

Commissioners' Board Meeting Minutes

March 14, 2013

The Berks County Board of Commissioners met in regular session on Thursday, March 14, 2013, at 10:00 A.M. in the Boardroom on the 13th floor of the Berks County Services Center, pursuant to due notice to Board members and the public.

Commissioner Chair Christian Y. Leinbach called the meeting to order with Commissioner Kevin S. Barnhardt and Commissioner Mark C. Scott in attendance. Also present were Solicitor Alan Miller, Chief Operating Officer Carl E. Geffken and Chief Clerk Maryjo Gibson.

Commissioner Leinbach opened the meeting with a moment of silence and Pledge of Allegiance to the Flag, and announced there was an Executive Session March 11, 2013 to discuss personnel issues and union negotiations.

Presentation

Glenn Welsh, Esq., Berks County Public Defender, attended the meeting and gave a presentation on the origin of the Public Defender's Office of Berks County, and an update of the County Public Defender Department. Mr. Welsh commented that 2013 is the 50th anniversary of the creation of the Public Defender of Berks County and was created as a result of the landmark decision Gideon v. Wainwright, which held that state courts are required to appoint counsel in a criminal case for the accused who does not have funds to secure his own counsel. Mr. Welsh provided the details of the case from the lower courts through the appeal process. Mr. Welsh reported that originally the Berks County Bar administered the Public Defender Program in part by support of the County of Berks and in part by the Bar Association. Mr. Welsh commented that in 1964 the Berks County Bar Association appointed the first Public Defender Emanuel Dimitriou. Mr. Welsh further provided the history of the Berks County Public Defender's Office and ended by commending his staff for zealously defending the rights of their clients and thanking the Board of Commissioners for their support of his office. Commissioner Leinbach introduced Eleni Dimitriou-Geishauer, a daughter of Mr. Dimitriou, who presented a framed newspaper print of her father and his secretary, who he later married, and is Mr. Dimitriou-Geishauer's mother. Commissioner Barnhardt commented that in addition to being Berks County's first Public Defender, Mr. Dimitriou was the first Public Defender in Pennsylvania. Commissioner Barnhardt stated that anyone applying for representation by the Public Defender must prove financial hardship in order to qualify for representation. Commissioner Barnhardt commented that the Public Defender provides a balance to the Criminal Justice System. Commissioner Leinbach requested that the Chief Clerk make the article on the first Public Defender which appeared in the Berks Barrister publication of the Berks County Bar Association be entered into the minutes of this meeting. Commissioner Scott commented on the evolution of the Public Defender's Office over the last 2 decades regarding the funding and disparity in the pay scale and inclusion of the investigators to the Office.

Approval of Minutes

The minutes of March 7, 2013 Commissioners' Board Meeting were approved as presented.

Agenda Items

1. A motion was made by Commissioner Barnhardt, seconded by Commissioner Scott and all voted unanimously to approve the items listed below:
 - 70.13 Adopt a resolution authorizing 2013 Budget Transfers in the amount of \$137,465.00 and 2013 Appropriations in the amount of \$1,256,178.00 per listing dated March 11, 2013.
 - 71.13 Adopt a resolution authorizing Human Resources Recommendations per listing dated March 14, 2013 as follows:
 1. Authorize promotion of Todd A. Kaley, PC012099 Probation Officer IV to PC010135 Assistant Chief Juvenile Probation Officer – Juvenile Probation, effective 3/13/13. Rate of \$69,070/annually. Salary budgeted \$69,070/annually. Salary range Minimum \$48,152; Midpoint \$64,203; Maximum \$80,253. Replacement for Daniel Heydt who transferred. This request meets the criteria of the Hiring Policy. Budget 10000 – 12020.
 - 72.13 Adopt a resolution authorizing execution of an Agreement with High Environmental Health & Safety Consulting Inc. of Lancaster, Pennsylvania, for an Indoor Air Quality Assessment at 101 North 9th Street, Reading, (Magisterial District Court No. 23-1-03) at a not to exceed amount of \$2,195.00.
 - 73.13 Adopt a resolution authorizing execution of a Lease Agreement between the Borough of Fleetwood and the County of Berks for approximately 2,900 square feet of office space located in the Fleetwood Community Center for use by Magisterial District Justice Gail Greth (23-3-04) for a five (5) year term beginning April 1, 2013 and ending March 31, 2018.
 - 74.13 Adopt a resolution designating Carl E. Geffken, Chief Operating Officer, to vote on resolutions that will be submitted electronically to the full CCAP (County Commissioners Association of Pennsylvania) membership following the Spring 2013 CCAP Conference.
2. Motion authorizing Christian Y. Leinbach as Chairman of the Board, to execute Contract Agreements/ Amendments as furnished by the Contract Coordinator, per listing dated March 11, 2013.

