Delivering on *Gideon*'s Promise: North Carolina's Efforts to Enhance Legal Representation for the Poor

Alyson Grine

In *To Kill a Mockingbird,* the State of Alabama appointed Atticus Finch to represent Tom Robinson because Robinson was too poor to hire an attorney. An African-American man falsely accused of raping a white woman in the Jim Crow South, Robinson sorely needed counsel. Finch was all that stood between him and an angry lynch mob. Finch held fast, putting himself and his children in harm's way to defend Robinson. He believed in the presumption of innocence, zealous advocacy, and a fair hearing. He rejected the notion that race and economic status should play a role in determining guilt or innocence. For these reasons, Finch has been embraced as a moral hero for nearly fifty years. Ironically, when Harper Lee penned the Pulitzer Prize–winning novel in 1960, states were not required to provide attorneys to poor people such as the fictional Robinson. Real people faced incarceration without the benefit of counsel.

Although it has always been clear that the Sixth Amendment to the U.S. Constitution guarantees the right to appointed counsel to people accused in federal court of committing a crime, until 1963, people accused in state court were not guaranteed this right. In 1963, in the landmark case of *Gideon v. Wainwright*, the U.S. Supreme Court held that the states must provide an attorney to every indigent person accused in state court of committing a felony.[1] The right to counsel has since been extended to many

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misdemeanor offenses and to all critical stages of criminal proceedings.

This article reviews the cases leading up to *Gideon, Gideon* itself, and subsequent cases related to the quality of representation. It then provides an overview of the various systems in place across the states for representation of indigent defendants, and it describes North Carolina's system in that context. Next, it discusses the need for training of defenders, and it identifies guidelines and standards that have been promulgated in support of quality training. The article concludes with a description of a unique collaboration in North Carolina to provide training for defenders.

The Right to Counsel

The Sixth Amendment to the U.S. Constitution provides, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." The U.S. Supreme Court initially interpreted this language to mean that in *federal* courts, counsel had to be provided for people accused of crimes who could not afford to hire an attorney.[2] In 1942, in *Betts v. Brady*, the Court considered whether the guarantee of counsel for indigent defendants applied to defendants in *state* courts under the Due Process Clause of the Fourteenth Amendment. The Court concluded that "appointment of counsel is not a fundamental right, essential to a fair trial."[3] Therefore the Fourteenth Amendment did not require appointment of counsel in state court in the way that the Sixth Amendment required appointment in federal court.[4] Under *Betts* an indigent defendant in a state criminal matter was entitled to counsel only in special circumstances, such as in capital cases

(those in which the state was seeking the death penalty) in which the accused was illiterate or mentally challenged.

Twenty-one years later, a handwritten letter to the U.S. Supreme Court from a prisoner was the catalyst for toppling the holding in *Betts*. In 1963 the Court accepted a petition written in pencil on prison stationery by a man who was too poor to pay the court filing fee. Clarence Earl Gideon was serving time in a Florida penitentiary for breaking into a pool hall and taking coins from vending machines. At trial he asked that counsel be appointed to represent him because he could not afford to hire an attorney, and his request was denied.

> The COURT: *Mr. Gideon, I am sorry, but I cannot appoint Counsel to represent you in this case. Under the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint Counsel to defend you in this case.*
>
> The DEFENDANT: *The United States Supreme Court says I am entitled to be represented by Counsel.*[5]

Forced to represent himself, Gideon, a semiliterate drifter, was quickly convicted and sentenced to prison for five years.

Reversing *Betts*, the U.S. Supreme Court unanimously ruled in *Gideon v. Wainwright* that every person charged with a serious criminal offense is entitled to counsel and that the state must provide an attorney to any person who cannot afford to hire one. Justice Hugo Black wrote for the majority:

> *That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.*[6]

The Court vacated Gideon's conviction and sent the case back to state court. Gideon was retried with the benefit of appointed counsel, and acquitted.

The impact of *Gideon* was far-reaching. In its wake, the U.S. Supreme Court has extended the right to counsel to direct appeals, initial appearance, custodial police interrogation, critical stages of preliminary proceedings, misdemeanors in which imprisonment is imposed, and misdemeanors in which a suspended sentence of imprisonment is imposed.[7] In the 1977 case of *Massiah v. United States*, the Court held that the Sixth and Fourteenth amendments require counsel at all critical stages of a criminal prosecution.[8] Further, the Court has held that due process requires appointment of counsel in noncriminal proceedings that involve loss of liberty or significant deprivations of rights, such as juvenile proceedings and, in some instances, proceedings for termination of parental rights.[9]

North Carolina statutes also provide a right to counsel for parents in abuse, neglect, or dependency proceedings; proceedings on termination of parental rights; and certain other proceedings.[10] Additionally, the North Carolina Supreme Court has recognized a due process right to counsel in civil contempt proceedings for failure to pay child support when the respondent is facing incarceration.[11]

The *Strickland* test of defense counsel's ineffectiveness: (1) demonstration of deficient performance and (2) resulting prejudice of the outcome.

In today's climate, the right to counsel is accepted as integral to the American system of justice and is rarely called into question despite the multimillion-dollar cost to taxpayers each year. Robert F. Kennedy summarized the impact of *Gideon* as follows:

> *If an obscure Florida convict named Clarence Earl Gideon had not sat down in his prison cell . . . to write a letter to the Supreme Court, . . . the vast machinery of American law would have gone on functioning undisturbed.*
>
> *But Gideon did write that letter, the Court did look into his case[,] . . . and the whole course of American legal history has been changed.*[12]

