

# The Burger Court Opinion Writing Database

*Argersinger v. Hamlin*  
407 U.S. 25 (1972)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

December 17, 1971

Re: No. 70-5015 - Argersinger v. Hamlin

MEMORANDUM TO THE CONFERENCE:

Could you help me clarify whether or not the Court was to invite the Solicitor General, the Attorney Generals of the states, the National Association of District Attorneys, and the National Association of Defense Counsels to file amicus briefs in the above?

The case will be reargued, as you know, later in the Term.

Regards,

WEB

✓ Dear Chief

It is my understanding that only  
the Solicitor General of the United States  
was to be invited

PP

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

December 20, 1971

Re: No. 70-5015 - Argersinger v. Hamlin

MEMORANDUM TO THE CLERK:

At Conference last Friday, in addition to rescheduling the above case for reargument it was decided that the Court should invite the Solicitor General to file an amicus brief. Would you please prepare the proper request?

WBB

cc: The Conference

*WB*

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

March 6, 1972

Re: No. 70-5015 - Argersinger v. Hamlin

MEMORANDUM TO THE CONFERENCE:

At Conference I withheld my final vote.

I am now persuaded that Bill Douglas' approach presents an acceptable solution, even assuming that at some future date the Court would have a different view such as "no counsel no confinement" and a new look at the jury problem.

I therefore vote to affirm since I read Harry's position as going along with Bill Douglas. If I am incorrect on this, he will correct me.

Regards,

*WB*

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

March 28, 1972

Re: No. 70-5015 - Argersinger v. Hamlin

Dear Bill:

I have your proposed opinion to reverse.

Since the original assignment was predicated on your vote to affirm I cannot join in a reversal.

The event will now await the votes on this disposition. I assume some of the Brethren may wish to wait until a writing is ready on the original vote to affirm.

Regards,

WESB

Mr. Justice Douglas

cc: The Conference

*Douglas*  
CHAMBERS OF  
THE CHIEF JUSTICE

Supreme Court of the United States  
Washington, D. C. 20543

May 31, 1972

*You have joined us*

*S'*  
No. 70-~~30~~15 -- Argersinger v. Hamlin

Dear Bill:

I enclose some concurring observations in  
the above. I have sent it to the printer. Should  
anyone join me, I can add them later.

Regards,

*WB*

Mr. Justice Douglas

Copies to Conference

To: Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: The Chief Justice

Circulated: MAY 31 1971

No. 70-5015 -- Argersinger v. Hamlin

Recirculated: \_\_\_\_\_

MR. CHIEF JUSTICE BURGER, concurring in the result.

I agree with much of the analysis in the opinion of the Court and with Mr. Justice Powell's appraisal of the problems. Were I able to confine my focus solely on the burden that the states will have to bear in providing counsel, I would be inclined, at this stage of the development of the constitutional right to counsel, to conclude that there is much to commend drawing the line at penalties in excess of six months confinement. Yet several cogent factors suggest the infirmities in any approach that allows confinement for any period without the aid of counsel at trial; any deprivation of liberty is a serious matter. The issues that must be dealt with in a trial for a petty offense or a misdemeanor may often be simpler than those involved in a felony trial and yet be beyond the capability of a layman, especially when he is opposed by a law-trained prosecutor. There is little ground, therefore, to assume that a defendant, unaided by counsel, will be any more able adequately to defend himself against the lesser charges that may involve confinement than more serious charges. Appeal from a conviction after an uncounseled trial is \_\_\_\_\_.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 17, 1971

Dear Chief:

Re: 70-5015 - Argersinger v. Hamlin

I think the Conference voted to invite only the Solicitor General to file a brief in this case. I think it also wanted the Solicitor General to participate in the reargument.

The names of other groups who might file briefs were mentioned but I think they were all voted down. I, however, would personally favor briefs amicus from the National Association of District Attorneys and the National Association of Defense Counsels.

*W. O. Douglas*  
William O. Douglas

The Chief Justice

CC: The Conference

3/20

Please find <sup>the</sup> M

### Top Five Reasons for Success

4th DRAFT

THE DIALECTS

SUPREME COURT OF THE UNITED STATES

3-24

No. 70-5015

Recirculated: \_\_\_\_\_

Jon Richard Argersinger, }  
Petitioner,  
*v.* } On Writ of Certiorari to the  
Raymond Hamlin, Sheriff, } Supreme Court of Florida.  
Leon County, Florida.