3. Motion to authorize payments set forth on Controller's Office vouchers listing dated March 12, 2013 for the week ending March 13, 2013. A motion was made by Commissioner Scott, seconded by Commissioner Barnhardt and all voted unanimously to approve the Controller's vouchers.

Reports

1. County Treasurer Nelson Long, CPA submitted a prepared weekly Treasurer's report.
2. The Controller's weekly report was presented by County Controller Sandy Graffius.

REPORTS OF CHIEF OPERATING OFFICE/CHIEF FINANCIAL OFFICER

1. Carl E. Geffken reported that at today's Budget Meeting the Area Agency on Aging cash flow budget and will be going over the cash flow position of the County.
2. Robert J. Patrizio

COMMISSIONERS' COMMENTS

Commissioner Barnhardt commented he found Mr. Welsh's presentation very informative, and that as we are allotted this block of time by BCTV, he recommends and encourages more department heads to schedule a few minutes to present information on their departments informing the public where their tax dollars are being spent.

Commissioner Scott agreed with Commissioner Barnhardt recommendation to have County Department make presentations at Board Meetings, and could include County Boards and Authorities. Commissioner Scott congratulated Sgt. Major Scott D. Hamm of the Marine Corps, Okinawa, who was one of 2 sergeants majors selected to attend the Marine Corps University's Command and Staff College. Commissioner Scott read the prepared statement outlining Sgt. Major Hamm's appointment. Sgt. Major Hamm is the son of Exeter Township Road Supervisor Clarence Hamm.

Commissioner Leinbach announced that on March 22, 2013 the State of the Community Breakfast Meeting will be held at the Crowne Plaza in Wyomissing, and is being hosted by the Greater Reading Chamber of Commerce. The topic is Crime and Quality of Life. The four panelists will be the District Attorney, the City of Reading Chief of Police, City of Reading Mayor and Commissioner Chair Leinbach. Commissioner Leinbach commented he will be giving a 60 day update on the Crime Summit from January 18, 2013, and this meeting is open to the public.

Alan S. Miller, County Solicitor, brought up from the floor a request to approve Change Order No. 01-14 to Pyramid Construction. This change order was submitted by Brian Gottschall earlier in the week, but was inadvertently omitted from the Agenda.

Mr. Gottschall commented that this is an anticipated change order, is within the budget and is to alter unit quantities on various tower sites. Carl Geffken commented he has reviewed this Change Order and it is a standard Change Order and finds it in order. Commissioner Scott motioned to approve Change Order No. 01-14 relative to tower construction and subject to the review and approval by the County Solicitor. Said motion was seconded by Commissioner Barnhardt and all voted unanimously to approve the Change Order No. 01-14 by adopting Resolution No. 75-13 as follows:

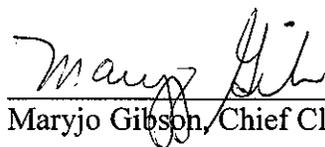
- 75.13 Adopt a resolution authorizing execution by Christian Y. Leinbach, Chair, of Change Order 01-14 dated February 26, 2013 in the amount of \$1,116,113.34 to the Contract with Pyramid Network Services, LLC, for final pricing for the Bally, Centre, Earl, North Heidelberg and Robeson tower sites and updated pricing for the Blue Mountain, Kutztown, Turnpike, West Penn and BCCC tower sites for the Berks County Public Safety Radio Project, and subject to the review and approval by the County Solicitor.

CITIZEN COMMENT/BUSINESS FROM THE FLOOR

Reverend Kistler, representing the Blue Mountain Concerned Citizens, attended the meeting along with his neighbor Mr. Welker. Mr. Kistler read a prepared statement regarding the Radio Tower Project affecting the Appalachian Trail and the Applebee Tower site. Reverend Kistler presented his statement to the Commissioners. Commissioner Leinbach commented he will provide this statement to the Solicitor who will respond accordingly.

There being no further business, the meeting adjourned at 10:51 A.M.

