

Remarks from the 40th Anniversary Celebration of *Gideon v. Wainwright* on March 27, 2003

A Different Path, A New Mindset

George Moore, Commonwealth Attorney

I have a new-found appreciation for the fact that at trial I go first on voir dire. As I have listened to the comments of the other folks this morning, they echo some of the things that I wanted to say. Ernie told me that he wanted me to talk a little about the future of public defenders. It is good to be here.

I do have to tell you that it was a pleasure when Ernie asked me to come and speak to this group and to be part of this event. Clearly *Gideon* is one of the seminal cases of criminal law and our generation. I say our generation fully realizing as I look around that there are a number of you in this room who lack the ability to remember 40 years ago. Jerry Cox you do and I will pick on you too. Sadly I do remember 40 years ago and the times that have come. But those 40 years mark a time of societal change that has addressed most of the egregious forms of discrimination and oppression that are known to modern democracy. Now clearly we have a number of issues still to confront and we have a long way to go but it is not only appropriate, I think it is healthy and certainly fun to take time to celebrate the joys of successes that we have celebrated. I would hasten to add as I share comments with you and state proudly that Attorney General John Breckinridge of our beloved Commonwealth of Kentucky was one of 22 state's attorneys general who joined in an amicus brief with the United States Supreme Court calling on the court to overrule the lower court in *Gideon*. I mention that because I think as I contemplate the challenge to define the future of public advocacy it is crucial to remember that fact in the process. For many, and sadly I think it is true for some in Kentucky, there is a belief that the adversarial nature of prosecution and defense must define not only the trial process but also the entire relationship between these two key participants in the criminal defense system. I propose today as I did to a small group of my colleagues just recently and as I intend to our entire gathering in August, as I address a topic that I have been asked to address there, that we must indeed, we can find a different path.

This proposal involves a mutual commitment to a new mindset. I hope I don't step on toes but for some time I have observed a trend that promotes an attitude of distrust, suspicion, antagonism and even animosity toward prosecutors when I see public advocates come to practice. I will concede that there have been times when I feared that that might represent a policy decision. I don't think so because the reality is that it is not a universal perception but it was prevalent enough that it captured my notice and distressed me both professionally and personally. Now granted that position and that

thought process were not antithetical to the image of public defenders. As being bleeding heart dogooders who would find no devious tactic unsatisfactory in the representation of a client, that was often at least given passive acceptance when we as prosecutors would gather in the hospitality room following our conferences. But the reality is that the mutuality of stereotyping makes it no less unacceptable nor less counterproductive. It is also a caricature that even when engaged with humor is a mindset that we can no longer afford or countenance as a profession.



Commonwealth Attorney
George Moore

I am pleased to stand here today stating publicly that not only do I have the utmost respect for Ernie Lewis but I consider him a valued colleague and perhaps more importantly and it is important that I say that on a personal level I consider him to be a friend. We have developed a relationship that forges a crucial partnership in advocating for the needs of each other in the process of budgeting and resource allocation. The General Assembly session which was just concluded two days ago stands as testimony I believe to the wisdom and success of the paradigm that I would ask us to adopt. Many observers this year told me how impressed they were when advocating for funds for our respective agencies, each of us added with sincerity and conviction that the other must be fully funded for the justice system to function properly. You see we both feel passionately about the people we represent in this system.

Clearly *Gideon* proclaims that indigent defendants have a constitutional right to representation and a competent counsel. I would contend with equal sincerity that the same constitution offers protections to the basic rights of victims of crimes. Victims seek protection under the same sacred document, as do defendants. In the final analysis you see each of our groups represents and protects individuals who have no one else to speak for him or her. So often defendant and victim alike are members of our society who have no lobby group, who have no effective power base, and who do not have either the individual wealth or the power to compel respect and fair treatment. Absent dedicated men and women who are willing to sacrifice the lure of wealth and power and prestige that comes with practice in private law firms, these vulnerable members of society would be left without competent advocacy on their behalf from either side. That is one reason that Ernie and I are both committed.

