

THE *Maricopa County* *Public Defender* TURNS

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Shooting Defense Shuffled

By JACK WEST

A SEPARATE attorney, named to avoid a possible conflict of interest, was appointed yesterday to defend one of four youths accused of the ambush shooting of detective Dudley Gibson.

Superior Court Judge Yale McFate named Irwin Bernstein to defend Ralph McGee, 19. The other defendants will continue to be represented by Howard Schwartz, deputy public defender.

A preliminary hearing for the four defendants in the court of Justice of the Peace Al J. Flood was continued until April 6 to give Bernstein time to familiarize himself with the case.

GIBSON was seriously wounded Feb. 23 when he was shot in the back as he stopped his patrol car for a signal light at Seventh Avenue and Buckeye Road. Charged with assault with intent to commit murder are McGee, 4451 S. 20th St.; Alfred Leo Smith, 20, 1545 W. Hadley; Stephen Bolden, 17, 1625 W. Maricopa, and Quentin Troy Thomas, 15, of 2117 E. Broadway.

Flood said the decision to appoint separate counsel for McGee was made because of indications of a conflict of interest between his defense and that of the other three defendants. Flood did not elaborate.

The decision followed a con-
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ference involving deputy coun- en felt that the shooting was ty attorneys Joe Jencks and unjustified. Larry Cronin with Schwartz and McPate.

IN A STATEMENT read by a court reporter McGee was quoted he fired the shot that hit the detective.

"They're trying to put all that stuff on me now," the statement continued, "but they was with me."

The statement also quoted McGee as saying that the shooting of the officer followed a discussion of the fatal shooting of a Negro by police several nights earlier.

A coroner's jury found that the police had fired "in line of duty," but McGee was quoted as saying that Smith and Bold-

en felt that the shooting was unjustified.

Detective Eloy Yassid testified yesterday that Thomas gave police a statement in which he said:

—McGee knew the Negro who had been shot by police.

—Bolden suggested shooting a policeman.

—The four walked around the neighborhood where Gibson was shot to select a place from which they could fire without being "boxed in."

—When Gibson's car approached, someone said, "Here comes a dick."

—Someone said, "shoot, shoot," just before McGee fired.



ACCUSED AMBUSHERS—Four youths charged in ambush shooting of detective Dudley Gibson confer with deputy public defender Howard Schwartz during preliminary hearing. From left

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Sept 10, 1965 - Original Staff Picture

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Gazette Staff Photo

Vernon Croaff (standing, right), newly appointed county public defender, talks to members of his staff. Also standing at front table are Lou Zussman (left), deputy, and Sylvia Thompson, office assistant. Seated at table (from left) are Marian Foster, administrative assistant; Howard

Schwartz, Don Francone and Don Jason, deputies; standing at rear table is Betty Bardwell, receptionist, and seated (from left) are Pete Brady, Eddie Yue, Helen Clayton and Jesus Cuellar, all interviewers. Not pictured are John O'Mara, chief deputy, and Gene Lindsey, investigator.

The year was 1965.

Americans were dying in Vietnam, Malcolm X was assassinated, NASA launched the Gemini mission, "The Sound of Music" took the Oscar for best picture over "Doctor Zhivago," and "The Girl From Ipanema" won a Grammy.

That was also the year the Maricopa County Public Defender's Office opened for business after an indigent Florida defendant named Clarence Earl Gideon forced forever a change in state indigent felony legal representation.¹ Although *Gideon v Wainwright* was decided in 1963, the states had been slow to react.

The County Board of Supervisors appointed Vernon Croaff to head up the office. He selected two veteran trial attorneys, Louis Zussman and John O'Mara, as chief deputies, and three young lawyers fresh from law school, Howard Schwartz, Don Francone and Don Jason. Three secretaries, two investigators and three interviewers completed the staff, and the office had its first client by late September. I was hired about two months later.

New lawyers were paid \$595 per month. The entire office budget was only \$145,000. Today the budget is just over \$66 million.² We were housed on the fourth floor of the "Old Courthouse," the exterior of which looks today as it did in 1965.