[March —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner, an indigent, was charged in Florida with carrying a concealed weapon, an offense punishable by imprisonment up to six months and a \$1,000 fine. The trial was to a judge and petitioner was unrepresented by counsel. He was sentenced to serve 90 days in jail and brought this habeas corpus action in the Florida Supreme Court, alleging that, being deprived of his right to counsel, he was unable as an indigent layman properly to raise and present to the trial court good and sufficient defenses to the charges for which he stands convicted. The Florida Supreme Court by a four-to-three decision, in ruling on the right to counsel, followed the line we marked out in *Duncan v. Louisiana*, 391 U. S. 145, 159, as respects the right to trial by jury and held that the right to court-appointed counsel extends only to trials "for nonpetty offenses punishable by more than six months imprisonment." 236 So. 2d 442, \_\_\_\_.<sup>1</sup>

<sup>1</sup> For a survey of the opinions of judges, prosecutors, and defenders concerning the right to counsel of persons charged with misde-

5th DRAFT

File  
Recd  
3/27/72

SUPREME COURT OF THE UNITED STATES

No. 70-5015

Jon Richard Argersinger,  
Petitioner,  
v. } On Writ of Certiorari to the  
Raymond Hamlin, Sheriff, Supreme Court of Florida.  
Leon County, Florida.

[March —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner, an indigent, was charged in Florida with carrying a concealed weapon, an offense punishable by imprisonment up to six months and a \$1,000 fine. The trial was to a judge and petitioner was unrepresented by counsel. He was sentenced to serve 90 days in jail and brought this habeas corpus action in the Florida Supreme Court, alleging that, being deprived of his right to counsel, he was unable as an indigent layman properly to raise and present to the trial court good and sufficient defenses to the charges for which he stands convicted. The Florida Supreme Court by a four-to-three decision, in ruling on the right to counsel, followed the line we marked out in *Duncan v. Louisiana*, 391 U. S. 145, 159, as respects the right to trial by jury and held that the right to court-appointed counsel extends only to trials "for nonpetty offenses punishable by more than six months imprisonment." 236 So. 2d 442, ——.<sup>1</sup>

<sup>1</sup> For a survey of the opinions of judges, prosecutors, and defenders concerning the right to counsel of persons charged with misde-

Wm Douglas

⑥

6-71

Rec'd  
4/17/72

8th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 70-5015

Jon Richard Argersinger,  
Petitioner,  
*v.*  
Raymond Hamlin, Sheriff,  
Leon County, Florida. } On Writ of Certiorari to the  
Supreme Court of Florida.

[April —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner, an indigent, was charged in Florida with carrying a concealed weapon, an offense punishable by imprisonment up to six months and a \$1,000 fine. The trial was to a judge and petitioner was unrepresented by counsel. He was sentenced to serve 90 days in jail and brought this habeas corpus action in the Florida Supreme Court, alleging that, being deprived of his right to counsel, he was unable as an indigent layman properly to raise and present to the trial court good and sufficient defenses to the charges for which he stands convicted. The Florida Supreme Court by a four-to-three decision, in ruling on the right to counsel, followed the line we marked out in *Duncan v. Louisiana*, 391 U. S. 145, 159, as respects the right to trial by jury and held that the right to court-appointed counsel extends only to trials "for nonpetty offenses punishable by more than six months imprisonment." 236 So. 2d 442, \_\_\_\_.<sup>1</sup>

<sup>1</sup> For a survey of the opinions of judges, prosecutors, and defenders concerning the right to counsel of persons charged with misde-

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

April 17, 1972

Re: No. 70-5015 - Argersinger v. Hamlin

MEMORANDUM TO THE CONFERENCE:

I have received various suggestions from the Brethren, particularly from Bill Brennan and Potter Stewart, and on the basis of their suggestions I have rather drastically overhauled and rewritten the opinion in this case narrowing the grounds and limiting the reach of the new proposed rule.

  
William O. Douglas

Pete  
Rein  
4-19

9th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5015

Jon Richard Argersinger,  
Petitioner,  
*v.*  
Raymond Hamlin, Sheriff,  
Leon County, Florida. } On Writ of Certiorari to the  
Supreme Court of Florida.

