentenced to five years in prison. Gideon began researching his case while in
prison and sent a hand-written writ of certiorari to the Supreme Court.

Regardless of who argued the case there was little doubt regarding the outcome. The
Gideon case was simple and straight forward in that it concerned the issue of representation
during trial. Black, writing much the same way that he did in Betts, dismissed the State of
Florida’s argument, that providing legal defense was beyond the intention of the Sixth
Amendment. Black attacked the premise of the state’s argument saying, “That governments hire
lawyers to prosecute and defendants who have the money hire lawyers to defend are the
strongest indications of the widespread belief that lawyers in criminal courts are necessities, not
luxuries.”77 With this statement Black addressed the issue of establishing a level playing field.
The United States essentially had two legal systems by not requiring the government to provide
lawyers: a fair system for those who had money to retain lawyers and an unfair system for those
who could not.

Black based his decision in Gideon on the same principles of freedom that the writers of
the Constitution believed in. Consequently Gideon was not a stretch of legal principles. Black’s
opinion in Gideon focused on the application of the Sixth Amendment to the state governments,
regardless of the severity of the charges. “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

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before the law.”78 To Black, Gideon was simple: the founders intended for justice to apply evenly to all citizens and the only sure way to deliver that was to guarantee legal counsel for the accused.

Reactions to Gideon were overwhelmingly positive, with one exception. In the ruling Black wrote that the need for counsel would apply retroactively to all persons convicted without counsel. States like Florida spent the next several years suffering from an overload of cases to retry. In some instances states released prisoners from custody where no evidence existed. Florida gave those convicted without presence of counsel a chance to have their day in court.79

Immediately after Gideon there was one article that proposed a unique reason for the decision: the date. Abe Krash wrote a summary of Gideon for the Notre Dame Law Review in the fall of 1963, a considerably quick turn around from the decision date of March 18, 1963. Krash argued that the argument of Gideon before the Court was timed to Felix Frankfurter’s retirement.80 Clarence Gideon’s hand written writ of certiorari was still pending before the Court in 1962 when Frankfurter suffered a stroke and subsequently retired.81 Frankfurter was the last member of the current court who voted in the majority in Betts v. Brady. Betts was the last case considered before the court with similar arguments, and this was the case in which Black dissented against his fellow justices and their unwillingness to give criminals the right to counsel at trial.

On the surface Gideon appears to have little in common with an ideological battle over communism. Black never once alluded to anything even remotely associated with the Soviet

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78 Gideon 372 U.S. at 797.
80 It should be noted that Abe Krash was a partner at Arnold, Fortas, and Porter: the law firm that defended Clarence Gideon.
Union or communism in *Gideon*; instead *Gideon* reads like a lesson in United States constitutional history. Deconstructing Black’s opinion is an exercise in futility. During his thirty-plus years on the Court, Black constantly refined his writing to make his legal opinions as clear as possible. So, with no direct mention of communism in the opinion, and no in-depth philosophical discussion taking place it would seem as though *Gideon* was simply another case argued before the Supreme Court. Black, however, was no simple man and *Gideon* was no simple case.

Black’s history with communism is far more complicated than other justices on the Supreme Court. The threat of communism is often identified as originating from the Soviet Union and targeting the citizens of the United States, but Black felt differently. His experience with the FBI during the 1950s was the first time that Black experienced any kind of oppression. He also knew there was strength in numbers, especially when the majority bullied a minority. To him the witch-hunt mentality of McCarthyism represented the worst possible combinations of a free society gripped by paranoia.

Black’s absolute dedication to civil liberties was life-long. He viewed civil liberty as a founding principle of the United States. The ferocity of his belief in civil liberties were only strengthened by the actions of people like Sen. Joseph McCarthy and J. Edgar Hoover, both of whom ruined reputations and spied on citizens. Black realized that in order to combat these paranoid men and their seemingly totalitarian beliefs, the Court had to act to ensure the rights of the ordinary citizen. Black was a member of the Supreme Court and free from many of the petty intrusions that politicians like McCarthy were willing to attack them with. Nothing short of an act of treason was likely to get Black impeached. The common citizens did not have the luxury

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82 This will be discussed in greater detail in Chapters 3 & 4.
of a lifetime appointment to their respective jobs and therefore did not have the safety that a Supreme Court Justice did.

Black’s opinions regarding the Smith Act and Truman’s Loyalty Oath constantly waved the principles of civil liberties in refute of the government’s policies. The Loyalty Oath was another reaction to communism, requiring government employees to swear allegiance to the United States government. Black’s opinion in *Gideon* was an attempt to make the presence of a lawyer for the accused a staple of the United States legal system. *Gideon* required the government, both state and federal, to provide the accused with an attorney no matter the crime. Regardless of innocence or guilt, *Gideon* set forth a principle that the accused were entitled to legal defense. This lessened the burden of those who wished to appear with counsel before inquisition, too often those accused of a crime associated the mere presence of defense counsel as an admission of guilt.83

Black authored many opinions regarding civil liberty. While reasons are not clear as to why Warren assigned Black to write *Gideon*, it is likely that Black’s history with attempting to gain the right of counsel over the previous two decades played a role. The expansion of the rights of the accused continued over the next three years culminating in *Miranda*. During the argument of *Miranda* before the Court Black assisted the defense counsel John J. Flynn with very leading questions. Black asked Flynn repeatedly who the Fifth Amendment applied to, eventually coaxing Flynn to say that it applied to every citizen of the United States, no matter how wealthy or poor they were.84

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Gideon ended a thirty-year struggle to ensure proper defense of criminals at trial. Black based Gideon on a number of different issues. Historically, the Court moved towards a wider interpretation of the Sixth Amendment, which resulted in Gideon. The wider understanding of the Sixth Amendment was only part of the decision for Black. He knew that the government was capable of restricting civil liberty, because of his familiarity with the Smith Act of 1940. The tendency of the United States government to overreact in certain political environments, such as the Red Scare, gave men like Black reason to be fearful and thus do what they could to protect citizens from overreaching governmental intrusion. It is likely that Gideon would have been written similarly had any other justice authored the opinion. However, Black’s Gideon was purely Black’s jurisprudence: one composed of forty years of legal experience.
Escobedo “will do nothing to enhance the security of America against crime”85

Philosophical Development

Justice Felix Frankfurter always kept the members of the Supreme Court guessing as to where he stood on any given issue argued before the Court. As a true moderate Frankfurter believed in the limited role of the Court when ruling an act of Congress as unconstitutional. As well, Frankfurter was reluctant to tell state governments what they could and could not do, unless there was an egregious violation of the Constitution. He was the swing vote on civil liberties throughout his tenure on the Court. After a series of health issues, Frankfurter realized that he could not continue to serve the government that he so dearly loved and resigned from the Court August 28, 1962. His replacement came from President Kennedy’s cabinet: Secretary of Labor Arthur J. Goldberg. It was with the addition of Goldberg that the liberal bloc of the Supreme Court received its fifth solid majority vote.

Justice Goldberg occupied the “Jewish” seat on the Supreme Court—Goldberg having replaced Frankfurter who had replaced Benjamin Cardozo.86 Goldberg’s working class background was a tremendous influence on his jurisprudence on the Supreme Court.

He was the child of Jewish-Russian immigrant parents, born August 8, 1908 in Chicago.87 The youngest of eleven children, Goldberg was the only member of his family to have attended

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86 Benjamin Cardozo (1932-1938) was the second Jewish member of the Supreme Court. Louis Brandeis (1916-1939) was the first.
school, either secondary or college. The neighborhood of Goldberg’s childhood was charged with the ethnic rivalry of the Jews and the Irish a constant reminder of immigrant life. His father, Joseph Goldberg, had immigrated to the United States through San Francisco and eventually moved to Chicago. Joseph Goldberg worked as a merchant to support the family with the rest of children adding income to support the family when they could. Only with the entire family working was the youngest, Arthur, afforded the luxury of an education.

Arthur Goldberg noted the 1923 Leopold and Loeb case as his first introduction to the law. Clarence Darrow argued the case on behalf of Leopold and Loeb, who committed murder under the belief that they were too intelligent to be caught. Darrow’s oration during the case was exceptional, especially his attack on the capitalist system. The court room dramatics of the Leopold and Loeb case captivated Goldberg as a youth. This exposure to the law gave Goldberg the desire to further his education and he eventually attended the City College of Chicago. While enrolled in college, Goldberg worked various odd jobs with labor gangs and as a delivery boy for a Chicago factory. The dedication needed to put oneself through college under such conditions speaks to the strong nature of Goldberg’s character. He attended Northwestern University Law after finishing his undergraduate education, and graduated with a degree in law by age twenty-one in 1933. After graduation Goldberg began working for a series of small law firms before starting his own practice. One of the first major clients that Goldberg landed after starting his own practice was the Chicago Newspaper Guild, an organization embattled with William Randolph Hearst.

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89 Ibid.
91 Biographical Dictionary of America Labor Leaders 127.
The conflict began in 1938 when Hearst fired several employees who were members of the Chicago Newspaper Guild. Hearst announced that the reason for their termination was negligence; the Guild thought otherwise. The Guild responded on December 15, 1938 by organizing a strike that lasted for fifteen months and affected both of Hearst’s Chicago newspapers, the *Herald-Examiner’s* and *Evening American.*¹⁻³ Hearst attacked the strike with every available resource both legally and physically, hiring thugs to intimidate the workers and lawyers to pursue legal action. The financial cost to the Guild was considerable as Hearst constantly brought suit against it.