Respectfully Submitted,



Maryjo Gibson, Chief Clerk

Berks County Bar Association Plays Leading Role in County's Response to the Landmark Gideon Decision

Edited and annotated by Donald F. Smith, Jr., Esquire

March 18, 2013 marks the 50th Anniversary of the landmark decision of Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d (1963), in which the United States Supreme Court ruled unanimously that state courts are required under the Fourteenth Amendment to provide counsel in criminal cases for those defendants who are unable to afford to pay for counsel. The following are excerpts from an article written by Robert E. Fawcett and appearing in the Reading Eagle on April 11, 1965, which details the history of the Berks County response to the decision.

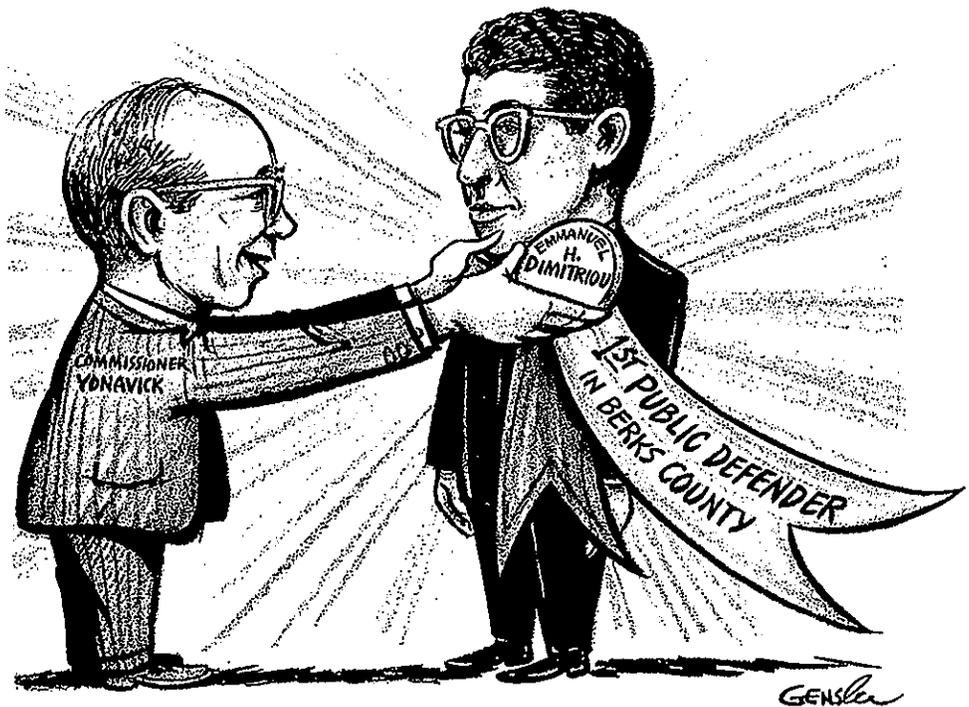
A legal experiment rounded out a year's trial run in Berks County last month and met with such success that more than a score of the state's 67 counties are considering similar programs.

Berks County's Public Defender program differs from others in two essentials:

1. It is almost wholly-supported by \$13,120 in tax monies. Quarters with a value of about \$1,200 a year are provided by the Berks County Bar Association.
2. It is operated through the association, which is responsible for its administration.

It was just a year ago in March that Emmanuel H. Dimitriou, an aggressive young lawyer, accepted the \$6,000-a-year appointment from the bar association's president. Now some 259 cases later, "Manny" is more enthusiastic than ever about his job—despite the effort and hours it adds to his long day in also properly maintaining a busy civil practice. Other than in his official capacity, he is barred from criminal practice.

Gesticulating with his inimitable cigar, Dimitriou emphasizes with a cloud of smoke the point most important to him. "Often," he says, "It's the only time anyone has shown any interest in them." He's referring to the criminal defendants whom he represents.

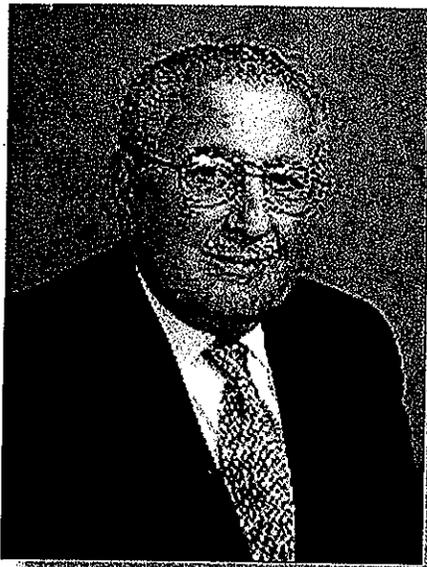


Of the 259 cases which in sometime devious ways reached him in the year, Dimitriou officially represented 146. Eleven were still pending at the end of the first year, 13 were turned over for various reasons to other lawyers appointed by Dimitriou, 36 were advised to seek private counsel because they were found not indigent, and 53 were found not the type of case for the public defender.