The Constitutional Minimum for Quality Representation

Although *Gideon* triggered a monumental change in the law, it did not instantaneously create sound systems across the country for providing representation for indigent defendants. Media accounts of breakdowns since 1963 have at times shocked the collective conscience: the man who languished in a Mississippi jail for eight months before counsel was appointed to represent him, the Texas lawyer who slept throughout his client's capital murder case, the Alabama lawyer who was so impaired during a capital trial that the trial had to be delayed for a day while he recovered in jail.[13] "*Gideon* is of immense symbolic importance," according to Abe Krash, one of the attorneys who worked on the case, "but in practice there's a great gap between the promise and how it's been realized."[14] Krash noted that the Court's decision did not address critical issues such as what quality of legal representation is required to protect the constitutional rights of indigent defendants, what level of funding is necessary to ensure adequate legal defense, what system of defense is best suited to ensuring quality representation, and how such a system should be managed.[15]

Although *Gideon* inspired hope that every person would receive capable representation regardless of economic status, ensuring quality representation continues to be a challenge. In 1984 the U.S. Supreme Court handed down its decision in *Strickland v. Washington*, a case establishing the minimum constitutional requirements for attorney

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performance.[16] In setting out a test for whether a conviction or a sentence should be set aside on the basis of ineffective assistance of counsel, *Strickland* set the bar low, presuming that the attorney acted reasonably under the circumstances.

In *Strickland*, the defendant, David Washington, pled guilty to three capital murder charges. The judge told Washington that he respected people who were willing to admit responsibility, but he made no promise about the sentence that he would impose. Washington's lawyer presented no evidence during the sentencing hearing, merely asserting that Washington's life should be spared because he had shown remorse, had no criminal history, and had committed the crimes under duress. The judge found numerous aggravating circumstances and sentenced Washington to death on all three counts of murder.

On appeal, Washington submitted that his attorney had been ineffective in that the attorney did not (1) request additional time to prepare for the sentencing hearing, (2) request a psychiatric evaluation of Washington, (3) investigate and present character witnesses, (4) seek a presentence investigation report, (5) present meaningful arguments to the sentencing judge, and (6) investigate the medical examiner's report and cross-examine the State's medical experts.[17]

The Supreme Court announced a two-part test for determining whether counsel was ineffective. First, to have a conviction or a death sentence set aside, the defendant had to demonstrate that counsel's performance was deficient, falling below "an objective standard of reasonableness."[18] Counsel must be given wide latitude to make tactical decisions, the Court cautioned, and the defendant must overcome the presumption that counsel was employing sound trial strategy under the circumstances.[19]

Second, the defendant had to show that counsel's ineffectiveness substantially prejudiced the outcome of the case, by demonstrating "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[20] In other words, the defendant had to establish a reasonable probability that he or she would not have been convicted or, in this case, sentenced to death, but for counsel's errors. Ultimately the *Strickland* Court decided that Washington's claim failed both prongs of the test in that his lawyer's actions were not unreasonable and he did not show prejudice that would require setting aside Washington's death sentences.

Between 1984 and 2000, the *Strickland* standard for ineffectiveness was applied strictly to capital cases as well as noncapital cases. James Messer was executed in Georgia in 1988 after his trial attorney made no opening statement, presented no evidence, made no objections to the State's admission of fifty-three items of physical evidence, cross-examined only nine of the State's twenty-three witnesses, and presented only Messer's mother at the sentencing phase.[21] Keith Messiah was sentenced to death in Louisiana in 1988 following a one-day trial and a twenty-minute sentencing hearing.[22] Jesus Romero was executed in Texas in 1992 after his trial attorney failed to present any evidence at the sentencing phase and made a single closing argument to the jury: "You've got that man's life in your hands. You

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can take it or not."[23] Larry Heath was executed in 1992 after his appellate attorney wrote a one-page brief to the Alabama Supreme Court, citing one case and raising one claim, the quality of which was "unreasonably deficient," according to the federal court that reviewed the matter on appeal.[24] In each of these cases, the courts found that counsel's conduct did not violate the standard established by *Strickland*.

Nationally, the system of providing representation to indigent defendants is a patchwork. Even in the best statewide systems, funding may not be adequate.

In 2000, however, the U.S. Supreme Court began to examine attorney performance in a slightly different light. In *Williams v. Taylor,* attorney conduct was similar to that in *Strickland*: counsel failed to investigate the client's background and prepare for the penalty phase of a capital case.[25] The Court found in *Williams* that had counsel done adequate investigation, he would have uncovered voluminous circumstances that would have mitigated the defendant's conduct, such as evidence of physical abuse as a child and borderline mental retardation.

Williams was notable in that it looked to the *ABA Standards for Criminal Justice* as a means of evaluating counsel's performance. Although the *Strickland* Court had acknowledged the standards, it had admonished that they did not have sufficient authority to override the presumption that counsel acted reasonably:

> *Prevailing norms of practice as reflected in American Bar Association*

standards and the like, e.g., ABA Standards for Criminal Justice 4-1.1 to 4-8.6 (2d ed 1980) ("The Defense Function"), are guides to determining what is reasonable, but they are only guides. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.[26]

The *Williams* Court, in contrast, used no such qualifying language in relying on the ABA standard regarding counsel's obligation to conduct a thorough investigation of the defendant's background.[27] Had counsel adhered to such a standard, the Court concluded, the defendant might not have been sentenced to die.

In 2003 the U.S. Supreme Court echoed its holding in *Williams*, finding in two capital cases that attorneys had been ineffective in failing to investigate their clients' history. In both *Wiggins v. Smith* and *Rompilla v. Beard*, the Court once again cited the ABA standards as a measure of attorney performance.[28] In *Wiggins*, the Court cited the ABA standards for the proposition that counsel must discover all reasonably available mitigating evidence, inform the prosecutor of any mitigating circumstances, and argue them before the court at sentencing.[29] Quoting *Strickland*, the *Wiggins* Court characterized the ABA standards as "guides to determining what is reasonable," but omitted the *Strickland* language regarding the limitations of such standards.[30]

In *Rompilla*, three justices dissented from the majority's conclusion that counsel was ineffective, complaining that the majority had departed from precedent by giving the ABA standards too much weight:

> *For this reason, while we have referred to the ABA Standards for Criminal Justice as a useful point of reference, we have been careful to say these standards "are only guides" and do not establish the constitutional baseline for effective assistance of counsel. The majority, by parsing the guidelines as if they were binding statutory text, ignores this admonition. The majority's analysis contains barely a mention of* Strickland *and makes little effort to square today's holding with our traditional reluctance to impose rigid requirements on defense counsel.*[31]

Despite the complaints of the dissenting justices, the Supreme Court had begun to use national standards as an objective measure of effectiveness. The standards provided a means of rebutting the *Strickland* presumption that counsel had acted reasonably. As a result, counsel was subjected to greater scrutiny, and the defendants who were prejudiced by counsel's deficiencies in *Williams*, *Wiggins*, and *Rompilla* obtained relief.

