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The following three articles are attached:

Ms. Moore authored, "Eyes on Ohio: Seeking Sustainable Reform in the Buckeye State," in the July 2009 issue of NACDL's Champion.

She was interviewed and quoted for "Time to Try 'Smart on Crime': Public Defender Reform Could Improve Public Safety and State/Local Budgets," in the April 2009 edition of CityBeat, a Cincinnati newspaper.

She was interviewed and quoted in "Are Third-Years Ready to Try Felony Cases?" in the 7 August 2009 on-line edition of American Lawyer.

On behalf of the staff and clinic students of the Ohio Justice & Policy Center (OJPC) in Cincinnati, I nominate attorney Janet Moore for the 2010 Champion of Indigent Defense Award. Building on a career dedicated to defendants' rights, Ms. Moore has propelled systemic change on indigent defense reform at the local, state, and regional levels. Her dedication has transformed a "tough on crime" criminal justice culture in a rust-belt region of the country that is notoriously resistant to progressive change. This nomination highlights three aspects of her leadership: directing the local reform effort, leveraging the local effect into state-wide reform, and teaching zealous criminal defense to both attorneys and law students.

The criminal justice system in Hamilton County (Cincinnati) is flooded with misdemeanor cases on the order of a new misdemeanor charge for every 20 County residents – man, woman, and child – each year. Per capita, the misdemeanor filing rate is twice that of nearby Franklin County (Columbus), which has a larger population and comparable demographics. Roughly half of Hamilton County's misdemeanor cases plead to top charge. Collateral consequences from those convictions block access to jobs, housing and education. These three elements are all critical to preventing recidivism. And the cycle continues.

(1) Leading the local reform effort: In 2009, Ms. Moore directed a study that put a dollar amount on the Hamilton County court system. Even after excluding the cost of policing and post-conviction detentions, the total taxpayer cost for processing criminal cases through the Hamilton County courthouse totaled over \$42,000 per hour. Ms. Moore used this astounding finding to educate policymakers on how, as she explains, "flooding the system with these misdemeanor is equivalent to swamping an emergency room with nosebleeds and headcolds."

"I am a professional nag," she says with characteristic humor. Her days are a blizzard of phone calls, emails, and meetings with local and state bureaucrats with the goal of improving services for Ohio's indigent defendants. She coaxed the local Public Defender toward building a positive legacy instead of caving to political pressure to the detriment of clients. She harangues the Board of County Commissioners into replacing good-hearted but ineffective members of the local Public Defender Commission with passionate, knowledgeable advocates of quality service. She cajoles police officers, judges, prosecutors, and service providers to collaborate in demanding expanded access to mediation services in order to reduce demand on the criminal justice system. She tracks funders to support attorney training, then bird-dogs supervisors to ensure that the training is put into practice. She ferrets out data, and she drafts and presents assessments to change the terms of the conversation and inspire key stakeholders.

Her efforts have been effective. She successfully persuaded Hamilton County to conduct an evaluation that found the local public defense system unconstitutional (see below; "Taking Gideon's Pulse"). She then led a bipartisan local task force to a unanimous action plan with timetables and benchmarks for reform. In addition, pushing Hamilton County to adopt mediation is central to her advocacy work. Community-based mediation provides essential low-cost mediation services and education on mediation skills in high-need neighborhoods. Mediation can divert many types of cases from court, including assault, criminal damaging, trespassing, disorderly conduct, and telecommunication harassment. In 2008, these types of cases comprised nearly 40% of Hamilton County's average annual misdemeanor caseload.

(2) Leveraging the local effect into state-wide reform: In 2008, Ms. Moore worked with NLADA to research and help author a 108-page report, "Taking Gideon's Pulse: An Assessment of the Right to Counsel in Hamilton County, Ohio," (July 2008), that established Hamilton

County's public defender system as unconstitutional. The report noted that "NLADA finds that the majority of the responsibility for this failure lies with the State of Ohio and not with Hamilton County," and served its intended purpose as a fulcrum to drive state-wide change.

Ms. Moore badgers the state Public Defender and her fellow state Public Defender Commissioners into changing the criteria for attorney qualification, training, and performance evaluation and the state CLE rules – all to further indigent defense reform. She coaches state staffers on project proposals and grant applications, and spends hours red-lining their drafts. She wheedles insights from defense attorneys state-wide to assess the system's current strengths and needs. She urges Presidents and Executive Directors of state bar associations, judicial conferences, and county commissioners' groups to support client-centered community defense.

