

**Remarks of Judge Michael S. Spearman  
Chief Criminal Judge  
King County Superior Court  
Seattle, Washington**

**Presented in testimony at a Hearing sponsored by the  
American Bar Association's Standing Committee on  
Legal Aid and Indigent Defendants entitled:**

**"ARE WE KEEPING THE PROMISE?  
The Right to Counsel 40 Years After *Gideon v. Wainwright*"**

**February 7, 2003  
Seattle, Washington**

I want to thank the A.B.A. for holding this hearing today and for this opportunity to speak to you about whether we in the legal profession are fulfilling the promise of Gideon v. Wainwright.

Prior to my appointment to the bench, I was a public defender for 10 years. I was a staff attorney at 2 different King County public defender agencies and with the Federal Defenders Office. At The Defender Association (T.D.A.) I supervised the felony division for two years working with and for Bob Boruchowitz, the director of T.D.A. In 1993, I was appointed King County Superior Court judge. In that position I have served in many capacities, but of particular relevance here are my two years as a juvenile court judge, two years as a criminal department judge and 3 years as the chief criminal judge. In the course of these 20 years of experience, I have been able to observe legal services for the indigent accused from three very different perspectives. And while I would be the first to say that, in comparison with many jurisdictions across the state and the nation, King County has much to be proud of, we also have much to do before the promise of Gideon v. Wainwright has been fulfilled.

The perennial problem for all public defender and legal aid services is funding and caseload levels, and Washington state is no exception in this regard. In many jurisdictions, particularly small municipal courts and in some state district courts, indigent defendants accused of misdemeanor and gross misdemeanor offenses are not assigned counsel until well after their first appearance in court. Many of these defendants plead guilty and are sentenced at that first appearance without the advice of counsel. It is likely that the court file for the majority of these defendants reflects that they have been fully advised of the right to counsel and that they knowingly, intelligently and voluntarily waived that right. However, it is virtually inconceivable that any of these people would have risked the deprivation of liberty likely to follow conviction without the advice of counsel if they could have afforded it or if it had been provided to them without cost or at an affordable cost. Our court rules provide that a defendant shall have the right to counsel “as soon as feasible after the defendant has been arrested, appears before a committing magistrate, or is formally charged, whichever occurs earliest.” This rule is not a reality for many defendants simply due to the expense associated with providing counsel in each of the more than 150,000 misdemeanor cases filed annually in our state. We must find the ability to manage our justice systems resources in a way that lives up to the promise of Gideon and the promise of our own rules.

I think that providing counsel for each defendant in our courts of limited jurisdiction also has the ameliorative effect of making judges better. When dealing with large calendars and *pro se* defendants inexperienced with the law and the legal process, it is often easy for judges to let their frustration get the best of them and to resort to unacceptable 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.

There have also been cases of judges with a pattern of treating defendants in a rude and abusive manner. Having lawyers at these proceedings can help the defendants understand the process and facilitate the efficient use of the court's time. In addition, where need be, lawyers can also serve as watch dogs who make sure that judges honor the constitutional rights of each defendant and treat each defendant with the respect that is appropriate to a judicial proceeding.

I do want to point out that the reason we know about these incidents is because these cases were brought to the attention of our Judicial Conduct Commission and the judges involved were sanctioned by our Supreme Court.

But even where jurisdictions have stepped up to the plate and funded public defender services, significant issues still remain with regard to assuring effective assistance of counsel to indigent defendants. Often there is no mechanism for monitoring defender agencies or assigned counsel to ascertain whether they are consistently representing their clients effectively. In a recent published opinion, a juvenile defendant was permitted to withdraw a guilty plea to 3 counts of rape of a child in the first degree. In that case it was found that appointed counsel delegated to his wife/assistant, who was not a lawyer, the task of interviewing and advising the 14-year-old child. She incorrectly advised the defendant regarding the burden of proof and his right not to testify and no investigation into the allegations was conducted at all. The only time the defendant met the attorney was just before entering court to plead guilty.

This and other recent appellate cases demonstrate the need for courts and other appointing authorities to develop effective methods of monitoring appointed counsel. Further, it is also a warning that simply awarding defender contracts to the lowest bidder can often serve only to remind us of the old adage “you get what you pay for.” And in the case referred to above, there can be no doubt that the cost of prosecuting the case again, several years later, is more expensive in many ways. It is more costly to the defendant, to the alleged victim and to the justice system as a whole, in terms of both money and, perhaps even more significantly, in terms of public confidence.