The cases following 2000 might be read as implicitly recognizing that the promise of *Gideon* is not realized by the mere appointment of counsel. Zealous representation is essential when a person of meager resources is pitted against the resources of the government and when the stakes include conviction, loss of liberty, and sometimes death.

Ultimately, however, the challenge falls to the states to deliver representation beyond what is minimally tolerable under the Constitution. Although relief for ineffective assistance of counsel may be more available under recent U.S. Supreme Court cases than it was under *Strickland*, relief on a case-by-case basis does not ensure that all defendants are receiving adequate representation. Instead, the states bear the responsibility

Public Defenders and Appointed Attorneys in North Carolina

- Public defenders: salaried employees of a public defender office who represent indigent clients exclusively. The head of the office is referred to as the "chief public defender," and the staff attorneys are referred to as "assistant public defenders."
- Appointed attorneys, also called "private assigned counsel" or "PACs": lawyers in private practice who accept the cases of indigent defendants and are typically paid an hourly fee of $75 in exchange for their services. In districts where there is a public defender office, appointed attorneys handle the cases that the public defender cannot accept because of a conflict of interest. In districts without a public defender office, appointed attorneys handle the entire caseload of indigent defendants.

of establishing sound systems of delivering, overseeing, and enhancing representation of indigent defendants.

The Importance of Systems and Oversight

The nation currently is made up of a patchwork of systems for providing representation to indigent defendants. Nineteen states have statewide public defender systems, in which representation is provided at state expense by salaried staff attorneys throughout the state.[32] Of these, twelve also have an independent commission with authority over representation statewide.[33] Duties of the commission may include determining the method or methods of delivering services for the state, establishing appropriate compensation rates for appointed counsel, and developing standards for performance. Six states do not have statewide public defender services, but do have commissions.[34] All six have some public defender offices, but the offices either do not serve the greater part of the state or accept limited types of cases, such as felonies.[35] In other states, either the county is responsible for funding and delivering services, or the responsibility is divided between local and state governments.[36]

Within the states that do not have comprehensive public defender services, the system of providing representation varies from one locale to another. One judicial district may have a public defender office with staff attorneys on salary, whereas a neighboring district may appoint private attorneys to represent indigent defendants (for a comparison of public defenders and appointed attorneys, see the sidebar on page 11). Private attorneys typically are appointed on a case-by-case basis and paid an hourly rate or a flat fee. Other districts within a given state may use a contract system under which private attorneys or firms assume the responsibility for representing indigent defendants over a longer time span.[37]

Private appointed attorneys are an important component of the system, even within a public defender district. They handle "conflict cases," those that arise when multiple people are charged with committing a given crime. For example, if three men are charged with robbing a store, the public defender can represent only one of them because they may have incompatible defenses. That is, each may assert that the other two participants forced him to participate in the crime. Appointed attorneys also help by shouldering a portion of the caseload when the public defender office is overwhelmed. In districts without public defender offices, some private attorneys handle appointed cases exclusively, devoting themselves to representing indigent defendants just as public defenders do, but without the supportive office setting.

Defenders of indigent clients need timely, comprehensive, continuing education of high quality. The ABA recommends that government fund such training to protect the right to counsel.

The states with commissions have an advantage in that a body is in place to evaluate the big picture and set the bar for attorney performance by adopting guidelines or standards and employing various oversight mechanisms. Public defender systems also provide a level of oversight in that within the public defender office, a supervisor, or chief public defender, screens attorneys who apply to work in the office and supervises attorneys on staff. Public defender offices have the additional advantage of specialization in a few areas of law, typically criminal and juvenile delinquency. For reasons such as these, there is a clear trend across the country toward creating statewide commissions and expanding public defender offices.[38]

The states that have succeeded in creating statewide public defender services or commissions still face problems, particularly if those systems are not adequately funded.[39] Without adequate funding, systems can become overburdened. In public defender offices, attorneys may carry daunting caseloads, representing hundreds of clients simultaneously. In this climate, attorneys are hard-pressed to provide effective representation in the form of conducting a thorough pretrial investigation, filing and litigating motions, retaining expert witnesses, and regularly taking cases to trial. Instead, many public defenders encounter pressure from judges, prosecutors, and sometimes their own offices to dispose of cases quickly. Before long, attorneys working in such an environment may experience burnout, leading to high turnover rates. Often, recent law school graduates step into the shoes of departing public defenders, and the office loses the benefit of the departing attorneys' accumulated knowledge and experience.

