

A PUBLIC DEFENSE SYSTEM FOR MICHIGAN'S 21ST CENTURY

Norman Lefstein
Professor of Law and Dean Emeritus
Indiana University School of Law –
Indianapolis

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BACKWARDS GLANCE: RIGHT TO COUNSEL IN U.S.

- Places Struggle in Historical Perspective
- We Still Need to Be Impatient and Outraged
- An Unfunded Mandate:
 - No Appropriations
 - No Roadmaps
 - No Federal Help
- Response of Michigan's State Government:
Let the Counties Deal with the Problem!
- One Area of Exception: APPEALS

WHY DOES IT MATTER HOW PERSONS ARE DEFENDED?

- Purposes of the Adversary System
- ABA Standards for Criminal Justice:
Defense Function (3rd ed., 1993):
"Defense counsel, in protecting the
rights of the defendant, may resist the
wishes of the judge on some matters,
and defense counsel may appear
unyielding and uncooperative at times."

WHY DOES IT MATTER HOW PERSONS ARE DEFENDED?

- More from Defense Function Standards:
In so doing, defense counsel is not
contradicting his or her duty to the
administration of justice but is fulfilling
an important function within the
adversary system.... Defense counsel
should not be viewed as impeding the
administration of justice...but as an
indispensable part of its fulfillment."

WHY DOES IT MATTER HOW PERSONS ARE DEFENDED?

- Can Understand the Importance of Counsel by Examining Mistakes that Counsel Make
- Statement of Dawn Van Hoek: Mar. 29, 2009, Submitted to House Judiciary Subcommittee:
- 2003-2007: Extensive Sentence Reductions!
- Since 1996: Ineffective Assistance of Counsel Claims Succeeded in Approximately 50 Cases!
- Types of Errors in IAC Cases

WHY DOES IT MATTER HOW PERSONS ARE DEFENDED?

- Wrongful Convictions: Important Role of Defense Counsel in Preventing Them
- Contributing Cause in Many Cases:
Bad Lawyering!
- Evidence of Wrongful Convictions Is Far More Disturbing than Public Realizes
- DNA Exoneration Cases: Primarily Sexual Assault Cases with Positive Eyewitness ID's
- Robberies: Virtually No DNA Exonerations!

WHY DOES IT MATTER HOW PERSONS ARE DEFENDED?

- Conclusion from One Recent Study:
- "Any plausible guess at the total number of miscarriages of justice in America in the last 25 years must be in the thousands, perhaps tens of thousands."
- Samuel L. Gross, et al., *Exonerations in the United States 1989 Through 2003*, 95 J. Crim. L. & Criminology 523 (2005)

WHY DOES IT MATTER HOW PERSONS ARE DEFENDED?

- Causes of Wrongful Convictions:
 - Mistaken Eyewitness IDs
 - False Confessions; Police and other Perjury
 - Faulty Scientific Evidence
- All Matters that Competent Defense Lawyers Can Address!
- Former Attorney General Janet Reno:
"In the End, A Good Lawyer is the best Defense Against Wrongful Convictions"

THE PUBLIC DEFENSE "SYSTEM" IN MICHIGAN

- There is No Public Defense System!
- 83 Counties Decide How to Do It: Often in the Least Expensive Way Possible
- Major Problems Across the Country:
 - Inadequate Funding; Excessive Caseloads;
 - Lack of Continuous Representation;
 - Inadequate Training; Judicial Control; No Supervision or Oversight; Lack of Client Contact; Failures to Provide Counsel;
 - Absence of Data and Technology

THE PUBLIC DEFENSE "SYSTEM" IN MICHIGAN

- Michigan Exemplifies All of the Problems that Afflict Indigent Defense in America!
- Michigan's Report Card: Failing Grade!
- Recommendation of Justice Denied:
 - "States should establish an independent, non-partisan agency, headed by a Board or Commission, responsible for all components of indigent defense services."

MICHIGAN AND THE NATION IS CHANGE POSSIBLE?

- Major Reforms Have Been Enacted in Some States in Recent Years
- Two Discernible Kinds of Reform:
- One Trend: Greater State Funding
 - 28 States Provide Full (Nearly Full) State Funds
 - 4 States Provide More than 50% State Funding
 - 16 States: Counties Provide More than 50%
 - Michigan: Substantially More than 50% of Funding Provided by Counties!

MICHIGAN AND THE NATION IS CHANGE POSSIBLE?

- Second Major Trend: Establishment of State Commissions to Oversee Indigent Defense
 - 19 States with a Commission (State PD or Dir.)
 - 8 States with a State PD but no Commission
 - 9 States with Partial Authority State Commission
- Since 2000, 11 States Have Passed Legislation to Reform Indigent Defense
 - 8 of the 11 States: Full Authority Commissions with a State PD or State Director



MICHIGAN AND THE NATION IS CHANGE POSSIBLE?

- Impetus for Reform in Other States:
Conditions Similar to Michigan Situation
 - Critical Media Coverage
 - Study of Indigent Defense that Described the Range of Indigent Defense Problems
 - Group to Galvanize Public Support
- Message: Keep on Advocating for Change!
- Justice Demands No Less!