Submit Yourselves to the King
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https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf

Good morning friends and family - those of you who are committed, bound and determined to see His will on earth as it is in heaven.

I have got so much to cover with you this morning, I know there is simply no way we can get to it all. I have some emails I want to cover - and I'd like to finish the series on "Times where God's People Acted Like it" but I know I will not have enough time to get to it all.

The first thing to discuss with you is something that just popped into my head - I had no intention to bring this up at all - until I made my opening introduction to you. "His will on earth as it is in heaven."

When you approach the Scriptures from the perspective that ALL - ALL - ALL Bible prophecy has been fulfilled - by Christ - on or before AD70 when the temple was destroyed bringing an official end to the Old Covenant system. When that understanding brings you to another - chain reaction - if you will - understandings - one of the things that needs to be discussed is the phrase "the passing of the heavens and the earth - and the establishing of the New Heavens and the New Earth."

I believe in messages past that I have made a strong case for the passing of the Old heavens, the old earth, the elements melting away with a fervent heat - and so forth - means - by earth - it means the physical aspects of the Old Covenant. By heavens - it means the spiritual aspects of the Old Covenant. Without going into greater detail today because this is not what I even intended to preach about - go back and read Hebrews 12 and you'll see the physical elements of the Old Covenant and the spiritual elements of the Old Covenant. And you will then see the Scriptures say that "the removing of things" is what is meant by, these things signify, the removing of the heavens and the earth - as of those things that could be shaken were then replaced by those things that cannot be removed - the Kingdom - the New Covenant World - signified in the Scriptures - specifically in Revelation 21 - as a New Heaven and a New Earth.

This past week I was sharing the Gospel with someone who had just written something she wanted me to read - and in one of the paragraphs she wrote about someday "entering His Kingdom in the heavens."

Much of what she had written was interesting and truthful - but I had to stop her and tell her that her understanding of a future Kingdom that is purely a spiritual Kingdom where people supposedly go to when they die - has caused her to miss the entire meaning of the Word of God. She has missed the plan of salvation. She does not understand the Gospel.

One day Jesus was having a conversation with one of the top, most well-respected men in Israel. And the conversation went like this as Jesus was explaining how salvation comes:

> [**9**] Nicodemus answered and said unto him, How can these things be?
> [**10**] Jesus answered and said unto him, Art thou a master of Israel, and knowest not these things?
> [**11**] Verily, verily, I say unto thee, We speak that we do know, and testify that we have seen; and ye receive not our witness.
> [**12**] If I have told you earthly things, and ye believe not, how shall ye believe, if I tell you of heavenly things?
> [**13**] And no man hath ascended up to heaven, but he that came down from heaven, even the Son of man which is in heaven.
> [**14**] And as Moses lifted up the serpent in the wilderness, even so must the Son of man be lifted up:
> [**15**] That whosoever believeth in him should not perish, but have eternal life.

And then a little later in John 5, He's having more conversation, and it went like this:

> [**23**] That all men should honour the Son, even as they honour the Father. He that honoureth not the Son honoureth not the Father which hath sent him.
> [**24**] Verily, verily, I say unto you, He that heareth my word, and believeth on him that sent me, hath everlasting life, and shall not come into condemnation; but is passed from death unto life.
> [**25**] Verily, verily, I say unto you, The hour is coming, and now is, when the dead shall hear the voice of the Son of God: and they that hear shall live.
> [**26**] For as the Father hath life in himself; so hath he given to the Son to have life in himself;
> [**27**] And hath given him authority to execute judgment also, because he is the

Son of man.
[**28**] Marvel not at this: for the hour is coming, in the which all that are in the graves shall hear his voice,
[**29**] And shall come forth; they that have done good, unto the resurrection of life; and they that have done evil, unto the resurrection of damnation.
[**30**] I can of mine own self do nothing: as I hear, I judge: and my judgment is just; because I seek not mine own will, but the will of the Father which hath sent me.
[**31**] If I bear witness of myself, my witness is not true.
[**32**] There is another that beareth witness of me; and I know that the witness which he witnesseth of me is true.
[**33**] Ye sent unto John, and he bare witness unto the truth.
[**34**] But I receive not testimony from man: but these things I say, that ye might be saved.
[**35**] He was a burning and a shining light: and ye were willing for a season to rejoice in his light.
[**36**] But I have greater witness than that of John: for the works which the Father hath given me to finish, the same works that I do, bear witness of me, that the Father hath sent me.
[**37**] And the Father himself, which hath sent me, hath borne witness of me. Ye have neither heard his voice at any time, nor seen his shape.
[**38**] And ye have not his word abiding in you: for whom he hath sent, him ye believe not.
[**39**] Search the scriptures; for in them ye think ye have eternal life: and they are they which testify of me.
[**40**] And ye will not come to me, that ye might have life.
[**41**] I receive not honour from men.
[**42**] But I know you, that ye have not the love of God in you.
[**43**] I am come in my Father's name, and ye receive me not: if another shall come in his own name, him ye will receive.
[**44**] How can ye believe, which receive honour one of another, and seek not the honour that cometh from God only?
[**45**] Do not think that I will accuse you to the Father: there is one that accuseth you, even Moses, in whom ye trust.
[**46**] For had ye believed Moses, ye would have believed me: for he wrote of me.
[**47**] But if ye believe not his writings, how shall ye believe my words?

Do you see the common thread hear? You must believe - but your beliefs must be based on truth. Everyone believes. Everyone believes in something. Even those who say they don't believe in anything - still believe in something. Believing in nothing is still a

belief. But the Son was sent to bring people to truth. The ignorant worship of God does not get it. The devils - whatever they were - the Scriptures say - not only believed - but trembled. But it got them no where.

One day, Paul was preaching, trying to bring his people to the truth - to saving faith - the saving gospel - and in Romans 10 the record says:

> [**1**] Brethren, my heart's desire and prayer to God for Israel is, that they might be saved.
> [**2**] For I bear them record that they have a zeal of God, but not according to knowledge.
> [**3**] For they being ignorant of God's righteousness, and going about to establish their own righteousness, have not submitted themselves unto the righteousness of God.

Do you see it? Friends, the ignorant worship of God - is not acceptable. And I'm telling you - there is overwhelming evidence from the Word of God - that if a man believes in a future King and a future coming Kingdom or a Kingdom reserved only in the heavens - or in the sky - and the spiritual Kingdom does not manifest itself in the physical realm today - then friends - that man has never heard the gospel.

> [**4**] For Christ is the end of the law for righteousness to every one that believeth.
> [**5**] For Moses describeth the righteousness which is of the law, That the man which doeth those things shall live by them.
> [**6**] But the righteousness which is of faith speaketh on this wise, Say not in thine heart, Who shall ascend into heaven? (that is, to bring Christ down from above:)

Stop right there. Did you see that? The modern "church" gospel is based on what? Bringing Christ back down from above. I think we better take some time to think about that one. Wow. That should - it won't - but it certainly should raise all sorts of questions among the churchians.

> [**7**] Or, Who shall descend into the deep? (that is, to bring up Christ again from the dead.)
> [**8**] But what saith it? The word is nigh thee, even in thy mouth, and in thy heart: that is, the word of faith, which we preach;
> [**9**] That if thou shalt confess with thy mouth the Lord Jesus, and shalt believe in thine heart that God hath raised him from the dead, thou shalt be saved.
> [**10**] For with the heart man believeth unto righteousness; and with the mouth

> confession is made unto salvation.

What? Wait. With the heart - let's go slowly - not for you - but for me as this is literally causing me to shake again - with the heart man believeth - unto righteousness - let's not make this any harder than it should be - what is righteousness? It's simply - well - let's get a definition we can all agree with. Here's what Webster's 1828 Dictionary says. Now, I'm not equating Webster's 1828 with the Bible - not at all - but it is the oldest English Dictionary I have. It's way closer to the understandings of words that were used in the 1600s than what we have today. Righteousness.

1. *Purity of heart and rectitude of life; conformity of heart and life to the divine law. righteousness as used in Scripture and theology, in which it is chiefly used, is nearly equivalent to holiness, comprehending holy principles and affections of heart, and conformity of life to the divine law. It includes all we call justice, honesty and virtue, with holy affections; in short, it is true religion.*

2. *Applied to God, the perfection or holiness of his nature; exact rectitude; faithfulness.*

3. *The active and passive obedience of Christ, by which the law of God is fulfilled. Daniel 9:7.*

4. *Justice; equity between man and man. Luke 1:75.*

5. *The cause of our justification.*

The Lord our righteousness Jeremiah 23:6.