The practice of criminal defense was more relaxed back then. There were only 20 Superior Court Judges, and only three presided over criminal cases. Each judge had his own pre-sentence writer, who was also a probation officer. Now there are



Republic Photo by Jack West

are Quentin Thomas, Ralph McGee, Stephen Bolden and Alfred Smith. Hearing was continued to allow McGee to obtain separate counsel to avoid possible conflict on interest.

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93 Judges, forty Commissioners and a Probation Office with a staff of 1,100.

When Howard Schwartz's nascent lawyering skills irked Judge Thurman (known as "Dad"), the Judge invited him to lunch at the Arizona Club and gave him a few pointers. When I appeared 15 minutes late to a motion hearing, a different judge held me in contempt and fined me \$50. Not having the cash, his Honor remanded me to the custody of the Deputy Sheriff who had escorted my own client to the hearing. The deputy promptly handcuffed me to my bewildered client and took us both to jail.

The County Attorney was Robert Corbin. His chief deputy was Moise Berger, and the chief criminal deputy was Mike Benchoff. Their offices were in what is now the East Court building, and the door was always open with no security. We would visit our clients in the county jail, entering from the basement of that building. An inmate would shine your shoes for a quarter.

Vern Croaff gave us a free hand, but little guidance. He spent little time on the lawyering of criminal law, as became apparent some years later when he left the position amid allegations that he ran his personal law practice from the P.D.'s office.

The variety and seriousness of our cases was overwhelming for such raw, untrained and unsupervised attorneys. Almost all of our cases originated in Justice Court, affording our clients a preliminary hearing. These hearings could take days and were heard before mostly Justices of the Peace with no legal training whatsoever. It did allow, however, for some lengthy cross-examining (now virtually nonexistent at a prelim) of not only the police but also the victim (now totally nonexistent at a prelim).

An attorney was assigned to a case and handled it from the beginning to the end. It would not be unusual to finish a murder trial in the morning and be in a preliminary hearing that afternoon while the jury was out. However, if the jury went out in the late afternoon, it was the custom to let them deliberate into the evening while we retired to Harry's Bar across the street to await the verdict or to share—with one particular judge—a short nip from the bottle he kept in his bottom drawer in chambers.

Our clients perceived us as just an extension of the prosecution. We were paid by the County, just like the Judges and the County Attorney. We went six months without an acquittal.

As we gained experience and confidence, we did begin to experience some positive results. In early 1966, four juveniles were charged with shooting and seriously wounding Phoenix Detective Dudley Gibson by ambush. The police obtained confessions from the young men, which were the only link to the crime. However, the landmark case of *Miranda* was decided on June 13, 1966, and the juveniles' public defender, Howard Schwartz, used it to suppress the confessions, freeing his clients.

Also, in that first year an old alcoholic was tried for first-



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Craig Mehrens in county jail on a contempt charge, 1966.

degree murder in the beating death of his roommate's girlfriend. We considered it a victory to secure a directed verdict on first-degree murder; the client was convicted of second-degree. However, that verdict was reversed on appeal.

Looking back over the last 40 years, one can see the monumental work done by the dedicated men and women who serve and have served in that office. I cannot imagine an accused facing the judicial system without an attorney. Even with counsel the fight is always uphill, a Sisyphean affair.

Although notoriety is usually spotlighted on retained counsel, I am made more aware that it is the public defenders of the country who do the heavy lifting; who protect every day the constitutional rights of so many people, for so little pay, for so little thanks, and in such adverse conditions.

The Pulitzer Prize-winning author Anthony Lewis wrote a magnificent book about Gideon and his struggle, titled "Gideon's Trumpet." Today Gideon's horn stills plays for the lawyers who have undertaken the work he made possible. And what a clarion call it is. We all owe them our deep appreciation and thanks. **RF**

endnotes

1. Federal defendants had already made representation mandatory for all federal accused felons in *Johnson v. Zerbst*, 304 U.S. 458 (1938).
2. This includes the Public Defender's Office, the Legal Defender, the Legal Advocate and the Office of Contract Counsel.

CALLING ALL ALUMS: The Maricopa County Public Defender celebrates its 40th anniversary on December 8. All alumni of the office are invited to participate. For more information, visit www.pubdef.maricopa.gov/40th