On the state level, she formed a high-level coalition to advance structural reform that includes the Public Defender, Bar Association, Judicial Conference, and County Commissioners. She described this work in "Eyes on Ohio: Seeking Sustainable Reform in the Buckeye State," in NACDL's *Champion* (July 2009). Her "smart on crime" message encouraged the state to increase funding for public defense, and in April 2010, she received one of three appointments made by the Ohio Supreme Court to the eight-member Ohio Public Defender Commission.

(3) *Leadership Development*: Ms. Moore led an expert team in designing Ohio's first comprehensive program for indigent defense attorney qualification, training, and performance evaluation. In August 2009, after 2.5 years of Ms. Moore's relentless advocacy, the Ohio Supreme Court amended the state student practice rule so that our students can provide supervised representation in felony cases, as in nearly all state and federal jurisdictions.

In collaboration with both the University of Cincinnati College of Law and the Northern Kentucky University Salmon P. Chase College of Law (she is an adjunct professor at both), Ms. Moore created in 2007 and has led Southern Ohio's first Indigent Defense Clinic. Ms. Moore provides hands-on teaching, coaching, and case management for a dozen clinic students each year. As her brain-child, the Indigent Defense Clinic is reversing the "meet 'em & plead 'em" culture that led 50% of Hamilton County indigent defendants to plead guilty to the top charge against them. Only 15% of Clinic cases pled to top charge, and every Clinic trial resulted in acquittal. Clinic graduates are employed in top defender offices around the country.

Ms. Moore has dedicated a career to provide and improve indigent defense. In 1992, she received J.D. and M.A. (philosophy) degrees from Duke University, where she served as Editor-in-Chief of *Law & Contemporary Problems*, the nation's first interdisciplinary law journal. She clerked on the U.S. Court of Appeals for the Fourth Circuit and spent seven years litigating capital cases in North Carolina, winning some form of relief for about 70% of her clients. She contributed to criminal justice reform through teaching, writing, community organizing, and drafting legislation and attorney performance standards. In 2006, she joined OJPC as Director of the Race and Justice Project. In 2008, she received one of four national Senior Justice Advocacy fellowships from the Open Society Institute to focus on Ohio's public defense system. In 2010, Ms. Moore returned to private practice while providing management consulting to OJPC.

I regret that I did not see the nomination deadline in time to solicit letters of support from Ms. Moore's partners in indigent defense reform around the state. I have no doubt that her colleagues would jump at the opportunity to recommend Ms. Moore for this award.

Thank you for your consideration.



Eyes on Ohio: Seeking Sustainable Reform In the Buckeye State

As the nation's public defense crisis erupts in a litigation explosion, Ohio has flown under the radar. Several factors kept Ohio out of the crosshairs. Like neighboring Michigan and Pennsylvania, Ohio is in the Rust Belt, and presents two major obstacles for reform advocates. First, Ohio is a "home rule" state. As a result, political power — and the primary responsibility for indigent defense — is scattered among Ohio's 88 counties.¹ Second, those 88 counties make up a state that is large, populous, and geographically diverse. Major urban and industrial areas from Cleveland to Cincinnati are surrounded by swaths of farmland, which rise into coal-mining country in the Appalachian hills to the east.

Until recently, Ohio's size, diversity, and decentralized politics helped shield the state's public defense system from national scrutiny. This was so despite the fact that the state's split system, which delegates nearly all responsibility for trial-level representation to the counties, was the subject of strong criticism from its inception. For years, repeated reform-oriented task force reports and expert studies gathered dust on shelves

across the state. These studies consistently decried the lack of any meaningful standards to guide attorney qualification, training, and performance evaluation.² Meanwhile, public defender caseloads were skyrocketing, and state funding was shrinking to historic lows. Today, Ohio is one of only two states in the nation that is actually increasing the burden on counties to pay for public defense. As the counties struggle to carry their mounting load, the occasional local lawsuit has focused temporary attention on a particular flaw in the system. But until recently, the catalyst for sustainable, structural change remained elusive.

The stalemate was frustrating for reform advocates like Bill Gallagher, who has served for years on the indigent defense committees of NACDL and the Ohio Association of Criminal Defense Lawyers. "For years," Gallagher says, "we felt that we were crying in the wilderness. But now there is new leadership, a new reform coalition, and new hope that reform can happen in Ohio."

That new leadership and coalition-building, combined with the worst economic crisis since the Great Depression, now confronts Ohio with stark choices. Decisions made today are determining whether Ohio's indigent defense reform process will be driven from the statehouse or the courthouse. The stakes are high. If Ohio chooses to join jurisdictions around the country that lurch from crisis to crisis, the state will be caught in a "one-step-forward, two-steps-back" cycle of stop-gap measures and temporary fixes. But the growing reform coalition is pointing to a better alternative. Seeking models for sustainable reform, coalition members have found several examples around the country. One example comes from North Carolina, another "under the radar" state.