The Guild sought Goldberg’s counsel after the municipal court of Chicago ruled that Guild members could not distribute handbills that listed the misdeeds of the Hearst corporation. Hearst responded by bringing yet another lawsuit against the guild claiming that such methods damaged the reputation of the *Herald-Examiner.*¹⁻⁴ Goldberg’s major focus in this Hearst confrontation was clear: such actions by government stood in direct contrast to the First Amendment. Goldberg consequently believed that the handbills were protected free speech.

Van Bittner, the Chicago leader of the CIO, was the first contact Goldberg had with organized labor. For Goldberg, this case was crucial in his professional development as he would spend the next twenty years working for organized labor in one capacity or another. Additionally, the Guild case was a chance for Goldberg to prove his dedication to civil liberty and the defense of free speech.

The selection of Goldberg as counsel for the Guild was primarily due to his staunch position against communism. Labor unions attracted large numbers of communists during the

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¹⁻⁴ Stebenne 14.
depression. Hearst used the general distrust of communists to his advantage in the Guild strike, claiming that the organization was infested with subversives. Thus with Goldberg as a staunch anti-communist his representation of the Guild lessened the rumors that the strike was a revolution and supported the idea that it was more of an issue of fairness and democracy. Goldberg won the case by making an argument for equal treatment of workers. His strategy involved attacking not only the illegality of the court order to stop the distribution of handbills, but also to bring Hearst’s tactics to the attention of the court. Goldberg’s unique philosophy of fairness was his way of touting democracy over communism. This was implicit in his defense of the Guild, that here was an organization of good people who were using the legal means of handbills to publicize their concerns.

Communist organizations during the 1930s that sought support from labor unions were numerous. The natural sympathies of the communist with organized labor unions made them vulnerable to questions of loyalty to our way of government and the United States. Goldberg’s support of the ideas of democracy was a way to advocate fair treatment and was a unique counterbalance to the activities of the communists. This is not to say that such a philosophy as Goldberg’s fairness through democracy always worked. Indeed, there are countless examples where the ability to corrupt democracy led to the undue suffering of the working class: however, Goldberg’s fairness principle retorted the idea of revolution.

Labor unions and the difficult living conditions of the working poor had been part of Goldberg’s early life. His father and family had toiled in the streets of Chicago so that he could be the fortunate member of his family to go to school. The proximity of Goldberg to this strong blue collar setting was a tremendous factor on his later life, especially during his tenure on the

95 Ibid., 17.
96 Ibid., 20.
Supreme Court. His fairness through democracy philosophy was continually applied throughout his career.

Goldberg offered his services to represent labor unions after the Japanese attacked Pearl Harbor in 1941. On December 8th Goldberg received a call from the FBI who informed him that his secretary, a Japanese American, was in their custody. Upon hearing this, as Goldberg later told his biographer David Stebenne, he threatened the FBI agent with legal action if his secretary were not released. The anti-Japanese climate in the United States was intense after the attack at Pearl Harbor, and eventually led to the establishment of relocation camps. Goldberg, however, held true to his principles of fairness through democracy in order to obtain the release of his secretary.

After serving in the Office of Strategic Services (OSS), during World War II in the European theater, Goldberg re-entered civilian life to again represent labor unions. His work in the OSS addressed labor movements in occupied countries. His status in the United States government during the war helped to assure him a more prominent role in the CIO; this time appointed as general counsel to the organization in 1948.

The first initiative that Goldberg took at the CIO was to lessen the typical adversarial confrontational position during labor negotiations. He knew that when confrontations started, as they had done in the Guild case, that the government was soon to be involved. This in turn lessened the ability of workers to negotiate. To support his theory Goldberg looked at the 1946 railway strike to prove that the government was willing to intervene to keep the economy running. The CIO’s choice of Goldberg for general counsel was due not only to his impeccable record regarding labor law. The infiltration of communists into unions was still a major concern

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97 Ibid., 15.
98 Ibid., 30.
for the citizens and government of the United States. Hence, Goldberg’s hire was seen as an
acknowledgement that the unions were doing all that was possible to keep the communists out of
organized labor.

During his tenure at the CIO, Goldberg orchestrated the CIO’s merger with the AFL.99 Goldberg, along with other labor leaders, realized that the government was much more willing to
get involved in the business of private corporations. The creation of the AFL-CIO gave
organized labor a larger base and more power when negotiating with big business. Additionally,
he created a bylaw to forbid communist from joining the CIO (which also applied to the AFL-
CIO after the merger) while at the same time ridding the organization of unions dominated by
communists.100 While Goldberg was an advocate of the expulsion of communists from the labor
unions, he was not in favor of any broad sweeping legislation designed to get rid of communists;
it had to be done lawfully. Rather than passing a rule removing all communists, Goldberg wrote
that no new member could be a current member of the Communist party.

The election of 1946 changed the political landscape in Washington. At the same time
events around the world contributed to heightened awareness of the expansion of communism.
The Republican party took control of both the House and Senate, increasing its numbers
considerably.101 Soviet activity in the Western Hemisphere had helped the Republicans achieve a
landslide victor. In particular a report from the Canadian Royal Commission noted that spies had
disclosed state secrets to the USSR.102 President Harry S. Truman, acting under political
pressure, decided that he had to show the United States that he was committed to fighting

99 Ibid., 120.
100 The Kennedy Years: Political Profiles 178.
101 House: Republican 245, Democrat 188. Senate: Republican 51, Democrat 45.
102 Athan G. Theorharis The Truman Presidency: The Origins of the Imperial Presidency and the
communism. On November 25, 1946 Truman issued an executive order requiring a loyalty oath from all employees of the United States government.

The McCarran Act of 1950 later incorporated the loyalty oath. Despite the Democrats reclamation of leadership in the 1948 election, the Red Scare stayed at the forefront of political action. Red-bashing politicians like House members Karl Mundt (R-South Dakota) and Richard Nixon were constantly pushing for laws targeting communist activity. They did despite protest from President Truman. Hysterics in the United States about Soviet espionage reached a fever pitch at the close of the 1940s. It was clear to lawmakers that the United States population would accept any measure designed to eliminate subversive activity, regardless of the loss of civil liberties.

Goldberg’s denouncement of the Truman Loyalty Program in the McCarran Act of 1950 demonstrated his convictions to the idea of fairness through democracy. The Red Scare mentality of American society believed that communists were omnipresent in government, so the loyalty oath provided a way to combat subversives. Goldberg responded by supporting the Act itself but under the condition that, “It be amended so as to accord some modicum of procedural due process to government employees accused of espionage.” Goldberg attempted to curtail the witch-hunt behavior of the government by appealing to the democratic tradition of the United States. His desire to lead the government away from communism by Stressing democracy was an ongoing theme in Goldberg’s life—one that would continue throughout his tenure on the Supreme Court.

104 Ibid., 141.
105 Stebenne, 107.
Goldberg’s actions up until his nomination and confirmation by the Senate as Associate Justice of the Supreme Court stressed anti-communism. His upbringing in a working class neighborhood would have led many to an adoration of communism, the triumph of the common man over capitalistic imperialism, but for Goldberg, this did not happen. Instead of supporting communism he decided to remove it from any organization that he was a part of as long as the eradication was done fairly.

The Supreme Court

Although his tenure on the Supreme Court was relatively brief, 2 years and 9 months, Goldberg participated in 450 cases and wrote 36 majority opinions. Most of those majority opinions dealt with labor issues, clearly an area of expertise for Goldberg. Another issue that Goldberg wrote on was the expansion of civil liberties. The two facets of his opinions actually complemented each other because they both encouraged protection of civil liberties and a staunch anti-communist position.

For example, Gibson v. Florida State Legislature (1963) brought Goldberg’s belief of fairness through democracy to the judicial writings of the Supreme Court. The Florida State Legislature Investigative Committee ordered Mr. Gibson, the Florida president of the National Association for the Advancement of Colored People (NAACP), to submit the member registers of that organization, allowing the state to compare the names with those of known communists. As with many motivations of the South at the time, it is unlikely that Florida was indeed looking for communists and more likely that they wanted the list for intimidation purposes. Regardless of the reasons, Gibson refused.

Writing for the Court, Goldberg perceived the actions of the State of Florida as entirely anti-democratic. “Freedom and viable government are both, of this purpose, individual concepts;
whatever affects the rights of the parties here, affects all.”\textsuperscript{106} This statement referred to the government’s power to obtain the list of names from the NAACP. Goldberg attempted to show that within the doctrine of freedom of democracy, all citizens were entitled to protection, while at the same time, reassured the Court that any great threat to the country must be dealt with. “The strong associational interests in maintaining the privacy of membership lists of groups engaged in the Constitutionally-protected free trade in ideas and belief may not be substantially infringed upon such a slender showing as here made by respondent.”\textsuperscript{107} The argument before the Court, Goldberg believed, was one that concerned the very foundation of American Democracy: freedom of speech. Goldberg gave some shelter to the idea of hunting communists with the phrase “substantially infringed upon.” In essence intrusion was permissible if direct links to communism were established. Florida’s actions in this case was unacceptable, especially due to the fact that no evidence supported subversion on the part of the NAACP.

