

## Living Greatly in the Law

*This article originally appeared in *The Advocate*, Vol. 15, No. 1 (1994) on the 30<sup>th</sup> Anniversary of Gideon. It is reprinted on the 40<sup>th</sup> Anniversary of Gideon with permission of Anthony Lewis.*

### Our Response to *Gideon*

When the *Gideon* case was decided, now more than 30 years ago, I thought this country would respond in the spirit of the Supreme Court's unanimous judgment. I believed that the states and the Federal Government would promptly and fully meet the obligation to assure counsel for all who faced criminal charges without the money to pay a lawyer.

How wrong I was. Today Congress often fails to appropriate sufficient funds for the defense of indigent Federal defendants, and many states and localities are trying to reduce funding as the caseload balloons.

### The Burden Falls on Lawyers Representing the Poor

The result is to put an increasingly heavy burden on lawyers who devote themselves to defense of the poor. They bear an extraordinary responsibility: not just to stand up for indigent defendants but really to maintain faith in our system of justice. The public does not always understand their role, as hardly needs to be said in this age of outcry for more jails, more punishment, more convictions. But the public's sense of justice will be diminished, in time, if people are railroaded to prison because no adequate defense was made on their behalf.

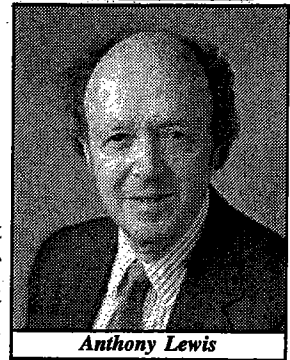
### Texas as an Example

An acute example of inadequate legal resources is the situation faced today by those on death row in Texas: 368 men and 4 women. As many as 70 of them have no lawyers to help them through the crucial final efforts to avoid execution. That is twice as many unrepresented as a year ago, despite repeated appeals to the Texas bar and help from out-of-state lawyers.

*Gideon* did not cover post-conviction remedies; in those processes there is no constitutional right to counsel. But no one who understands how capital cases work in this country can doubt the crucial importance of counsel at the final stages. It is, literally, a matter of life and death. Many convictions have been set aside in Federal habeas corpus proceedings because of grave constitutional errors, and a significant number of convicted persons have actually been found innocent. So it is a sad comment on the state of justice that not enough Texas lawyers are willing to volunteer for the representation of men and women on death row. And, of course, it is a comment on the state of Texas that, unlike other states with large death row populations, it provides neither money nor lawyers itself.

### Public Defenders Do Society's Work

Lawyers who volunteer or work at modest salaries to represent the poor are doing society's work. But I do not think that it should really be regarded as a burden. It is an honor that gives meaning to their professional lives.



Anthony Lewis

### Lawyers Redeem Us from Injustice

Again and again in American history lawyers have come forward to redeem our society from cruelty and injustice. Often it is only a few brave lawyers, but they bring honor to the profession. I think of those who defended witnesses before Congressional committees in the McCarthy days, or helped others facing charges of Communist associations. Or of Charles Evans Hughes, who during the Red Scare of the 1920's represented Socialists who had been elected to the New York Legislature but were being denied their seats. Or of Gilbert E. Roe and Walter Pollak and the others whose briefs informed the Holmes and Brandeis dissents in the early free speech cases that led, eventually, to the rights we now enjoy under the First Amendment.

### Kentucky Public Defenders Live Greatly in the Law

The lawyers who make Kentucky's indigent defense system work are in a great tradition. They prove what Justice Holmes said long ago: "It is possible to live greatly in the law."