Although the operation of the defender office is paid for by county tax monies

granted directly to the association, its headquarters are not a county expense. Dimitriou's offices are located in the association's building, a stone's throw from the 18-story courthouse. From the county allocation, the association pays Dimitriou's salary and salary of his full-time secretary (\$3,120). Earmarked for associate counsel fees is \$2,000. Routine expenses account for the balance.

At the urging of President Judge Hess, a study of the public defender system



Emmanuel H. Dimitriou



Honorable Albert A. Stallone

was launched by the bar association years ago with Atty. Joseph E. DeSantis, then chairman of the criminal law committee, in charge. Few of the lawyers or the judges were happy with the then prevailing method of representing defendants who could not afford lawyers.

A common practice in Berks and other counties—it's still in operation in some areas—was to ask a defendant in the

courtroom if he wanted a lawyer. If he replied he did, the judge would look about, see a young lawyer who just happened to be present, and name him "defense counsel" on the spot. What frequently resulted was a hurried conference, sometimes lasting only a few minutes, right on the scene. The unfairness to both counsel and client is obvious.

But even as the special committee of the bar association studied the problem, the "Age of Gideon" made its advent. Like Sputnik to the scientist and educator

"Gideon" flashed across the legal sky and its waves rippled into the courts throughout the land.

In February of 1961, Clarence Earl Gideon appeared in circuit court in Bay County, Fla., charged with breaking and entering. Gideon said he couldn't afford a lawyer and asked the court to appoint one for him.

The jurist: "Mr. Gideon, I am sorry, but I cannot appoint counsel to represent you in this case. Under the laws of the state of Florida, the only time the court can appoint counsel to represent a defendant is when that person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint counsel to defend you in this case."

The defendant: "The United States Supreme Court says I am entitled to be represented by counsel."

Albert A. Stallone, then an assistant district attorney who took up the study started by DeSantis, observed in the final report which went to the bar association membership:

"Gideon's words were prophetically correct. He was convicted of the charges against him and sentenced to five years in prison. His subsequent appeal reached the Supreme Court of the United States.

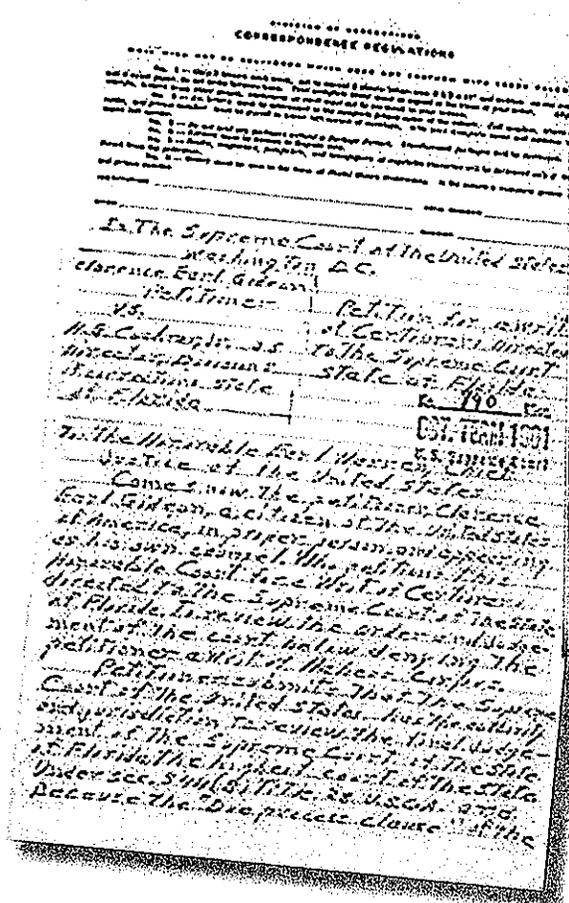
"On March 18, 1963, that court held the 6th Amendment to the Constitution requiring provision of counsel in criminal proceedings also was made obligatory on the states by the 14th Amendment.

"The Gideon decision became a new landmark in the law," Stallone wrote.

Almost four years after he was originally denied a lawyer, Gideon, on Aug. 5, 1963, was retried on the same charges. This time he had a lawyer. A one-day trial and Gideon was found innocent.

