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**Subcommittee on Crime, Terrorism and Homeland Security  
Committee on the Judiciary  
United States House of Representatives**

**The State of Public Defense Services in Michigan**

**March 26, 2009**

Chairman Robert C. Scott, Ranking Member Louie Gohmert and Members of the Subcommittee:

I am pleased to testify on behalf of the American Civil Liberties Union, its 53 affiliates and more than 500,000 members nationwide, concerning the failure of states, such as Michigan, to adequately fund and administer their indigent defense systems. I currently sit on the Board of Directors of the Michigan Campaign for Justice, a broad-based group of organizations and individuals from across the political spectrum fighting for a fair and effective public defense system in Michigan. I am also counsel for plaintiffs in *Duncan v. Granholm*, a lawsuit filed in Michigan state court challenging inadequacies in public defender programs in three Michigan counties – Berrien, Genesee and Muskegon.

Inadequacies in state indigent defense programs are of concern not only to the ACLU and this subcommittee, but also to all Americans who expect their criminal justice systems to produce fair and accurate results in the most cost-effective manner. Researchers estimate that between 80 and 90% of all those accused of criminal wrongdoing by state prosecutors must rely upon state indigent defense programs for representation. As a result, the failure of states to adequately fund and administer these programs infects the entire criminal justice system. It compromises that system's ability to produce justice results, jeopardizes public confidence in that system, perpetuates racial disparities, endangers public safety, wastes taxpayer dollars, and ultimately diminishes the United States in the international community.

## 1. The Sixth Amendment

The Sixth Amendment to the United States Constitution guarantees that in all criminal prosecutions, the accused shall have “the Assistance of Counsel for his defense.”<sup>1</sup> In the landmark case *Gideon v. Wainwright*, the United States Supreme Court ruled that this constitutional guarantee requires states to provide counsel to those persons accused by the state of criminal wrongdoing and unable to afford private counsel.<sup>2</sup> The Court subsequently made clear that such persons are entitled to more than just a lawyer standing next to them at trial. Instead, states must ensure that they receive “*effective assistance of competent counsel.*”<sup>3</sup>

The Court has defined effective assistance of competent counsel as representation that subjects the prosecution’s case to “the crucible of meaningful adversarial testing.”<sup>4</sup> In so doing, it has noted that the “very premise” of our system of criminal justice “is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free.”<sup>5</sup> If defense counsel is incapable of adequately challenging the state’s evidence, “a serious risk of injustice” infects the entire criminal justice process.<sup>6</sup>

## 2. State Abdication of Sixth Amendment Responsibilities

Many states have never taken the steps necessary to fulfill their Sixth Amendment obligations. Michigan, for example, has delegated to each of its 83 counties the responsibility for funding and administering trial-level indigent defense services. It provides no fiscal or administrative oversight. Michigan does nothing to ensure that the counties allocate the funding and promulgate the policies, programs and guidelines needed to enable their public defenders to provide constitutionally adequate legal representation. As a result, most Michigan county public defense programs are seriously under-funded and poorly administered. For example:

- In 2007, the budgets of the prosecutors in Michigan’s Berrien and Genesee counties were nearly three and one-half times greater than the counties’ indigent defense budgets. In Muskegon County, the prosecuting attorney’s budget was nearly double the county’s indigent defense budget.
- A 1999 survey by the U.S. Department of Justice of 100 largest counties in the country found that those counties spent an average of \$287 per case to provide representation to indigent persons accused of criminal wrongdoing.<sup>7</sup> In 2006, the Muskegon County finance director issued a letter to the county commissioners stating that the average cost per case should be kept to \$130 to \$140.