I appreciate Ernie's words when he said as some of us look at the ends of our career. It was fun during this legislative session and you all need to know if you don't how much work and effort Ernie puts into the legislative process and how effective he is in that venue on your behalf. One of the other things that often elicits humor is that when we are both in the building and I end up being here full time during legislative sessions, that when we are both in the building we generally have lunch together - but don't tell anybody else outside of this room. This year we spent some part of that time talking about the fact that we are both able to see retirement.

But one of the things that both of us want to accomplish before we give it up is to have loan forgiveness for the newest people who choose to follow us in our respective fields of public service. That is also the reason that I call on you today, to do all in your power to protect the rights of you clients when the Commonwealth charges them with a crime, I would note - almost always correctly so.

"One man, One mission"

Secretary Janie Miller

Thank you Ernie and thanks to all of you for being here today on this important celebration of *Gideon v. Wainwright's* 40th anniversary.

The landmark U.S. Supreme Court decision in *Gideon v. Wainwright* occurred because Clarence Earl Gideon, a simple, penniless Florida man would not accept his fate after being denied counsel and sentenced to prison.

One man caused the single biggest change in the history of the U.S. criminal justice system because he believed in the American justice system and knew his right to a fair trial had been violated.

One man changed the course of legal history by writing a letter from a prison cell petitioning the Supreme Court to retry his case.

One man's action caused the Supreme Court to look into his petition and grant him counsel in a new trial.

When then Attorney General Robert F. Kennedy spoke to the New England Law Institute on November 1, 1963 he said "If an obscure Florida convict had not written the letter, and the Court not taken the trouble to look for merit in that **one** crude petition, the vast machinery of American law would have gone on functioning undisturbed."

One man accomplished historic feat because of his unwavering belief in the American justice system. Fortunately, here in Kentucky another man shares Mr. Gideon's convictions.

Since 1996, Ernie Lewis has worked tirelessly to improve the indigent defense system by providing public defenders to

I respect you for your commitment, your effort and for your dedication but at the same time I would ask you to join me in either a new or renewed sense of mutual respect. I would ask personally that each of you take the opportunity when you return to your community to tell your prosecutors that you value their dedicated public service because together we can fight like the dickens in the courtroom but we can work together in all of those other arenas for effective and fair administration of justice for all of the citizens of our Commonwealth and of our nation. That is after all why all of us decided to do what we do. I don't know any of you who chose this because you really thought it was going to get you that Mercedes. I see John Rosenberg sitting here and I think of the career that John has spent in service to the public.

We have a right to be proud of what we do and I want to tell you that I am proud of the group sitting to my left that practices in my circuit and I am proud of each of you and I hope to get back to be with you this afternoon. Thank you

people unable to afford an attorney.

In 2003, Ernie will have brought full time public defender offices to 112 Kentucky counties, from 47 counties when he became Kentucky's Public Advocate. He hopes to complete the full time system by 2004.

Under Ernie's leadership, salaries of defenders have improved by nearly 46%, improving recruitment and retention goals.

He's also advanced a culture of professionalism and excellence by implementing American Bar Association and National Legal Aid and Defender standards at the trial level.

Ernie has a lot in common with Mr. Gideon. He was faced with an unacceptable situation when he became Public Advocate and he vowed to change things. But he knew it would take more than his lone efforts.

That's why he's articulated his vision to hundreds of people including legislators, the private and public sector, and all of you in this room.

But Ernie needs your help. Working together, we can continue to chart the course for indigent defense well into the future and keep Kentucky's reputation as a leader and model for public defense in tact.

Thank you again for being here today and I hope you have a productive meeting as we work together to make the promise of *Gideon* a reality in Kentucky. ■



Public Protection & Regulation
Secretary Janie Miller