The effects of the Gideon case have been dramatic, far-reaching and, for a profession which to laymen seems to move with sluggish-pace, almost as instantaneous as dehydrated coffee.

Gideon set the stage. More than ever, the courts and the lawyers saw the need for some sort of public defender program. It was a question now of how.



Clarence Earl Gideon

Gideon Petition - Mr. Gideon's prose petition requesting review by the United States Supreme Court



The photo that accompanied the Reading Eagle article on April 11, 1965. It depicts Public Defender Dimitriou standing while his secretary and future wife interviews a potential client.

Berks County's feelings on this were best expressed by Judge James W. Bertolet when he appeared before the county commissioners at their annual budget review. The program "is a governmental function rather than a charity function," the jurist said.

The [bar association committee's] report recommended that the defender be an employee of the bar association, provided for a schedule of payment for associate counsel and ruled that the defender should not serve more than four years.

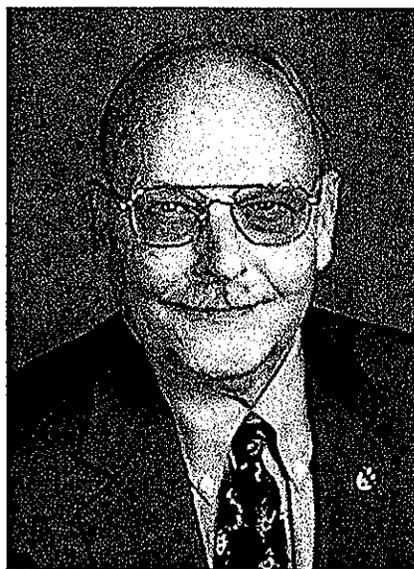
At its semi-annual membership meeting in October 1963, the association voted the commissioners be approached. Russell L. Hiller, federal bankruptcy referee and then the association's president, assigned the criminal committee this task. Three months later, the commissioners approved the program and the following February, Hiller appointed Dimitriou to the post.

"Associate counsels" are appointed by Dimitriou from a bar association list of interested lawyers. A lawyer assigned by him to represent a defendant who enters a plea of guilty receives \$50. For representation at a trial, such a lawyer

receives \$100, and for appeals requiring court argument, \$50.

The fact that he is, in a sense, a public official has misled many to think of him as another district attorney or an agent of the police. Dimitriou is finding this logic the hardest to combat. But gradually he is gaining the confidence of those he represents and with it their

understanding that he is, after all, a "defense attorney" with all the privileges—and all the obstacles—the term implies.



William R. Bernhart, Esquire

Although Dist. Atty. W. Richard Eshelman has been quick to recognize the value of the public defender's office in expediting cases, the district attorney's office grants no more and no less to Dimitriou than it would to any other private attorney. Nor do the police or other authorities.

The expediting of cases is a major factor in the approval of the system by Berks

jurists. Judge Readinger comments, "I think the defender system has resulted in handling cases more rapidly and keeping the backlog of cases to a minimum to some extent. It's much better than the old system...In most instances, we did not have sufficient time to investigate if the appointment was suitable to the lawyers at the time."

"Much of the credit" for the success of the operation, Judge Hess states, must go to Dimitriou. "Highly-pleased" with the initial year, Judge Hess is especially laudatory to the bar association and especially the criminal law committees for the work they invested in the program."

One of Manny's "Associate Counsels" was William R. Bernhart, Esquire, now the Dean of the Berks criminal defense bar. Bill remembers Manny providing him, not too far in advance of the start of trial, "one hundred dollars and a sheath of a morass of unintelligible paper." As an "Associate," Bill claims to have unsuccessfully represented one "charged with carnal knowledge of an attractive sow and a Pastor exposing himself at the ACME."

Manny served as Public Defender until March 1, 1968. By 1975, when William F. Ochs, Jr. became Public Defender, he was not appointed by the BCBA president but rather was hired by the County Commissioners with a salary paid by the County. In 1975 the PD offices were still in the Bar Building, but that changed shortly thereafter with a move to the basement of the Berkshire Building. The Criminal Law Committee continued to conduct interviews of applicants for assistant public defender positions, but that practice ended in the early 1980's. By that time, the office was completely funded and operated by the County.

The current Chief Public Defender, Glenn D. Welsh, has served in that capacity since 1998. He has a staff of twenty-three assistant public defenders and a total budget of \$3,075,452.

Quite a legacy established by Clarence Earl Gideon, helped along locally by Emmanuel H. Dimitriou, the late President Judge Warren K. Hess and now-retired Judge Albert A. Stallone. ■