During the 40th anniversary year of the U.S. Supreme Court’s decision in Gideon v. Wainwright, the American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants (ABA SCLAID) in 2003 held a series of public hearings to examine the implementation of the right to counsel in state court proceedings for poor persons accused of crimes. In January 2005, ABA SCLAID published its final report based on the testimony provided at the hearings, entitled “Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice.” This information sheet contains a short summary of the “Problems in Indigent Defense,” “Recent Reform Efforts,” and “Model Approaches to Providing Services” in Washington that were reported by the hearing witnesses. For the complete information regarding each of the statements listed below (including references to hearing transcripts, reports, and other supporting materials), please see “Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice,” available at http://www.indigentdefense.org/brokenpromise.

Problems in Indigent Defense

The following problems were reported by the hearing witnesses:

- Varying levels of local funding for indigent defense have led to disparities in the quality of representation throughout the state. Consequently, the measure of justice received by an indigent defendant may depend more upon location than the actual merits of a case.

- Assigned counsel in Washington receive inadequate rates of compensation, a problem that is often is compounded because many attorneys providing indigent defense services have enormous law school debts, yet are unable to obtain loan forgiveness.

- Public defenders in the state historically have operated with grossly inadequate office equipment and technology as well as insufficient support staff and expert witness funding.

- Notwithstanding clear guidance from national standards, sometimes indigent defense contracts in some states in Washington are awarded on a flat fee basis to the lowest bidder without regard to qualifications or any other considerations. One witness described how grossly inadequate representation by a law firm awarded a low-bid contract resulted in the wrongful conviction of a client charged with twenty-three counts of child rape. The lawyer did...
no investigation and did not meet with the jailed client prior to trial, despite the client’s repeated requests. On the night before trial, the lawyer brought to the jail the client’s wife, who was a co-defendant in the case, and told the client that the wife’s “only hope” of acquittal at trial was if the client pled guilty to the charges. The client followed the lawyer’s advice and was sentenced to forty-five years in prison, but his wife nonetheless was found guilty at trial. An extensive post-conviction investigation uncovered evidence establishing the client’s innocence, resulting in the client’s ultimate release from prison after serving five years of his sentence.

• Attorneys providing contract services frequently represent multiple defendants in the same criminal case, in violation of court decisions and rules of professional conduct relating to conflicts of interest. For example, a witness reported that a law firm holding the indigent defense contract in a Washington county considered its employees to be “independent contractors,” allowing one lawyer to represent a defendant in a criminal case while another lawyer from the same firm represented the state’s material witness.

• Contract defense systems in the state are not fully independent from undue political or judicial influence; for example, one witness reported that county officials in Clark County, Washington “closed the contract office down when the attorneys asked for too many resources.”

• Some judges in Washington make no attempt to determine whether an accused’s waiver is knowing, voluntary, and intelligent before accepting it, as required by Supreme Court decisions, and many judges do not follow the additional guidance contained in national standards. As one witness remarked, “[i]n dealing with large calendars and pro se defendants inexperienced with the law and legal process, it’s easy for judges to let their frustration get the best of them and look for ways to move the calendar along. There has been more than one documented case in Washington where judges have not fully advised defendants of their right to counsel and to trial by jury or have explicitly encouraged defendants to waive those rights in the name of efficiency.”

• According to one witness, there are at least 150,000 misdemeanor cases per year in Washington courts of limited jurisdiction. Despite court rules that establish the right to counsel in these types of cases “as soon as feasible after the defendant has been arrested, appears before a committing magistrate, or is formally charged, whichever occurs earliest,” the witness reported that counsel is not appointed for first appearance hearings in most courts, and in some cases, counsel is never appointed; this occurs either because counsel is not offered or waivers of counsel that take less than one minute of court time and do not meet constitutional standards are accepted.

Recent Reform Efforts

The following recent reform efforts were reported by the hearing witnesses:

• In 2004, the Washington State Bar Association approved recommendations of a study panel calling for additional state funding, monitoring of trial level indigent defense services, implementation of indigent defense standards, and the creation of a permanent state bar committee to advocate for legislation or court rules to address indigent defense shortcomings.
Model Approaches to Providing Services

The following model approaches to providing services were reported by the hearing witnesses:

- The Washington Defender Association (WDA), funded primarily through membership dues, was founded in 1983 to provide technical assistance and training for public defender offices, assigned counsel, and private firms providing indigent defense services. WDA created statewide standards for public defense services (endorsed by the Washington State Bar Association) and established a full-time immigration attorney position to advise defenders on issues affecting non-citizen clients. In addition, WDA files amicus curiae briefs in cases where local defenders challenge defense system inadequacies and engages in state legislative advocacy on behalf of defense service providers on issues such as alternative sentencing programs and post-prison offender rehabilitation. WDA also has worked with the ABA Juvenile Justice Center and other organizations on an assessment of juvenile justice in Washington, which included a statewide survey and site visits in seven counties.

- On the juvenile front, the TeamChild program in Washington was cited for helping public defenders, judges, and court personnel identify underlying causes of delinquency and advocating for community-based services for juvenile clients, such as those addressing educational, mental or medical health, or housing needs.