Public defenders and private appointed attorneys also may not be compensated adequately. The inadequate compensation makes recruiting and retaining quality professionals to serve indigent defendants a continuing

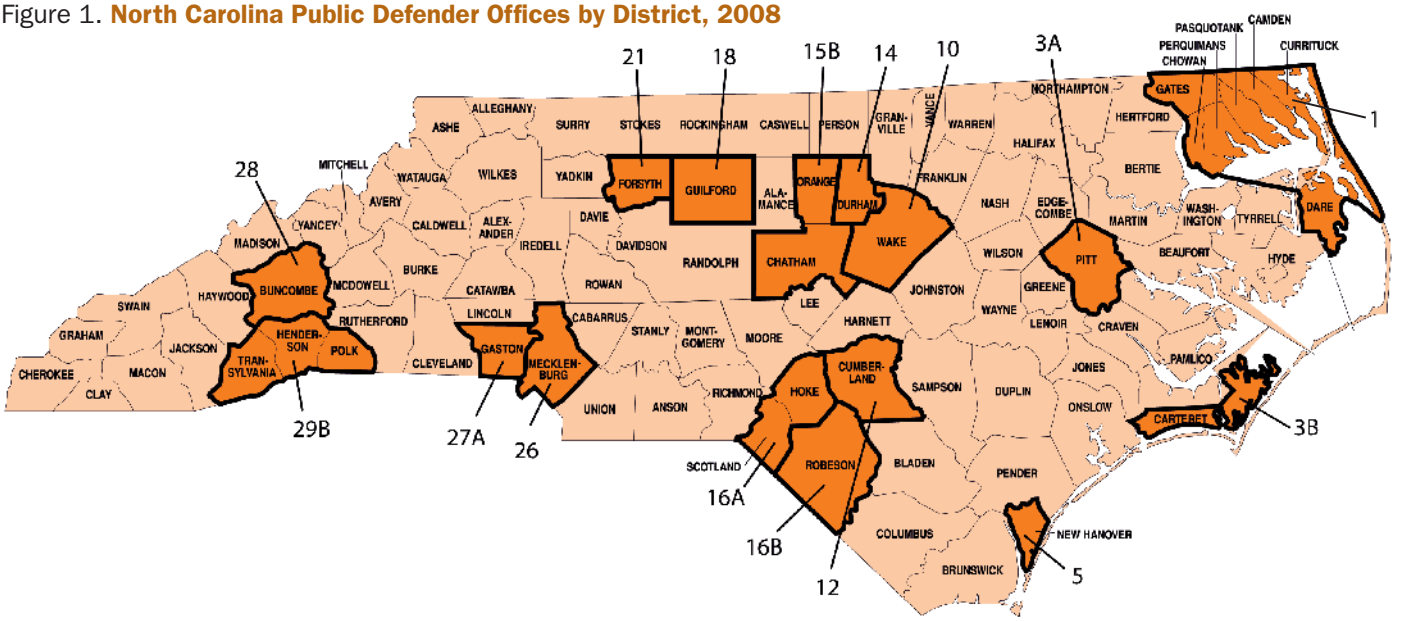
Goals of the North Carolina Commission on Indigent Defense Services

The goals of the North Carolina Commission on Indigent Defense Services are as follows:

- "[T]o recruit the best and brightest North Carolina attorneys to represent indigent defendants;
- [T]o ensure that every attorney representing indigent defendants has the qualifications, training, support, resources, and consultation services [he or she] need[s] to be [an] effective advocate[];
- [T]o create a system that will eliminate the many recognized problems and conflicts caused by judges appointing and compensating defense attorneys; and
- [T]o manage the state's indigent defense fund in a more efficient and equitable manner."

Source: North Carolina Court System, Office of Indigent Defense Services, www.ncids.org.

Figure 1. **North Carolina Public Defender Offices by District, 2008**



challenge. Appointed attorneys in North Carolina provide representation at a deeply discounted rate compared with the market rate for private legal services. Currently, an attorney who is appointed to a noncapital case is paid $75 per hour, less than half the average hourly rate that a private defense attorney would charge in most parts of the state.[40] For example, a private lawyer would typically charge between $1,000 and $3,000 to represent a client charged with driving while impaired. In contrast, appointed lawyers are paid an average of $280 for handling such a case. When the cost of operating a law practice is factored in, attorneys who are appointed to noncapital cases in North Carolina net $22 per hour, on average, for their professional services.[41]

The Organization of North Carolina's System for Representing Indigent Defendants

North Carolina's size, diversity, and rapid growth are strengths in many respects, but present challenges in providing representation for indigent defendants. The Tar Heel State stretches five hundred miles from west to east, or "from Murphy to Manteo," as the popular saying goes. It is made up of one hundred counties and divided into forty-one judicial districts.[42] With more than 8.5 million people, North Carolina is the eleventh-most-populous state in the nation. The state has experienced rapid population growth in recent years, as well as a proliferation of cases in the criminal justice system, and the number of dispositions of cases involving indigent defendants has grown more than 50 percent in the past five years.[43]

North Carolina has a mixed system for representation of indigent defendants, consisting of public defender offices, appointed counsel, and a small number of contracts with private attorneys.[44] Sixteen of the forty-one judicial districts in North Carolina have public defender offices. Some of the public defender districts encompass multiple counties, with the result that twenty-six counties are covered by public defender offices (see Figure 1).[45]

In districts without public defenders, private attorneys are appointed on a case-by-case basis, or, in limited instances, they enter into contracts with the state's Office of Indigent Defence Services (IDS) to handle cases in their district on an ongoing basis. Overall, the number

Performance Guidelines

In 2004 the North Carolina Commission on Indigent Defense Services (IDS Commission) adopted *Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level*. The guidelines identify issues that may arise at each stage of a noncapital criminal proceeding, and recommend effective approaches to resolving those issues. They are designed to be a resource for defense counsel as well as a training tool. Following is an excerpt from the guidelines:

Guideline 1.2 Role of Defense Counsel

(a) The paramount obligations of criminal defense counsel are to provide zealous and quality representation to their clients at all stages of the criminal process, and to preserve, protect, and promote their clients' rights and interests throughout the criminal proceedings. Attorneys also have an obligation to conduct themselves professionally, abide by the Revised Rules of Professional Conduct of the North Carolina State Bar and other ethical norms, and act in accordance with all rules of court.

Source: North Carolina Commission on Indigent Defense Services, *Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level* (Raleigh: North Carolina Commission on Indigent Defense Services, November 2004), 1, www.ncids.org/ (click on IDS Rules and Procedures).

