

GIDEON'S ELUSIVE DREAM

By James Funt

Clarence Gideon was an unlikely hero. In 1963, denied the access to counsel, the frail, bespectacled, uneducated, 50-something drifter was convicted in Florida of a pool-hall burglary he did not commit. The verdict was based on the uncorroborated, unfounded and unproven testimony of Henry Cook, the person who was in all likelihood the actual perpetrator of that crime. But without the wherewithal to attack the flimsy evidence against him, he was convicted and summarily sentenced to five years of hard labor. And so, from his solitary cell, Mr. Gideon scribed with a pencil on prison letterhead a simple yet elegant self-evident principle: that everyone in this county accused of a serious crime, regardless of economic status, should have the right to a competent lawyer.

"It makes no difference how old I am or what color I am or what church I belong too if any. The question is I did not get a fair trial. The question is very simple. I requested the court to appoint me a attorney and the court refused. All countrys try to give there citizens a fair trial and see to it that they have counsel."

That cell-room whisper filtered its way to the hallowed halls of the U.S. Supreme Court. There, Gideon was represented by future jurist Abe Fortas who amplified his precept. A unanimous Supreme Court, led by Justice Hugo Black agreed, noting:

"the noble idea that every defendant stands equal before the law...cannot be realized if the poor man charged with a crime has to face his accusers without a lawyer." And so the right to counsel was born.

Fifty years later, Gideon's dream remains elusive. Driven by an ill-conceived and poorly executed war on drugs, the criminal justice system is bursting at the seams. We live in a society driven by fear. We fill our homes with television sets and then proceed to empty our heads with "reality TV." We choose incarceration over education, punishment over restoration. We provide funds to build prisons while our schools fall in ruins. Public defenders and court-appointed counsel are overwhelmed, and judges have become understandably increasingly desensitized by their burgeoning dockets. Throughout it is the indigent defendant who suffers the brunt of this institutionalized neglect.

The truth is that unless it is your loved one who has been charged with a crime, the general public simply does not favor the criminally accused over the perceived security of the police. This perception is magnified when those accused are poor. Like the homeless panhandler we avert our eyes from when we walk down the street, and then convince ourselves we did not see him, we have placed on willful blinders in the hope that the problem will recede. But hope is not a plan.

In the ever-increasing competition for limited resources, states and municipalities have chosen to habitually underfund those organizations that are charged

with representing the most vulnerable in our society. State Public Defenders in Philadelphia have not seen a raise since 2008 yet the number of cases they handle continues to grow. Furloughs in Luzerne County are not uncommon and recently the Federal Defender's Office was forced to initiate furloughs with the imposition of the budget sequester. These are dedicated, zealous and fearless advocates who have forgone lucrative careers because they believe in their role to achieve social justice. They understand that poverty is not a disease to be shunned. They embrace the herculean task of painting the complex portrait of their clients' lives to a skeptical public. They try more cases in a month than most lawyers do in a career and are unfairly rewarded with the disparaging public perception, sometimes even from their own clients, that they are not "real lawyers." And they do all of this for not much more money than we pay our parking attendants to watch our cars. Gideon and Justice Black would be appalled.

For those lawyers reading this article who do not work in the areas of social justice, it is unlikely that you ever directly encounter the problems that have been discussed about the inequality of justice among the poor. My guess is that you do not believe Gideon's failed promise has affected you in any substantial way. But I suggest that when Gideon's whisper is collectively and willfully ignored we risk not only financial ruin but our own moral bankruptcy.

The war on drugs has magnified a two-tier society. One in three African Americans will be incarcerated in their lifetime and there are more people of color in prison than in college. We jail more people than any other industrialized nation and are last in the areas of math and science. Mental health

funding has been slashed and thus the homeless population has skyrocketed. Do you feel safer? Ben Franklin once said that if we give up even a modicum of freedom in the name of security we achieve neither. Yet that is exactly what we have done, and it is costing all of us as taxpayers hundreds of millions of dollars in wasted incarceration costs and untold amounts in wasted human opportunity.

When we become numb to the plight and pain of our fellow citizens we are all diminished. When we shutter our children's schools forcing them to roam the streets and be subsequently devoured by our "justice system," we are all diminished. When the cries for help of the mentally ill fall on desensitized deaf and unfeeling ears, we are all diminished. When we allow our elders to subsist on food stamps, food drives and emergency room medical care, we are all diminished.

We can and must do better. It is not enough to simply rail at a failed and over-burdened system. Each one of us has the ability, as barristers, to access to the halls of justice and thus make a significant difference to fulfill Gideon's promise. Indeed there is reason for optimism. For example, recently, the Philadelphia social justice legal community rallied together to support legislation currently pending before the state legislature known as Senate Bill 979 to fund, for the first time, a center for effective indigent defense. The bill would establish a resource center to support the work of defenders offices as well as all attorneys who do court-appointed work throughout the state. It would provide recurring high quality continuing

education, training and skills development programs and resources for public defender staff, and would support the delivery of client-centered, quality indigent defense legal representation through the use of programming and resource sharing. The bill was authored by state Sen. Stewart Greenleaf and has been supported by Chancellor Kathleen Wilkinson; Phyllis Subin, executive director, Pennsylvania Coalition for Justice; Lou Rulli, the former head of Community Legal Services; Ellen Greenlee, the Chief Defender in Philadelphia; the Juvenile Law Center; Mark Bookman of the Atlantic Center for Capital Representation; various sections of the Philadelphia Bar Association including the Criminal Justice Section, the Public Interest Section and the Delivery of Legal Services Committee, the Family Law Section, and recently won the unanimous support of our Bar Association's Board of Governors who represent myriad interests from the private bar.

This united effort is but one shining example of what our legal community can do when we all work together toward the noble goal of achieving a fair, just and caring society.

That was Gideon's dream.

That was Justice Black's promise.

Now it is our job to achieve, hand in hand, one step at a time. ■

James Funt (james@gpeff.com) is a partner with Greenblatt, Pierce, Engle, Funt & Flores.



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