Okay. Not that whether I agree with this or not makes one hill of beans difference - but I think an excellent summation of what is righteousness is:

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So go back again:

> [**10**] For with the heart man believeth unto righteousness; and with the mouth confession is made unto salvation.

Jesus' earthly ministry was mainly made up of trying to point people to the truth. The truth of Who He was - but reasoning that from Creation - all the way through John the

Baptist - everything was pointing to Him. And His example was - "I Keep my Father's Commandments. I keep my Father's commandments - you keep your traditions, your ways, your laws, your statues - and because I am pointing you to my Father - you want to kill me."

> But what saith it? The word is nigh thee, even in thy mouth, and in thy heart: that is, the word of faith, which we preach;
> [**9**] That if thou shalt confess with thy mouth the Lord Jesus, and shalt believe in thine heart that God hath raised him from the dead, thou shalt be saved.
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Faith is that system of belief that is based on the truths contained in the Word. And belief in those truths contained in the Word produces faith - which then yields the righteousness of God in our hearts - then when it is confessed - it is manifested in our lives - salvation comes. We must understand that this saving faith - this belief system that brings salvation - MUST - it MUST bring us to righteousness - and that righteousness...

> For they being ignorant of God's righteousness, and going about to establish their own righteousness, have not submitted themselves unto the righteousness of God....

That righteousness must be of God. Today, the gospel that is well-known - the accepted gospel - the popular gospel - is the gospel according to the righteousness of the state. It is not the righteousness of God - which is His Laws, His Statutes, His Judgements, His Perfect Will. His Laws, His Statutes, His Judgements, His Perfect Will is something that is reserved for the heavenlies - the spiritual beyond - or someday when He is brought back down from the heavens to institute some one-world government - which will never happen because the Word of God does not teach it.

Saving faith is one based on a system of belief taught all the way back in Genesis and all throughout the Word that concludes that man is to submit to ordinance - the Creation of God for man - which man is to obey.

> [**11**] For the scripture saith, Whosoever believeth on him shall not be ashamed.
> [**12**] For there is no difference between the Jew and the Greek: for the same Lord over all is rich unto all that call upon him.
> [**13**] For whosoever shall call upon the name of the Lord shall be saved.

[**14**] How then shall they call on him in whom they have not believed? and how shall they believe in him of whom they have not heard? and how shall they hear without a preacher?
[**15**] And how shall they preach, except they be sent? as it is written, How beautiful are the feet of them that preach the gospel of peace, and bring glad tidings of good things!
[**16**] But they have not all obeyed the gospel. For Esaias saith, Lord, who hath believed our report?

How can they believe in something they have never heard? We are in the same place today as Paul was back then. The Gospel - the true Gospel of the Kingdom of God has been hidden for several hundred years now and the reality is - very very few people in America today have ever even heard the Gospel. The Gospel is the King, the Kingdom, His Father's Righteousness and a man's willingness to accept these truths into his life and begin seeking His Will on earth as it is in heaven.

[**17**] So then faith cometh by hearing, and hearing by the word of God.

Again, we see it. Again. Over and over. I was talking to another man this week and we were discussing the word "church." In the 1500s, William Tyndale knew that the word should not be in our English Bibles. Miles Coverdale, in his translation knew the word shouldn't be in our English Bibles. Didn't take long for that perversion to come along and now we are in a society that thinks that all the truth of God is found in something called a "church." Which - and I still have people wanting to argue with me about it - "I know what the true meaning of the word 'church' is." Well, friends, as kindly as I can say it - if you really knew what the true meaning of the word "church" is - you'd immediately do everything you could to eliminate it from your vocabulary - except - of course when trying to expose it for the lie it is.

The Kingdom of God is not a four-walled building - and whether we say we can use the word "church" to interchange with Kingdom or God's Government - the reality is - 99% of the population of the world believes that "church" is a four-walled building where people learn about God and the Bible, it's a place people go to for worship - but it's definitely NOT a place where people go to hear how the Law of God is to be implemented and a place to learn how the Bible calls men out of earthly worldly governments and into the Kingdom of God and service to His Laws, Statutes, Commandments and Judgements. That is exactly what "church" is - and by the very fact that "churches" are 501(c)(3) government corporations - that fact alone should make those who claim to know what ecclesia really is - that fact alone should tell us part of

our reeducating the lost in the true plan of salvation should include - possibly front and foremost - that "church" is not part of the truth - the saving faith - the belief system that brings about salvation.

> [**18**] But I say, Have they not heard? Yes verily, their sound went into all the earth, and their words unto the ends of the world.

Well, that once again shoots down the false belief that the gospel has never been preached to the whole world - again - let's let God be true and every man a liar. The Gospel - the true Gospel - the saving Gospel WAS PREACHED to every creature under heaven - just like the Words of Christ from Matthew 24:15 - and then the end came - just like He said.

> [**19**] But I say, Did not Israel know? First Moses saith, I will provoke you to jealousy by them that are no people, and by a foolish nation I will anger you.
> [**20**] But Esaias is very bold, and saith, I was found of them that sought me not; I was made manifest unto them that asked not after me.
> [**21**] But to Israel he saith, All day long I have stretched forth my hands unto a disobedient and gainsaying people.

So I said all that to conclude this. The New Heavens and the New Earth are this, the New Heavens are the spiritual aspects of the New Covenant and the New Earth is the manifestation of our belief in the ways of God - the truths that Christ was trying to get those people to understand - which leaves people like us - without absolutely no excuse for not believing. We can plainly read the things Christ said. Plainly read how those people rejected His Words. We can see it. We have no excuse for making the same mistakes those people made. The Word was written for our learning. We have no excuse.

Jesus said, "I was born to be King." Those people said, "No you weren't, and we're going to kill you and show you." They messed up. They blew it. We can see that as plainly and clearly as can be. Now, here we are 2,000 years later, and the "church" and the "churchmen," the modern day Caiphas's say - "No, Caesar is still king today, you must obey Caesar, and someday the messiah will come, and when messiah comes, then he will be king."

Or even some of the "churchmen" - namely the preterist types - will say - yes - He fulfilled it all - He's King - but that Kingship and His Kingdom is reserved only for the heavenlies and has no real application in the physical today.

It's so unbelievable convoluted and messed up - the world is in desperate need of being turned right-side up. And that can ONLY happen - when the model clearly shown from the Word of God - is implemented - and that is Acts 17 - "These that have turned the world upside down are come hither also, whom Jason hath received, and these all do contrary to the decrees of Caesar, saying, there is another King, One Jesus."

First, we must understand what His Will is. Then, we must adopt that as our own - this is called saving faith - this is the belief part - then we confess it with our mouths and if the belief is truly there - it will be manifested in our lives.

When I had my last circus - and I don't mean circus as in fun times with tamed lions and tigers doing tricks - I mean circus as in the Roman days where the Christians were fed to lions for the entertainment of the Caesars and all his other debauched, vile excuses for humans. Right before mine was a circus for a poor lady - and I mean poor in every sense of the word. She had been living in a trailer on her own land, and the county came and took her trailer which had all her possessions in it. They took it all.

To top it off, while on her own land, she was arrested for trespassing. She was easy pickings. Poor already, then had everything else taken from her, then arrested, thrown in jail and forced to defend herself like a woman thrown into the coliseum to defend herself against the lions.

She tried her best to fight. She tried her best to defend herself. But she was going up against a system that has no conscience, no compassion, no humanity, nothing less than an unsatiable desire to ruin and destroy as many people and lives as it possibly can.

If you think you can educate yourself in their ways where you can go in there on equal footing with these ----- I have no words to describe them ------ you are fooling yourself. They are bound and determined that unless you have one of their attorneys in their system - they are not going to let you win - right wrong or indifferent. When you try to speak, they will silence you - either by intimidation or threats - but they will silence you. When they are done with you - you will be led away - one way or another. But you will not get quote "your day in court."

This poor lady back in November had a trial date set for January 22 of 2020.