BY JANET MOORE

Seeking Sustainability: The North Carolina Approach

The reform saga from the Old North State has garnered little national attention — perhaps because the plot and starring role held little drama. Without nationwide media coverage or protracted litigation, a core group of effective leaders gradually nudged a vision of standards-based best practices toward reality. The reform initiative won a powerful supporter in the state trial lawyers' association — a unique coalition of the plaintiff's bar and criminal defense attorneys. Other key players included a former judge, who served as director of the state Administrative Office of the Courts, and the highly respected Institute of Government (now the School of Government) at the University of North Carolina-Chapel Hill.

According to Professor John Rubin at the School of Government, North Carolina's small band of committed reform advocates invested scarce public resources in system improvement instead of repeated task force reports, expert studies, or litigation. "People like Tye Hunter and Mary Ann Tally just doggedly pursued the long, hard political task of building the strong stakeholder base that is indispensable to sustainable reform," says Rubin. And while much remains to be done, the state's brand of committed, results-oriented reform advocacy has raised indigent defense from red-haired stepchild to equal partner in the state's criminal justice system. "We certainly don't have a perfect system," admits Hunter, who recently moved from the position of executive director of North Carolina's Indigent Defense Services System to lead the state's Center for Death Penalty Litigation. "But at least we are now on equal footing with every other agency, and there is a much stronger commitment at both the state and local level to supporting quality service."

With Ohio's public defense system verging on collapse, North Carolina's reform process illuminates some steps toward short-term, concrete improvement. In the long term, this path leads to a robust community defense system, which is client-centered, proactive, and collaborative. While the community defender's first goal always remains optimal client service, a strong community defense system does more.

Through data-driven analysis, community defenders identify and address sources of demand on the system, such as counterproductive laws, policing practices, and charging decisions.³ Key stakeholders — legislators, law enforce-

ment, prosecutors, judges, probation officers, and behavioral health service providers — are brought to the table. Proactive, collaborative engagement shifts the conversation away from knee-jerk, "tough on crime" policies, which funnel one of every 99 Americans — *and one of every nine African American males aged 20 to 34* — into jail or prison and, too often, from a cell into unbreakable cycles of recidivism.⁴

To replace these counterproductive "tough on crime" policies, community defenders promote empirically proven, "smart on crime" practices, such as drug treatment, job training, and early intervention with youth. Community defenders actively educate the public on the benefits of "smart on crime" policies, which improve public safety while conserving tax dollars.

In the current economic crisis, there is a growing recognition that Ohio can afford nothing less than a robust community defense system. As a result, concrete steps toward reform are underway. Yet it remains an open question whether sufficient progress will occur before a major lawsuit seeks to vindicate the Sixth Amendment rights of the state's indigent defendants.

Ohio's Long-Simmering Public Defense Crisis

Ohio's indigent defense statute received criticism from its inception in the 1970s.⁵ The defender system in Hamilton County, Ohio, where Cincinnati is located, has been a particular target. The county court system is clogged with tens of thousands of new low-level misdemeanor cases every year. Those thousands of cases add up to one new misdemeanor charge annually for every 20 county residents — man, woman, and child. This per capita misdemeanor filing rate is more than double the rate in nearby Franklin County, where Columbus, the state capital, is located.⁶

Hamilton County's misdemeanor tsunami has swamped the local public defense system. Funding is so low that the attorneys squeeze elbow-to-elbow into cubicles without adequate computers, file space, or support staff. Caseloads are 2.5 times the national standard.⁷ Twice as many cases plead to top charge in Hamilton County as in Franklin County.⁸ As NACDL recently reported, such staggering misdemeanor conviction rates impose harsh consequences on indigent defendants and their communities.⁹

One example is the complicated stew of collateral consequences con-

cocted by the Ohio General Assembly. Hundreds of these statutory restrictions target low-level offenders, raising impenetrable barriers to jobs, housing, and education.¹⁰ The result is a perfect recipe for recidivism. More low-level offenders cycle in and out of expensive jail beds instead of becoming productive citizens. And the tsunami rolls on. As Ohio Public Defender Tim Young puts it, "Being 'tough on crime' is very tough on the taxpayer."