[April —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner, an indigent, was charged in Florida with carrying a concealed weapon, an offense punishable by imprisonment up to six months and a \$1,000 fine. The trial was to a judge and petitioner was unrepresented by counsel. He was sentenced to serve 90 days in jail and brought this habeas corpus action in the Florida Supreme Court, alleging that, being deprived of his right to counsel, he was unable as an indigent layman properly to raise and present to the trial court good and sufficient defenses to the charges for which he stands convicted. The Florida Supreme Court by a four-to-three decision, in ruling on the right to counsel, followed the line we marked out in *Duncan v. Louisiana*, 391 U. S. 145, 159, as respects the right to trial by jury and held that the right to court-appointed counsel extends only to trials "for nonpetty offenses punishable by more than six months imprisonment." 236 So. 2d 442, \_\_\_\_.<sup>1</sup>

<sup>1</sup> For a survey of the opinions of judges, prosecutors, and defenders concerning the right to counsel of persons charged with misde-

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fca

§ 3/2

10th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 70-5015

Jon Richard Argersinger,  
Petitioner,  
v.  
Raymond Hamlin, Sheriff,  
Leon County, Florida. } On Writ of Certiorari to the  
Supreme Court of Florida.

[April —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner, an indigent, was charged in Florida with carrying a concealed weapon, an offense punishable by imprisonment up to six months and a \$1,000 fine. The trial was to a judge and petitioner was unrepresented by counsel. He was sentenced to serve 90 days in jail and brought this habeas corpus action in the Florida Supreme Court, alleging that, being deprived of his right to counsel, he was unable as an indigent layman properly to raise and present to the trial court good and sufficient defenses to the charges for which he stands convicted. The Florida Supreme Court by a four-to-three decision, in ruling on the right to counsel, followed the line we marked out in *Duncan v. Louisiana*, 391 U. S. 145, 159, as respects the right to trial by jury and held that the right to court-appointed counsel extends only to trials "for nonpetty offenses punishable by more than six months imprisonment." 236 So. 2d 442, ——.<sup>1</sup>

<sup>1</sup> For a survey of the opinions of judges, prosecutors, and defenders concerning the right to counsel of persons charged with misde-

Con't  
Virtue  
7/2

D  
You forced  
me to do it but have  
not seen these 2  
minutes.

May 9, 1972

MEMORANDUM TO: Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall

In No. 70-5015 - Argersinger v. Hamlin, it is suggested that on page 12 I add the following footnote.

Would you let me have your reaction to the suggestion?

We do not share Mr. Justice Powell's doubt that the nation's legal resources are insufficient to implement the rule we announce today. It has been estimated that between 1,575 and 2,300 full-time counsel would be required to represent all indigent misdemeanants, excluding traffic offenders. Note, Dollars and Sense of an Expanded Right to Counsel, 55 Iowa L. Rev. 1249, 1260-61 (1970). These figures are relatively insignificant when compared to the estimated 335,200 attorneys in the United States (Statistical Abstract of the United States 153 (1971)), a number which is projected to double by the year 1985. See Russel, That Booming Law School Enrollment, 58 A.B.A.J. 146, 147. Indeed, there are 18,000 new admissions to the bar each year -- 3,500 more lawyers than are required to fill the "estimated 14,500 average annual openings." Id. at 148.

The Solicitor General on oral argument stated that many misdemeanor cases "might be handled very effectively by law students under proper supervision," a project that the Ford Foundation is helping the American Bar Association supervise.

W. O. D.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

May 10, 1972

*WJD*  
*I agree with some*  
*aspects of*  
*footnote 7 on page 12*  
*WJD*

MEMORANDUM TO THE CONFERENCE:

Re: No. 70-5015 - Argersinger v. Hamlin

I am adding a new footnote 7 on page 12 to the last circulation of the draft of the opinion which reads as follows:

We do not share Mr. Justice Powell's doubt that the nation's legal resources are insufficient to implement the rule we announce today. It has been estimated that between 1,575 and 2,300 full-time counsel would be required to represent all indigent misdemeanants, excluding traffic offenders. Note, Dollars and Sense of an Expanded Right to Counsel, 55 Iowa L. Rev. 1249, 1260-61 (1970). These figures are relatively insignificant when compared to the estimated 335,200 attorneys in the United States (Statistical Abstract of the United States 153 (1971)), a number which is projected to double by the year 1985. See Ruud, That Burgeoning Law School Enrollment, 58 A.B.A.J. 146, 147. Indeed, there are 18,000 new admissions to the bar each year -- 3,500 more lawyers than are required to fill the "estimated 14,500 average annual openings." Id. at 146.

*C. W.*

William O. Douglas

*B/P/V*

To : Mr. Chief Justice  
Mr. Associate Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Rehnquist

11th DRAFT

From : Douglas, J.

## SUPREME COURT OF THE UNITED STATES

Recirculated: *5/11/75*

No. 70-5015

Jon Richard Argersinger,  
Petitioner,  
*v.*  
Raymond Hamlin, Sheriff,  
Leon County, Florida.

On Writ of Certiorari to the  
Supreme Court of Florida.