The theme continued, “Nothing we say here impairs or denies the existence of the underlying legislative right to investigate or legislate with respect to subversive activities by Communists or anyone else.”\textsuperscript{108} \textit{Gibson} showed that the Court was dedicated to hunting communists, but only if done in a fair manner.

Roughly one year later another case \textit{Aptheker v. Secretary of State} which involved civil liberties came before the Court. However, where \textit{Gibson} did not address the actions of the Communist Party, \textit{Aptheker v. Secretary of State} did. Aptheker was a known member of the Communist Party who applied for a passport. Section 6 of the Passport Act of 1926 granted the Treasury Department the right to refuse to issue passports to communists or any other person

\textsuperscript{107} \textit{Gibson} at 556.
\textsuperscript{108} \textit{Gibson} at 557.
who might seek to travel outside the country to try and subvert the United States government. Again, Goldberg delivered the opinion of the Court beginning cautiously by asserting the right of the government to protect the interests of the nation: “That Congress under the Constitution has power to safeguard our Nation’s security is obvious and unarguable.”\(^{109}\) This language was similar to \textit{Gibson} affirming the right of the legislative body to keep the people of the United States safe. What was different was that instead of addressing a state legislature, Goldberg told the United States Congress what they could and could not do. Referring to the duties and powers of Congress he continued, “At the same time the Constitution requires that the power of government must be so exercised as not, in attaining a permissible end, unduly infringe a Constitutionally protected freedom.”\(^{110}\) This reinforced Goldberg’s judicial ideology leading up to this point: fairness through democracy.

Having established himself as a staunch opponent of communism in his previous career as a lawyer and counsel to labor unions, Goldberg continued to assail Marxist principles while on the Court in cases like \textit{Gibson} and \textit{Aptheker}. However, the way he went about doing so was as different as his reasoning. Communism as a threat from outside the United States was the problem, not from within. Goldberg felt that the United States had to stand up to Communism on the basis of ideology. The hearts and minds of the citizens of the Soviet Union were not going to be won by persecuting communists in the United States but instead by showing to the world that the citizens of the United States were free. Goldberg applied these ideas in \textit{Escobedo v. Illinois} which became his magnum opus in civil liberties.

\(^{109}\) \textit{Aptheker v. Secretary of State} 378 U.S. 509 (1964).

\(^{110}\) \textit{Aptheker} at 509.
Escobedo

After *Gideon*, criminal defendants across the United States were given their fair representation in court with the protection of counsel. Unfortunately, *Gideon* dealt only with the rights of the accused during the trial. *Brown v. Mississippi* still governed the treatment of the accused which stated that torture had no place in interrogation. While exclusion of outright torture was a large step forward, but it was not enough to keep law enforcement officials from psychologically abusing the accused.

The main field text used by law enforcement officials throughout the United States was Fred E. Inbau’s *Lie Detection and Criminal Interrogation*. Inbau, a professor of criminal law at Northwestern University, provided investigators with a step by step approach to getting the most information out the accused acting as a “how to manual” to handle different types of accused criminals.

Inbau based his book of what law enforcement officials could do during interrogation. Multiple references in *Lie Detection and Criminal Interrogation* were made informing investigators to tell the accused that evidence existed of his or her guilt, when in fact no such evidence existed. Additionally, the book pointed out that it was not only legally unnecessary to inform a defendant of his or her constitutional rights. However, that the investigator should not do so thus enabling the investigator to proceed with questioning under more favorable conditions for law enforcement, but certainly not so for the accused.

After the victory of *Gideon* civil libertarians now targeted the confession. Tactics spelled out in *Lie Detection and Criminal Interrogation* could not stand in modern criminal

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113 Ibid., 170, 175.
114 Ibid., 177-78.
investigations if the United States wanted to sell itself as the champion of democracy. There was no shortage of cases received at the Supreme Court that dealt with these issues, but the justices’ law clerks had difficulty in finding the right circumstances for the Court to address the confession.

*Gideon* was the crucial first step in overturning outdated laws regarding the treatment of the accused. Prior to *Escobedo* other cases made it to the Court to contest the manner and conditions of confessions. The main precedent the Court set out to establish was the right to presence of counsel at interrogation. *Massiah v. United States* was the first attempt to give the accused the right to counsel. In this case, the defendant confessed to a crime in the presence of an informant. Although this appeared to be a simple case to resolve, the accused had retained counsel and the Court found that, since the informant was operating with a federal agent, the absence of counsel at the confession violated the accused’s Sixth Amendment right.115 “We hold that the petitioner was denied the basic protections of that guarantee when there was used against him at his trial evidence of his own incriminating words, which federal agents had deliberately elicited from him after he had been indicted and in the absence of counsel.”116

The Sixth Amendment right to counsel was incorporated only to the federal government—not the state government—and *Massiah* was a federal case. What the Court now needed to fully apply the Sixth Amendment was a case from a petitioner convicted under similar practices during a state sponsored investigation. The Court did not have to wait long to find such a case.

Danny Escobedo was a 22 year old Mexican-American arrested for murder in 1960. The investigation of Escobedo began without the presence of his lawyer at his questioning. After

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115 *Massiah v. United States* 304 U.S. 458 (1964)
several hours of interrogation, Escobedo implicated himself in the murder, and not surprisingly, was found guilty and sentenced to 20 years in prison. After several appeals, his case reached the Supreme Court and was reversed.

By the time Escobedo’s case was argued before the Court on April 29, 1964 the political atmosphere in the United States was heating up. The recent nuclear test ban treaty eased some fear of war, only to be upset again after China detonated its first hydrogen bomb in October 1964.117 Communism and the Red Scare were still alive in the United States as there was a growing fear that Marxism was gaining widespread support in the world, especially in Asia.118

*Escobedo v. Illinois* continued the recent trend of the Court to uphold the rights of criminally accused defendants. In *Gideon* the court stated that the Sixth Amendment applied to the states via the due process clause of the Fourteenth Amendment, specifically that state governments had to provide counsel to all defendants in criminal cases: *Escobedo* dealt with the same issues. Where Clarence Gideon was not provided a lawyer during trial, Danny Escobedo had retained a lawyer. Clarence Gideon’s need for legal counsel was crucial in the trial phase while Danny Escobedo’s need was crucial in the interrogation. Eventually, the Court ruled that Danny Escobedo had a right to have his counsel present at interrogation. This decision created a great deal of anger among law enforcement around the country.119

The decision itself was none too long. As with *Gideon* the Court kept primarily to the facts of the case and wrote an opinion that stated the facts and developed precedent for the ruling. When examining the opinion, written by Goldberg, it becomes necessary to look closely

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119 Powe, 396.
at the wording itself to see how the decision relates to the ideological battle with Communism. There is little supporting evidence for Goldberg’s Escobedo opinion as his personal Court papers are not among the manuscript collections at the Library of Congress. By contrast with Gideon and Miranda where there are numerous supporting documents that allow scholars an in-depth view of those decisions. However, the lack of drafts and chamber notes does not prevent an analysis of Escobedo that parallels its philosophy with that of an ideological battle waged by the United States against the maxims of communism.

Danny Escobedo was taken into custody by police on January 30, 1960 in Chicago, Illinois for questioning regarding the murder of his brother-in-law Manuel Valtierra. Escobedo repeatedly asked for his lawyer and stated that he did not wish to answer any questions until his lawyer was present. Despite the repeated attempts, of not only the defendant but also his lawyer, to have legal counsel present the police officers refused to grant the presence of defense counsel. After several hours of interrogation Escobedo implicated that he was present at the murder, and implicated himself in the plot to murder Manual Valtierra. A statement was then taken by Assistant State Attorney Theodore J. Cooper during which time he did not “. . . advise petitioner of his constitutional rights, and it is undisputed that no one during the course of the interrogation so advised him.”

Police tactics have changed dramatically in the forty-seven years since Escobedo’s trial and conviction. However, the actions of the police in denying presence of counsel was not only accepted police practice, it was part of many police interrogation manuals. A twenty-first century perspective of this behavior cannot help but view the police tactics as illegal, but also as

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121 Escobedo at 483.
122 See Lie Detection and Criminal Interrogation by Fred E. Inbau 1948
a clear violation of the Sixth Amendment right to counsel. The law and order mantra of politicians was clearly dominating the viewpoint of many in state governments by trying to make sure that convictions were swift and justice was served. George McGovern’s ill-fated 1964 presidential bid was also based on the law and order campaign. Many of those campaigns focused on the growing fear in the United States over the breakdown of society and the very real increase in crime. Law and order candidates capitalized on the fear of American citizens. They reduced the idea of what justice meant to doing whatever it took to put people behind bars. The rhetoric was logically flawed as it was easy to convict people who had no legal counsel.

The decision in Escobedo was filled with anti-communist language, so much so that there were questions among the brethren of the Court that the language went too far. Goldberg began the opinion with a summary of the events leading up to the argument before the Court, gently transitioning towards his fairness through democracy philosophy. “The rule sought by the State here, however, would make the trial no more than an appeal from the interrogation.” The rule Goldberg was referring to was that of denying a defendant the presence of retained counsel during police questioning. Again there was nothing too shocking about this statement.

However, in a footnote to the above argument Goldberg explained his words further, “The Soviet criminal code does not permit a lawyer to be present during the investigation. The Soviet trial has thus been aptly described as an appeal from the pretrial investigation.”