Legal Challenges In Federal Court

Young has served as state public defender for a little over a year. He is deeply committed to standards-based reform. Young has a strong supporter in state Public Defender Commissioner Bob Newman. Newman is a Cincinnati civil rights attorney who has challenged several aspects of Hamilton County's public defense system in state and federal court. "The policies and practices in this county were clearly violating indigent defendants' constitutional rights," says Newman. "Poor people were being jailed for non-payment of fines, and then when they got to jail, they couldn't even make free phone calls to communicate with their lawyers

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The federal courts were receptive to Newman's arguments. A permanent injunction now requires that indigent detainees have telephone access to their public defenders.¹¹ The Sixth Circuit lauded this "important victory" for indigent defendants.¹² The Sixth Circuit also found a cognizable § 1983 claim in the allegation that the system failed, as a matter of policy, to seek indigency hearings for individuals facing jail for unpaid fines.¹³

Catalyst for Change

In state court, Newman sought to force an increase in the inadequate compensation afforded to appointed counsel. Ultimately, the First District Court of Appeals directed the plaintiffs to pursue administrative relief. But First District Appellate Court Judge Mark Painter issued a scathing concurring opinion in the case, stating, "Everyone knows that lawyers who take public defender cases are paid a pittance. The Ohio Administrative Code requires lawyers to be reasonably paid for their work. The county has violated the provision for years, if not forever."¹⁴

The ensuing administrative action was dismissed without prejudice after Hamilton County agreed to expand the public defender staff and management team, and to undertake a comprehensive professional evaluation of the entire system. That evaluation was stalled for months, however, until November 2006, when David Pepper was elected to the Hamilton County Board of Commissioners. Pepper promptly convened a county-wide Criminal Justice Commission to address jail overcrowding and other public safety issues. Seizing this opportunity, the Ohio Justice & Policy Center (OJPC) emphasized the crucial role of robust community defense, and urged the commissioners to proceed with the promised evaluation of the local system.

OJPC provided this advocacy through the Ohio Indigent Defense Reform Initiative. As part of OJPC's Race & Justice Project, the Initiative responds to Ohio's public defense crisis because inadequate defense services increase the heavy weight that the criminal justice system lays upon low income and minority members of our communities. The Initiative works to secure long-term, sustainable reform of Ohio's broken system through coalition-building, research and policy advocacy, and clinical legal education.

After hearing from OJPC on the

need for a comprehensive professional evaluation of Hamilton County's defender system, the commissioners unanimously agreed to proceed. The county chose the National Legal Aid & Defender Association to conduct the study. In July 2008, NLADA declared that Hamilton County's public defender system was unconstitutional.¹⁵

Coalition-Building

As anticipated, the news from Hamilton County focused sharp attention on Ohio's flawed system. Many who had served on prior state-level reform task forces or commissions felt a spark of new energy. Bill Weisenberg and Gary Leppla were among those who saw an opportunity unfolding. Leppla was serving as president of the Ohio State Bar Association (OSBA); Weisenberg is OSBA's assistant executive director of public affairs. OSBA threw its full support toward reform, and agreed to co-sponsor a statewide summit on Ohio's public defense crisis. Co-hosts included the County Commissioners Association of Ohio and the Ohio Public Defender Commission. A broad group of stakeholders participated, including judges and county officials.

At the summit, OJPC worked closely with the state public defender to set Ohio's public defense crisis in the broader context of the need for "smart on crime" policies that improve outcomes for indigent defendants and their communities. OJPC stressed the racial justice implications of Ohio's broken defender system, and urged participants to broaden and deepen stakeholder support to achieve sustainable reform. OJPC pointed to the ABA's *Ten Principles of a Public Defense Delivery System* as a blueprint for system improvement, and to North Carolina as one model for achieving reform without litigation. Finally, OJPC emphasized the need to solicit input from clients throughout the reform process.

The message was enthusiastically received. The summit led to the creation of a statewide reform coalition led by former Ohio Attorney General Jim Petro. The new state-level focus on indigent defense reform encouraged the governor to double the funding for public defense in his proposed budget. Meanwhile, at the local level, the Hamilton County Criminal Justice Commission convened a local task force to prioritize short-term and long-term steps toward structural reform. OJPC worked closely with all stakeholders to hammer out an action plan with timelines for compliance. The local public

defender and his management team have accepted the challenge and are actively pursuing those changes that can be accomplished without critically needed additional funds.

Training and More Training

Simultaneous with these developments, OJPC was laying the foundation to improve Ohio's indigent defense attorney qualification, training, and performance evaluation procedures. To begin this task, OJPC was aided by Ira Mickenberg, an experienced public defender and trainer. Mickenberg conducted a series of site visits in Hamilton County, meeting with public defender staff attorneys, appointed counsel, judges, and other county officials to obtain an accurate needs assessment. The project goal is to provide attorneys with the tools they need to literally "raise the bar" for client service.¹⁶ And since client feedback is a crucial first component, OJPC designed Ohio's first "indigent defense client bill of rights." In jargon-free language, this "bill of rights" tracks Ohio's new performance guidelines and tells indigent defendants what they can reasonably expect from competent counsel. In addition, to develop a more systematic data set that will be subject to collection and assessment over time, OJPC also is adapting North Carolina's pioneering client satisfaction survey to meet Ohio's needs.