[April —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner, an indigent, was charged in Florida with carrying a concealed weapon, an offense punishable by imprisonment up to six months and a \$1,000 fine. The trial was to a judge and petitioner was unrepresented by counsel. He was sentenced to serve 90 days in jail and brought this habeas corpus action in the Florida Supreme Court, alleging that, being deprived of his right to counsel, he was unable as an indigent layman properly to raise and present to the trial court good and sufficient defenses to the charges for which he stands convicted. The Florida Supreme Court by a four-to-three decision, in ruling on the right to counsel, followed the line we marked out in *Duncan v. Louisiana*, 391 U. S. 145, 159, as respects the right to trial by jury and held that the right to court-appointed counsel extends only to trials "for nonpetty offenses punishable by more than six months imprisonment." 236 So. 2d 442, —.<sup>1</sup>

<sup>1</sup> For a survey of the opinions of judges, prosecutors, and defenders concerning the right to counsel of persons charged with misde-

Supreme Court of the United States  
Washington, D. C. 20543

June 9, 1972

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

70-5015

MEMORANDUM TO THE CONFERENCE:

The following cases have been held for Argersinger v. Hamlin:

70-50 City of Jacksonville v. Wooley

70-5052 Kammerer v. Washington

70-5053 Fox v. City of Bellevue

71-5722 Wright v. Town of Wood

71-5723 McAllister v. Virginia

Nos. 70-50, 71-5722, and 71-5723 are clear reversals on Argersinger, as all involved indigent misdemeanants sentenced to a jail term w/o counsel. There is an additional claim in No. 71-5723 that Virginia's statute making non-support a crime is an invidious discrimination based on sex, as it applies only to husbands who don't support their wives, not to wives who don't support their husbands. But this claim need not be reached.

In No. 71-5052, the indigent misdemeanant has been convicted of possession of dangerous drugs, but apparently has not yet been sentenced. The Clerk's office is checking, but it appears that the trial proceedings were halted pending the outcome of petitioner's writ of prohibition in Washington Supreme Court and were not completed pending disposition of the cert. In No. 71-5053, petitioner is charged with three misdemeanors punishable by jail sentences, but his trial has been stayed pending outcome of the cert.

Wm. Douglas 70-5015

- 2 -

Inasmuch as the Washington Supreme Court ruled that neither of the petitioners in No. 71-5052 or 71-5053 had any right to counsel at all, these cases should be vacated and remanded for proceedings not inconsistent with the Court's opinion in Argersinger.

*LLW*  
W. O. D.

December 17, 1971

RE: No. 70-5015 - Argersinger v. Hamlin

Dear Chief:

My notes indicate that the invitation was only to the Solicitor General. There was discussion of inviting others to file amicus briefs but I thought we concluded that such invitations were unnecessary because if they cared to be heard they would apply.

Sincerely,  
WJB

The Chief Justice

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 20, 1972

RE: No. 70-5015 - Argersinger v. Hamlin

Dear Bill:

I agree.

Sincerely,

*Bill*

Mr. Justice Douglas

cc: The Conference

May 9, 1972

RE: No. 70-5015 - Argersinger v. Hamlin

Dear Bill:

I've looked further into the Ford Foundation and ABA projects and suggest that the last line of your proposed footnote may more properly be phrased to read "a project that the Ford Foundation in cooperation with the American Bar Association is promoting."

There are many Ford and ABA projects under way in this general field. Ford created a \$6,000,000 fund for Clinical Legal Education which is being used in many experimental projects under grants to various kinds of lawyer groups representing disadvantaged or minority persons. For example, the University of Pennsylvania and Temple Law Schools have received grants to finance a project using law students in criminal causes in the United States District Court in Philadelphia.

There is also an ABA Commission on Correctional Facilities and Services of which former Governor Hughes of New Jersey is Chairman. One of its projects contemplates financing the services of one thousand young lawyers throughout the country with an LEAA grant of federal moneys to aid probation officers.

A project of the ABA Section on Judicial Administration to persuade States by statute or rule of court to allow audience to law students in some courts for some kinds of cases has resulted in the adoption of such statutes or rules by more than half the States.

- 2 -

While it concerns legal services for the poor in civil matters primarily, nevertheless OEO Legal Services now has federal appropriations of some \$61,000,000 and some of those services will inevitably spill over into criminal causes.

In sum, various projects have Ford taking the lead and others the ABA. Generally, however, they work together. Thus my suggested change.

Sincerely,

W. J. B. Jr.

Mr. Justice Douglas

cc: Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall

May 17, 1972

Dear Bill:

Thanks very much. My opinion incorporating some of this material is at the printer.