Where Goldberg was merely suggesting the ideological battle in opinions such as Gibson and Aptheker, he was shouting from the rooftops in Escobedo. Both Gibson and Aptheker were cases dealing directly with communism and surely provided the Justice with plenty of

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124 Escobedo at 487.
125 Escobedo at 487.
opportunities to point out the difference between democracy and communism. However, *Escobedo* dealt with the rights of a criminal and there within the opinion of Goldberg was the mention of the Soviet Union by name. This addressed far more than the protection of civil liberties. Goldberg realized that in order to win the Cold War the United States had to be willing to measure up to its own Radio Free America claims of equal opportunity.\(^{126}\)

Perhaps emboldened by his use of the Soviet Union as a punching bag for democracy, Goldberg continued his championship of democracy. “Our Constitution, unlike some others, strikes the balance in favor of the right of the accused to be advised by his lawyer of his privilege against self incrimination.”\(^{127}\) Consistently holding the idea of American democracy as the shining example of government, Goldberg assailed the government of the Soviet Union as anything but fair. While this particular passage is no less controversial than the mention of the Soviet criminal code, there were questions in the Court about its usage. Within the private papers of both Earl Warren and William Brennan there are copies of Goldberg’s tentative opinion. Both Warren and Brennan marked the above text with “delete” written next to it.\(^{128}\) The reasons for deletion are not given, nor are any of Goldberg’s notes on *Escobedo* in his Supreme Court collection. However, it is curious that Warren and Brennan wanted this section removed from the opinion.

Regardless of the objections of the other Justices, Goldberg seems to have kept the opinion in the original form that he first wrote it. He went on to address the legitimacy of government and the place of the confession in law enforcement, “A modern system of criminal law enforcement which comes to depend of the ‘confession’ will, in the long run be less reliable

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\(^{126}\) Kenneth Osgood *Total Cold War: Eisenhower’s Secret Propaganda Battle at Home and Abroad* (Lawrence: University of Kansas Press, 2006) 341.

\(^{127}\) *Escobedo* at 488.

\(^{128}\) Earl Warren Collection Box 602. Library of Congress
and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation.” Additionally this section of the opinion was footnoted to include mention of Joseph Stalin’s purges during the 1930s.

The term “skillful investigation” was undoubtedly a praise to the majority of police officers of the time who relied on evidence, instead of harsh interrogation tactics. Goldberg probably knew that Escobedo would irritate the law enforcement community and thus the above quote was likely seen by the author as a kind of olive branch to police officers currently practicing fair interrogation. The second half of this quote mentioned Stalin in the footnote. Goldberg alluded that to treat criminals in the same manner that the Soviet Union did was travesty of democracy, and that the United States was far superior to such practices. While there is no doubt that the Justice was writing on firm academic and philosophical grounds, it is apparent from the responses to the decision that this line of writing did not get through to the critics.

In summation, Goldberg continued to tout the righteousness of democracy and the justice system of the United States. “We have also learned the companion lesson of history that no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens’ abdication through unawareness of their Constitutional rights.”\footnote{Escobedo at 490.} Again Goldberg is discussing a “system of criminal justice” in order to draw a comparison of the system of the United States versus the rest of the world. Drawing his opinion to close Goldberg states, “No system worth preserving should have to fear that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights.”\footnote{Escobedo at 490.}

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\footnote{Escobedo at 490.}
\footnote{Escobedo at 490.}
After Escobedo the Court received a tremendous amount of criticism. Los Angeles Police Chief William Parker publicly assailed Escobedo, stating that the Supreme Court was making it next to impossible for the police to do their jobs.\footnote{Powe, 391.} Parker was not alone in his attacks; police chiefs from cities around the nation echoed Parker and not surprisingly Barry Goldwater, the 1964 Republican presidential candidate, joined the chorus of dissent. Despite all the attacks the Supreme Court received, there was little possibility of repercussion.

Goldberg’s Escobedo also received a mix review in the law journals. Ibnau (the author of Lie Detection and Criminal Interrogation) felt that the court’s opinion would do nothing short of making it impossible for police to properly investigate crimes.\footnote{“Escobedo Doctrine” Baylor Law Review 17 (1965): 387.} Another response came from Harvard Law professor James Vorenberg, who praised the work that Escobedo did for the indigent defendant and claimed that the Court would eventually rule to exclude all confessions obtained from the police.\footnote{Vorenberg, “Police Detention and Interrogation of Uncounselled Suspects: The Supreme Court and the States” Boston Law Review 44 (1964): 433.} Ibnau and Vorenberg expressed differing opinions about Escobedo, which was typical of the academic writing of the time about the case. No attention was paid to Goldberg’s mention of communism and the Soviet Union. The absence of discussion surrounding this facet of his opinion can be attributed to the seemingly pointless nature of its mention in first place. On the surface it seemed there was no need to mention the Soviet Union in a case like Escobedo that dealt with revamping the United States legal system. Goldberg’s life work centered around his adherence to fairness through democracy and this was apparent with Escobedo.

While fairness through democracy was Goldberg’s constant theme throughout cases of civil liberty while on the Supreme Court, the closing pages of Escobedo resonated that theme
clearly and patriotically. Goldberg aptly aligned the rights of the individual as granted by the Constitution with a defense of democracy that highlighted the inequalities of communism under the Soviet Union. Detractors of the Supreme Court often made ridiculous statements claiming that the Court wanted to let murderers and rapists go unpunished: this was obviously not true. What the Supreme Court did was effectively tell the law enforcement community that in order to convict murderers and rapists they (the law enforcement community) were going to have to abide by the law of the Constitution.

134 Countless publications of groups such as The John Birch Society called for numerous actions against the Supreme Court, including the impeachment of several justices.
CHAPTER 4
EARL WARREN AND MIRANDA

“Insofar as I am concerned, your decision will do nothing but permit rapists, persons molesting minor children, murderers, robbers and burglars to have an opportunity to escape any punishment for their crimes.”\(^\text{135}\)

**Philosophical Development**

Earl Warren’s ascension to the Supreme Court was a political payback. During the Republican convention of 1952 Earl Warren gave his support to Dwight Eisenhower with one caveat, that the next seat on the Supreme Court go to him. However, Eisenhower was not expecting the first seat vacated to be that of Chief Justice Fred Vinson.\(^\text{136}\) Warren was determined to make the president honor their agreement: and as a man of his word, Eisenhower nominated Warren to the elitest of fraternities, making him the 14\(^{th}\) Chief Justice of the Supreme Court of the United States of America.

Warren was the embodiment of the powerful figure needed to keep the Court in order. Despite the fact that the Chief Justice has no special power (other than assigning justices to write opinions) there has always been a notion of higher authority that rests with the Chief. Warren’s tenure began with a monumental case, *Brown v. Board of Education*. While *Brown*’s importance to the history of the United States cannot be challenged, the case did not define Warren’s tenure; in fact it only set the stage for equally dramatic shifts in the judicial system of the United States, namely the expansion of criminal rights.


Earl Warren, like Arthur Goldberg was born to immigrants to the United States. His father, Mathias Warren, came to the United States from Norway with his parents while still a young child. Earl Warren was born March 19, 1891, in Bakersfield California. From a young age his father instilled an attitude of hard work through dedication, always instilling a sense of discipline.

After completing high school Warren went on to attend the University of California at Berkley as both an undergraduate and law student. He was described as an average student in high school and continued that distinction in college and law school. After completion of his legal education Warren worked for a small law firm that provided the new lawyer with little stimulus. After a series of meetings with various politicians in the Republican Party (Warren’s lifelong political party) the young lawyer worked as the deputy district attorney in Alameda County, California, where he later became the district attorney.

As district attorney Warren was exposed to a criminal element that he was not unaware of, but certainly had only heard about before. In many opinions, he was perfect for the job. Before Warren’s term as district attorney, the office had fallen into the stereotypical actions of law enforcement agencies in the age of the political boss.\footnote{Ed Cray \textit{Chief Justice: A Biography of Earl Warren} (New York: Simon & Schuster, 1997) 47.} When Warren began his service, the corruption which had dominated the office stopped abruptly. Warren knew full well that the district attorney’s office operated on bribes and intimidation before, but he was not willing to be part of it while in charge. He experienced a number of threats from local crime syndicates but while these threats had worked effectively on Warren’s predecessors; he ignored them.\footnote{Cray, 57.}

Another change that Warren brought about in the district attorney’s office was that of admissible evidence. While prosecutors had typically not cared about the manner by which
confessions were obtained Warren did. There was a clear dictate from him that coerced
confessions were not to be used to prosecute offenders and that no matter who was being
investigated, communists or pickpockets, the manner of investigation would be the same.\textsuperscript{139} This
might seem obvious to modern legal studies, but the notion of excluding such evidence in the
1920s was revolutionary. Warren demanded that criminals be given equal rights under the law,
regardless of the crime, and was determined to rid Alameda County of corruption and
unscrupulous tactics by prosecutors while doing so.\textsuperscript{140}

After working diligently as the Alameda District Attorney for fourteen years Warren was
rewarded by Republican party elders and given their support to become the Attorney General of
the State of California.\textsuperscript{141} Immediately after winning the election, Warren as Attorney General
started investigations into a number of illegal activities that had gone un-checked during the
previous Attorney General’s watch. Among these activities were the selling of pardons by
judges and the habit of law enforcement to look the other way when it came to gambling.
Having brought a number of his own people from Alameda County Warren was able to bring
sweeping changes to the Attorney General’s office within a few months of taking the position.