She is almost 60 years old. Tiny. One of her arguments during her circus was that the

quote "charging instrument" they were using against her was that she was a 150 pound green eyed male. I have not seen the document. But if what she was saying was true, that alone should have at least stopped the proceedings until a correction was made. She was never given the chance - at least from what I witnessed to show this.

She was terrified that they were going to arrest her and throw her in the same jail as the men.

Anyway, this past week, the court docket online showed - and it's still there today - that the Hearing/Trial for 1/22 was Cancelled. It is still there. Earlier this week, there was an entry dated 1/20/2020 that said Hearing/Trial Cancelled for 1/22/2020. The lady did not show up on 1/22/2020. Unbeknownst to her, they held a trial without her. The persecutor told the jury that the lady had requested not to be there. I don't understand that statement, but that was told to me by someone who was there.

They had a trial. She, of course, was found guilty, and she was sentenced to 120 days in prison.

The docket entries show that this lady was poor. A hearing was held and the judge assigned a public defender. The Public Defender's office then filed something that said Public Defender Not Available. Then, a little later, there was a docket entry that said, Appearance Filed and this was for an attorney from the Public Defender's office. Then, later still, there is an order from the judge withdrawing the public defender.

Now, I admit to you, I do not know all the details here. But I absolutely know this, she did not have an attorney with her in November and she did not have an attorney when they proceeded with the trial on 1/22.

I want to make myself one hundred percent totally clear. I know that sometimes I am not clear - but please understand this - I do not claim the U.S. CONstitution for myself. I do not claim the Missouri CONstitution for myself. I do not claim the International Covenant on Civil and Political Rights for myself. I claim the Word of God, the Laws of God and that's it.

I am dealing with people who have scoffed and mocked me because of my beliefs. That's okay. I'll take it. That was part of it going in and I knew full well that could happen because I have seen many many examples in the Scriptures where others said the same thing about their faith - and they were mocked, beaten, jailed, tortured and worse. I had my eyes fully open to that possibility - and I'll take whatever comes with taking up

His Cross and following Him. Walking right behind Him - if I could just carry them hem of His robe - if that gets me in trouble with His enemies - well - that's part of the job.

However. Since they will not obey God's Law - is there a problem with me finding things in their quote unquote laws and at least trying to get them to obey their own laws? I don't think so. They won't obey God's Laws - shouldn't they at least obey their own laws?

The United States signed a treaty - and according to their OWN CONstitution - the treaties they sign even supercede their own local laws and statues. Seems to me that their treaties are the quote "supreme law of their lands and peoples."

So, let's start with a treaty. The treaty is called the International Covenant on Civil and Political Rights. I put a link to it on the website.

https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf

The United States of America signed this treaty in 1992. I found this to be quite interesting. When the U.S. signed the treaty, it did so with five reservations, five understandings and four declarations. None of which are covered by what I intend to share with you in just a minute. But here is a very interesting statement that I want to read to you regarding the U.S.' participation in the treaty. Quote:

Prominent critics in the human rights community, such as Prof. Louis Henkin[99] (non-self-execution declaration incompatible with the Supremacy Clause) and Prof. Jordan Paust[100] ("Rarely has a treaty been so abused") have denounced the United States' ratification subject to the non-self-execution declaration as being a blatant fraud upon the international community, especially in light of what they allege is its subsequent failure to conform domestic law to the minimum human rights standards as established in the Covenant and in the Universal Declaration of Human Rights over the last thirty years.[citation needed]

That's really interesting to me, especially in light of what I have been experiencing now for more than 4 years in their court system. So you sign a treaty, an international treaty, where everyone else seems to be agreeing to one thing - and then basically - you say, "I'll sign the treaty, just don't expect me to abide by what's in it."

One of the things that's in the treaty - to which there is no exception by the U.S. - is a

man's basic human right to have counsel at a criminal trial. This treaty, in Article 14 says:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
(c) To be tried without undue delay;
(d) To be tried in his presence, and to defend himself in person or through legal as sistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

So, in my case, and in the lady I'm talking about today, international law has been broken and in reality - no one really cares. The record shows clearly, that the lady was to be appointed counsel. The appointed counsel said nothing was available. Then counsel was appointed. Then it was withdrawn. Everything proceeded anyway. They held a trial which was supposedly cancelled - now she is awaiting a sentencing hearing in the jail to be held on 2/20/2020 - all without her having any counsel.

I have possibly told you this before, but I think it's important that we look at it again. I have sat through literally hundreds of hours of court hearings in the last 4 years. I have learned a little. And I mean a little - even though I do not believe myself to be stupid - but I can't make rhyme or reason out of a lot of the things I've seen.

But as I have sat through all these hours and hours of hearings, I have watched literally hundreds of people sentenced to prison. Now, of these hundreds of people - I do not think I can recall one - not one - of them - that did not have an attorney standing by their side as the sentence was being read.

Prior to the drop of the guillotine, the judge, like a robot, totally by memory - because he has said it 1000s of times, begins speaking to the one found guilty and he says, "Did you have an attorney?" And the attorney nudges the defendant and says, "Say yes."

Then, the judge says, "Did you have an attorney at every stage of the process?" And the attorney nudges the defendant and says, "Say yes." Then, the judge says, "Did your attorney do everything you asked him or her to do?" And the attorney nudges the defendant and says, "Say yes." Then the judge says, "Did you have competent and effective assistance of counsel?" And the attorney nudges the defendant and says, "Say yes."

And this goes on for several minutes, until finally, the gavel comes down, off goes the head - or sent away to prison - or to begin probation.

I told my wife one day, what would the judge do, if the poor schmuck standing there said, "No, I did not have an attorney. No, I did not have an attorney at every stage of the process. No, I did not have effective assistance of counsel. No, no, no." What would happen? Does it even matter at all what the defendant says or how he answers those questions? I thought about this for months and months, then one evening, I just started typing in those questions that the judge asked into a search engine to see why he as saying those things and did it really matter.

I was shocked at what I came up with.

I began reading, and for a minute, a brief minute as I was reading, I found myself saying, "I cannot believe what I'm reading. There is compassion. There is a sense of justice - even an urgency - even a radical pursuit of justice - and I honestly could not believe that anything so compassionate was coming from the united states quote unquote supreme court." It literally blew my mind. Especially because I was experiencing - a Christian - a non-citizen - I was experiencing and reliving a lot of my own life through what was being said in that document.

I am impressed, especially in light of Gina being held in the jail right now - unjustly in my opinion - but I am impressed to read to you this morning what I was reading that evening a while back - because if these people will not hold to decency and justice commanded from the Word of God - cease from their constant oppressing of the poor - and again - don't misunderstand me - please - please - I'm not talking like Martin Luther King or other supposed civil rights advocates - I'm talking about oppressing the poor as found in the Word of God - denying justice - biting and gnashing on people who refuse to conform. I'm talking about people who are thrown in jail and tortured - not because they have killed someone, or damaged someone - or broken the Laws of God - but because they are seen as non-conformists and the wrath of earthly statue makers comes against them to make examples of them and scare others into not daring to be

another non-conformist.

Back in the 1960s in a land called Florida, the courts were routinely denying counsel to poor people because - they had argued - they weren't going to spend more than 6 months in jail or prison and since the sentence was no longer than 6 months - they could deny the poor counsel. In 1972, the case of Argersinger versus Hamlin made it to the quote "supreme court" of the united states. This is the case that I stumbled on that evening and simply could not hardly believe what I was reading. A link to this is on the website. Please listen closely - again - not because I claim this for myself - but because if they will not bow to God's Law - then they should be held to their own statues when they violate them. They won't obey God's Law. They won't obey the treaties they sign. They should obey their own laws.

I'm going to skip the beginning stuff and get to the meat of what was said.

https://scholar.google.com/scholar_case?case=4692183053006223940&q=argersinger+v+hamlin&hl=en&as_sdt=6,26

Petitioner, an indigent, was charged in Florida with carrying a concealed weapon, an offense punishable by imprisonment up to six months, a $1,000 fine, or both.

We could stop here for just a second before we even get started. If the Laws of God were in place today - there would never have been a crime committed or charged based on this very sentence. The whole thing - all the time - all the money - all the expense of getting this to their quote "supreme court" would have never even taken place - at least for this instance - though it's a good thing this decision did come about. Continuing.