Selected Training Programs for Defenders of Indigent People

Training programs offered through the School of Government and funded by the Office of Indigent Defense Services include the following:

New Misdemeanor Defender Program

This annual introductory program provides training in substantive law and procedure in criminal district court, where misdemeanor cases are primarily heard. Participants develop client-counseling, negotiating, and bench-trial skills through role-play and small-group work, and they engage in a discussion with prison inmates about the role of counsel and attorney-client relationships.

New Felony Defender Program

This annual program is an introduction to representing clients charged with felonies in superior court. It covers topics such as discovery, motions practice, and preservation of the record for appeal. Clients work in small groups to prepare a mock case for trial.

North Carolina Defender Trial School

This annual five-day program is designed to help defenders hone their criminal trial skills. Participants practice opening statements, closing arguments, examination of witnesses, and other trial skills based on their own cases.

Juvenile Defender Training Programs

- The New Juvenile Defender Program is an introductory program that covers topics such as communicating with child and adolescent clients and crafting appropriate dispositions for juveniles adjudicated delinquent. The program includes role-play and small-group work as well as a visit to a juvenile detention center.
- The Annual Juvenile Defender Conference covers topics of current interest, such as school-related offenses and the constitutional rights afforded to juveniles.

Parent-Attorney Conference

This annual conference provides training for attorneys representing parents in cases of abuse, neglect, and dependency and termination of parental rights. The inaugural conference in 2007 was a nuts-and-bolts training event on representing parents. Future programs will address current topics of interest, such as representing chemically dependent parents.

Civil Commitment and Guardianship Training

Civil commitment and guardianship programs alternate each year and focus on issues specific to those kinds of cases, such as determining capacity.

A full calendar of events is available at www.indigentdefense.unc.edu.

of attorneys working in public defender offices is 213, and the number of private attorneys appointed to represent indigent defendants is about 2,800.

Each district is a unique culture. Carteret County, on the east coast, has a small public defender office, consisting of two attorneys and one support staff. Criminal offenses there often relate to the county's status as a tourist locale: impaired driving abounds in the warmer months, and breaking and entering is frequent in the winter, when vacation houses are left empty.

In contrast, the Mecklenburg County office, in the western part of the state, employs more than 50 attorneys, 7 investigators, and numerous support staff. Mecklenburg County includes the Queen City of North Carolina, Charlotte, and thus encounters more criminal offenses that arise from urban problems such as gangs and firearms.

The District 1 public defender office covers seven counties in the northeast part of the state. Public defenders there travel over bridges and waterways to appear in three courthouses.

In contrast, the District 14 office serves only one county, Durham. The office is located in the same high-rise building as the court.

All the public defender offices handle both felony and misdemeanor cases at the trial level. About half of them accept juvenile delinquency cases, and a few represent parents in abuse, neglect, and dependency proceedings. Public defenders do not handle their cases on appeal to the North Carolina Court of Appeals or Supreme Court. This function is housed in North Carolina's Office of the Appellate Defender.

Each public defender office is supervised by a chief public defender. Selection of the chief is a local matter. The senior resident superior court judge appoints the chief after receiving recommendations from the local bar association.

Overseeing this vast, complex system is the IDS (for the goals of IDS, see the sidebar on page 12). Created by the North Carolina General Assembly in 2000, IDS is charged with overseeing the provision of legal representation to people entitled to counsel at state expense, and with managing the indigent defense fund, which now totals $108.5 million per year.[46] IDS carries out its statutory mandate with a central staff of 8 full-time employees, 3 part-time employees, and a small financial services division. IDS is governed by the Commission on Indigent Defense Services, made up of thirteen members selected by various appointing authorities, including the governor, the chief justice of the North Carolina Supreme Court, the speaker of the North Carolina House, the president pro tem of the North Carolina Senate, and various bar groups in North Carolina.[47]

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Since it began operating in July 2001, IDS has implemented a series of reforms. For example, it has developed statewide attorney rosters—lists of attorneys who are qualified for appointment in various practice areas such as capital trials and cases on appeal. It has raised the rate of compensation to $95 per hour in cases that may result in capital punishment, and to $75 per hour in noncapital cases. Also, it has created performance guidelines for representing clients at each stage of the proceedings for criminal cases; juvenile delinquency cases; abuse, neglect, and dependency cases; and cases involving termination of parental rights (for an excerpt from the performance guidelines, see the sidebar on page 13).

Further, IDS has created public defender offices to serve five additional districts and is conducting an ongoing evaluation to determine whether more public defender offices would be cost-effective or are necessary because of a shortage of private attorneys available to handle appointed cases.[48]

National Attention to Education of Defenders

Training for defenders of indigent people is recognized as a critical part of ensuring high-quality legal representation. Law school alone cannot sufficiently prepare a new attorney for the rigors of a defender's job because it must provide a general, substantive education in a wide array of civil and criminal subjects in only three academic years. A recent law school graduate may have taken only a few courses germane to his or her practice area. Criminal defense is a specialized area that requires in-depth knowledge of crimes and sentencing guidelines as a starting point. Beyond that, practitioners must be well versed in constitutional law to know whether their clients' rights have been violated, perhaps by an unlawful search or a coercive police interrogation. They must have a firm grasp of the evidentiary rules that govern what is admissible at trial so that they can prevent unlawful evidence from being introduced, and they must have honed trial-advocacy skills to screen prospective jurors, examine witnesses, and deliver persuasive arguments. Criminal attorneys also must be aware of collateral consequences, such as whether a conviction may result in eviction from public housing or deportation from the country. Defenders of indigent people in particular work in a fast-paced, high-pressure setting where an error may have devastating consequences for the client.

The collaboration between IDS and the School of Government places the training of defenders in a university. This is unique in the nation.