Warren believed in the application of the law fairly and evenly. If illegal activity was
going on in the state it was shut down, regardless of the size of the operation. Warren proved his
dedication to consistency when he went after dog track operations which were illegal but had
been allowed to operate under salutary neglect. John J. Jerome was the first operator targeted for
closure. Initially, Jerome and his attorney thought that this was part of the Attorney General’s
office sorting out the biggest offender as an example to other gambling operations. Warren

\textsuperscript{139} Cray, 67.
\textsuperscript{140} Cray, 48.
\textsuperscript{141} Cray, 90.
insisted that all dog track operations were to be treated the same: Jerome decided to comply and shut down his operation. 142

The actions that Warren took to ensure equality before the law were consistent throughout his life, with two exceptions. The first was the vendetta approach he took to prosecuting communists implicated in the murder of a union leader, known as the Point Lobos case, which involved murder, organized labor, and communists. George Alberts, the chief engineer of the ship Point Lobos, was found bludgeoned to death March 22, 1936. After a lengthy investigation by the police four men Earl King, Ernest Ramsay, Frank Conner, and George Wallace, who were known communists, were arrested and charged with the murder. 143 Alberts who was a known union basher and disliked by most who met him, had fired several communists a few weeks before his murder. The prosecution’s investigation, led by Warren, was assisted by the American League Against Communism. 144

The evidence to convict the four accused of murdering Albert was questionable, especially considering Warren’s earlier dictates about how information should be gathered for investigations. One of the defendants Frank Conner, was not only denied access to his lawyer, but also was spied upon at length while in the custody of the state. Despite weak evidence, Warren was committed to bring four known communists to justice for the murder of a labor union leader. Warren went so far as to say to the press that, “Alberts was an outspoken man, and had voiced his bitter opinion on seamen’s union troubles and against Communistic activities, and thus apparently incurred the animosity which brought about his death.” 145 The four accused men

142 Cray, 101.
144 Cray, 84.
145 Cray, 84.
were sentenced to life in California prisons for the murder. While Warren never admitted wrong-doing in his over-zealous approach to this case he eventually commuted the sentence of the last man, Conner, held for this crime in his last hours as Governor of California before leaving to serve as Chief Justice.

The second exception to his equality before the law was the internment of Japanese Americans during World War II. In the first few months of 1942 government forces organized in California to address what they saw as the imminent threat of invasion from Japan.\footnote{Arthur C. Verge “The Impact of the Second World War on Los Angeles” \textit{The Pacific Historical Review} 63 (1994): 296.} At state-held hearings by the Tolan Committee Warren testified that there was a threat from Japanese Americans living in California.\footnote{Newton, 136.} While Warren did not advocate the imprisonment of these Japanese Americans he did believe that they should be removed from the coastal areas of the United States for security purposes.\footnote{Newton, 136.}

Warren’s position on race relations is not easy to discern. His actions in cases such as \textit{Brown v. Board of Education} seem to historically overshadow anything else he did that could be perceived as racist. One overlooked issue regarding his relationship with Japanese-Americans was his membership in the Order of Native Sons of the Golden West. The Order passed a resolution shortly after Warren’s appearance on the Tolan Committee, suggesting that Japanese-Americans be stripped of their citizenship.\footnote{Newton, 75.} No distinctions were made in the resolution; it applied to all Japanese-Americans native born or otherwise.

There can be no excuse for the actions of Warren with regards to the internment of Japanese-Americans during World War II, or of his position regarding the removal of their

\footnote{Newton, 136.}
\footnote{Newton, 136.}
\footnote{Newton, 75.}
citizenship. It is curious that a man so dedicated to equal treatment under the law could advocate the treatment of American citizens in such a manner. The fact that this occurred cannot be overlooked with regard to his later defense of criminals while on the Supreme Court in cases such as *Miranda*. Additionally, one cannot assume that Warren had the consequences of his suggestions in mind when voting on cases of civil liberties, but it would be naive to think that there was not some hint of his past deeds having an affect on him. However, presentism exists as a trap to condemn Warren. He was a man of the early twentieth-century and the United States experienced an attack unlike any other in living memory.

**The Supreme Court**

Earl Warren’s tenure on the Supreme Court as Chief Justice oversaw some of the most profound changes in the legal history of the United States. *Brown v. Board of Education* was just the beginning for the Warren Court. Arguably, there was never a time in the history of the United States government when so much was done to expand the rights of citizens than during the sixteen years that Earl Warren was Chief Justice. Aside from race-related cases, such as *Brown*, the Warren Court redefined what it meant in the United States to have privacy. Additionally, the Court expanded citizen rights regarding illegal police searches, birth control, voting representation and many other areas of civil liberties and civil rights.\(^{150}\)

Equality before the law was a driving factor for him as seen from the opinions he wrote while Chief Justice. Warren was not as vocal at attacking the Soviet Union as Goldberg had been in cases like *Escobedo*, but that is not to say Warren did not understand the important role the Court played in showing the world that the United States believed what it broadcast.\(^{151}\)

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\(^{151}\) Kenneth Osgood *Total Cold War: Eisenhower’s Secret Propaganda Battle at Home and Abroad* (Lawrence: University of Kansas Press, 2006) 341.
Throughout many cases before the Court, Warren made it a point to highlight the United States’ approach to democracy, regardless of the issue. The *Point Lobos* case and its involvement with communists served as a demonstration of Warren’s intolerance for communism. However, now acting as the nation’s top judge there was a shift in his judicial philosophy to fully back the idea of equality before the law.

Warren’s fight against communism began with a case involving the House Committee on Un-American Activities (HUAC). The HUAC was formed in 1938 and was initially intended to focus on German activities in the United States.\(^\text{152}\) After World War Two the focus of the committee changed considerably with more time spent looking for communists and other subversives present in the United States.\(^\text{153}\) Senator Joseph McCarthy’s actions on the Tydings Committee (and later the Army hearings) had soured the country toward outright persecution of citizens: unfortunately this did not stop further persecution of American citizens by the HUAC. The HUAC investigations into the steel industry centered around fighting two things: organized crime and communists.

Warren’s maxim of equality before the law was represented in *Yellin v. U.S.* Edward Yellin was indicted for refusing to answer questions before the HUAC. The HUAC called Yellin before the committee to testify regarding the actions of communists in the steel industry. The impetus behind the case was that the HUAC denied Yellin the right to answer questions under executive session and thus shield him from exposure to the press. Within the rules of HUAC there was a clear statement that those called to testify could, and would, be held in executive session if they so desired. Warren trounced on the egregious lapse of the committee’s own willfulness to ignore its own procedure.

\(^{152}\) Ibid., 296.
\(^{153}\) Ibid., 296.
“To foreclose a defense based upon those rules, simply because the witness was deceived by the Committee’s appearance of regularity, is not fair” Warren wrote.\textsuperscript{154} The HUAC convened the Yellin hearing to investigate claims that the United States steel industry was being infiltrated by communists. The downfall of Senator McCarthy was several years previous and the full blown manhunt for communists had subsided significantly, yet there were still efforts by ambitious congressmen to thwart the country of the communist threat, no matter how real or imagined the threat. Warren quickly called out the lack of the HUAC to abide by its own rules and grant witness the full protection their own procedure called for.

Another case involving Warren’s idea of equality was \textit{U.S. v. Brown} (1965).\textsuperscript{155} This case involved the Labor-Management Reporting and Disclosure Act of 1959 which made it a crime for a member of the communist party to be an officer in a labor union. Despite the downfall of McCarthy in 1954, the United States was still participating in a number of witch-hunt activities. The political climate of 1965 was such that the movement of Communism was strong on the minds of United States citizens. Bombing campaigns against the Communists in North Vietnam were escalating with every passing month.\textsuperscript{156} Politicians, such as Warren, realized that the threat of Communism was not coming from within the United States but from the growing numbers of communist countries outside of the United States. Regardless of the reality of the communist presence in Vietnam, the United States believed the political climate in South-East Asia to be in direct conflict with the safety of the nation. In \textit{Brown} we see much more of Warren the politician at work in the decision rather than the Chief Justice.

\textsuperscript{154} \textit{Yellin v. United States} 374 US 109 (1963)
\textsuperscript{155} This case will be referred to as Brown so as to save confusion.
\textsuperscript{156} Operation Flaming Dart and Rolling Thunder.
The Labor-Management Reporting and Disclosure Act of 1959 (also known as the Landrum-Griffin Act) was part of a barrage of labor reform bills that were produced by Congress in 1959. Nineteen-fifty-nine was a big year for labor; not since 1947 had more laws been passed with regards to unions and trades.\footnote{R. Alton Lee, Eisenhower & Landrum-Griffin (Lexington: The University Press of Kentucky, 1989) 117.} The need for government intervention in labor unions stemmed back to the days when the socialist and communist parties were viewed with more legitimacy. Eugene V. Debs, and others, set about organizing labor unions to protest industrialist like Andrew Carnegie and George Pullman. The presence of the communists and socialist parties in American politics diminished considerably during the first half of the twentieth century. Unfortunately, reactions in the United States to the Cold War created a number of unfair practices, including targeting union organization.