*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 charge for which he stands convicted. The Florida 27*27 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 non-petty offenses punishable by more than six months imprisonment." 236 So. 2d 442, 443. [1]*

The case is here on a petition for certiorari, which we granted. 401 U. S. 908. We reverse.

The Sixth Amendment, which in enumerated situations has been made applicable to the States by reason of the Fourteenth Amendment (see Duncan v. Louisiana, supra; Washington v. Texas, 388 U. S. 14; Klopfer v. North Carolina, 386 U. S. 213; Pointer v. Texas, 380 U. S. 400; Gideon v. Wainwright, 372 U. S. 335; and In re Oliver, 333 U. S. 257), provides specified standards for "all criminal prosecutions."

Now, this is interesting reading, not because any of this pertains to the Laws of God - the reality is that most of it does not - but the history of where this has come from in man's continual refusal to submit to the righteousness of God - is most interesting. The history that this judge is going to discuss goes back hundreds of years. Continuing.

*28*28 One is the requirement of a "public trial." In re Oliver, supra, held that the right to a "public trial" was applicable to a state proceeding even though only a 60-day sentence was involved. 333 U. S., at 272.*

Another guarantee is the right to be informed of the nature and cause of the accusation. Still another, the right of confrontation. Pointer v. Texas, supra. And another, compulsory process for obtaining witnesses in one's favor. Washington v. Texas, supra. We have never limited these rights to felonies or to lesser but serious offenses.

In Washington v. Texas, supra, we said, "We have held that due process requires that the accused have the assistance of counsel for his defense, that he be confronted with the witnesses against him, and that he have the right to a speedy and public trial." 388 U. S., at 18. Respecting the right to a speedy and public trial, the right to be informed of the nature and cause of the accusation, the right to confront and cross-examine witnesses, the right to compulsory process for obtaining witnesses, it was recently stated, "It is simply not arguable, nor has any court ever held, that the trial of a petty offense may be held in secret, or without notice to the accused of the charges, or that in such cases the defendant has no right to confront his accusers or to compel the attendance of witnesses in his own behalf." Junker, The Right to Counsel in Misdemeanor Cases, 43 Wash. L. Rev. 685, 705 (1968).

*District of Columbia v. Clawans, 300 U. S. 617, illustrates the point. There, the offense was engaging without a license in the business of dealing in second-hand property, an offense punishable by a fine of $300 or imprisonment for not more than 90 days. The Court held that the offense was a "petty" one and could be tried without a jury. But the conviction was reversed 29*29 and a new trial ordered, because the trial court had prejudicially restricted the right of cross-examination, a right guaranteed by the Sixth Amendment.*

The right to trial by jury, also guaranteed by the Sixth Amendment by reason of the Fourteenth, was limited by Duncan v. Louisiana, supra, to trials where the potential punishment was imprisonment for six months or more. But, as the various opinions in Baldwin v. New York, 399 U. S. 66, make plain, the right to trial by jury has a different genealogy and is brigaded with a system of trial to a judge alone. As stated in Duncan:

"Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the complaint, biased, or eccentric judge."

Whoa, whoa, whoa. Stop right there. You mean there are corrupt or overzealous prosecutors? There are biased or eccentric judges? Put yourself in my shoes as I have talked to you about things that have been to me over the last 4+ plus years. Corrupt cops. Corrupt persecutors. Biased judges. I have seen it all. What is being said in this supreme court decision is exactly what I've seen with my own eyes. Happened and is still happening to me. Continuing.

If the defendant preferred the common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of the single judge, he was to have it. Beyond this, the jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. Fear of unchecked power, so typical of our State and Federal Governments in other respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence. The deep commitment of the Nation to the right of jury trial in serious criminal cases as a defense against arbitrary law enforcement qualifies for protection under the Due Process Clause of the Fourteenth Amendment, and must therefore be respected by the States." 391 U. S., at 156.

*30*30 While there is historical support for limiting the "deep commitment" to trial by jury to "serious criminal cases,"[2] there is no such support for a similar limitation on the right to assistance of counsel:*

"Originally, in England, a person charged with treason or felony was denied the aid of counsel, except in respect of legal questions which the accused himself might suggest. At the same time parties in civil cases and persons accused of misdemeanors were entitled to the full assistance of counsel. . . .

.....

"[It] appears that in at least twelve of the thirteen colonies the rule of the English common law, in the respect now under consideration, had been definitely rejected and the right to counsel fully recognized in all criminal prosecutions, save that in one or two instances the right was limited to capital offenses or to the more serious crimes . . . ." Powell v. Alabama, 287 U. S. 45, 60, 64-65.

The Sixth Amendment thus extended the right to counsel beyond its common-law dimensions. But there is nothing in the language of the Amendment, its history, or in the decisions of this Court, to indicate that it was intended to embody a retraction of the right in petty offenses wherein the common law previously did require that counsel be provided. See James v. Headley, 410 F. 2d 325, 331-332, n. 9.

*We reject, therefore, the premise that since prosecutions for crimes punishable by imprisonment for less than 31*31 six months may be tried without a jury, they may also be tried without a lawyer.*

The assistance of counsel is often a requisite to the very existence of a fair trial. The Court in Powell v. Alabama, supra, at 68-69—a capital case—said:

Now I want you to listen to this very carefully. Quote.

"The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect."

In Gideon v. Wainwright, supra (overruling Betts v. Brady, 316 U. S. 455), we dealt with a felony trial. But we did not so limit the need of the accused for a lawyer. We said:

*"[I]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, 32*32 quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants*

charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires 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. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law.

This is a lie. This is standing in public and saying liberty, freedom, justice when there is no liberty, there is no freedom, there is no justice. There is no due process. There is nothing fair about what is going on in the courts in America - at least in the ones I'm being brought into. This is a charade. It is not happening.

This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him." 372 U. S., at 344.[3]

*Both Powell and Gideon involved felonies. But their rationale has relevance to any criminal trial, where an accused is deprived of his liberty. Powell and Gideon suggest that there are certain fundamental rights applicable to all such criminal prosecutions, even those, such 33*33 as In re Oliver, supra, where the penalty is 60 days' imprisonment:*

"A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense—a right to his day in court—are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel." 333 U. S., at 273 (emphasis supplied).

The requirement of counsel may well be necessary for a fair trial even in a petty-offense prosecution. We are by no means convinced that legal and constitutional questions involved in a case that actually leads to imprisonment even for a brief period are any less complex than when a person can be sent off for six months or more. See, e. g., Powell v. Texas, 392 U. S. 514; Thompson v. Louisville, 362 U. S. 199; Shuttlesworth v. Birmingham, 382 U. S. 87.

The trial of vagrancy cases is illustrative. While only brief sentences of imprisonment may be imposed, the cases often bristle with thorny constitutional questions. See Papachristou v. Jacksonville, 405 U. S. 156.

*In re Gault, 387 U. S. 1, dealt with juvenile delinquency and an offense which, if committed by an adult, would have carried a fine of $5 to $50 or imprisonment in jail for not more than two months (id., at 29), but which when committed by a juvenile might lead to his detention in a state institution until he reached the age of 21. Id., at 36-37. We said (id., at 36) that "[t]he juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child `requires the guiding hand of counsel 34*34 at every step in the proceedings against him,' " citing Powell v. Alabama, 287 U. S., at 69. The premise of Gault is that even in prosecutions for offenses less serious than felonies, a fair trial may require the presence of a lawyer.*

Beyond the problem of trials and appeals is that of the guilty plea, a problem which looms large in misdemeanor as well as in felony cases. Counsel is needed so that the accused may know precisely what he is doing, so that he is fully aware of the prospect of going to jail or prison, and so that he is treated fairly by the prosecution.