National standards and guidelines have emphasized the importance of timely, comprehensive, ongoing, quality education. In its 1992 Standards, subtitled *Providing Defense Services,* the ABA declared that defenders must receive should fund such training to protect the right to counsel for indigent people. The relevant standard, 5-1.5, states,

> *The legal representation plan should provide for the effective training, professional development and continuing education of all counsel and staff involved in providing defense services. Continuing education programs should be available, and*

public funds should be provided to enable all counsel and staff to attend such programs.[49]

In 2002 the ABA went further in its *Ten Principles of a Public Defense Delivery System,* a practical guide for creating, funding, and improving public defense delivery systems.[50] The ten principles represent "the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for defendants who are unable to afford an attorney."[51] Included among them is Principle 9, which mandates all-inclusive training on a par with that offered to prosecutors:

Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.[52]

The National Legal Aid and Defender Association, an organization of lawyers dedicated specifically to representing indigent defendants, promulgated the *Defender Training and Development Standards* as "another attempt to promote and improve quality and competence in the delivery of criminal defense services to the poor."[53] Standard 1.1, titled "Training is Essential," states, "The defender organization must provide training opportunities that insure the delivery of zealous and quality representation to clients."[54] Standard 1.3, "Adequate Financial Resources," states, "Defender organizations must have adequate governmental funding for the resources to provide high quality training opportunities consistent with these standards."[55]

Although the necessity of training is recognized, the means of providing education in representation of indigent defenders in different states is as varied as the defense systems in place there. Some states boast a sophisticated, statewide training system, whereas others have no organized, state-supported training function. The states with statewide public defender systems and/or commissions in place are more likely than those without such structures to have developed comprehensive, effective training for the state.

Indigent Defense Manual Series

The North Carolina Indigent Defense Manual Series, produced by the School of Government and funded by the Office of Indigent Defense Services, currently includes the following titles, in order of publication:

North Carolina Defender Manual (Criminal Law)

This loose-leaf manual is a reference for public defenders and others who work in the criminal courts. Volume 1, *Pretrial,* covers such topics as capacity to proceed, obtaining of experts, motions practice, and the right to counsel. Volume 2, *Trial,* is partially complete and includes chapters on guilty pleas, the right to a jury trial, and jury selection.

North Carolina Civil Commitment Manual

Designed to assist the attorney representing an adult or a minor in civil commitment proceedings, this manual reviews North Carolina mental health and substance abuse laws pertaining to inpatient and outpatient commitments and admissions.

North Carolina Guardianship Manual

This manual discusses the role and the responsibilities of attorneys who are appointed to represent allegedly incapacitated adults in adult guardianship proceedings. It summarizes and analyzes relevant provisions of North Carolina's guardianship law and discusses the legal standards for determination of incapacity, appointment of guardians, and other significant aspects of guardianship proceedings.

Immigration Consequences of a Criminal Conviction in North Carolina

Using a step-by-step approach to the immigration consequences of a criminal conviction, this guide explains the different types of immigration status and the various criminal convictions that trigger removal of a person from the country (deportation) in light of his or her immigration status. Included is a detailed chart of immigration consequences of various North Carolina offenses.

North Carolina Juvenile Defender Manual

Relevant law and practice pointers are provided for attorneys representing juveniles in delinquency proceedings. Topics include initiation of proceedings, custody hearings, probable cause and transfer hearings, discovery, motions to suppress, plea negotiations, adjudicatory hearings, dispositional hearings, probation, commitment, appeals, and expunction of records.

All the manuals are available for personal use, at no charge, on the School's indigent defense education website, www.indigentdefense.unc.edu. They also are available for purchase at a nominal price on the School's Publications website, http://shopping.netsuite.com/s.nl/c.433425/sc.7/category.-107/.f.

North Carolina's Response to the Need for Education of Defenders

Recognizing the importance of education to providing quality representation, the North Carolina General Assembly included among IDS's statutorily enumerated duties the following proviso: "Conduct training programs for attorneys and others involved in the legal representation of persons subject to this Article."[56] To fulfill that responsibility, IDS has partnered with the School of Government at the University of North Carolina at Chapel Hill to provide ed-

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ucation for public defenders and other attorneys representing indigent defendants in North Carolina. This collaboration is unique in the nation. In no other state is the training function for representation of indigent defendants centered in a university.

Established in 1931 as the Institute of Government, the School has a long tradition of serving public officials and the court system by providing advice, research, and education. More than 12,000 public officials attend training programs at the School each year. Housed within the School is a "courts group" of scholars that promotes justice in North Carolina by providing education to judges, magistrates, prosecutors, clerks of court, and other participants in the court system. The School is dedicated to practical scholarship and public service. Supporting IDS in its efforts to provide quality legal representation for the poor is a natural outgrowth of the School's mission.

By availing itself of the resources of North Carolina's largest research organization, IDS is able to improve the state's overall system of providing indigent representation by offering a high standard of training in an efficient, cost-effective way. The current cost to IDS of training defenders of indigent people through the School is approximately $300,000 per year, which represents less than one-third of one percent of IDS's overall budget of $108.5 million. IDS fully funds training for public defenders out of its budget. Private appointed attorneys who attend programs at the School are charged only for the cost of providing the training; neither IDS nor the School profits from registration fees.

The School meets the need for education of defenders in several ways. It provides formal educational opportunities, such as training programs, reference manuals, and online educational materials, and it assists IDS in developing internal training and identifying training opportunities that other organizations provide.[57]

The School sponsors about twelve training programs per year, with IDS funding the development and the administration of the events. Many of the programs are geared toward trial attorneys defending clients accused of crimes. Introductory programs for defenders who are new to a given practice area are followed by programs targeting experienced defenders. For example, a new attorney may attend the New Misdemeanor Defender Program in his or her first year to develop bench-trial skills for district court, and graduate to the New Felony Defender Program once he or she begins to handle proceedings in superior court. Experienced trial attorneys typically return to the School for the Defender Trial School to hone their advocacy skills for all stages of trial.