The reality of the situation was that some union members did consider themselves communists. But, to compare union members (who happened to be communists) to Stalin was an oversimplification. Indeed the labor unions in the United States were key in fighting the actions of communist in post-war Europe with regard to the delivery of relief supplies under the Marshall Plan.\footnote{R. Alton Lee, 12.} Nonetheless the United States government took numerous actions to curtail unions and keep them clear of communist influence. Another reason for scrutinizing the unions was the very real presence of organized crime in unions.\footnote{Morris Ploscowe “New Approaches to the Control of Organized Crime” Annals of the American Academy of Political and Social Science 347 (1963): 75.}

Thus the Labor-Management Reporting and Disclosure Act of 1959 was an attempt by law makers to make membership in the communist party a barrier to leadership in labor unions. The purpose of the act was to protect the United States labor movement from overzealous
politicians who exploited fear of communism for votes. The Labor-Management Reporting and Disclosure Act was the first time the United States government told private organizations (labor unions) how they could and could not act. The involvement of the government in private organizations was where Warren, writing for the majority, attacked the Labor-Management Reporting and Disclosure Act.

“In a number of decisions, this Court has pointed out the fallacy of the suggestion that membership in the Communist Party, or any other political organization, can be regarded as an alternative, but equivalent, expression for a list of undesirable characteristics.” Warren stated that the United States represented such a powerful democracy that the ideas of communism were not enough to topple it. To attack communism in such a way gave it a legitimacy of challenging our own system. While Warren had no great affection for the ideas of communism he did state that if there were to be a movement against any philosophy it had to be applied equally. “Rather, we make again the point made in Lovett: that Congress must accomplish such results by rules of general applicability.”

In US v. Brown the Supreme Court ruled the Labor-Management Reporting and Disclosure Act of 1959 unconstitutional. The action of the Court in doing so was not approached casually. “This Court is always reluctant to declare that an Act of Congress violates the Constitution, but in this case we have no alternative.” Under Warren’s philosophy of equality before the law there was no question of how Brown would be decided. Brown dealt with rules that targeted one specific group for its actions within the United States. It would be historically unsound not to mention the fact that Warren had suggested a threat from Japanese

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Americans twenty-three years earlier on similar grounds. Chief Justice Warren applied his idea of equality before the law consistently ever since making his tremendous error with regard to Japanese American citizens.

Warren’s new found dedication to equality before the law was more than just an allegiance to the liberal wing of the Court; it was part of a judicial philosophy he carried with him throughout his life. The application of this philosophy during his tenure on the court was strongest during issues of civil liberty, as part of the ideological battle that the United States was involved with the Union of Soviet Socialist Republics. There are many examples throughout Warren’s judicial career that highlight his views on this ideological battle, but few had the magnitude of *Miranda*.

**Miranda**

The controversy of Earl Warren’s tenure did not begin with *Miranda*. Twenty-three years earlier Warren led the court in a ground-breaking case that challenged segregation in society. *Brown* did away with decades of state-imposed racism and gave children the right to go to school wherever they wanted regardless of the color of their skin. With the exception of the South, *Brown* was hailed as a testament to the greatness of American democracy. The reaction to *Miranda* 23 years later was far different and invoked letters of hatred from thousands of angry citizens.

*Miranda* followed the path of *Gideon* and *Escobedo* before it, that is upholding the expansion of the rights of the accused. While both *Gideon* and *Escobedo* granted reasonable extension of the Sixth Amendment to criminal prosecutions *Miranda* extended the Fifth Amendment’s right against self-incrimination. The decision, written by Warren, was extremely long, taking almost 100 pages in the Court Reporter. The number of revisions to *Miranda* are
considerably higher than previous opinions with numerous suggestions given by Justices William Douglas, Hugo Black, and William Brennan as well as by Warren’s law clerks.\textsuperscript{164} Within those 100 pages there are countless mentions of the freedoms United States citizens enjoy and act as a reminder to the rest of the world that the United States was an example of democracy regardless of who was on trial. \textit{Miranda} was often used as support for labeling the Warren Court activist. However, as legal scholar Mark Tushnet described Miranda it was merely the continuation of the court’s definition of “involuntary confessions.”\textsuperscript{165}

After the Court expanded the rights of the accused in \textit{Escobedo} to include the right of the accused to have legal counsel present at interrogation there was an instant attack of the decision from all legal areas outside of the court. Criticism from the police chiefs’ unions was one issue, but an entirely different issue was the rhetoric generated by various legal institutions within the United States, namely the criticism from the American Law Institute. The American Law Institute (ALI) was established to provide clarity to the United States legal code.\textsuperscript{166} Within the legal community the ALI was a well-respected institution with a solid relationship with academia. The fact that the ALI was attacking the Court was cause for concern of the greater congruity of the United States legal system, not that any member of the Court answered the ALI criticism.\textsuperscript{167}

The current membership of the ALI was centered around the Harvard legal intellectual model which, above all else, stressed moderate judicial behavior.\textsuperscript{168} Moderate judicial behavior means that the Court should keep out of the states’ business (such as Illinois in \textit{Escobedo}) and let

\begin{footnotesize}
\textsuperscript{164} Earl Warren Collection, Box 616 Library of Congress.
\textsuperscript{165} Tushnet, 22.
\textsuperscript{166} \url{http://www.ali.org/} accessed October 22, 2007.
\textsuperscript{167} The criticism was seen as a major issue from those outside of the Court, as the Court itself made no comment regarding any criticism.
\textsuperscript{168} Powe, 393.
\end{footnotesize}
the states’ courts deal with the issue. Only in the most important matters, such as segregation or a national emergency, should the Court intervene with the individual state laws and “tell them” what to do. Using this behavioral model it become clear that institutions like the ALI would not stand for decisions such as *Escobedo*.

The ALI’s response to Escobedo was drafted by two Harvard Law professors, James Vorenberg and Paul Bator.\(^{169}\) Their response, *A Model Code of Pre-Arraignment Procedures*, listed numerous suggestions for how suspects should be treated during interrogation. One suggestion was to keep the defendant incommunicado for four hours from any legal assistance: this suggestion was extensively debated by the ALA.\(^{170}\) How the Court felt about this is unknown, but such blatant criticism from one of the most respected legal institutions outside of government had to generate some opinion. Additionally, the ALI suggested that such methods might result in self-incrimination, “but self-incrimination in the absence of compulsion is neither undesirable nor prohibited by the Constitution.”\(^ {171}\)

The ALI’s tentative draft version of *A Model Code of Pre-Arraignment Procedure* contained numerous examples of how they felt the Warren Court was subverting the United States legal process. Regardless of the ALI, police unions, or anyone else, the Court decided to take another case along the same line as Escobedo that dealt with confessions. Warren directed his clerks to look for another confession case in the *writs of certiorari* that arrived daily at the Supreme Court.\(^{172}\) Warren’s actions were intended to deal directly with the issue of the confession, to expand and clarify what *Escobedo* meant.

\(^{169}\) Powe, 392.
\(^{170}\) *A Model code of Pre-Arraignment Procedure.* (tentative draft 1) 1966, 42.
\(^{171}\) Ibid., 42.
\(^{172}\) Laura Kalman *Abe Fortas* (New Haven: Yale University Press, 1990) 180.
The methods of police interrogation had gotten better since Escobedo, but were not where the Court wanted them. States were still trying to side-step the rules. A particular tactic was to arrest a subject on Friday afternoon just as the court house closed for the weekend, allowing two and a half days with no legal action taking place whatsoever. This tactic was obviously not as effective in areas such as Chicago or New York, which had night courts to deal with such situations. But, less populated cities could use this method as an advantage to keeping the accused unaware of a number of rights, such as the right to legal counsel at trial given in *Gideon* and the right to have your lawyer present at questioning in *Escobedo*.

Ernest Miranda was taken into custody on suspicion of the rape of a woman in Phoenix, Arizona. He was spotted by the attacker’s brother-in-law several days after the attack who then reported seeing Miranda to the police. Upon interrogation by the police Miranda admitted to raping the victim. At trial, Miranda’s confession was entered as evidence of guilt, resulting in a quick conviction.

Cases such as *U.S. v. Brown* and *Yellin* provided an ideological battlefield for Warren to expound the advantages of democracy. Warren took full advantage in those cases to show the superiority of the system of the United States: *Miranda* was no different. Warren was conscious that this case dealt with a more socially sensitive issue, rape, but felt the need to continue his idea of equality before the law as is evident in the opinion. Throughout the opinion Warren repeatedly invoked the idea that the United States was the exemplar of democracy in the world.

*Certiorari* was granted to Ernest Miranda by the Supreme Court in the fall of 1965. Previously, the Court, in cases such as *Gideon* was actively looking for cases to confront state laws regarding criminal proceedings. It is likely that a similar action was pursued with *Miranda* as several state laws stripped *Escobedo* of its power, creating loopholes for the police to operate.
in. While there is plenty of evidence supporting the active role the Court took to find Gideon there is no such evidence that the same thing happened in *Miranda*. Regardless of the Court’s motives, Miranda had his day before the highest court in the United States. Warren’s opinion took little time to get to the heart of the matter.