Sincerely,

WJB

Mr. Justice Douglas

To: SOR

Mr. Justice  
Douglas

⑧ M/

To: The Chief Justice  
 Mr. Justice Douglas  
 Mr. Justice Stewart  
 Mr. Justice White  
 ✓ Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Brennan, J.

No. 70-5015

Circulated: 5-17-72 ✓

Recirculated: \_\_\_\_\_

Jon Richard Argersinger,  
 Petitioner,  
 v.  
 Raymond Hamlin, Sheriff,  
 Leon County, Florida.

} On Writ of Certiorari to the  
 Supreme Court of Florida.

[May —, 1972]

MR. JUSTICE BRENNAN, concurring.

I join the opinion of the Court and add only some observations upon its discussion of legal resources, *ante*, at 12, n. 7. Law students as well as practicing attorneys may provide an important source of legal representation for the indigent. The Council on Legal Education for Professional Responsibility (CLEPR) informs us that more than 125 of the country's 147 accredited law schools have established clinical programs in which faculty-supervised students aid clients in a variety of civil and criminal matters.\* CLEPR Newsletter, May 1972, at 2. These programs supplement practice rules enacted in 38 States authorizing students to practice law under prescribed conditions. *Ibid.* Like the American Bar Association's Model Student Practice Rule (1969), most of these regulations permit students to make supervised court appearances as defence counsel in criminal cases. CLEPR, State Rules Permitting the Student Practice of Law: Comparisons and Comments 13 (1971). Given the

\*A total of 57 law schools have also established clinical programs in corrections, where law students, under faculty supervision, aid prisoners in the preparation of petitions for post-conviction relief. CLEPR Newsletter, May 1972, at 3. For an excellent discussion, see *United States v. Simpson*, 141 U. S. App. D. C. 8, 436 F. 2d 162 (1970).

BT  
P.J.

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5015

MS. B-6.1.1.1

Circulated

Recirculated: 5-18-72

Jon Richard Argersinger,  
Petitioner,  
v.  
Raymond Hamlin, Sheriff,  
Leon County, Florida.

On Writ of Certiorari to the  
Supreme Court of Florida.

[May —, 1972]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE  
DOUGLAS joins, concurring.

I join the opinion of the Court and add only an observation upon its discussion of legal resources, *ante*, at 12, n. 7. Law students as well as practicing attorneys may provide an important source of legal representation for the indigent. The Council on Legal Education for Professional Responsibility (CLEPR) informs us that more than 125 of the country's 147 accredited law schools have established clinical programs in which faculty-supervised students aid clients in a variety of civil and criminal matters.\* CLEPR Newsletter, May 1972, at 2. These programs supplement practice rules enacted in 38 States authorizing students to practice law under prescribed conditions. *Ibid.* Like the American Bar Association's Model Student Practice Rule (1969), most of these regulations permit students to make supervised court appearances as defense counsel in criminal cases. CLEPR, State Rules Permitting the Student Practice of

\*A total of 57 law schools have also established clinical programs in corrections, where law students, under faculty supervision, aid prisoners in the preparation of petitions for post-conviction relief. CLEPR Newsletter, May 1972, at 3. For an excellent discussion, see *United States v. Simpson*, 141 U. S. App. D. C. 8, 436 F. 2d 162 (1970).

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

December 17, 1971

70-5015 - Argersinger v. Hamlin

Dear Chief,

It was my understanding that the members of the Conference voted only to ask the Solicitor General for his views in connection with the reargument of this case.

Sincerely yours,

P. S.

The Chief Justice

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

April 12, 1972

Re: No. 70-5015 - Argersinger v. Hamlin

Dear Bill,

This case seems to me peculiarly one in which a Court opinion is essential -- in order to give intelligible guidance to the countless courts in the country where the problem involved will arise every day. With that objective in mind, I take the liberty of expressing my difficulties with your opinion in its present form:

(1) While I may be alone in this view, I could not join an opinion that says the entire Sixth Amendment is made applicable to the States by reason of the Fourteenth Amendment. I would hope, therefore, that you might be able to tone down the first sentence of the second paragraph on page 2 for my benefit.

-- (2) A much more basic difficulty is that I cannot agree that counsel is constitutionally required "if the offense is in the imprisonable class -- that is to say if the statute makes any imprisonment a permissible penalty . . ." (page 9 of your opinion). There are undoubtedly a myriad of statutes and ordinances that make imprisonment "a permissible penalty," but for whose violation imprisonment is virtually never imposed -- spitting on the sidewalk, jaywalking, smoking in the subway, etc. I think the correct standard is the one you quote from Application of Stevenson in the first quoted paragraph on page 12 of your opinion. That is, I think that a person cannot be actually sentenced to imprisonment unless he had a lawyer at his trial.