Michigan is not alone. Similar disparities exist in other states. For example:

- In FY 2005, Tennessee’s 31 District Attorneys General received approximately \$170 million to prosecute indigent persons while its 31 public defender programs received \$56 million to defend them.<sup>8</sup>
- A 2007 study concluded that California’s 58 counties spent 40% more on prosecutorial services than on indigent defense services.<sup>9</sup>

Without adequate funding, indigent defense programs cannot hire a sufficient number of attorneys and support staff to meet the demand. Insufficient numbers of attorneys and essential support staff, in turn, lead to excessive workloads and no time or money for training or supervision.

Overwhelming caseloads prevent attorneys for poor criminal defendants from meeting with their clients with sufficient frequency, interviewing defense and prosecution witnesses, obtaining and analyzing evidence, visiting the scenes of alleged crimes, consulting with experts, researching case law, filing motions and preparing for trial.<sup>10</sup> A report released in 2000 by the Bureau of Justice Statistics of the United States Department of Justice confirmed that public defenders meet and confer with their clients almost 50% less than do privately retained counsel.<sup>11</sup>

As a result, the poor are frequently provided with counsel in name only. The representation they receive is far from that contemplated by the Supreme Court’s definition of “effective assistance of competent counsel.”<sup>12</sup>

### **3. Consequences of Abdication**

The failure of Michigan and other states to fulfill their constitutional obligations under the Sixth Amendment is, in part, due to a lack of awareness about the real costs of poor performing indigent defense systems.

#### **a. Loss of Public Confidence**

Poorly funded and administered indigent defense programs undermine public confidence in the criminal justice system. The legitimacy of that system is based on its ability to adequately investigate crime, accurately identify offenders and appropriately sanction the convicted. When public defenders do not have the tools to engage in adversarial advocacy, their clients are wrongfully convicted; are incarcerated prior to trial for unnecessarily long periods of time; plead guilty to inappropriate charges and receive harsher sentences than the facts of their cases warrant. For example:

- Michigan resident Allen Fox received a 12-month sentence after pleading guilty to attempting to steal two cans of corned beef from a convenience store. Although the cans in question never left the store, Mr. Fox was arrested after he and the store clerk got into a scuffle. Charged with a felony, Mr. Fox sat in jail for six months before ever meeting an attorney.

- Michigan resident Darryl Lynn Blakely paid his court appointed attorney \$7500 to ensure that he received a fair plea agreement. Charged with unlawful driving of an automobile, Mr. Blakely was informed by his attorney at their first meeting that for \$7500, the attorney would ensure that Mr. Blakely received a sentence of two years in prison. If Mr. Blakely did not pay, he would spend five years in prison. The judge knew of the payment agreement but did nothing about it.

In response to events like these, public confidence in the criminal justice system has plummeted. Recent public opinion surveys reveal that the American public has less confidence in the system than it does in other public institutions such as organized religion, medical systems, the military, newspapers, organized labor and public schools.<sup>13</sup> In 2007, more than 80% of those surveyed nationwide reported having little or no confidence in the criminal justice system.<sup>14</sup>

**b. Perpetuation of Racial Disparities**

Poorly performing indigent defense systems perpetuate racial disparities in the criminal justice system. Racial disparities, in turn, create a perception of bias and cast doubt on the constitutional guarantee of equality under the law.

In 2007, both nationally and in Michigan, African Americans were three times more likely than Latinos and five times more likely than Caucasians to be jailed or imprisoned.<sup>15</sup> While a number of complex factors contribute to this disparity, the United Nation's committee charged with overseeing compliance of signatory nations with the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the national Conference of State Court Administrators, representing criminal courts in all fifty states, and several state committees established to study racial disparities have repeatedly identified under-resourced and poorly managed indigent defense systems as one of those factors.<sup>16</sup>

People of color are more likely than Caucasians to live in poverty, more likely to rely on indigent defense systems for representation when charged with criminal wrongdoing, and thus, more likely to feel the consequences of under-funding and inadequate administration of those systems.<sup>17</sup> In fact, a 2000 survey of state prisoners revealed that over three-quarters of African-American prisoners had been represented by public defenders as compared to less than two-thirds of Caucasian prisoners.<sup>18</sup>