In February 2009, Ohio's public defender approved OJPC's proposal for statewide implementation of this model reform program. Generous support from the Ohio State Bar Foundation has allowed OJPC to begin recruiting a team of national experts. A best-practice survey is underway that will draw upon exemplary programs around the country — including the Kentucky Department of Public Advocacy, the Southern Public Defender Training Center, and Public Defender Services in Washington, D.C. — to build a core curriculum and teaching staff. The completed program will include separate components to cover new attorney training; trial advocacy; appellate advocacy; management training; juvenile training; investigator training; and intensive capital defense training.

OJPC's attorney training project is an outgrowth of another OJPC reform effort that began in 2007 with the launching of southern Ohio's first Indigent Defense Clinic. OJPC leads this clinical legal education program in partnership with two local law schools,

the local public defender, and the private defense bar. The clinic provides a new paradigm of client-centered advocacy for southern Ohio. The goal is to inculcate best practice standards in students and supervising faculty alike. But it is not enough to provide excellent client service and top quality practical training for law students. The clinic also is a culture-changing tool. The long-term goal is to nurture new generations of committed advocates who will become the public defense leaders, judges, and legislators of the future. As one concrete example, the clinic's intensive trial advocacy "boot camp," which was drawn from best-practice programs around the country, will be further adapted to serve as a keystone for the multi-faceted public defender training program to be implemented across Ohio.

NACDL Board Member Bill Gallagher is a fan of OJPC's reform work. Gallagher recruited some of Cincinnati's best criminal defense attorneys to serve as supervising faculty for students in the Indigent Defense Clinic. Thanks to Gallagher's efforts, clinic students enjoy one-on-one supervision. Gallagher also spearheaded scholarship drives to send staff attor-

neys from the local public defender office to the National Criminal Defense College in Macon, Ga., and to a statewide juvenile training session co-sponsored by the Ohio public defender and the Children's Law Center in Covington, Ky. The first "Gallagher Scholars" will trek to Macon this summer. The Cincinnati Bar Foundation also has agreed to fund trial training for another set of staff attorneys through the National Defender Training Project in Dayton, Ohio.

The Hamilton County public defender is creating new office structures to ensure that all of these attorneys will be able to share their training effectively with their peers when they come home. At Gallagher's urging, OJPC and public defender trainer Ira Mickenberg also sponsored a day and a half "bring your own case" training program focused on case investigation. Support for the program was overwhelming. "Some of these staff attorneys have been in the trenches for 25, 35 years," said Ray Faller, president of the Greater Cincinnati Criminal Defense Lawyer's Association. Faller serves as a faculty supervisor for the Indigent Defense Clinic, and gave up a day and a half from his busy private

practice to serve as a small group leader during the investigation training program. "It was amazing. I heard one of the staff lawyers say it was the best thing that has happened in more than 30 years."

"These are important steps," says Gallagher, "but we have a huge mountain to climb to achieve sustainable indigent defense reform in Ohio." First, the coalition must continue the public education and outreach necessary to expand the public defender system's stakeholder base. Target audiences include law firms, local bar associations, and the individual county commissions around the state who are shouldering nearly 80 percent of the financial burden for indigent defense services. And, as organizations like the Michigan Justice Coalition have demonstrated, additional potential partners include law enforcement, prosecutors, victim rights organizations, the business community, and the faith community. OJPC also will continue to reach out to special needs populations and their advocates. These prospective coalition members can be powerful advocates for juveniles, veterans, individuals who struggle with substance abuse and behavioral health

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issues, and the homeless — all of whom are best served by interdisciplinary, client-centered advocacy.

Second, OJPC will continue to advocate for implementation of innovative indigent defense practices that embody the proactive, collaborative characteristics of a robust community defender system. Examples include cooperation between defense attorneys and other stakeholders to identify and address factors that create excessive demand upon the criminal justice system. Opportunities for such cooperation include outreach with youth to encourage more successful interaction with law enforcement; reducing the large number of technical probation violations in the system; and promoting reliance on diversion programs such as community-based mediation.

Ohio is no longer flying under the radar. Reform advocates are watching closely as Ohioans choose the future of their indigent defense system. As the Constitution Project made clear in the recent publication *Justice Denied*,¹⁷ these choices will affect everyone in the state. But the consequences will be felt most deeply by countless low income defendants, their families, and their communities. By focusing intently on sustainable reform, Ohio will see increased support for unitary funding and the depoliticized, independent leadership that is necessary to promote best-practice standards. By working cooperatively with stakeholders to understand their needs and provide the tools necessary for client-centered advocacy, the coalition will expand the shared vision of a better future. Amid today's economic crisis, Ohio can afford nothing less.

