

MESSAGE FROM THE CHAIR

by Kimberly Kupferer

Chair, State Bar Criminal Law Section Executive Committee

EQUAL JUSTICE FOR ALL

Dear Members,

Martin Luther King once said, "Peace is not just the absence of violence, it is the presence of justice."

Perhaps one thing that we as prosecutors and defense lawyers can agree upon is that we are all better served in the criminal system when there is competent and diligent representation on both sides in a criminal action. Last year the State Bar embarked on a project that is still ongoing to review the standards for Indigent Criminal Defense within the state. A proposed State Bar of California Guidelines on Indigent Defense for 2005-2006 was recently posted on the State Bar web site. Concerns over proper representation for criminal defendants is not a new concern in this state. In the mid-1980's a statewide study was conducted by the State Bar's Standing Committee on the Delivery of Legal Services to Criminal Defendants and it found that among all of California's 58 counties, "there was no consistency in the manner, cost efficiency, and quality of legal services being provided to the indigent accused throughout the state." Almost 20 years later, California still faces the same legal dilemma-- not all defendants are receiving equal or even adequate representation.

The sixth amendment to the US Constitution provides, "In all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defense." At the state level most indigent criminal defense was done on a pro bono basis until well into the 20th century. In 1914 the first public Defender's office was established in Los Angeles. Finally in 1963, the Supreme Court ruled in *Gideon vs. Wainwright* that an indigent accused defendant in a serious felony case has a right to defense counsel appointed at state expense. A series

of other supreme court cases followed which expanded the right to counsel to juvenile as well as misdemeanor cases.

The idea for developing guidelines related to indigent defense is not unique to California. In fact, earlier this year the American Bar Association held a summit in Utah to address the problems related to inadequate indigent defense around the country. In 1998, former United States Attorney General, Janet Reno, backed a National Symposium on Indigent Defense. In 2000, the National Symposium on Indigent Defense issued a report through the Justice Department. In that report Attorney General Reno stated the following.

"My experiences as a prosecutor and as Attorney General have taught me just how important it is for every leg of the criminal justice system to stand strong. Indigent defense is an equally essential element of the criminal justice process, which should be appropriately structured, and funded and operating with effective standards. The reality is that despite the US Supreme Court's decision 36 years ago in *Gideon vs. Wainwright* that every defendant, rich or poor, has the right to be represented by a lawyer when charged with a serious crime, many adult and juvenile offenders are not receiving effective assistance of counsel."... "I believe that all of us, regardless of our position in the criminal justice system, have the responsibility to work to improve the quality of criminal defense for the poor. Our system of justice will only work, and will only inspire complete confidence and trust of the people, if we have strong prosecutors, an impartial judiciary, and a strong system of indigent criminal defense."

The State Bar Guidelines propose many changes and suggestions on how indigent legal services should be provided. Many Court Appointed Programs have cut

their fees so drastically so as to avoid the county starting a alternate public defenders office that services provided are bare bones and there is a flat fee system such that there is no incentive for attorneys to see, clients, prepare motions or do anything other than make the necessary court appearances. Other counties have gone to private firms handling the indigent defendant cases for a flat fee like an HMO. This new bidding system for some county contracts is reminiscent of the turn jails have taken with their privatization of part or all of the facilities and the problems inherent to those correctional facilities. A few weeks ago, Federal Judge Thelton Henderson had to take control of the entire state of California prison health system after they had been given 2 years to make changes and had done nothing and it was determined that there were numerous unnecessary and preventable deaths in the California prisons due to health care neglect.

Last year the San Francisco Daily Journal did a report on the Indigent Defense Panels in Alameda County and their "gross" under funding. The extremely low flat fee rates were criticized as leading to substandard representation for those indigent defendants who might happen to be assigned a panel attorney to represent them. In fact, the most recent guidelines produced by the State Bar suggest that flat fees should be avoided in the context of indigent representation. The panel suggested that the "amount of compensation should be a direct relationship to the time and effort reasonably invested by the attorney in the defense of his or her clients."

Even current President George W. Bush has acknowledged the need to provide more funding for indigent defense. In his 2005 state of the union address, President Bush proposed spending 150 million dollars over the next 3 years to ensure defense counsel, prosecutors and judges are adequately trained.

As the State Bar continues to grapple with Indigent Defense Guidelines and it's role in relationship to them, the Criminal Law Section of the State Bar will also seek ideas on enforcement of the proposed

guidelines and ABA standards. For those of you interested in participating in our efforts to assure quality representation for all please contact the Criminal Law Section through the State Bar.

Sincerely,

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Chair, Criminal Law Section

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