In addition, the volume of misdemeanor cases,[4] far greater in number than felony prosecutions, may create an obsession for speedy dispositions, regardless of the fairness of the result. The Report by the President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 128 (1967), states:

*"For example, until legislation last year increased the number of judges, the District of Columbia Court of General Sessions had four judges to process the preliminary stages of more than 1,500 felony cases, 7,500 serious misdemeanor cases, and 38,000 petty offenses and an equal number of traffic offenses per year. An inevitable consequence of volume that large is the almost total preoccupation 35*35 in such a court with the movement of cases. The calendar is long, speed often is substituted for care, and casually arranged out-of-court compromise too often is substituted for adjudication. Inadequate attention tends to be given to the individual defendant, whether in protecting his rights, sifting the facts at trial, deciding the social risk he presents, or determining how to deal with him after conviction. The frequent result is futility and failure. As Dean Edward Barrett recently observed:*

" `Wherever the visitor looks at the system, he finds great numbers of defendants being processed by harassed and overworked officials. Police have more cases than they can investigate. Prosecutors walk into courtrooms to try simple cases as they take their initial looks at the files. Defense lawyers appear having had no more than time for hasty conversations with their clients. Judges face long calendars with the certain

knowledge that their calendars tomorrow and the next day will be, if anything, longer, and so there is no choice but to dispose of the cases.

" `Suddenly it becomes clear that for most defendants in the criminal process, there is scant regard for them as individuals. They are numbers on dockets, faceless ones to be processed and sent on their way. The gap between the theory and the reality is enormous.

" `Very little such observation of the administration of criminal justice in operation is required to reach the conclusion that it suffers from basic ills.' "

*That picture is seen in almost every report. "The misdemeanor trial is characterized by insufficient and frequently irresponsible preparation on the part of the defense, the prosecution, and the court. Everything is rush, rush." Hellerstein, The Importance of the Misdemeanor 36*36 Case on Trial and Appeal, 28 The Legal Aid Brief Case 151, 152 (1970).*

There is evidence of the prejudice which results to misdemeanor defendants from this "assembly-line justice." One study concluded that "[m]isdemeanants represented by attorneys are five times as likely to emerge from police court with all charges dismissed as are defendants who face similar charges without counsel." American Civil Liberties Union, Legal Counsel for Misdemeanants, Preliminary Report 1 (1970).

*We must conclude, therefore, that the problems associated with misdemeanor and petty[5] offenses often 37*37 require the presence of counsel to insure the accused a fair trial. MR. JUSTICE POWELL suggests that these problems are raised even in situations where there is no prospect of imprisonment. Post, at 48. We need not consider the requirements of the Sixth Amendment as regards the right to counsel where loss of liberty is not involved, however, for here petitioner was in fact sentenced to jail. And, as we said in Baldwin v. New York, 399 U. S., at 73, "the prospect of imprisonment for however short a time will seldom be viewed by the accused as a trivial or `petty' matter and may well result in quite serious repercussions affecting his career and his reputation."[6]*

We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.[7]

That is the view of the Supreme Court of Oregon, with which we agree. It said in Stevenson v. Holzman, 254 Ore. 94, 102, 458 P. 2d 414, 418:

*"We hold that no person may be deprived of his 38*38 liberty who has been denied the assistance of counsel as guaranteed by the Sixth Amendment. This holding is applicable to all criminal prosecutions, including prosecutions for violations of municipal ordinances. The denial of the assistance of counsel will preclude the imposition of a jail sentence."[8]*

We do not sit as an ombudsman to direct state courts how to manage their affairs but only to make clear the federal constitutional requirement. How crimes should be classified is largely a state matter.[9] The fact that traffic charges technically fall within the category of "criminal prosecutions" does not necessarily mean that many of them will be brought into the class[10] where imprisonment actually occurs.

*39*39 The American Bar Association Project on Standards for Criminal Justice states:*

"As a matter of sound judicial administration it is preferable to disregard the characterization of the offense as felony, misdemeanor or traffic offense. Nor is it adequate to require the provision of defense services for all offenses which carry a sentence to jail or prison. Often, as a practical matter, such sentences are rarely if ever imposed for certain types of offenses, so that for all intents and purposes the punishment they carry is at most a fine. Thus, the standard seeks to distinguish those classes of cases in which there is real likelihood that incarceration may follow conviction from those types in which there is no such likelihood. It should be noted that the standard does not recommend a determination of the need for counsel in terms of the facts of each particular case; it draws a categorical line at those types of offenses for which incarceration as a punishment is a practical possibility." Providing Defense Services 40 (Approved Draft 1968).

*40*40 Under the rule we announce today, every judge will know when the trial of a misdemeanor starts that no imprisonment may be imposed, even though local law permits it, unless the accused is represented by counsel. He will have a measure of the seriousness and gravity of the offense and therefore know when to name a lawyer to represent the accused before the trial starts.*

The run of misdemeanors will not be affected by today's ruling. But in those that end up in the actual deprivation of a person's liberty, the accused will receive the benefit of "the guiding hand of counsel" so necessary when one's liberty is in jeopardy.

Reversed.

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE STEWART join, concurring.

I join the opinion of the Court and add only an observation upon its discussion of legal resources, ante, at 37 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, p. 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 41*41 *court appearances as defense counsel in criminal cases. CLEPR, State Rules Permitting the Student Practice of Law: Comparisons and Comments 13 (1971). Given the huge increase in law school enrollments over the past few years, see Ruud, That Burgeoning Law School Enrollment, 58 A. B. A. J. 146 (1972), I think it plain that law students can be expected to make a significant contribution, quantitatively and qualitatively, to the representation of the poor in many areas, including cases reached by today's decision.*

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 to 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 uncounselled trial is not likely to be of much help to a defendant since the die is usually cast when judgment is entered on an uncounselled trial record.

42*42 *Trial judges sitting in petty and misdemeanor cases— and prosecutors—should recognize exactly what will be required by today's decision. Because no individual can be imprisoned unless he is represented by counsel, the trial judge and the prosecutor will have to engage in a predictive evaluation of each case to determine whether there is a significant likelihood that, if the defendant is convicted, the trial judge will sentence him to a jail term. The judge can preserve the option of a jail sentence only by offering*

counsel to any defendant unable to retain counsel on his own. This need to predict will place a new load on courts already overburdened and already compelled to deal with far more cases in one day than is reasonable and proper. Yet the prediction is not one beyond the capacity of an experienced judge, aided as he should be by the prosecuting officer. As to jury cases, the latter should be prepared to inform the judge as to any prior record of the accused, the general nature of the case against the accused, including any use of violence, the severity of harm to the victim, the impact on the community, and the other factors relevant to the sentencing process. Since the judge ought to have some degree of such information after judgment of guilt is determined, ways can be found in the more serious misdemeanor cases when jury trial is not waived to make it available to the judge before trial.[*] This will not mean a full "presentence" report on every defendant in every case before the jury passes on guilt, but a prosecutor should know before trial whether he intends to urge a jail sentence, and if he does he should be prepared to aid the court with the factual and legal basis for his view on that score.

*43*43 This will mean not only that more defense counsel must be provided, but also additional prosecutors and better facilities for securing information about the accused as it bears on the probability of a decision to confine.*

The step we take today should cause no surprise to the legal profession. More than five years ago the profession, speaking through the American Bar Association in a Report on Standards Relating to Providing Defense Services, determined that society's goal should be "that the system for providing counsel and facilities for the defense be as good as the system which society provides for the prosecution." American Bar Association Project on Standards for Criminal Justice, Providing Defense Services 1 (Approved Draft 1968). The ABA was not addressing itself, as we must in this case, to the constitutional requirement but only to the broad policy issue. Elsewhere in the Report the ABA stated that:

"The fundamental premise of these standards is that representation by counsel is desirable in criminal cases both from the viewpoint of the defendant and of society." Id., at 3.

After considering the same general factors involved in the issue we decide today, the ABA Report specifically concluded that:

"Counsel should be provided in all criminal proceedings for offenses punishable by loss of liberty, except those types of offenses for which such punishment is not likely to be imposed, regardless of their denomination as felonies, misdemeanors or otherwise." Id., § 4.1, pp. 37-38.

*In a companion ABA Report on Standards Relating to the Prosecution Function and the Defense Function 44*44 the same basic theme appears in the positive standard cast in these terms:*

"Counsel for the accused is an essential component of the administration of criminal justice. A court properly constituted to hear a criminal case must be viewed as a tripartite entity consisting of the judge (and jury, where appropriate), counsel for the prosecution, and counsel for the accused." Id., at 153 (Approved Draft 1968).