In March 2008, the United Nation's CERD committee issued specific recommendations to address this problem:

The Committee recommends that the [United States] adopt all necessary measures to eliminate the disproportionate impact that persistent systemic inadequacies in criminal defence programmes [sic] for indigent persons have on defendants belonging to racial, ethnic and national minorities, inter alia, by increasing its efforts to improve the quality of legal representation provided to indigent

defendants and ensuring that public legal aid systems are adequately funded and supervised. The Committee further recommends that the [United States] allocate sufficient resources to ensure legal representation of indigent persons belonging to racial, ethnic and national minorities in civil proceedings, with particular regard to those proceedings where basic human needs, such as housing, health care, or child custody, are at stake.<sup>19</sup>

**c. Economic Waste**

Poorly performing indigent defense programs waste taxpayer dollars. To the extent under-funded programs lead to wrongful convictions, unnecessary or prolonged pre-trial incarceration, sentences that are not commensurate with the crimes committed and legal errors, taxpayers must pay the consequences. For example:

- Since 1983, more than 340 prisoners have been exonerated around the country. At least one-third were victims of poor lawyering by court-appointed lawyers. That one-third spent approximately 1100 years behind bars,<sup>20</sup> at a cost of \$25 million to the American taxpayers.<sup>21</sup>
- One of those exonerees, Eddie Joe Lloyd, was released from a Michigan prison in 2002 after DNA testing confirmed his innocence. His trial attorney, appointed eight days before the commencement of trial, failed to question the details of the police investigation, called no witnesses and gave a five-minute closing argument. Mr. Lloyd spent 17 years behind bars. Michigan taxpayers paid \$510,000 for Mr. Lloyd's unnecessary imprisonment, \$2,000 for appellate public defender services, \$4,000,000 to settle a wrongful conviction lawsuit and unknown amounts for prosecutors and law enforcement officials to defend his conviction on appeal and for appellate courts to adjudicate the case.<sup>22</sup>
- In 2007, Patrico Ramonez was released from a Michigan prison after the United States Court of Appeals for the Sixth Circuit ruled that his public defender had failed to interview witnesses who could have supported his innocence.<sup>23</sup> He spent seven years behind bars. Michigan taxpayers paid \$390,000 to incarcerate Mr. Haynes, \$11,000 for appellate public defender services and unknown amounts for prosecutors and law enforcement officials to defend his conviction on appeal and for appellate courts to adjudicate the case.<sup>24</sup>
- Between 2003 and 2007, Michigan's State Appellate Defender Office found sentencing errors in one-third of the guilty plea appeals assigned to that office. By initiating proceedings to correct the errors, the attorneys saved Michigan taxpayers \$3,675,000 in unnecessary incarceration costs.<sup>25</sup> Pursuant to state statute, however, SADO receives only 25% of all appeals.<sup>26</sup>

In addition, taxpayers must pay for the economic inefficiencies that usually characterize poorly funded and administered indigent defense programs. A number of

studies have concluded that having well-organized public defender agencies under a single statewide entity reduces redundancy and costs by enhancing coordination, uniformity of services, administrative efficiency and planning capacity.<sup>27</sup>

**d. Compromising Public Safety**

Poorly performing indigent defense programs jeopardize public safety. Public safety suffers when public defenders are unable to mount appropriate defenses, contributing to the wrongful convictions of innocent people. In 132 of the 234 exonerations obtained by the Innocence Project with the use of DNA evidence, the actual criminal has never found — and presumably remains at large to commit more crimes.<sup>28</sup>

