



NATIONAL COMMISSION ON FORENSIC SCIENCE

NIST
National Institute of
Standards and Technology
U.S. Department of Commerce

Abstract

Proposed Topic

Access of Indigents to Defense Experts

Sponsoring Subcommittee

Reporting and Testimony Subcommittee

Type of Work Product Proposed

Views Document

Statement of the Issue

The reliability of expert evidence often cannot be fully understood, challenged or tested by defense counsel without assistance from a defense expert. Indigent defendants however, often have difficulty obtaining expert assistance. This is not true in most cases of prosecutors or defense counsel representing more affluent defendants.

Background

In many criminal cases, securing the services of experts to examine evidence, to advise counsel, and/or to testify at trial is critical. As the commentary to the American Bar Association's Standards on Criminal Justice notes: "The quality of representation at trial . . . may be excellent and yet unhelpful to the defendant if the defense requires the assistance of a psychiatrist or handwriting expert and no such services are available."

Recent Supreme Court cases concerning ineffective assistance of counsel have also emphasized the need for defense experts. In *Harrington v. Richter* (2011), the Court wrote: "Criminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence." "Prosecution experts, of course, can sometimes make mistakes. Indeed, we have recognized the threat to fair criminal trials posed by the potential for incompetent or fraudulent prosecution forensics experts This threat is minimized when the defense retains a competent expert to counter the testimony of the prosecution's expert witnesses; it is maximized when the defense instead fails to understand the resources available to it by law." *Hinton v. Alabama* (2014)

The Commission should address this issue.