The right to counsel has historically been an evolving concept. The constitutional requirements with respect to the issue have dated in recent times from Powell v. Alabama, 287 U. S. 45 (1932), to Gideon v. Wainwright, 372 U. S. 335 (1963). Part of this evolution has been expressed in the policy prescriptions of the legal profession itself, and the contributions of the organized bar and individual lawyers—such as those appointed to represent the indigent defendants in the Powell and Gideon cases—have been notable. The holding of the Court today may well add large new burdens on a profession already overtaxed, but the dynamics of the profession have a way of rising to the burdens placed on it.

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.[1] The question 45*45 before us today is whether an indigent defendant convicted of an offense carrying a maximum punishment of six months' imprisonment, 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. The broader question is whether the Due Process Clause requires that an indigent charged with a state petty offense[2] be afforded the right to appointed counsel.*

*In the case under review, the Supreme Court of Florida agreed that indigents charged with serious misdemeanors were entitled to appointed counsel, but, by a vote of four to three, it limited that right to offenses punishable by more than six months' imprisonment.[3] The state court, in drawing a six-month line, followed the lead of this Court in Duncan v. Louisiana, 391 U. S. 145 (1968), and in the subsequent case of Baldwin v. New York, 399 U. S. 66 (1970), which was decided shortly after the opinion below, in which the Court held that the due process right to a trial by jury in state criminal cases was limited to cases in which the offense charged was punishable by more than six months' imprisonment. It is clear that wherever the right-to-counsel line is to be drawn, it must be drawn so that an indigent 46*46 has a right to appointed*

counsel in all cases in which there is a due process right to a jury trial. An unskilled layman may be able to defend himself in a nonjury trial before a judge experienced in piecing together unassembled facts, but before a jury the guiding hand of counsel is needed to marshal the evidence into a coherent whole consistent with the best case on behalf of the defendant. If there is no accompanying right to counsel, the right to trial by jury becomes meaningless.

Limiting the right to jury trial to cases in which the offense charged is punishable by more than six months' imprisonment does not compel the conclusion that the indigent's right to appointed counsel must be similarly restricted. The Court's opinions in Duncan, Baldwin, and District of Columbia v. Clawans, 300 U. S. 617 (1937), reveal that the jury-trial limitation has historic origins at common law. No such history exists to support a similar limitation of the right to counsel; to the contrary, at common law, the right to counsel was available in misdemeanor but not in felony cases.[4] Only as recently as Gideon has an indigent in a state trial had a right to appointed counsel in felony cases. Moreover, the interest protected by the right to have guilt or innocence determined by a jury—tempering the possibly arbitrary and harsh exercise of prosecutorial and judicial power[5]—while important, is not as fundamental to the guarantee of a fair trial as is the right to counsel.[6]

47*47 *I am unable to agree with the Supreme Court of Florida that an indigent defendant, charged with a petty offense, may in every case be afforded a fair trial without the assistance of counsel. Nor can I agree with the new rule of due process, today enunciated by the Court, that "absent a knowing and intelligent waiver, no person may be imprisoned . . . unless he was represented by counsel at his trial." Ante, at 37. It seems to me that the line should not be drawn with such rigidity.*

There is a middle course, between the extremes of Florida's six-month rule and the Court's rule, which comports with the requirements of the Fourteenth Amendment. I would adhere to the principle of due process that requires fundamental fairness in criminal trials, a principle which I believe encompasses the right to counsel in petty cases whenever the assistance of counsel is necessary to assure a fair trial.

I

I am in accord with the Court that an indigent accused's need for the assistance of counsel does not mysteriously evaporate when he is charged with an offense punishable by six months or less. In Powell v. Alabama[7] and Gideon,[8] both of which involved felony prosecutions, this Court noted that few laymen can present adequately their own cases, much less identify and argue relevant legal questions. Many petty offenses will also present complex legal and factual issues that may not be fairly tried if

*the defendant is not assisted by counsel. Even in relatively simple cases, some defendants, because of ignorance or some other handicap, will be incapable of defending themselves. The consequences of a misdemeanor conviction, whether they be a brief period served under the sometimes deplorable conditions 48*48 found in local jails or the effect of a criminal record on employability, are frequently of sufficient magnitude not to be casually dismissed by the label "petty."[9]*

Serious consequences also may result from convictions not punishable by imprisonment. Stigma may attach to a drunken-driving conviction or a hit-and-run escapade.[10] Losing one's driver's license is more serious for some individuals than a brief stay in jail. In Bell v. Burson, 402 U. S. 535 (1971), we said:

"Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment." Id., at 539.

When the deprivation of property rights and interests is of sufficient consequence, [11] denying the assistance of counsel to indigents who are incapable of defending themselves is a denial of due process.

*49*49 This is not to say that due process requires the appointment of counsel in all petty cases, or that assessment of the possible consequences of conviction is the sole test for the need for assistance of counsel. The flat six-month rule of the Florida court and the equally inflexible rule of the majority opinion apply to all cases within their defined areas regardless of circumstances. It is precisely because of this mechanistic application that I find these alternatives unsatisfactory. Due process, perhaps the most fundamental concept in our law, embodies principles of fairness rather than immutable line drawing as to every aspect of a criminal trial. While counsel is often essential to a fair trial, this is by no means a universal fact. Some petty offense cases are complex; others are exceedingly simple. As a justification for furnishing counsel to indigents accused of felonies, this Court noted, "That government hires 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."[12] Yet government often does not hire lawyers to prosecute petty offenses; instead the arresting police officer presents the case. Nor does every defendant who can afford to do so hire lawyers to defend petty charges. Where the possibility of a jail sentence is remote and the probable fine seems small, or where the evidence of guilt is overwhelming, the costs of assistance of counsel may exceed the benefits.[13] It is*

*anomalous that the Court's opinion today will extend 50*50 the right of appointed counsel to indigent defendants in cases where the right to counsel would rarely be exercised by nonindigent defendants.*

Indeed, one of the effects of this ruling will be to favor defendants classified as indigents over those not so classified, yet who are in low-income groups where engaging counsel in a minor petty-offense case would be a luxury the family could not afford. The line between indigency and assumed capacity to pay for counsel is necessarily somewhat arbitrary, drawn differently from State to State and often resulting in serious inequities to accused persons. The Court's new rule will accent the disadvantage of being barely self-sufficient economically.

A survey of state courts in which misdemeanors are tried showed that procedures were often informal, presided over by lay judges. Jury trials were rare, and the prosecution was not vigorous.[14] It is as inaccurate to say that no defendant can obtain a fair trial without the assistance of counsel in such courts as it is to say that no defendant needs the assistance of counsel if the offense charged is only a petty one.[15]

*Despite its overbreadth, the easiest solution would be a prophylactic rule that would require the appointment of counsel to indigents in all criminal cases. The simplicity of such a rule is appealing because it could be 51*51 applied automatically in every case, but the price of pursuing this easy course could be high indeed in terms of its adverse impact on the administration of the criminal justice systems of 50 States. This is apparent when one reflects on the wide variety of petty or misdemeanor offenses, the varying definitions thereof, and the diversity of penalties prescribed. The potential impact on state court systems is also apparent in view of the variations in types of courts and their jurisdictions, ranging from justices of the peace and part-time judges in the small communities to the elaborately staffed police courts which operate 24 hours a day in the great metropolitan centers.*

The rule adopted today does not go all the way. It is limited to petty-offense cases in which the sentence is some imprisonment. The thrust of the Court's position indicates, however, that when the decision must be made, the rule will be extended to all petty-offense cases except perhaps the most minor traffic violations. If the Court rejects on constitutional grounds, as it has today, the exercise of any judicial discretion as to need for counsel if a jail sentence is imposed, one must assume a similar rejection of discretion in other petty-offense cases. It would be illogical—and without discernible support in the Constitution—to hold that no discretion may ever be exercised where a nominal jail sentence is contemplated and at the same time endorse the legitimacy of discretion in "non-jail" petty-offense cases which may result in far more serious consequences than a few hours or days of incarceration.

