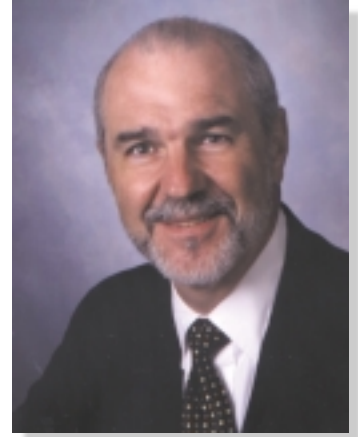


# Gideon's Silent Trumpet

by Joseph A. Condo 2000–2001 VSB President



Many of us are familiar with the story of Clarence Gideon, a ne'er-do-well in a small southern town who was convicted of breaking into a pool hall. His appeal, begun with a handwritten petition, culminated in 1963 in the landmark U.S. Supreme Court decision of *Gideon v. Wainwright*, establishing an indigent's right to appointed counsel in criminal proceedings.

Clarence Gideon has been lionized as a hero of the downtrodden and unchosen. His struggle was celebrated in the book, *Gideon's Trumpet*, and later depicted in a television movie starring Henry Fonda. Yet his legacy is being desecrated in this Commonwealth. For years, Virginia has ranked last in the nation in the level of compensation for court-appointed lawyers defending indigent criminal defendants. In fact, Virginia's fees are so low that increases approved by the 2000 General Assembly did little to advance our ranking among the states.

No great imagination is required to discern the effect of these indefensibly low fees on the rights of indigent defendants in Virginia. Incidences of ineffective representation are becoming more common, as even those lawyers with minimal experience find that they cannot afford to accept these cases. Some published reports indicate that a Virginia indigent defendant's court-appointed lawyer is six times likelier than his or her colleagues to have run afoul of our disciplinary system.

For those lawyers willing to take on complex criminal cases on a court-appointed basis, the financial hardship can be considerable. How many of us have not heard stories about court-appointed lawyers who have expended time that would be worth thousands of dollars, if billed at customary rates, but were paid fees of **one** thousand dollars or less? A circuit court judge once told me of a lawyer who was required to borrow money to meet his office expenses during the pendency of his court-appointed representation of a defendant charged with a felony.

One recent review of available data found that in some areas of the state there are a few attorneys whose practices comprise mostly court-appointed cases. But that same analysis found that those lawyers are maintaining an extraordinary volume of cases in order to earn a reasonable income. This naturally prompts some questions. How much attention can they give their indi-

vidual clients? Are these defendants receiving the quality of representation the *Gideon* court envisioned?

Justice Hugo Black's opinion in *Gideon* includes this passage:

The right of one charged with a crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on . . . safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

I submit that this "noble ideal cannot be realized"—even if counsel has been appointed for an indigent charged with a crime, when that counsel is so underpaid and inexperienced that it is tantamount to the defendant's having no lawyer at all. In Virginia, it is difficult to seriously argue that the impoverished criminal defendant can expect to "stand equal before the law," when all other jurisdictions pay higher fees to court appointed counsel.

Those outside the profession, or those within the profession who do no criminal work, may think this issue has nothing to do with them. But they should remember this compelling irony: it is mostly people who are charged with crimes—usually from the disdained classes of society—who guard some of our most fundamental constitutional protections from encroachment by the government. The criminal defendant who challenges the legality of a search is truly helping to ensure the continued vitality of the Fourth Amendment for **all** citizens. In a very real sense, these criminal defendants are often protecting the Bill of Rights for the rest of us.

Chief Justice Harry Carrico of our Supreme Court has been in the vanguard of past efforts to bring about higher fees for court-

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## President's Message *continued from page 3*

appointed criminal defense counsel, and the Chief Justice and all of his fellow justices have pledged their continued support. But our profession is the single most important agent for nurturing and strengthening the rule of law in this society, and it is incumbent upon us to take up this cause and right this profound injustice. Who will do so if we do not?

The 2001 session of the General Assembly is in the middle of a two-year budget cycle. Nevertheless, I have learned that there will be an effort in this session to obtain additional increases in fees for court-appointed criminal defense counsel, based upon the recommendation of the Crime Commission.

It will be difficult, as it always has been, to attract the attention of the General Assembly's appropriations apparatus to this issue. Many other constituencies, with greater power and influence, are vying for limited funds. To make matters worse, the fund from which the state compensates appointed counsel for indigent criminal defendants is also the source of fees for court-appointed guardians *ad litem*. So an arduous task lies before us, with little time in which to act. But it has been said that one can learn important things about a society from the way it treats its most powerless and dispossessed. What does our standing among the states in compensating court-appointed criminal defense counsel say about Virginia's legal system, and its commitment to equal access to justice?

For my part, I intend to place the moral authority of this organization behind additional increases in these fees, by communicating with every member of the Senate and House of Delegates, and especially the members of the Committees with responsibility in this area (Courts of Justice and Finance/Appropriations), and emphasizing the critical importance of this issue. I urge each lawyer in Virginia to do likewise. One of us, or even a thousand of us, might be ignored; twenty-three thousand of us will not.

If we do nothing, the consequences for our system of criminal justice and, indeed, for our society itself, are dire and far-reaching. ☞