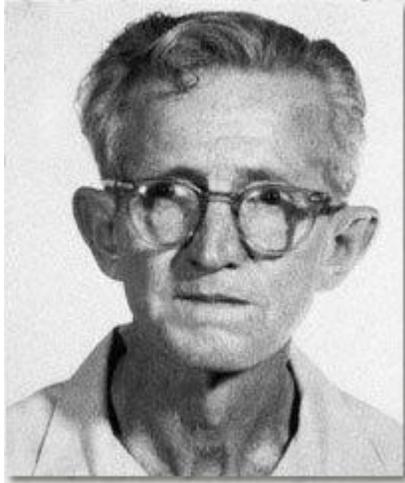


Ky. Voices: At liberty's core: right to counsel

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Clarence Gideon was charged with burglary of a pool hall in Panama City, Fla., in 1961. Without a lawyer, he was convicted and sentenced to five years in prison based on a witness who said he had seen Gideon leaving the poolroom at 5:30 a.m. with money in his pocket and a bottle of wine, and on the unchallenged testimony of a taxi driver.

Poor defendant won for all 50 years ago

By Ed Monahan and Dan Goyette

Imagine your daughter, brother or best friend were arrested. Surely, you would urge him or her to seek counsel to ensure that his or her rights were protected, regardless of guilt or innocence, so that the best result could be achieved under the circumstances.

This is a special time to recognize the importance of that right to counsel. We are in the 40th year of the statewide public defender program established in 1972 by Gov. Wendell Ford, who appointed Tony Wilhoit as the first chief defender.

It is also a special time because March 18 is the 50th anniversary of the landmark U.S. Supreme Court decision in the case of *Gideon v. Wainwright*. The ruling requires the state to provide counsel to a person too poor to hire an attorney when charged with a felony. The court has continued to expand the right to counsel to any charge that places a person's liberty at risk.

The constitutional mandate is clear: the state must either provide counsel for an indigent defendant or it cannot proceed with a prosecution. This is what the Sixth Amendment in our Bill of Rights guarantees.

Like doctors, teachers and accountants, lawyers are professionals who help lay persons when they are in need or something significant is at risk. Most importantly, though, lawyers protect our liberty. That is what is at stake in criminal cases. Individual liberty is the core American value.

Our American ideal is radical in this sense: each person is entitled to due process, even those without money. Never has the world seen such an ideal embodied in law, preserved and put into practice in this ongoing American experiment of which we are still a part.

The nobility of our American values is exceptional. The application of our values involves a web of complexities and can be challenging.

Clarence Gideon was charged with burglary of a pool hall in Panama City, Fla., in 1961. Without a lawyer, he was convicted and sentenced to five years in prison based on a witness who said he had seen Gideon leaving the poolroom at 5:30 a.m. with money in his pocket and a bottle of wine, and on the unchallenged testimony of a taxi driver.

After the U.S. Supreme Court held it was unconstitutional to try a man for a felony without giving him a lawyer on request, Gideon was retried, this time with a lawyer.

In Gideon's first trial, the taxi driver said Gideon asked to be picked up at the pool room at 2 a.m. The prosecutor asked the driver, "Did Mr. Gideon say anything when he got in the cab?" And the driver answered, "Yes. He said, 'Do not tell anyone you picked me up.'" There was no questioning by the unrepresented Gideon.

At Gideon's second trial, however, Gideon's lawyer did question the taxi driver. He asked, "Had he ever said that to you before?" "Oh yes," the taxi driver answered, "he said that to me every time I picked him up." "Why?"... "I think it was some kind of woman trouble."

This time Gideon was found not guilty.

Lawyers made a difference for Gideon, and they make a difference in our American system of justice, which has at its core a revolutionary devotion to liberty.

The anniversary of the Gideon decision is an occasion to renew our support for a statewide public defender program that protects the liberty of all Kentuckians.

Public defenders lower the cost of incarceration for counties and states by:

- Providing representation at first appearances in court and advocating for pretrial release;
- Advocating for appropriate sentences based on the facts of the case;
- Developing alternative sentencing options that avoid incarceration and provide individually based treatment that reduces recidivism.
- Assisting clients upon adjudication with re-entry needs, including employment and housing;

- Preventing expensive wrongful convictions.

To play their role properly, public defenders need reduced caseloads to allow adequate time to represent each client, increased resources to develop alternative sentencing options and funds sufficient to contract with local private lawyers when the system faces professional conflicts.

Liberty does not defend itself. Public defenders preserve, protect and defend liberty each time they represent a client. Clarence Gideon's case proved that 50 years ago.



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