“Even without employing brutality...the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals.”\(^{173}\) This statement speaks more to Warren’s experience as a prosecutor than as a champion of equality before the law but is nonetheless important when drawing out the Chief’s judicial philosophy. The idea of “individual liberty” represented Warren’s commitment to justice and set the stage for his more complex language dealing with an ideological confrontation of democracy against totalitarianism. Whereas previous Supreme Court sessions dealt with torture with regard to interrogation, Warren was dealing with philosophical decency, “even without employing brutality,” in essence that removal of tertiary rights created a problem for Warren.

“The current practice of incommunicado interrogation is at odds with one of the United States’ most cherished principles – that individual may not be compelled to incriminate himself.”\(^{174}\) This quote is in partial reference to *Escobedo* two years earlier, reminding the legal community that the practices of “incommunicado interrogation” was a decided issue. The quote also implies that further protection of the accused is necessary; rather than merely protecting a right to counsel the accused must know that the right exists in the first place.

Throughout the length of the opinion there were many avenues where Warren’s philosophy of equality before the law can be discerned. “The question in these cases is whether the privilege is fully applicable during a period of custodial interrogation. In this Court, the

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\(^{174}\) *Miranda* 384 U.S. at 458.
privilege has consistently been accorded a liberal construction.”

Here Warren used the term “liberal” to which many historians attempt to spread throughout his jurisprudence and thus label him and the other members of the court as liberal activists. However, to do so would be in error because the term liberal was in reference only to the broad application of rights granted under the Constitution.

Similar to Goldberg’s attempt to praise the efforts of good police work so too did Warren. However, Warren went a step further by stating, “Our decision in no way creates a constitutional straightjacket which will handicap sound efforts at reform, nor is it intended to have this effect.” This sentence appeared only in the final draft of the opinion. Previous drafts made no mention of the “constitutional straightjacket” that Warren now felt compelled to mention. The sensitivity of this case cannot go unnoticed: the Chief surely knew the amount of criticism that such a decision would bring upon the Court.

Aside from attempts to sideline criticism of the Court, Warren continued to apply his equality before the law principle. The criminal investigation process gave Warren more opportunities to tout the legitimacy of American democracy. Referring to questioning of the accused, “It is at this point that our adversary system of criminal proceedings commences, distinguishing itself at the outset from the inquisitorial system recognized in some countries.” Where Goldberg would have mentioned the Soviet Union by name Warren here alludes to the Russians. Hence Warren’s mention of “some countries” is an affront to those who would deride the justice system of the United States. With a decision such as Miranda, ensuring people’s

\[175\] Miranda 384 U.S. at 460-461.

\[176\] Miranda 384 U.S. at 467.

\[177\] A final draft copy in Warren’s papers called “draft not circulated” appears to be the last copy of Miranda before the final version was released as no other drafts are located in the collection with later dates. Earl Warren Box 616.

\[178\] Miranda 384 U.S. at 477.
knowledge of their rights when arrested, there could be little left for political detractors to mention.

*Miranda* was at the center of the growing expansion of the criminal’s rights. Warren’s opinion was intended to give the accused knowledge of their rights according to the Constitution and Bill of Rights. Despite advances the decision made for the cause of civil liberties it did not manage to fully protect the criminally accused from abusive police tactics.¹⁷⁹

Regardless the implications for criminal procedure that *Miranda* had, the greater point of the decision relates to Warren’s view of the Constitution as a tool to grant equality to citizens of the United States regardless of their social position. To a greater point Warren’s writing in *Miranda* reinforced the mantra of the cold war warrior, that the United States was not full of empty platitudes but was a model to the rest of the world.

Of all the decisions of the Warren Court concerning police procedure, none come close to the explosive nature, or infamy, of *Miranda*.¹⁸⁰ The reaction to *Miranda* was negative from all reaches of the country: police unions, attorney generals, and community organizations. Despite the tremendous negative reaction to *Miranda*, the philosophy and ideology behind the decision can be characterized as the height of the Court’s anti-communist decisions. Warren, writing for the majority, spent considerable time on the final draft. The *Miranda* decision resulted in a legal system that granted a greater degree of freedom to all citizens of the United States.

*Miranda* was a masterpiece of judicial writing and a culmination of decades of legal experience. Equality before the law for the accused represented a lifetime of philosophical development by Warren and served as an example to the rest of the world regarding the

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legitimacy of the United States. Despite the intention of Warren to protect the rights of the accused, Miranda does little to protect them.\textsuperscript{181} However, that does not diminish what the opinion stood for: no matter who was accused of a crime they had the right to know their rights.

Warren’s Miranda decision was attacked from all sides. The idea that a rapist like Ernest Miranda had the right to know his rights before being arrested was too much for some citizens to handle. Warren attempted to make the decision easier for society by stating that the ruling pertained only to future cases as opposed to the retro-activity of Gideon. Police unions and police chiefs from around the nation criticized the Court for hampering their ability to investigate crime.\textsuperscript{182} The John Birch Society continued to support the idea of impeachment against Earl Warren. Politicians rode the wave of law and order sentiment that emanated from these groups to Congress, where several efforts to curtail the power of the Supreme Court were attempted.

The attention given to the Supreme Court over Miranda concentrated on an obscure issue of a greater point. Making citizens aware of their rights in a criminal investigation was nothing revolutionary, but simply a measure to ensure that law enforcement treated all suspects the same. The greater point of Miranda was what the opinion did for the United States in terms of consistency. The United States government used every opportunity to tout the advantages of democracy while at the same time drawing attention to the unfairness of communism regardless of the inequality present in American democracy-. Opinions, such as Miranda, gave the United States a consistency between its promises of liberation to Communist countries and the freedoms it granted to its own citizens. Earl Warren understood all too well that the United States had to be a beacon for democracy. He understood this when he authored the Brown decision and he

\textsuperscript{181} Leo, 1016.
understood it when he authored *Miranda*. Warren’s tenure was like no other in history. The United States was a superpower and the eyes of the world were upon it. There was no other way for Warren to handle issues of equality before the law. *Miranda* showed the world that in the United States everyone, regardless of their wealth or politics, was treated as fairly as possible.
Chapter 5: Conclusion

The lives of Clarence Gideon, Danny Escobedo, and Ernest Miranda did not get much better after their victories before the Supreme Court. Clarence Gideon continued life as an indigent and died in 1972.\textsuperscript{183} Little information is available about Danny Escobedo; after the Court heard his case he drifted. He was supposedly arrested in Mexico City in 2001 and is presumably still alive. Ernest Miranda profited from his fame by signing “Miranda Warning” cards. He was murdered during a poker game in 1976. Ironically his attacker exercised his right to counsel and was acquitted.\textsuperscript{184}

The members of the Supreme Court fared better. Arthur Goldberg resigned from the Court in 1966 to accept the position of Secretary General to the United Nations.\textsuperscript{185} Other members of the Court discouraged him from doing this. President Lyndon Johnson wanted Goldberg to resign so that he could nominate his friend and advisor Abe Fortas to the Court. Goldberg’s tenure at the United Nations was short lived, lasting until 1968. He unsuccessfully ran for governor of New York in 1970.\textsuperscript{186} Goldberg spent the rest of his life as a lawyer in Washington D.C. and died in 1990.

Hugo Black continued to serve on the Court until 1971, serving a total of 34 years. His dedication to the incorporation of the Bill of Rights continued to the end. He firmly believed that the Bill of Rights were crucial to maintaining the rights and liberties of American citizens. One of the greatest testaments to Black’s character came in 1970. His friend and fellow justice William O. Douglas was under attack. The House of Representatives drafted articles of

\textsuperscript{183} Powe, 411.
\textsuperscript{184} Powe, 411.
\textsuperscript{185} Stebenne, 352.
\textsuperscript{186} Stebenne, 356.
impeachment against Douglas. In response to this Black offered to resign his seat to defend Douglas should he be tried before the Senate. Black loved the Court, and to offer to resign to defend Douglas was incredible. Douglas was not impeached and Black continued to serve on the Court until September 17, 1971; he died eight days later.

Earl Warren stayed on the Court as Chief Justice until 1969. He offered his resignation to Lyndon Johnson in the summer of 1968 when the election of Richard Nixon appeared evident. When Warren was Governor of California, Nixon had began his climb in politics. Warren never liked Nixon. He found Nixon to be untrustworthy after he used a number of questionable campaign tactics for his election to the House of Representatives in 1946. Thus resigning that summer, after a replacement was found, allowed Johnson to name a Democrat to the bench. Unfortunately, Johnson’s pick of Abe Fortas did not work, due to a controversy over receiving a speakers fee. Fortas eventually resigned from the Court. Warren stayed on the Court until Warren Burger was sworn in as the 15th Chief Justice of the Supreme Court.

Warren stayed in the Washington D.C. area after his life on the Court, and kept current with politics. Warren was bothered by the scandal that Watergate brought to the presidency. He was a fair man and despised underhanded politicians, especially President Nixon. Justices William Brennan and William O. Douglas visited Warren in a Maryland hospital on July 9, 1974. They told Warren that the Court had just voted to compel President Nixon to turn over all records regarding the Watergate scandal. Three hours later Warren died, knowing that justice was coming for Nixon.

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187 Newman, 452.
188 Cray, 493.
189 Cray, 521.
190 Cray, 527.
The Warren Court was unlike any other in United States history, if only for the fact of how much controversy it caused. While the Court was, undoubtedly, righting the wrongs of decades of laws written to favor one class of people over the other, the whole of society did not see this action as positive. When considering the place of the Warren Court in history one has to take into account what it did for one of most under represented populations: those accused of crime. *Gideon*, *Escobedo* and *Miranda* gave rights to those who were most removed from mainstream society. Men such as Clarence Gideon, Danny Escobedo, and Ernest Miranda had little advantage in society to begin with, and to have their pleas heard from the Supreme Court, and win, was remarkable.

