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ADKT 411

**Nevada Supreme Court Indigent Defense Commission
December 14, 2007**

FILED

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**Testimony of Holly A. Thomas
Assistant Counsel
NAACP Legal Defense & Educational Fund, Inc.**

PAUL J. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

The NAACP Legal Defense and Educational Fund was founded in 1940 to assist African Americans in securing their constitutional and statutory rights, as well as to provide legal services to persons suffering injustice due to racial discrimination. Through litigation, advocacy, public education, and outreach, LDF continually works to secure equal justice under law for all Americans, and to break down the barriers that prevent minority groups from realizing their basic civil and human rights.

Indigent defense is an issue of central importance to the Legal Defense Fund because of its very substantial impact upon the African-American community. Nationwide, the greatest share of the burden imposed by the absence of a properly funded indigent defense system is borne by African Americans. While comprising just 12% of the U.S. population, African Americans make up over 40% of those persons going through the criminal justice system. Coupled with this fact is the reality that, as compared to other groups, African Americans are, on average, more likely to require indigent defense services because they are more likely to live in poverty. Indeed, a 2006 study by the United States Census Bureau found that the poverty rate amongst African Americans was 24.9%, compared to only an 8.3% poverty rate amongst whites.

In recent years, much of LDF's work on indigent defense has been focused in Mississippi, a state with a large and impoverished black population. In "Assembly Line Justice," LDF's comprehensive study of Mississippi's indigent defense system published in 2003, LDF found that inadequate funding for indigent defense, coupled with the lack of a statewide public defender system and the absence of caseload limits for public defenders, created a crisis which fell heavily upon the black community. In particular, the lack of caseload limits had effects that resounded throughout the criminal justice system. As a result of being overburdened, lawyers had difficulty maintaining appropriate contact with their clients; they failed to conduct thorough investigations; failed to file an appropriate number of motions; and failed to adequately explain plea and sentencing options to clients. Lawyers' trial preparation suffered and, in many cases, appeals were not filed.

The problems LDF identified in Mississippi are not unique. They plague indigent defense systems – and African American communities – nationwide. The consequences of these failures are well-documented and dramatic. A 2004 study identified 328 exonerations nationwide between 1989 and 2004. Of these persons, 55% were African American and 13% were Hispanic. Many of these wrongful convictions are directly attributable to the crisis in indigent defense representation. As the Innocence Project has observed, "ineffective or incompetent defense counsel have allowed men and women who might otherwise have been proven innocent at trial to be sent to prison. Failure to investigate, failure to call witnesses, [and] inability to prepare for trial (due to caseload or incompetence), are a few examples of poor lawyering." A 2005 study by the Sentencing Project found that whites were much more likely to retain counsel than blacks or Latinos, and that the hiring of a private attorney tended to result in less severe sentences.

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Problems with indigent defense of course affect all indigent persons who proceed through the criminal justice system. However, as in Mississippi, Nevada's African American community will suffer most acutely from any failures to meet Gideon's promise. Data from the United States Census Bureau shows that as of 2006, state-wide, 10.3% of Nevadans were living in poverty. However, whereas 7.7% of those identifying themselves as white live in poverty, 15% of black Nevadans live in poverty.

Nevada's black population is concentrated here in Clark County. Although African-Americans comprise less than 10% of the county's population, 30% of public defender cases opened in the last calendar year involved black defendants. It is clear that blacks – who are, on average, poorer than whites, and who are disproportionately represented in the criminal justice system – will bear a disproportionate burden of any failures of indigent defense.

Reforms such as caseload limits and performance standards will help to ensure that zealous and competent representation are the standard experience of those going through the state's criminal justice system, and that the justice people of color receive is not determined by their economic status. LDF strongly supports the Commission's recommendation that statewide statistics be kept about the nature and quality of services provided to indigent defendants, including information about the race and ethnicity of each defendant represented. Such information will not only provide guidance about how indigent defense resources are being used to serve these populations, but will also help to shed light upon the larger impact of the criminal justice system on minorities in the state of Nevada. The Legal Defense Fund commends the Nevada Supreme Court's Indigent Defense Commission for its effort to ensure that Gideon's promise is met for all of Nevada's citizens.

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December 18, 2007

Janette Bloom
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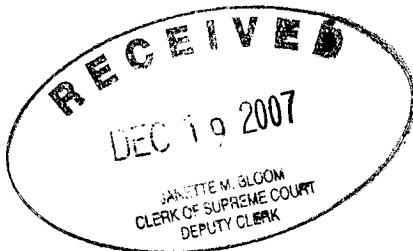
Dear Ms. Bloom,

Please find enclosed a DVD of my testimony for the Nevada Supreme Court's hearing concerning the representation of indigent defendants, scheduled to take place this Thursday, December 20, 2007. Also find enclosed 12 copies of the testimony to be submitted to the Court at the hearing.

I will be out of the office for the rest of the week, but may be contacted on my cell phone at (510) 682-7221 if you have any questions.

Sincerely,


Holly A. Thomas
Assistant Counsel



12/20/07 Counsel advised that DVD contained an error. will send replacement DVDs. Original submission was discarded. JBloom