The School also has developed programs in noncriminal practice areas for which there is a right to counsel, including appellate practice; juvenile delinquency; abuse, neglect, and dependency; and civil commitment. As with criminal trial practice, a two-tier system is used in these specialized practice areas. An attorney who has started practicing in delinquency court will attend the New Juvenile Defender Program and then the annual special-topic seminar for more experienced juvenile defenders.

Management training is offered annually to leadership in the IDS office and public defender districts to develop skills such as giving feedback to employees.

Program structures vary from one-day seminars to a five-day workshop,

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and favor interactive methods of teaching to increase skill development. Although some programs are open only to public defenders in order to control class size and maximize learning, many are open to private appointed counsel as well. Following each program, training materials are posted on the IDS website, indexed by subject matter and program. (For examples of training programs, see the sidebar on page 14.)

With funding from IDS, the School has produced the North Carolina Indigent Defense Manual Series, a collection of reference-quality manuals on law and practice in representation of indigent defendants in North Carolina, including criminal trials, civil commitment, guardianship, and juvenile delinquency. (For more details about the manual series, see the sidebar on page 16.) All the manuals are available online at no cost. In this way, appointed attorneys across the state, numbering about 2,800, have on hand a synthesis of complex legal issues, even if they are unable to attend the training programs.

To meet the needs of such a large, diverse group, the School has begun developing online training in collaboration with organizations like the North Carolina Administrative Office of the Courts and the North Carolina Bar Association. Further, IDS has forged connections with other organizations that provide training and reference materials. Currently, all public defenders are entitled to the benefits of membership in the North Carolina Academy of Trial Lawyers and may attend one of that organization's seminars free of charge each year. On request and when funds are available, IDS sponsors defenders of indigent persons to attend continuing legal education programs offered by the North Carolina Bar Association and other organizations in the Southeast.

Conclusion

North Carolina has a more structured system of providing and overseeing representation of indigent defendants than many states do. Such a system has distinct advantages. Among other things, it has led to collaboration between the School and IDS. This collaboration has helped to fulfill the promise of counsel articulated in *Gideon* by supporting and enhancing quality legal representation through education, which is essential to ensuring justice for all people regardless of socioeconomic status.

Notes

1. Gideon v. Wainwright, 372 U.S. 335 (1963).
2. Johnson v. Zerbst, 304 U.S. 458 (1938).
3. Betts v. Brady, 316 U.S. 455, 471 (1942).
4. Before *Betts,* the U.S. Supreme Court held in Powell v. Alabama, 287 U.S. 45, 68 (1932), that the right to counsel was a fundamental right. In overruling *Betts*, the *Gideon* Court reasoned that the Court in *Betts* had "made an abrupt break with its own well-considered precedents." *Gideon*, 372 U.S. at 344.
5. *Gideon*, 372 U.S. at 337.
6. *Id.* at 344.
7. Douglas v. California, 372 U.S. 353 (1963) (direct appeals); Rothgery v. Gillespie County, Texas, 554 U.S. ___ (2008) (Slip Opinion No. 07-440, decided June 23, 2008) (right attaches at initial appearance); Miranda v. Arizona, 384 U.S. 436 (1966) (custodial police interrogation); Coleman v. Alabama, 399 U.S. 1 (1970) (critical stages of preliminary proceedings); Argersinger v. Hamlin, 407 U.S. 25 (1972) (misdemeanors in which imprisonment is imposed); Shelton v. Alabama, 535 U.S. 654 (2002) (misdemeanors in which suspended sentence of imprisonment is imposed).
8. Massiah v. United States, 377 U.S. 201 (1977).
9. *In re* Gault, 387 U.S. 1 (1967) (juvenile proceedings). *See* Lassiter v. Department of Social Services, 452 U.S. 18 (1981) (failure to appoint counsel for indigent parents in termination-of-parental-rights proceeding did not deprive them of due process under the specific facts of the cases, but appointment of counsel was wise policy not only in such cases, but also in dependency and neglect proceedings).
10. N.C.G.S. § 7B-602(a) (abuse, neglect, or dependency proceedings) (hereinafter G.S.); G.S. 7B-1101.1 (proceedings on termination of parental rights). *See* G.S. 7A-451 (scope of entitlement of indigent person to counsel).
11. McBride v. McBride, 334 N.C. 124 (1993).
12. Robert F. Kennedy, speech at the New England Law Institute, November 1, 1963, as quoted in National Association of Criminal Defense Lawyers, *Gideon at 40: Understand-*

ing the Right to Counsel (Washington, DC: National Association of Criminal Defense Lawyers, 2002), www.landmarkcases.org/gideon/pdf/gideon_lesson_plan.pdf.

13. Virginia E. Sloan et al., "Gideon's Unfulfilled Mandate: Time for a New Consensus," *Human Rights*, Winter 2004, 3–4, 13, www.abanet.org/irr/hr/winter04/gideon.html; Stephen B. Bright, "Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer," *Yale Law Journal* 103 (1994): 1835–36.

14. Abe Krash, as quoted in Douglas McCollam, "The Ghost of 'Gideon,'" Law.com, www.law.com/jsp/law/LawArticleFriendly.jsp?id=900005534390.

15. Sloan et al., "Gideon's Unfulfilled Mandate."

16. Strickland v. Washington, 466 U.S. 668 (1984).

17. *Id.* at 676.

18. *Id.* at 688.

19. *Id.* at 689.

20. *Id.* at 694.

21. Messer v. Kemp, 760 F.2d 1080 (1985), *cert. denied*, 474 U.S. 1088 (1986).

22. State v. Messiah, 538 So.2d 175, 187 (La. 1988), *cert. denied*, 493 U.S. 1063 (1990).

23. Romero v. Lynaugh, 884 F.2d 871, 875 (1989), *cert. denied*, 494 U.S. 1012 (1990).

24. Heath v. Jones, 941 F.2d 1126, 1131 (1991) (holding that defendant failed to show he was prejudiced by counsel's deficient performance), *cert. denied*, 502 U.S. 1077 (1992).