The Ohio Justice & Policy Center is a non-profit law office focused on criminal justice reform. The author is grateful to the Ford Foundation, the Open Society Institute, the Ohio State Bar Foundation, the Cincinnati Bar Foundation, the Murray and Agnes Seasongood Good Government Foundation, and the Colleges of Law at the University of Cincinnati and Northern Kentucky University for supporting the work of the Ohio Indigent Defense Reform Initiative.

Notes

1. See OHIO CONST. art. XVIII, §§ 3, 7.
2. Nicole J. De Sario, *The Quality of Indigent Defense on the 40th Anniversary of Gideon: The Hamilton County Experience*, 32 CAP. U. L. REV. 43 (2003); Ohio Public Defender, *Report by the Ohio Public*

Defender on the Hamilton County Public Defender Office (2008) (copy on file with the author); The Spangenberg Group, *Overview of the Hamilton County, Ohio Public Defender Program* (2006) (on file with the author); The Supreme Court of Ohio, *Report of the Supreme Court Task Force to Study Court Costs and Indigent Defense* (1992) (on file with the author); The Spangenberg Group, *Assessment of Indigent Defense System in Ohio* (1991) (on file with the author); The Spangenberg Group, *Assessment of the Status of Misdemeanor Representation in the Ohio Municipal and County Courts* (1987) (on file with the author); Ira Mickenberg, *Raising the Bar: Improving Attorney Qualification, Training, & Performance Evaluation Processes for Indigent Defense Service Providers in Hamilton County, Ohio* (2008) available at www.ohiojpc.org (click on "Publications," then "Reports"); National Legal Aid & Defender Association, *Taking Gideon's Pulse: An Assessment of the Right to Counsel in Hamilton County, Ohio* (2008) available at http://www.mynlada.org/files/HAMILTON_COUNTY_-_FINAL_-_072208.pdf; and the Supreme Court of Ohio, *Report and Recommendations of the Supreme Court Task Force on Pro Se & Indigent Litigants* (2006) available at http://www.sconet.state.oh.us/Publication/s/prose/report_april06.pdf.

3. See, e.g., Kyung M. Lee, Comment, *Reinventing Gideon v. Wainwright: Holistic Defenders, Indigent Defendants, and the Right to Counsel*, 31 AM. J. CRIM. L. 367 (2004); Christopher Muller, *The Case for Community Defense in New Orleans* (Brennan Center for Justice at NYU School of Law 2006); North Carolina Indigent Defense Services, *FY 2007 Capital Trial Case Study* (2008) available at <http://www.ncids.org/Reports%20%20Data/Latest%20Releases/FY07CapitalStudyFinal.pdf> (revealing up-front costs of high capital charging rates); North Carolina Indigent Defense Services, *FY 2005 Private Appointed Counsel Waiting in Court Study* (2005) available at <http://www.ncids.org/Reports%20%20Data/Latest%20Releases/fy05%20pac%20wait%20time%20study%20report%20final.pdf> (revealing costs of attorney wait time).

4. The Pew Center on the States, *One in 100: Behind Bars in America 2008* at p.3 available at http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf.

5. See *supra* note 2.

6. Data compilation and analysis on file with the author. Data is drawn from the municipal court sections of the annual Ohio Courts Summaries produced by the Ohio Supreme Court, which can be

accessed at <http://www.supremecourt.ohio.gov/publications/>.

7. National Legal Aid & Defender Association, *supra* note 2, at 17-24.

8. See *supra* note 6.

9. National Association of Criminal Defense Lawyers, *Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts* (2009), available at www.nacdl.org/misdemeanor.

10. Ohio has hundreds of collateral consequences for low-level convictions. See Kimberly R. Mossoney and Cara A. Roecker, *Ohio Collateral Sanctions Project: Executive Summary*, 36 U.TOL. L. REV. 1 (2005); The Hon. Robert H. Gorman, *Collateral Sanctions in Practice in Ohio*, 36 U.TOL. L. REV. 469 (2005).

11. *Lynch v. Leis*, 2002 U.S. Dist. LEXIS 27604 (S.D. Ohio 2002).

12. *Lynch v. Leis*, 382 F.2d 642, 646 (6th Cir. 2004), *cert. denied*, 544 U.S. 949, 161 L.2d 526 (2005).

13. *Powers v. Hamilton County Public Defender Comm'n*, 501 F.3d 592 (6th Cir. 2007), *cert. denied*, ___ U.S. ___, 172 L.Ed.2d 21 (2008).