(3) The issue before us is whether the Florida Supreme Court was correct in holding that the Constitution permits a prison sentence of up to six months even though the defendant did not have a lawyer at his trial. I would confine our decision to resolving that issue (in the terms expressed above), which is difficult enough. I could not join an opinion that seems to decide in advance that a lawyer is also required in various other criminal, quasi-criminal, civil, and administrative proceedings -- whether involving the loss of a driver's license, revocation of parole or probation, the attachment of "stigma," or whatever.

Sincerely yours,

✓ P.S.

Mr. Justice Douglas

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

April 18, 1972

70-5015, Argersinger v. Hamlin

Dear Bill,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

May 9, 1972

70-5015 - Argersinger v. Hamlin

Dear Bill,

I think the footnote you propose (modified in accord with Bill Brennan's suggestion) would be a desirable addition to your opinion for the Court in this case.

Sincerely yours,

P. S.  
P.

Mr. Justice Douglas

Copies to    Mr. Justice Brennan  
                 Mr. Justice White  
                 Mr. Justice Marshall

*B*

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

May 18, 1972

No. 70-5015 - Argersinger v. Hamlin

Dear Bill,

I should appreciate your adding my name to your concurring opinion in this case.

Sincerely yours,

*P. S.*

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

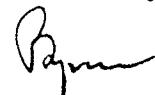
December 20, 1971

Re: No. 70-5015 - Argersinger v.  
Hamlin

Dear Chief:

I think we voted to ask only  
the Solicitor General to partici-  
pate in the reargument.

Sincerely,



The Chief Justice

Copies to Conference

Wm. J. White  
Solicitor General

*B*  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 20, 1972

Re: No. 70-5015 - Argersinger v.  
Hamlin

Dear Bill:

Please join me.

Sincerely,

*Byron*

Mr. Justice Douglas

Copies to Conference

Br  
CHAMBERS OF  
JUSTICE BYRON R. WHITE

Supreme Court of the United States  
Washington, D. C. 20543

May 10, 1972

Re: No. 70-5015 - Argersinger v. Hamlin

Dear Bill:

I would prefer that you omit entirely the last paragraph of your suggested footnote. I'm not convinced that student representation satisfies the right to counsel. Their "supervision" is often more theoretical than real, or at least remote.

Sincerely,



Mr. Justice Douglas

Copies to Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall

9  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 11, 1972

Re: 70-5015 - Argersinger v. Hamlin

Dear Bill:

The footnote suggested in  
your May 10 memorandum suits me.

Sincerely,



Mr. Justice Douglas

Copies to Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 20, 1971

Re: No. 70-5015 - Argersinger v. Hamlin

Dear Chief:

It is my understanding that only  
the Solicitor General of the United States  
was to be invited.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 27, 1972

Re: No. 70-5015 - Argersinger v. Hamlin

Dear Bill:

Please join me.

Sincerely,

  
T.M.

Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 11, 1972

Re: No. 70-5015 - Argersinger v. Hamlin

Dear Bill:

I agree with your footnote 7  
on page 12.

Sincerely,

  
T.M.

Mr. Justice Douglas

cc: The Conference

December 17, 1971

Re: No. 70-5015 - Argersinger v. Hamlin

Dear Chief:

This is in response to your memorandum of December 17. My notes indicate that the Solicitor General was to be invited to express his views. My notes are silent as to others, but I recall that there was some discussion about that possibility. I suspect that we reached no consensus as to that.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 2, 1972

Re: No. 70-5015 - Argersinger v. Hamlin

Dear Chief:

I have devoted further attention to this case. I write this note merely to let you know that my vote, this time around, remains just as tentative and just as unsure as it was in December. I am particularly concerned, of course, because mine seems to be the swing vote, and at the moment I feel I could draw the line either at imprisonment or at the six-month mark. The latter has the obvious advantage of relating to Baldwin. It is possible that I shall come to rest only after something is written out.

Facetiously, one might conclude to send this case back because of the Boykin error and let it go at that.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 18, 1972

Re: No. 70-5015 - Argersinger v. Hamlin

Dear Bill:

Please join me.

I have had difficulty in coming to a conclusion in this case, primarily because I have been concerned about retrospectivity and the Loper v. Beto aspect. Both are necessarily present here and I assume that all members of the Court are aware of this. On the other hand, the nature of these lesser offenses perhaps minimizes the problem. I am still somewhat uncomfortable, but the result you propose is perhaps the practical one.