These three cases are commonly lumped together in history books and academic papers as part of the Warren Court’s attempt to “Police the Police.”[^191] *Gideon*, *Escobedo*, and *Miranda* reshaped criminal procedure in the United States, but to simply label them so would be missing the point. Middleclass citizens found these decisions appalling. They felt that the Court gave criminals every advantage; this was most certainly not the case. *Gideon*, *Escobedo*, and *Miranda* gave the same rights to every citizen, not special rights to criminals. If anything, these cases attempted to lessen the amount of influence and protection citizens received due only to their financial situation. In other words, that those who were accused of crimes and were wealthy were able to properly defend themselves. The overwhelming disadvantages that criminals faced before the Court led to the establishment of the doctrines in cases such as *Gideon*, *Escobedo*, and *Miranda*. Torture, and being held incommunicado, were given little consideration by those not subjected to it.

[^191]: See Powe *Warren Court in American Politics.*
The question now becomes why did the court do this. Why did Hugo Black, Arthur Goldberg, and Earl Warren write these opinions and have the convictions they did. A removed opinion, one that cares nothing of the makeup of the court, would be quick to label these decisions as the result of activism. Organizations such as the John Birch Society, claimed the Court was under communist influence. The truth is that each Justice brought with him a unique perspective concerning the ideological battles during the cold war.

Arthur Goldberg was an insecure man with a large ego. Perhaps because of this, or because of a need to have to prove himself a patriot, he set out to vehemently attack communism at every turn. Each position that Goldberg held in life allowed him to do something to thwart the existence and/or growth of communism, but this was always done fairly and justly. He never targeted communists with laws that were not sound and according to the legal principles of the United States. After arriving at the Supreme Court his constant vigilance against communism continued, but changed with regard to the methods that he did so.

Goldberg, like Warren, realized that the threat from communism was no longer domestic. Earlier in Goldberg’s career there was little doubt that he thought communism a threat to the safety and security of the United States, which would explain his attempts to eliminate communist from labor organizations at every turn. Once he arrived at the Supreme Court, Goldberg set out to change the legal system to silence the Soviet detractors of the injustices of the United States legal system. Much like Truman’s Executive Order 9981, which ended segregation in the United States military to silence Soviet critics about inequity in the United States military, Goldberg set out to silence Soviet critics of the American justice system.192

192 *Miranda* 384 U.S. at 375.
It would be difficult to find, in all of the cases during the Warren Court, one that more blatantly attacked communism than *Escobedo*. Goldberg’s multiple examples of what the communist state allowed (or did not) in criminal cases were mentioned in *Escobedo*. Goldberg then stated that the United States legal system was fair beyond reproach and to compare it to communism was absurd. However clever Goldberg’s observations were they were selectively ignored by the press and the police unions who criticized *Escobedo* on the grounds that the decision let a confessed murderer go free.¹⁹³ The reality was that Goldberg’s *Escobedo* was a patriot’s decision in its every word: that the United States legal system was fair and applied evenly to everyone accused of crime, no matter the crime. The jurisprudence developed in *Escobedo* was critical to continue the trend towards egalitarianism that would result in *Miranda*.

Earl Warren’s *Miranda* decision was a natural conclusion to the expansion of the rights of the accused. Warren’s experience as a district attorney, and Attorney General, were crucial to his dedication to equality before the law. Numerous examples from Warren’s days in California demonstrate that as a lawyer he was concerned that justice apply to all in the legal system, those prosecuting and those accused. Additionally, his time spent in California increased his awareness about the threat from communism that the United States faced.

After arriving at the Supreme Court, Warren’s view on communism, and the threat it posed, changed. He realized that in order to defeat the ideological battle of democracy versus communism that it was necessary to show the rest of the world that the United States was genuine in its dedication to the principle of justice for all, *Miranda* was such an instance. *Miranda* constantly, and consistently, referred to the principles of freedom and equality as synonymous with the United States criminal justice system and society. Warren was aware of

¹⁹³ Powe, 399.
the growing threat of communism from the Soviet Union. He was also aware that if the United States was going to defeat communism, that there had to be a clear message to the rest of the world that everyone was treated fairly in the judicial system. While every criminal defendant could not be given the absolute best lawyer, they could, at least, be aware that they had a right to a lawyer.

*Gideon, Escobedo* and *Miranda* changed the status quo of the United States legal system. *Gideon* received positive reactions from legal scholars and the media. However, as the Court continued to widen the scope of rights for the accused, negative attention accumulated. Initially, the legal community defended these cases while the “law and order” politicians attacked them. The legislature threatened a number of actions to either change the role of the Court entirely or to enact laws in an attempt to overturn decisions, like *Miranda*. Over time, the legal profession developed several staple defenses of *Gideon, Escobedo* and *Miranda*.

Those who disliked the Warren Court’s expansion of civil liberty initially used many different labels for the Court. In general, these labels came down to the idea that the Warren Court was a group of bleeding heart liberals who thought they could legislate from the bench. This definition served the purpose of law and order politicians but it was not enough, it needed a certain zing to it: thus enters activist.

When discussing the Supreme Court, law and order politicians use the term activist with great joy. What exactly activist means has never been clear and certainly is not clear now. “Activist Court” is the current adjective for the Court. For the John Birch Society it was “Traitor Court.” For the racist elements of the United States it was “Communist Court.” Activist explains nothing. The reasons for the Warren Court’s ruling in *Gideon, Escobedo* and *Miranda*

194 Newton, 425.
are due to both the evolution of the Court’s jurisprudence and also to the unique life experiences of the men who wrote the opinions.

While Warren and Goldberg had political experience with communism, Black’s relationship was more complicated. He saw the actions taken by the government, like the Smith Act and the Truman loyalty program, as an affront to the principles of democracy. It was not the threat of communism towards democracy for him, but instead the threat that tyranny causes because of a reaction to communism. The United States government had reacted poorly to the threat of internal communism, and caused a rush to curtail the rights of its citizens, creating a terrible act of injustice on the system of democracy from within. Black acted as the Court’s watchdog for intrusions into civil liberty, especially when the intrusion was due to a citizen’s political affiliation. He saw no point in persecuting someone because he or she were a member of the Communist party, such as Harisiades v. Shaughnessy.

Black wanted to give criminals the right to have defense counsel appointed for them at trial since his earliest days on the court in the 1930s. By the time that Gideon was argued in 1963 Hugo Black realized that the need for this decision was greater than just giving the criminally accused the right to counsel. American democracy was under attack abroad from communism and domestically by those who would exploit the threat of communism. Hence here is where a large difference exists between Black and the two other Justices. Black wanted to give the criminally accused rights because he feared what the United States government was capable of doing with regards to hampering or just ignoring civil liberty. By contrast Goldberg and Warren both wanted to defeat communism by correcting the criminal justice system of how it dealt with the accused.
The jurisprudence behind *Gideon*, *Escobedo*, and *Miranda* was due to the ideological battle of communism. The shift that these cases created in the United States legal system was revolutionary, and as with any change in how a society deals with sensitive issues, in this case crime, there were negative reactions. Notre Dame law professor William Ross argued that the Warren Court was operating during a turbulent era and that these decisions, in any other time, would not have seemed so revolutionary. The reality, that these decisions demonstrated the egalitarian nature of American democracy, was lost on the Court’s critics. The only thing that police unions could see as a “result” of the Warren Court’s decision was that crime was on the rise in the United States. Clearly, statistics from the Department of Justice show that crime began to dramatically rise in 1963 (the same year as *Gideon*). What the detractors did not mention was that 1963 was also the first year that the baby boomers started to turn 18, and thus be eligible to have their crimes counted as crimes and not juvenile offenses.

There is strong evidence, as shown in the preceding legal decisions, that the *Gideon*, *Escobedo*, and *Miranda* decisions were written as an ideological answer to communism. A certain level of legal analysis is needed to reach this conclusion, something that the media is not especially known for. *Gideon*, *Escobedo*, and *Miranda*, examined outside of their relationship with the ideological battle with communism, tremendously advanced the rights of the criminally accused. Ross’ suggestion that the Warren Court was so negatively viewed because of the social upheaval of the time certainly shows how these cases true meanings could be bypassed. Due to a lack of examination of the philosophical evolution of these justices, *Gideon*, *Escobedo*, and *Miranda* were, in turn, labeled as part of the Court’s “activist” behavior.

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Gideon, Escobedo, and Miranda have stood the test of time. Gideon and Escobedo were relatively free from attacks by Congress. Miranda, however, was not. In 1968 Congress passed 18 U.S.C. 3501 which stated that confessions were admissible in federal cases regardless of the defendant’s knowledge of his Miranda warnings. The addition to the Criminal Code was first tested in Dickerson v. United States (2000). Chief Justice William Rehnquist authored the 7-2 opinion Dickerson, reaffirming the validity of Miranda. “We conclude that Miranda announced a constitutional rule that Congress may not supersede legislatively.”196 In essence Rehnquist stated that in order to overturn Miranda that Congress would have to pass an Amendment to the Constitution: by default he guaranteed the continued right to counsel.

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