conditioned full direct appellate review—review to which all convicted defendants were entitled—on the furnishing of a bill of exceptions or report of the trial proceedings, in the preparation of which the stenographic transcript of the trial was usually essential. Only indigent defendants sentenced to death were furnished free transcripts; all other convicted defendants had to pay a fee to obtain them. "In criminal trials," Justice Black wrote in the plurality opinion, "a State can no more discriminate on account of poverty than on account of religion, race, or color." Although the state was not obligated to provide an appeal at all, when it does so it may not structure its system "in a way that discriminates against some convicted defendants on account of their poverty." The system's fault was that it treated defendants with money differently from defendants without money. "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." [2024]

The principle of *Griffin* was extended in *Douglas v. California*,[2025] in which the court held to be a denial of due process and equal protection a system whereby in the first appeal as of right from a conviction counsel was appointed to represent indigents only if the appellate court first examined the record and determined that counsel would be of advantage to the appellant. "There is lacking that equality demanded by the Fourteenth Amendment where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshaling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself." [2026]

From the beginning, Justice Harlan opposed reliance on the Equal Protection Clause at all, arguing that a due process analysis was the proper criterion to follow. "It is said that a State cannot discrimi-

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[2024] 351 U.S. at 17, 18, 19. Although Justice Black was not explicit, it seems clear that the system was found to violate both the Due Process and Equal Protection Clauses. Justice Frankfurter's concurrence dealt more expressly with the premise of the Black opinion. "It does not face actuality to suggest that Illinois affords every convicted person, financially competent or not, the opportunity to take an appeal, and that it is not Illinois that is responsible for disparity in material circumstances. Of course, a State need not equalize economic conditions. . . . But when a State deems it wise and just that convictions be susceptible to review by an appellate court, it cannot by force of its exactions draw a line which precludes convicted indigent persons, forsooth erroneously convicted, from securing such a review merely by disabling them from bringing to the notice of an appellate tribunal errors of the trial court which would upset the conviction were practical opportunity for review not foreclosed." Id. at 23.

[2025] 372 U.S. 353 (1963). Justice Clark dissented, protesting the Court's "new fetish for indigency," id. at 358, 359, and Justices Harlan and Stewart also dissented. Id. at 360.

[2026] 372 U.S. at 357–58.