14. *State ex rel. Felson v. McHenry*, 158 Ohio App. 3d 81, 85, 814 N.E.2d 75, 78 (Painter, J., concurring), *rev. denied*, 103 Ohio St.3d 1494, 816 N.E.2d 1080 (2004).

15. National Legal Aid & Defender Association, *supra* note 2.

16. Mickenberg, *supra* note 2.

17. National Right to Counsel Committee, *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel* (The Constitution Project 2009) available at <http://tcpjusticedenied.org/>. ■

About the Author

Janet Moore is Soros Senior Justice Advocacy Fellow at the Ohio Justice & Policy Center, where she leads OJPC's Indigent Defense Reform Initiative. She received juris doctor and master's (philosophy) degrees from Duke University. Before working as a capital defense attorney, she clerked for the Honorable J. Dickson Phillips Jr., of the U.S. Court of Appeals for the Fourth Circuit.



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CityBeat

Wednesday, March 25, 2009

Time to Try 'Smart on Crime'

Public defender reform could improve public safety and state/local budgets

[By Margo Pierce](#)

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"Three strikes and your out," life sentences with parole and other "tough on crime" policies have led to the United States having the largest prison population in the world. More than one of every 100 American adults was in prison at the start of 2008, according to the World Prison Brief published by Kings College London, using data provided by the U.S. Bureau of Justice Statistics.

A record 7.2 million Americans were in jail, on probation or on parole at the end of 2007, at an annual total price tag of approximately \$60 billion.

As state and local economies try to deal with the most significant economic crisis in decades, many are starting to consider a "smart on crime" approach to positively impact public safety and save money. The best place to begin looking to implement change, according to Ohio Justice and Policy Center (OJPC) attorney Janet Moore, is at the bottom rung of the criminal justice system: public defenders representing indigent clients.

"I received a fellowship to focus on helping the public defense system in Ohio move quickly toward national standards — attorney qualifications, evaluation and training to improve the quality of client service — (in order) to move toward a community defense system," Moore says. "The community defense model is one way to do something different by investing pennies in the front end, which is going to pay off hugely at the back end."

Community defense is often referred to as “smart on crime” because it’s a systemwide effort to address issues that cause crime. All branches of the criminal justice system collaborate to divert people who commit minor offenses to rehab, mental health, job training or other programs — less expensive alternatives that save prison for violent offenders and help break the pattern of repeat offenses.

Qualifications, evaluation, training

Poor people usually get a public defender assigned by the court after they’ve been arrested, but these lawyers are underpaid, inadequately trained and carry a heavy caseload. As a result, many people end up in jail when they really don’t need to be there.

For decades, various groups throughout Ohio have made recommendations for improving the public defender system, but those reports have been shelved — until now.

After the National Legal Aid and Defender Association (NLADA) issued its review of the Hamilton County Public Defender’s Office last year (see [“Poor Judgment,” issue of July 23, 2008](#)), Moore says it sparked statewide interest.

“The NLADA report ... says, ‘The system is broken,’ ” she says. “The economic crisis says, ‘We can’t keep throwing money at a system that’s putting people into boxes. We’ve got to do something different.’ ”

Moore is also pleased with the appointment of Tim Young as the Ohio Public Defender.

“Tim is all about standard-based reform, accountability, transparency,” she says. “He’s all about empowering the attorneys to provide top-quality representation.”

Moore says key players are collaborating across political and ideological boundaries to bring about meaningful reform: the state bar, the Ohio Public Defender Commission and, most importantly, the County Commissioners Association of Ohio.

“Political power very much rests locally, and it is the county commissioners who have born the brunt of the burden of indigent defense in Ohio as the state has increasingly shunted that burden off to the counties,” she says.

Now all of the expertise buried in those dust-covered reports is finally getting some action, says Bob Newman, a Cincinnati attorney who sits on the Ohio Public Defender Commission.

“The Ohio Public Defender office (has) adopted standards of performance that are now required of all the county defender offices,” he says. “We are now also working on caseload limitations to limit the number of cases public defenders can take to make sure that they can comply with the standards of performance. The caseloads have not yet been adopted, but that’s going to be very soon.”

Attorneys who handle indigent defense now must meet criteria that are nationally recognized as best practices and will be evaluated according to a set of performance measurements. Curricula for training programs for all areas of public defense — juvenile, felony, death penalty and others — are being developed.

The standards require lawyers to talk to their clients, investigate the details of cases and take the time necessary to prepare an adequate defense. That hasn’t been the case in Hamilton County, where some clients first meet their attorneys just moments before heading into court.