*The Fifth and Fourteenth Amendments guarantee that property, as well as life and liberty, may not be taken from a person without affording him due process of law. The majority opinion suggests no constitutional basis for distinguishing between deprivations of liberty and property. In fact, the majority suggests no reason at 52*52 all for drawing this distinction. The logic it advances for extending the right to counsel to all cases in which the penalty of any imprisonment is imposed applies equally well to cases in which other penalties may be imposed. Nor does the majority deny that some "non-jail" penalties are more serious than brief jail sentences.*

Thus, although the new rule is extended today only to the imprisonment category of cases, the Court's opinion foreshadows the adoption of a broad prophylactic rule applicable to all petty offenses. No one can foresee the consequences of such a drastic enlargement of the constitutional right to free counsel. But even today's decision could have a seriously adverse impact upon the day-to-day functioning of the criminal justice system. We should be slow to fashion a new constitutional rule with consequences of such unknown dimensions, especially since it is supported neither by history nor precedent.

II

The majority opinion concludes that, absent a valid waiver, a person may not be imprisoned even for lesser offenses unless he was represented by counsel at the trial. In simplest terms this means that under no circumstances, in any court in the land, may anyone be imprisoned— however briefly—unless he was represented by, or waived his right to, counsel. The opinion is disquietingly barren of details as to how this rule will be implemented.

*There are thousands of statutes and ordinances which authorize imprisonment for six months or less, usually as an alternative to a fine. These offenses include some of the most trivial of misdemeanors, ranging from spitting on the sidewalk to certain traffic offenses. They also include a variety of more serious misdemeanors. This broad spectrum of petty-offense cases daily floods the lower criminal courts. The rule laid down today 53*53 will confront the judges of each of these courts with an awkward dilemma. If counsel is not appointed or knowingly waived, no sentence of imprisonment for any duration may be imposed. The judge will therefore be forced to decide in advance of trial— and without hearing the evidence—whether he will forgo entirely his judicial discretion to impose some sentence of imprisonment and abandon his responsibility to consider the full range of punishments established by the legislature. His alternatives, assuming the availability of counsel, will be to appoint counsel and retain the discretion vested in him by law, or to abandon this discretion in advance and proceed without counsel.*

*If the latter course is followed, the first victim of the new rule is likely to be the concept that justice requires a personalized decision both as to guilt and the sentence. The notion that sentencing should be tailored to fit the crime and the individual would have to be abandoned in many categories of offenses. In resolving the dilemma as to how to administer the new rule, judges will be tempted arbitrarily to divide petty offenses into two categories—those for which sentences of imprisonment may be imposed and those in which no such sentence will be given regardless of the statutory authorization. In creating categories of offenses which by law are imprisonable but for which he would not impose jail sentences, a judge will be overruling de facto the legislative determination as to the appropriate range of punishment for the particular offense. It is true, as the majority notes, that there are some classes of imprisonable offenses for which imprisonment is rarely imposed. But even in these, the occasional imposition of such a sentence may serve a valuable deterrent purpose. At least the legislatures, and until today the courts, have viewed the threat of 54*54 imprisonment—even when rarely carried out—as serving a legitimate social function.*

In the brief for the United States as amicus curiae, the Solicitor General suggested that some flexibility could be preserved through the technique of trial de novo if the evidence—contrary to pretrial assumptions—justified a jail sentence. Presumably a mistrial would be declared, counsel appointed, and a new trial ordered. But the Solicitor General also recognized that a second trial, even with counsel, might be unfair if the prosecutor could make use of evidence which came out at the first trial when the accused was uncounselled. If the second trial were held before the same judge, he might no longer be open-minded. Finally, a second trial held for no other reason than to afford the judge an opportunity to impose a harsher sentence might run afoul of the guarantee against being twice placed in jeopardy for the same offense.[16] In all likelihood, there will be no second trial and certain offenses classified by legislatures as imprisonable, will be treated by judges as unimprisonable.

The new rule announced today also could result in equal protection problems. There may well be an unfair and unequal treatment of individual defendants, depending on whether the individual judge has determined in advance to leave open the option of imprisonment. Thus, an accused indigent would be entitled in some courts to counsel while in other courts in the same jurisdiction an indigent accused of the same offense would have no counsel. Since the services of counsel may be essential to a fair trial even in cases in which no jail sentence is imposed, the results of this type of pretrial judgment could be arbitrary and discriminatory.

*55*55 A different type of discrimination could result in the typical petty-offense case where judgment in the alternative is prescribed: for example, "five days in jail or $100 fine." If a judge has predetermined that no imprisonment will be imposed with respect*

to a particular category of cases, the indigent who is convicted will often receive no meaningful sentence. The defendant who can pay a $100 fine, and does so, will have responded to the sentence in accordance with law, whereas the indigent who commits the identical offense may pay no penalty. Nor would there be any deterrent against the repetition of similar offenses by indigents.[17]

To avoid these equal protection problems and to preserve a range of sentencing options as prescribed by law, most judges are likely to appoint counsel for indigents in all but the most minor offenses where jail sentences are extremely rare. It is doubtful that the States possess the necessary resources to meet this sudden expansion of the right to counsel. The Solicitor General, who suggested on behalf of the United States the rule the Court today adopts, recognized that the consequences could be far reaching. In addition to the expense of compensating counsel, he noted that the mandatory requirement of defense counsel will "require more pre-trial time of prosecutors, more courtroom time, and this will lead to bigger backlogs with present personnel. Court reporters will be needed as well as counsel, and they are one of our worst bottlenecks."[18]

56*56 *After emphasizing that the new constitutional rule should not be made retroactive, the Solicitor General commented on the "chaos" which could result from any mandatory requirement of counsel in misdemeanor cases:*

"[I]f . . . this Court's decision should become fully applicable on the day it is announced, there could be a massive pileup in the state courts which do not now meet this standard. This would involve delays and frustrations which would not be a real contribution to the administration of justice."[19]

The degree of the Solicitor General's concern is reflected by his admittedly unique suggestion regarding the extraordinary demand for counsel which would result from the new rule. Recognizing implicitly that, in many sections of the country, there simply will not be enough lawyers available to meet this demand either in the short or long term, the Solicitor General speculated whether "clergymen, social workers, probation officers, and other persons of that type" could be used "as counsel in certain types of cases involving relatively small sentences."[20] *Quite apart from the practical and political problem of amending the laws of each of the 50 States which require a license to practice law, it is difficult to square this suggestion with the meaning of the term "assistance of counsel" long recognized in our law.*

The majority's treatment of the consequences of the new rule which so concerned the Solicitor General is not reassuring. In a footnote, it is said that there are presently 355,200 attorneys and that the number will increase rapidly, doubling by 1985. This is

*asserted to be sufficient to provide the number of full-time counsel, estimated by one source at between 1,575 and 2,300, to represent all indigent misdemeanants, excluding traffic 57*57 offenders. It is totally unrealistic to imply that 355,200 lawyers are potentially available. Thousands of these are not in practice, and many of those who do practice work for governments, corporate legal departments, or the Armed Services and are unavailable for criminal representation. Of those in general practice, we have no indication how many are qualified to defend criminal cases or willing to accept assignments which may prove less than lucrative for most.[21]*

*It is similarly unrealistic to suggest that implementation of the Court's new rule will require no more than 1,575 to 2,300 "full-time" lawyers. In few communities are there full-time public defenders available for, or private lawyers specializing in, petty cases. Thus, if it were possible at all, it would be necessary to coordinate the schedules of those lawyers who are willing to take an 58*58 occasional misdemeanor appointment with the crowded calendars of lower courts in which cases are not scheduled weeks in advance but instead are frequently tried the day after arrest. Finally, the majority's focus on aggregate figures ignores the heart of the problem, which is the distribution and availability of lawyers, especially in the hundreds of small localities across the country.*

*Perhaps the most serious potential impact of today's holding will be on our already overburdened local courts.[22] The primary cause of "assembly line" justice is a volume of cases far in excess of the capacity of the system to handle efficiently and fairly. The Court's rule may well exacerbate delay and congestion in these courts. We are familiar with the common tactic of counsel of exhausting every possible legal avenue, often without due regard to its probable payoff. In some cases this may be the lawyer's duty; in other cases it will be done for purposes of delay.[23] The absence of direct economic impact on the client, plus the omnipresent ineffective-assistance-of-counsel claim, frequently produces a decision to litigate every issue. It is likely that young lawyers, fresh out of law school, will receive most of the appointments in petty-offense cases. The admirable zeal of these lawyers; their eagerness to make a reputation; the time their not yet crowded schedules permit them to devote to relatively minor legal problems; their desire for courtroom exposure; the availability in some cases of hourly fees, lucrative to the novice; and the recent constitutional explosion in procedural rights for the accused —all these factors are likely to result in the stretching 59*59 out of the process with consequent increased costs to the public and added delay and congestion in the courts.[24]*