25. Williams v. Taylor, 529 U.S. 362 (2000).

26. Strickland v. Washington, 466 U.S. 668, 688–89 (1984).

27. *Williams*, 529 U.S. at 396 (citing 1 *ABA Standards for Criminal Justice* 4-4.1, commentary, p. 4-55 (2d ed., 1980)).

28. Wiggins v. Smith, 539 U.S. 510 (2003) (counsel failed to present evidence that defendant's mother deprived him of food as child, forced him to eat garbage, had sex with men while he was in same bed, and put his hand on hot stove; counsel also failed to uncover that defendant was raped while in foster care and was living on streets at age sixteen); Rompilla v. Beard, 545 U.S. 374 (2003) (counsel failed to look at prosecutor's file, even though counsel knew it contained evidence of defendant's prior convictions for rape and assault that State intended to introduce, as well as mitigating evidence).

29. *Wiggins,* 539 U.S. at 524–25.

30. *Id.* at 524 (citing *Strickland*, 466 U.S. at 688).

31. *Rompilla*, 545 U.S. at 400 (Kennedy, J., dissenting, joined by C.J. Rehnquist, J. Scalia, and J. Thomas).

32. The nineteen are Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Iowa, Kentucky, Maryland, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, Rhode Island, Vermont, Wisconsin, and Wyoming. Spangenberg Group, *Statewide Indigent Defense Systems: 2005* (West Newton, MA: the Spangenberg Group, 2005), www.abanet.org/legalservices/downloads/sclaid/indigentdefense/statewideinddefsystems2005.pdf.

33. Arkansas, Colorado, Connecticut, Hawaii, Iowa, Kentucky, Maryland, Minnesota, Missouri, Montana, New Hampshire, and Wisconsin. *Id.*

34. Massachusetts, North Carolina, Oregon, Virginia, and West Virginia. *Id.* Since the Spangenberg Group's report was issued, Louisiana has established a public defender board with authority over indigent defense services statewide. La. Rev. Stat. Ann. §§ 15-141 *et seq.* (West 2007).

35. Spangenberg Group, *Statewide Indigent Defense Systems: 2005*.

36. *Id.*

37. Sloan et al., "Gideon's Unfulfilled Mandate."

38. Spangenberg Group, *Statewide Indigent Defense Systems: 2005*.

39. In one dramatic example, the Mississippi legislature passed a sweeping reform act in 1998 to create a statewide system for representing indigent defendants, but was forced to repeal the act because of inadequate funding. Sloan et al., "Gideon's Unfulfilled Mandate."

40. E-mail from Danielle Carman, Assistant Director of the Office of Indigent Defense Services, April 23, 2008.

41. *Id.*

42. This number refers to administrative districts.

43. Between fiscal year 2001–2 and fiscal year 2006–7, total dispositions by public defenders and appointed counsel grew from 175,833 to 266,527, a 51.5 percent increase. Data provided by the North Carolina Office of Indigent Defense Services, Research Department, from the March 2008 study, *Distribution of Indigent Defense Cases by PAC and PD Offices.*

44. North Carolina Office of Indigent Defense Services, *The Challenge: Evaluating Indigent Defense,* Conference Report (Raleigh: North Carolina Office of Indigent Defense Services, March 2005), 2. About twenty-eight appointed attorneys are currently under contract, according to IDS.

45. Defender District 1, covering Camden, Chowan, Currituck, Dare, Gates, Pasquotank, and Perquimans counties; Defender District 3A, covering Pitt County; Defender District 3B, covering Carteret County; Defender District 5, covering New Hanover County; Defender District 10, covering Wake County; Defender District 12, covering Cumberland County; Defender District 14, covering Durham County; Defender District 15B, covering Chatham and Orange counties; Defender District 16A, covering Hoke and Scotland counties; Defender District 16B, covering Robeson County; Defender District 18, covering Guilford County; Defender District 21, covering Forsyth County; Defender District 26, covering Mecklenburg County; Defender District 27A, covering Gaston County; Defender District 28, covering Buncombe County; and Defender District 29B, covering Henderson, Polk, and Transylvania counties.

46. Indigent Defense Services Act of 2000 (S.L. 2000-144; G.S. 7A-498 *et seq.*).

47. Executive Summary, *Report of the Commission on Indigent Defense Services*, (Raleigh: Commission on Indigent Defense Services, March 2008), 1, www.ncids.org/Reports%20&%20Data/Prior%20GA%20Reports/final%20legislature%20report%202008.pdf.

48. *Id.*

49. American Bar Association, *ABA Standards for Criminal Justice: Providing Defense Services* (3d ed. Washington, DC: American Bar Association, 1992), Standard 5-1.5, www.abanet.org/crimjust/standards/defsvcs_toc.html.

50. American Bar Association, Introduction, *Ten Principles of a Public Defense Delivery System* (Washington, DC: American Bar Association, 2002), www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf.

51. *Id.*

52. *Id.,* Principle 9.

53. National Legal Aid and Defender Association, Preface, *The Defender Training and Development Standards* (Washington, DC: National Legal Aid and Defender Association, n.d.), www.nlada.org/Defender/Defender_Standards/Defender_Training_Standards.

54. *Id.,* Standard 1.1.

55. *Id.*, Standard 1.3. NLADA's training standards are to be read in conjunction with its previously published standards, such as Guideline 1.2 of *Performance Guidelines for Criminal Defense Representation,* "Education, Training and Experience of Defense Counsel": "(a) To provide quality representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the particular jurisdiction. Counsel has a continuing obligation to stay abreast of changes and developments in the law. Where appropriate, counsel should also be informed of the practices of the specific judge before whom a case is pending. (b) Prior to handling a criminal matter, counsel should have sufficient experience or training to provide quality representation."

56. G.S. 7A-498.6(8).

57. More information about resources provided by the School is available on its indigent defense education website, www.indigentdefense.unc.edu.