

TESTIMONY OF JOHN J. TYNER III ON BEHALF OF THE OREGON STATE OF BAR

RE: HOUSE BILL 2294- January 27, 1998

The House of Delegates passed Resolution Number 11 calling for the indigent attorney's hourly rate to be raised to \$75.00 an hour from the current statutory amount of \$30.00 an hour. They authorized the bar to contact the legislature for that purpose.

The principal sources of the right to counsel in criminal cases are the constitutional guarantees of the Oregon and the United States Constitutions.

Article I, 11, of the Oregon Constitution states: "In all criminal prosecutions, the accused shall have the right... to be heard by himself and counsel..."

The United States Constitution, Sixth Amendment, provides: "In all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defence."

The landmark decision of Gideon v. Wainwright, 372 US 335, 83 S Ct 792, 9 L Ed2d 799 (1963), established that the Sixth Amendment guarantee of assistance of counsel is applicable to criminal prosecutions in state courts through the due process clause of the Fourteenth Amendment of the United States Constitution.

In federal courts it is a long established principle that a criminal accused who is unable to employ counsel has a fundamental right to court-appointed counsel. Powell v. Alabama, 287 US 45, 53 S Ct 55, 77 L Ed 158 (1932). This means the right to effective assistance of counsel. Powell v. Alabama, supra. The Supreme Court refuses to distinguish between retained and court-appointed counsel for the "effective assistance" standard of review. Cuyler v. Sullivan, 446 US 335, 344-345, 100 S Ct 1708, 64 L Ed2d 333 (1980).

Counsel should be competent, Rook v. Cupp, 18 Or App 608, 526 P2d 605 (1974), and there should be "no restrictions upon the function of counsel," such as state interference, Herring v. New York, 422 US 853, 95 S Ct 2550, 45 L Ed2d 593 (1975).

Oregon provided for hourly pay for counsel in the 1979 when Judge Gardner, then House Judiciary Chairman and Bob Oleson, who was then assistant to Senate President Jason Boe, first pushed the legislation which resulted in the \$30.00 an hour attorney fee for indigent defense. Since 1991 the rate paid has been ten dollars more or \$40.00 an hour.

Since that time most of the indigent defense budget has been contracted to providers who are paid on a unit basis for cases taken. Many experienced attorneys have left the court appointed system or joined these indigent attorney service provider organizations.