There is an additional problem. The ability of various States and localities to furnish counsel varies widely. Even if there were adequate resources on a national basis, the

uneven distribution of these resources—of lawyers, of facilities, and available funding—presents the most acute problem. A number of state courts have considered the question before the Court in this case, and have been compelled to confront these realities. Many have concluded that the indigent's right to appointed counsel does not extend to all misdemeanor cases. In reaching this conclusion, the state courts have drawn the right-to-counsel line in different places, and most have acknowledged that they were moved to do so, at least in part, by the impracticality of going further. [25] *60*60 In other States, legislatures and courts through the enactment of laws or rules have drawn the line short of that adopted by the majority.* [26] *These cases and statutes reflect the judgment of the courts and legislatures of many States, which understand the problems of local judicial systems better than this Court, that the rule announced by the Court today may seriously overtax capabilities.* [27]

*The papers filed in a recent petition to this Court for a writ of certiorari serve as an example of what today's ruling will mean in some localities. In November 1971 the petition in Wright v. Town of Wood, No. 71-5722, was filed with this Court. The case, arising out of a South Dakota police magistrate court conviction for the municipal offense of public intoxication, raises the same issues before us in this case. The Court requested that the town of Wood file a response. On March 8, 1972, a lawyer occasionally employed by the town filed with the clerk an affidavit explaining why the town had not responded. He explained that Wood, South Dakota, 61*61 has a population of 132, that it has no sewer or water system and is quite poor, that the office of the nearest lawyer is in a town 40 miles away, and that the town had decided that contesting this case would be an unwise allocation of its limited resources.*

Though undoubtedly smaller than most, Wood is not dissimilar to hundreds of communities in the United States with no or very few lawyers, with meager financial resources, but with the need to have some sort of local court system to deal with minor offenses. [28] *It is quite common for the more numerous petty offenses in such towns to be tried by local courts or magistrates while the more serious offenses are tried in a countywide court located in the county seat.* [29] *It is undoubtedly true that some injustices result from the informal procedures of these local courts when counsel is not furnished; certainly counsel should be furnished to some indigents in some cases. But to require that counsel be furnished virtually every indigent charged with an imprisonable offense would be a practical impossibility for many small town courts. The community could simply not enforce its own laws.* [30]

*62*62 Perhaps it will be said that I give undue weight both to the likelihood of short-term "chaos" and to the possibility of long-term adverse effects on the system. The answer may be given that if the Constitution requires the rule announced by the

majority, the consequences are immaterial. If I were satisfied that the guarantee of due process required the assistance of counsel in every case in which a jail sentence is imposed or that the only workable method of insuring justice is to adopt the majority's rule, I would not hesitate to join the Court's opinion despite my misgivings as to its effect upon the administration of justice. But in addition to the resulting problems of availability of counsel, of costs, and especially of intolerable delay in an already overburdened system, the majority's drawing of a new inflexible rule may raise more Fourteenth Amendment problems than it resolves. Although the Court's opinion does not deal explicitly with any sentence other than deprivation of liberty however brief, the according of special constitutional status to cases where such a sentence is imposed may derogate from the need for counsel in other types of cases, unless the Court embraces an even broader prophylactic rule. Due process requires a fair trial in all cases. Neither the six-month rule approved below nor the rule today enunciated by the Court is likely to achieve this result.

*63*63* ***III***

I would hold that the right to counsel in petty-offense cases is not absolute but is one to be determined by the trial courts exercising a judicial discretion on a case-by-case basis. [31] *The determination should be made before the accused formally pleads; many petty cases are resolved by guilty pleas in which the assistance of counsel may be required.* [32] *If the trial court should conclude that the assistance of counsel is not required in any case, it should state its reasons so that the issue could be preserved for review. The trial court would then become obligated to scrutinize carefully the subsequent proceedings for the protection of the defendant. If an unrepresented defendant sought to enter a plea of guilty, the Court should examine the case against him to insure that there is admissible evidence tending to support the elements of the offense. If a case went to trial without defense counsel, the court should intervene, when necessary, to insure that the defendant adequately brings out the facts in his favor and to prevent legal issues from being overlooked. Formal trial rules should not be applied strictly against unrepresented defendants. Finally, appellate* *64*64* *courts should carefully scrutinize all decisions not to appoint counsel and the proceedings which follow.*

It is impossible, as well as unwise, to create a precise and detailed set of guidelines for judges to follow in determining whether the appointment of counsel is necessary to assure a fair trial. Certainly three general factors should be weighed. First, the court should consider the complexity of the offense charged. For example, charges of traffic law infractions would rarely present complex legal or factual questions, but charges that contain difficult intent elements or which raise collateral legal questions, such as search-and-seizure problems, would usually be too complex for an unassisted layman. If

the offense were one where the State is represented by counsel and where most defendants who can afford to do so obtain counsel, there would be a strong indication that the indigent also needs the assistance of counsel.

Second, the court should consider the probable sentence that will follow if a conviction is obtained. The more serious the likely consequences, the greater is the probability that a lawyer should be appointed. As noted in Part I above, imprisonment is not the only serious consequence the court should consider.

Third, the court should consider the individual factors peculiar to each case. These, of course, would be the most difficult to anticipate. One relevant factor would be the competency of the individual defendant to present his own case. The attitude of the community toward a particular defendant or particular incident would be another consideration. But there might be other reasons why a defendant would have a peculiar need for a lawyer which would compel the appointment of counsel in a case where the court would normally think this unnecessary. Obviously, the sensitivity and diligence of individual judges would be crucial to the operation of a rule of fundamental fairness requiring the consideration of the varying factors in each case.

*65*65 Such a rule is similar in certain respects to the special-circumstances rule applied to felony cases in Betts v. Brady, 316 U. S. 455 (1942), and Bute v. Illinois, 333 U. S. 640 (1948), which this Court overruled in Gideon.[33] One of the reasons for seeking a more definitive standard in felony cases was the failure of many state courts to live up to their responsibilities in determining on a case-by-case basis whether counsel should be appointed. See the concurring opinion of Mr. Justice Harlan in Gideon, 372 U. S., at 350-351. But this Court should not assume that the past insensitivity of some state courts to the rights of defendants will continue. Certainly if the Court follows the course of reading rigid rules into the Constitution, so that the state courts will be unable to exercise judicial discretion within the limits of fundamental fairness, there is little reason to think that insensitivity will abate.*

In concluding, I emphasize my long-held conviction that the adversary system functions best and most fairly only when all parties are represented by competent counsel. Before becoming a member of this Court, I participated in efforts to enlarge and extend the availability of counsel. The correct disposition of this case, therefore, has been a matter of considerable concern to me—as it has to the other members of the Court. We are all strongly drawn to the ideal of extending the right to counsel, but I differ as to two fundamentals: (i) what the Constitution requires, and (ii) the effect upon the criminal justice system, especially in the smaller cities and the thousands of police, municipal, and justice of the peace courts across the country.

The view I have expressed in this opinion would accord considerable discretion to the courts, and would allow the 66*66 *flexibility and opportunity for adjustment which seems so necessary when we are imposing new doctrine on the lowest level of courts of 50 States. Although this view would not precipitate the "chaos" predicted by the Solicitor General as the probable result of the Court's absolutist rule, there would still remain serious practical problems resulting from the expansion of indigents' rights to counsel in petty-offense cases.*[34] *But the according of reviewable discretion to the courts in determining when counsel is necessary for a fair trial, rather than mandating a completely inflexible rule, would facilitate an orderly transition to a far wider availability and use of defense counsel.*

In this process, the courts of first instance which decide these cases would have to recognize a duty to consider the need for counsel in every case where the defendant faces a significant penalty. The factors mentioned above, and such standards or guidelines to assure fairness as might be prescribed in each jurisdiction by legislation or rule of court, should be considered where relevant. The goal should be, in accord with the essence of the adversary system, to expand as rapidly as practicable the availability of counsel so that no person accused of crime must stand alone if counsel is needed.

As the proceedings in the courts below were not in accord with the views expressed above, I concur in the result of the decision in this case.