

Thank you for the opportunity to speak on the subject of indigent defense representation. My name is Tye Hunter and I recently retired after more than thirty years of direct involvement in the representation of indigent persons in state courts in North Carolina. I have served as a public defender, an appellate defender and, from 2001 through 2008 as the first executive director of the newly formed North Carolina Office of Indigent Defense Services. In my time I'd like to make a modest suggestion about a role the federal government could take to encourage reform.

## **1. Justice Denied**

But first I want to acknowledge the excellent work of the Constitution Project's National Right to Counsel Committee and the Committee's report, *Justice Denied: America's Continuing Neglect of our Constitutional Right to Counsel*. I agree with the report's criticism of our current attempts to provide counsel for indigent people accused of crimes. I also agree with the general thrust of the recommendations. I especially like that the recommendations are organized to point out what different actors could do to improve things. The bar, the state and federal judiciary, state legislatures and this Congress have all played a part in the neglect of the right to counsel and all, I think, must play a role if we are to reform our current system.

## **2. The North Carolina Indigent Defense Services Commission**

North Carolina created an Indigent Defense Services Commission (IDS) in 2000. I am attaching a document from the IDS website, [ncids.org](http://ncids.org), that summarizes the reforms undertaken by the Commission in the past eight years. These include the development of state wide rules governing the delivery of indigent legal services, expansion of public defender offices, creation of performance guidelines, improvement of training for lawyers and establishment of special state wide rosters for capital and appeal cases. While I am proud of what has been accomplished in North Carolina, we are aware that we are not nearly finished with the long and difficult work of reform. There are a number of significant reforms that would improve the quality of indigent defense in North Carolina that the Commission has been unable to accomplish, not because of lack of funds, but because of resistance to change by powerful interests among the bench and bar.

## **3. Money Not the Only Problem**

Lack of adequate funding is the biggest problem for indigent defense, but it is not the only challenge. Although the problems with indigent defense are repeated throughout the country, most people involved with indigent defense have a narrow and local view. I have found that most lawyers and judges are sympathetic with the kind of report we are discussing today and have no problem with general criticism of the quality of indigent defense work. However, most people in positions of power feel that their own jurisdiction is an exception to the general rule of deplorable quality. People support reform until it is specifically directed at the place where they make their living. While the local indigent defense system may work very badly for indigent people accused of crime, it may work pretty well for the local judges and lawyers. Or even if it doesn't

work very well for the professionals, at least they have learned how to negotiate in the current system and they are reluctant to exchange it for a system that may or may not serve them as well. Thus, it can be difficult to convince folks on the local level that they have a problem, much less that they need to change the ways they have been doing things. Anyone hoping to actually reform our current system must understand that it is really thousands of different local systems. This does not mean that a regional or national reform effort cannot succeed, but any reform strategy must either have the authority to impose reform despite local misgivings or be prepared to engage in a protracted effort one courthouse at a time.

#### **4. A Role for the Federal Government**

I suspect there will be little dispute about the fact that the right to counsel is neglected and that the neglect is nationwide in scope. The issue of what the Congress can and should try to do about it is more controversial.

As an early step, I think it would be useful if the federal government would make grants available to reward and encourage indigent defense reform. Currently, federal grants and assistance coming to North Carolina for public safety or criminal justice almost never make their way to indigent defense.

I know that many are suspicious of further federal involvement in what they think should be the responsibility of the state or county or city. I can tell you about one federal program that funded an indigent defense project in North Carolina that has had a very positive impact. In 1980, the federal government awarded an LEAA grant to North Carolina to fund an Appellate Defender's Office for one year. That was the first statewide indigent defense program in North Carolina. During that first year a thorough evaluation was conducted and published. The Office of the Appellate Defender was picked up for state funding the second year and has lifted the quality of indigent representation for appeals for 29 years. The success of that office helped set the stage for other statewide defenders and for the acceptance of IDS in 2000. The lawyer who had been the first Appellate Defender in 1980 served as the first Chair of the IDS Commission in 2000. That small and limited time investment by the federal government paid large dividends for reform in North Carolina.

Any funding from the federal government should be aimed at improving the status quo rather than merely filling the budget gap for state or local programs. I would reward programs that agree to standards consistent with the recommendations of the Right to Counsel Committee's report and groups like American Bar Association, the National Legal Aid and Defender Association and the National Association of Criminal Defense Lawyers. I would also encourage innovators. A few of our thousands of local systems can serve as pilot programs as we try to discover better ways to accomplish the goal of creating a truly effective system of indigent defense. While many jurisdictions fail to provide even minimal representation, others have tried new approaches. These experiments should be encouraged. All programs that are funded should be evaluated to determine whether they should be continued.

Thank you again for your invitation, thank you for your interest in this very important problem, and I am happy to answer any questions you may have.