Sincerely,

*H. A. B.*

Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 27, 1972

Re: No. 70-5015 Argersinger v. Hamlin

Dear Bill:

Although your draft opinion is persuasive, I am not yet persuaded to change my vote. Accordingly, I now plan to write something.

Sincerely,

*Lewis*

Mr. Justice Douglas

lfp/ss

cc: The Conference

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F

To The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black <sup>1</sup>  
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5015

From: Powell, J.

Circulated APR 13 1972

Jon Richard Argersinger,  
Petitioner,  
v.  
Raymond Hamlin, Sheriff,  
Leon County, Florida.

On Writ of Certiorari to the  
Supreme Court of Florida.

Recirculated: \_\_\_\_\_

[April —, 1972]

MR. JUSTICE POWELL, concurring in the result.

*Gideon v. Wainwright*, 372 U. S. 335 (1963), held that the States were required by the Due Process Clause of the Fourteenth Amendment to furnish counsel to all indigent defendants charged with felonies.<sup>1</sup> The question before us today is whether an indigent defendant charged with an offense carrying a maximum punishment of six months' imprisonment or a fine of \$1,000 or both is entitled as a matter of constitutional right to the assistance of appointed counsel. More generally, we must determine whether the Due Process Clause requires that an indigent charged with a state petty offense<sup>2</sup> be afforded the right to appointed counsel.

<sup>1</sup> While it is true that Mr. Justice Black's opinion for the Court in *Gideon* is not narrowly written, Mr. Justice Harlan was quick to suggest, in his concurring opinion, that the facts in *Gideon* did not require the Court to decide whether the indigent's right to appointed counsel should extend to all criminal cases. 372 U. S., at 351. In opinions announced more recently, the Court has assumed that the holding of *Gideon* has not yet been extended to misdemeanor cases. See *In re Gault*, 387 U. S. 1, 29 (1967); *Mempa v. Rhay*, 389 U. S. 12, 34 (1967); *Burgett v. Texas*, 389 U. S. 109, 114 (1967); *Loper v. Beto*, — U. S. — (1972).

<sup>2</sup> As used herein, the term "petty offense" means any offense where the authorized imprisonment does not exceed six months. *Baldwin v. New York*, 399 U. S. 66, 69 (1970). It also includes all offenses

April 22, 1972

Re: No. 70-5015 Argersinger v. Hamlin

MEMORANDUM TO THE CONFERENCE

Although the revision of the Court opinion (3/21/72) meets some of my concerns, I still intend to concur in the result by a separate opinion which I hope to circulate next week.

L. F. P., Jr.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 25, 1972

Re: No. 70-5015 Argersinger v. Hamlin

MEMORANDUM TO THE CONFERENCE:

Although the revision of the Court's opinion (3/19/72) meets some of my concerns, I still intend to concur in the result by a separate opinion which I hope to circulate after my return from the Fifth Circuit Conference.

*LFP*  
L. F. P., Jr.

B  
Charges throughout

3rd DRAFT

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Rehnquist

From: Powell, J.

Circulated:

Recirculated: MAY 2 1972

SUPREME COURT OF THE UNITED STATES

No. 70-5015

Jon Richard Argersinger,  
Petitioner,  
v.  
Raymond Hamlin, Sheriff,  
Leon County, Florida.

On Writ of Certiorari to the  
Supreme Court of Florida.

[April —, 1972]

MR. JUSTICE POWELL, concurring in the result.

*Gideon v. Wainwright*, 372 U. S. 335 (1963), held that the States were required by the Due Process Clause of the Fourteenth Amendment to furnish counsel to all indigent defendants charged with felonies.<sup>1</sup> The question before us today is whether an indigent defendant charged with an offense carrying a maximum punishment of six months' imprisonment or a fine of \$1,000 or both is entitled as a matter of constitutional right to the assistance of appointed counsel. More generally, we must determine whether the Due Process Clause requires that an indigent charged with a state petty offense<sup>2</sup> be afforded the right to appointed counsel.

<sup>1</sup> While it is true that Mr. Justice Black's opinion for the Court in *Gideon* is not narrowly written, Mr. Justice Harlan was quick to suggest, in his concurring opinion, that the facts in *Gideon* did not require the Court to decide whether the indigent's right to appointed counsel should extend to all criminal cases. 372 U. S., at 351. In opinions announced more recently, the Court has assumed that the holding of *Gideon* has not yet been extended to misdemeanor cases. See *In re Gault*, 387 U. S. 1, 29 (1967); *Mempa v. Rhay*, 389 U. S. 12, 34 (1967); *Burgett v. Texas*, 389 U. S. 109, 114 (1967); *Loper v. Beto*, — U. S. — (1972).