“We’re not talking O.J. dream team,” Moore says. “What we’re talking is, if you went into the doctor’s office and they didn’t check your blood pressure, check your heart rate, you’d think, ‘Hmmm, something’s

wrong here.' If a defense lawyer doesn't have the time to communicate with their client, investigate the facts ... it's the same situation as walking into that doctor's office and not getting those basic things done."

'Tiny up-front investment'

Political independence is essential for real change to occur.

"A judge should not have the ability to appoint a soft, compliant prosecutor or a soft, compliant defense attorney," Newman says. "That's a very important issue. It's very troublesome in some other counties, especially in Cuyahoga County, where judges explicitly hire their friends and their political supporters and it's an outright patronage system."

Similarly, reform of the whole system will require independence, Moore says.

"You don't want those decisions to be made with somebody saying, 'I've got to please the judges. I've got to please the county commissioners,'" she says. "At that level, it has to be as independent as possible."

The community defense model calls for limiting use of the criminal justice system to the worst offenders and creating alternative options for disputes between neighbors or domestic conflicts. The model can also lead to a review and change in police practices, how people are charged with crimes and other ways a community decides it wants to handle public safety issues.

Funding this new system is still being studied. No matter how that conversation progresses, the financial reality of having an ineffective public defender system looms large.

"We are now at a point in the pendulum swing between 'tough on crime' and 'smart on crime' extremes," Moore says. "Having gone through the '80s and '90s 'lock 'em up' mentality, a bill for that is coming due at a point when we are in an economic crisis. So the system and the key players are being forced to say, 'Now we don't have a choice. We've got to change what we're doing because we literally cannot afford to keep putting people in boxes.'"

"A very tiny up-front investment can save hundreds of thousands of dollars at the back end and improve outcomes — not just for the client but for the whole community."

Newman is optimistic.

"We're going to start over with a lot of structure," he says. "The whole Public Defender Commission is behind this effort and getting a lot of support from the state bar and from the judges association. I have hope. If I didn't have hope, I wouldn't stay on the Public Defender Commission. I'd sue somebody."

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Are Third-Years Ready to Try Felony Cases?

Posted by Zach Lowe

There's a growing consensus that third-year law students are ready to handle felony criminal matters, provided they have the proper supervision.

This week Ohio became the forty-second state to allow 3Ls to handle more than misdemeanors, changing course after a long campaign led by the Indigent Defense Clinic at the Ohio Justice & Policy Center, a nonprofit that partners with several area law schools.

The clinic has long argued that the students are ready and that overburdened public defenders and prosecutors need the help--especially during a deep recession. The Ohio Supreme Court changed the rule over the weekend, leaving just eight states, including New York, in the dwindling minority that limit student involvement to misdemeanors.

The new rule requires 3Ls handling felony cases to have some affiliation with a law school clinic or similar nonprofit. It also requires that experienced lawyers supervise the students, up to the point of sitting at the trial table if a third-year is questioning a witness.

Elizabeth Gillespie, who graduated last year from one of the law schools linked with the Ohio Justice & Policy Center (the Salmon P. Chase College of Law at Northern Kentucky University), laments the fact that for her, the change came one year too late.

"It's very disappointing," says Gillespie, now in private practice as a criminal attorney. "When people say felony cases are more complicated than misdemeanors, that's a myth. To the defendant it's just as serious to be charged with domestic violence as it is to be charged with trafficking cocaine."

Amanda Smith, a rising 3L at the University of Cincinnati College of Law, is excited to work on felony cases next year. After her summer associateship at [Jones Day](#), Smith will enroll in a ten-day boot camp with the Indigent Defense Clinic to help prepare her for handling criminal cases. (The clinic continues to educate a select group of students, including Smith, throughout the academic year).

"It's scary, because when you work on felonies, you're looking at more prison time," Smith says. "But it's an amazing opportunity for students that we wouldn't get otherwise."

Not everyone was on board with the change. A few local lawyers [argued it would lead to lower quality defense for indigent criminals](#), and at least one major area law school backed off supporting the change because of the extra responsibility it would place on students.

"We were comfortable with the existing rule," says Steven Huefner, an associate professor at the Moritz College of Law at Ohio State University and director of the school's legal clinics. "We

feel we can provide students with as much experience as they'd get in a felony case without the stress or higher stakes."

(It should be noted that Moritz College of Law didn't actively oppose the bill. One of Huefner's colleagues, Ric Simmons, disputed the idea that felonies are substantially different from misdemeanors in [this story in the Cleveland Plain-Dealer](#), though he also told the paper he is unsure if Moritz will allow third-years to work on felony cases.)

That's unfortunate, considering students are "chomping at the bit to handle these cases," says Janet Moore, a senior staff attorney at the Ohio Justice & Policy Center. "Law schools do a great job teaching theory, but too often students are doing their practical learning after they graduate and join public defender offices."