A second issue that remains is the caseload levels carried by public defenders and assigned counsel. High caseloads can significantly diminish the effectiveness of appointed counsel. As you probably have already heard, the Washington state legislature has enacted legislation requiring that counties and cities adopt standards for delivery of public defense services and that the standards endorsed by the Washington State Bar Association (W.S.B.A.) may serve as a guide in accomplishing that task. Although the W.S.B.A. has set a maximum of 300 misdemeanor cases per attorney, the caseloads in many jurisdictions far exceed this standard. For example, in Spokane County the public defender had a misdemeanor caseload of 523 case per attorney in 2001 and 470 in 2002, while in Whatcom County and Skagit County misdemeanor caseloads in 2001 were 404 and 525 cases per attorney, respectively.

Likewise, in juvenile matters where the standard is 250 cases per year, Whatcom County and King County defenders averaged 365 and 330 cases per attorney, respectively. In addition there are many areas of public defender practice where no

standards have yet been established, such as dependency proceedings, sex offender commitment proceedings, truancy and others.

High quality legal representation depends on many factors, but one overwhelming issue is the number of cases and clients that an attorney must serve. No attorney, no matter how experienced or dedicated or industrious, can deliver effective representation when caseload levels so far exceed the recommended standard.

A third critical factor in achieving Gideon's promise is the retention of experienced attorneys as public defenders and as assigned counsel. Experienced attorneys are a benefit in any setting. But when we are dealing with high volume calendars, poor and uneducated defendants, defendants who present issues ranging from drug addiction to mental health concerns, and where consequences often involve substantial loss of liberty, an attorney with experience is essential to assuring just results. For that reason we must make being a public defender a realistic career option for bright, capable and dedicated lawyers. Step one is addressing the crushing caseload statistics I just discussed, but other issues need to be addressed as well. Adequate compensation for appointed counsel and competitive salaries for public defenders, on par with deputy prosecuting attorneys with similar experience, must be on the agenda. A benefits package must be available that allows for families and permits one to save for children's educational needs and for retirement. Public defender offices must have adequate support staff so that expensive attorney time won't be used on tasks that don't require attorney skills, such as copying, filing pleadings and providing social services. Technological advances that make practicing law more efficient and cost affective must be introduced into public defender offices.

In a time of tight budgets it is easy to be shortsighted and think that a public defender office staffed with less expensive inexperienced attorneys is a better option. But my experience as a staff attorney, a supervisor and a judge tell me that experienced attorneys more than compensate for the expense in what they bring to the justice system. Experienced attorneys encourage prompt resolutions of criminal cases. They are able to evaluate cases and make reasonable plea agreements more quickly. Their experience is recognized by their clients and contributes to good attorney-client relationships. With experienced attorneys, the cases that go to trial are more likely to be the cases that should be tried. Trials are more efficiently done because the lawyers are better prepared and more focussed. And any judge will tell you that the best trials are those done with experienced lawyers on both sides. The results are more fair. There are fewer mistrials and fewer reversals on appeal because appropriate motions and objections give the trial court the opportunity to prevent or correct errors in a timely manner. All of these things are advantages to the system that result in substantial financial savings and enhance public confidence in the criminal justice system.

Let me conclude by saying that the difficulties with how King County provides legal representation to indigent defendants have not gone ignored by our courts or by our county executive and county counsel. In 1999 the King County Executive, Ron Sims brought together the Public Defender Oversight Committee. The committee membership included representatives from the defender agencies, the offices of the King County Prosecuting Attorney and the Seattle City Attorney, the King County Executives Office, the King County Council, the W.S.B.A., the Department of Adult and Juvenile Detention, and all of the levels of county's trial courts. The committee, with the assistance of The

Spangenberg Group, an internationally recognized consulting firm on criminal justice matters, conducted an extensive analysis of our public defender system. The analysis was to, among other things, evaluate the quality and efficiency of our system and to compare it to other alternative models. Although the study concluded that overall King County provides quality representation to indigent criminal defendants, there are a number of steps that could be taken to improve public defender services. Some of those steps have already been taken, such as upgrading the director position of the office of public defense, and we have recently concluded a case weighting study that we hope will allow us to more efficiently and effectively fund public defender services. Other recommendations included developing a centralized case management system along with improving the computer technology at the Office of Public Defense, as well as among the four defender agencies.

Finally, I again want to thank the A.B.A. for this opportunity. I'd be pleased to respond to any questions.