**Anthony Lewis**  
*The New York Times* (Retired)  
1010 Memorial Drive  
Cambridge, MA 02138

**Anthony Lewis**, twice winner of the Pulitzer Prize, is a columnist for *The New York Times*. Resident in Boston, he travels widely in this country and abroad. He has also covered the Supreme Court for *The Times*, and been chief of its London Bureau. Mr. Lewis was born in New York City on March 27, 1927. He attended the Horace Mann School in New York and received his B.A. degree from Harvard College in 1948. From 1948 to 1952 he worked for the Sunday Department of *The Times*. In 1952 he became a general assignment reporter for the *Washington Daily News*. In 1955 he won his first Pulitzer Prize for national reporting, for a series of articles in the *Daily News* on the dismissal of a Navy employee as a security risk. The articles led to the employee's reinstatement. Mr. Lewis joined the Washington Bureau of *The Times* in 1955, to cover the Supreme Court, the Justice Department and other legal subjects. In 1956-57 he was a Nieman Fellow at Harvard, studying law. In the following years he reported on, among other things, the Warren Court and the Federal Government's responses to

the civil rights movement. He won his second Pulitzer Prize in 1963 for his coverage of the Supreme Court. He is the author of three books: *Gideon's Trumpet*, about a landmark Supreme Court case, *Portrait of a Decade*, about the great changes in American race relations, and (in 1991) *Make No Law: The Sullivan Case and the First Amendment*. He has published numerous articles in legal journals. Mr. Lewis was for fifteen years a Lecturer on Law at the Harvard Law School, teaching

a course on The Constitution and the Press. He has taught at a number of other universities as a visitor, among them the Universities of California, Illinois, Oregon and Arizona. Since 1983 he has held the James Madison Visiting Professorship at Columbia University. He has received a number of honorary degrees. In 1983 he was the Elijah Parish Lovejoy Fellow at Colby College. In 1987 he delivered the John Foster Memorial Lecture at University College, London. ■

## DPA Avoids Further Budget Cuts, Full-Time System Near Completion

The 2003 General Assembly has passed a budget that for the most part avoided raising revenue and cutting most state agencies' funding levels by 2.6%. The potential of 5.2% and even 9% cutbacks was avoided.

The Department of Public Advocacy was spared the 2.6% budget cuts. Along with prosecutors in County Attorneys and Commonwealth's Attorneys offices, DPA was not cut in FY03 or FY04. The specter of having to turn back cases, a very real possibility if DPA's budget had been cut further, was avoided.

### This Year's Budget Remains Consistent with the Spending Plan

DPA began the year with a budget outlined by the Governor's Spending Plan. The Spending Plan incorporated the 1% budget reduction of FY01 and the 3% budget reduction of FY02. As a result, the Spending Plan failed to fund 26 positions. Those 26 positions remain unfunded in House Bill 269, the budget bill. DPA will continue to implement House Bill 269 for this year.

The total budget for DPA for FY03 (the current year) is \$28,520,500. This represents the 3% budget reduction from FY02, and includes no new money. This includes \$23,925,300 in General Fund dollars, \$1,569,300 in federal funds (mostly to fund the Protection and Advocacy Division), and \$3,025,900 authorization to spend revenue collected from the DUI fee, the partial fee, and the court cost bill.

### The Budget for FY04 Includes 2 New Offices

DPA is funded for FY 04 at \$29,852,200. This mostly continues the existing FY03 budget. It includes raises for all merit employees of \$1080. Non-merit employees receive no raise in FY04. It also includes 11% increase to cover health insurance costs. 26 positions remain unfunded.

However, the General Assembly authorized DPA to open new offices in Boone and Harrison Counties to cover 5 additional counties. Included in the authorization are 11 additional positions. As of the end of FY04, 117 counties will be covered by a full-time office. Only Barren, Metcalfe, and Campbell Counties will remain as contract counties. I will be requesting authorization to cover these 3 counties from existing revenue sources to complete the full-time system before the end of FY04.

### DPA had Significant Support in the General Assembly

On the whole, DPA is fortunate to have received this budget for the remaining part of the biennium. While 26 positions remain unfunded, DPA avoided further budget reductions. More importantly, DPA will be able to move forward toward its primary policy goal, that of completing the full-time system.

The most important deficit remaining is the high caseloads being carried by staff attorneys. That will be the focus for the 2004 General Assembly. ■

**Ernie Lewis**  
Public Advocate  
elewis@mail.pa.state.ky.us

### Counsel for the Poor

Reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, can-not be assured a fair trial unless counsel is provided for him.

- *Gideon v. Wainwright*, 372 U.S. 335 (1963) -