<sup>2</sup> As used herein, the term "petty offense" means any offense where the authorized imprisonment does not exceed six months, *Baldwin v. New York*, 399 U. S. 66, 69 (1970). It also includes all offenses

Wm. L. Marston

70-5015

TS  
1, 8-9, 13-14) 22-23

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5015

From: Powell, J.

Circulated:

Recirculated:

MAY 19 1972

Jon Richard Argersinger,  
Petitioner,  
v.  
Raymond Hamlin, Sheriff,  
Leon County, Florida.

On Writ of Certiorari to the  
Supreme Court of Florida.

[April —, 1972]

MR. JUSTICE POWELL, concurring in the result.

*Gideon v. Wainwright*, 372 U. S. 335 (1963), held that the States were required by the Due Process Clause of the Fourteenth Amendment to furnish counsel to all indigent defendants charged with felonies.<sup>1</sup> The question before us today is whether an indigent defendant convicted of an offense carrying a maximum punishment of six months' imprisonment or a fine of \$1,000 or both, and sentenced to 90 days in jail, is entitled as a matter of constitutional right to the assistance of appointed counsel. More generally, we face the question whether the Due Process Clause requires that an indigent charged with a state petty offense<sup>2</sup> be afforded the right to appointed counsel.

<sup>1</sup> While it is true that Mr. Justice Black's opinion for the Court in *Gideon* is not narrowly written, Mr. Justice Harlan was quick to suggest, in his concurring opinion, that the facts in *Gideon* did not require the Court to decide whether the indigent's right to appointed counsel should extend to all criminal cases. 372 U. S., at 351. In opinions announced more recently, the Court has assumed that the holding of *Gideon* has not yet been extended to misdemeanor cases. See *In re Gault*, 387 U. S. 1, 29 (1967); *Mempa v. Rhay*, 389 U. S. 12, 34 (1967); *Burgett v. Texas*, 389 U. S. 109, 114 (1967); *Loper v. Beto*, — U. S. — (1972).

<sup>2</sup> As used herein, the term "petty offense" means any offense where the authorized imprisonment does not exceed six months, *Baldwin v. New York*, 399 U. S. 66, 69 (1970). It also includes all offenses

*1, 3, 2<sup>2</sup> + minor charges*

To: The Chief Justice  
 Mr. Justice Douglas  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 - Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Rehnquist

## 5th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 70-5015

From: Powell, J.

Circulated:

Recirculated MAY 25 1972

Jon Richard Argersinger,  
 Petitioner,  
 v.  
 Raymond Hamlin, Sheriff,  
 Leon County, Florida.

On Writ of Certiorari to the  
 Supreme Court of Florida.

[April —, 1972]

MR. JUSTICE POWELL, with whom MR. JUSTICE REHNQUIST joins, concurring in the result.

*Gideon v. Wainwright*, 372 U. S. 335 (1963), held that the States were required by the Due Process Clause of the Fourteenth Amendment to furnish counsel to all indigent defendants charged with felonies.<sup>1</sup> The question before us today is whether an indigent defendant convicted of an offense carrying a maximum punishment of six months' imprisonment or a fine of \$1,000 or both, and sentenced to 90 days in jail, is entitled as a matter of constitutional right to the assistance of appointed counsel. More generally, we face the question whether the Due Process Clause requires that an indigent charged with a state petty offense<sup>2</sup> be afforded the right to appointed counsel.

<sup>1</sup> While it is true that Mr. Justice Black's opinion for the Court in *Gideon* is not narrowly written, Mr. Justice Harlan was quick to suggest, in his concurring opinion, that the facts in *Gideon* did not require the Court to decide whether the indigent's right to appointed counsel should extend to all criminal cases. 372 U. S., at 351. In opinions announced more recently, the Court has assumed that the holding of *Gideon* has not yet been extended to misdemeanor cases. See *In re Gault*, 387 U. S. 1, 29 (1967); *Mempa v. Rhay*, 389 U. S. 12, 34 (1967); *Burgett v. Texas*, 389 U. S. 109, 114 (1967); *Loper v. Beto*, — U. S. — (1972).

<sup>2</sup> As used herein, the term "petty offense" means any offense where the authorized imprisonment does not exceed six months, *Baldwin v. New York*, 399 U. S. 66, 69 (1970). It also includes all offenses

*B*  
*M*  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 23, 1972

Re: No. 70-5015 - Argersinger v. Hamlin

Dear Lewis:

Please join me in your concurring opinion in this  
case.

Sincerely,

*Wm. H. Rehnquist*

Mr. Justice Powell

Copies to the Conference