Public safety also suffers when public defenders do not have the resources to advocate for the diversion of non-violent offenders away from jails and prisons into social service programs. In response to a 2005 survey, 60% of state prisoners reported having mental health problems; 42% reported both mental health and substance abuse problems.<sup>29</sup> Studies have shown consistently that diversion programs that address these issues reduce recidivism. A New York City diversion program for convicted felons with serious mental illness decreased the arrests of program participants by approximately 90%.<sup>30</sup> A similar program in Maricopa County, Arizona, reduced the rate of new offenses committed by seriously mentally ill offenders to 5%, nearly one-half the 9% recidivism rate of general population offenders.<sup>31</sup>

Lastly, public safety suffers when public defenders are unable to ensure that their clients receive sentences commensurate with their crimes. Researchers have found that high rates of incarceration actually increase crime by destroying the social and family bonds that guide individuals away from crime, removing adults who would otherwise nurture children, depriving communities of income, reducing future income potential, and engendering a deep resentment toward the legal system. When communities are less capable of maintaining social order through families or social groups, crime rates go up.<sup>32</sup>

**e. Violation of International Human Rights Standards**

Poorly performing indigent defense programs diminish the standing of the United States in the international community. To the extent that they compromise the right to a fair trial and equal treatment before the courts, they violate the United States' obligation under the International Covenant on Civil and Political Rights, ratified by Congress in 1992.<sup>33</sup> To the extent that they perpetuate racial disparities in the application and availability of indigent defense services, they are inconsistent with United States treaty obligations under the Convention on the Elimination of All Forms of Racial Discrimination (CERD), ratified by Congress in 1994.<sup>34</sup>

**4. Recommendations**

To maintain public confidence in state criminal justice systems, to promote public safety, to prevent unnecessary public expenditures and to ensure that the United States

meets its international treaty obligations, Congress can and should take steps to encourage states, such as Michigan, to adequately fund and administer their indigent defense programs.

Public opinion polls show that voters support a criminal justice system that delivers fair results and that they are willing to commit the tax dollars necessary to accomplish this goal. A 2000 nation-wide public opinion poll showed that 64% of those polled supported the use of taxpayer dollars to provide indigent persons with lawyers. A majority supported reforms to ensure those accused of crime received competent counsel, including proposals that would provide public defenders and prosecutors with the same resources per case (88%); create local oversight commissions to ensure that indigent defense counsel is competent and has adequate resources (78%); establish standards on qualifications for public defenders and court-appointed lawyers (78%); establish public defender offices with full-time professional staff (71%); and ensure that judges and local governments do not appoint attorneys based solely on who charges the least (50%).<sup>35</sup>

The ACLU respectfully requests that Congress consider the following:

- **To encourage parity between state prosecutorial and indigent defense services, require states that receive funding from the federal Justice Assistance Grant Program to use that money to enhance prosecutorial and indigent defense services in equal amounts.**
- **To encourage states to engage in a needs-based analysis when funding indigent defense programs, require the Bureau of Justice Statistics of the United States Department of Justice to collect and publish data on the funding and operation of such programs nationwide.** Many states are unaware of the amount of money they and other states spend on indigent defense services and thus are unable to evaluate effectively the needs of public defender programs. By requiring the Bureau of Justice Statistics to collect such data from states, Congress would be encouraging states to collect the data themselves. The last time the Bureau collected such data was in 1999.
- **To ensure that death penalty cases do not monopolize state indigent defense resources, jeopardizing the representation of clients charged with lesser crimes, recreate the federal death penalty resource centers.** In 1988, Congress established such centers to ensure quality representation in capital cases and reduce the financial and administrative burden of such cases on under-resourced state programs. Although the centers proved to be a cost-effective way of handling capital cases, Congress de-funded the centers in 1996.<sup>36</sup>
- **To encourage lawyers to become public defenders, fund the College Cost Reduction and Access Act, Pub. L. No. 110-84, which became law in September 2007.** Sections 203 and 401 of the Act enable lawyers to pursue careers in, among other areas, indigent defense or civil legal aid by forgiving certain types of federal student loans. By funding the Act, Congress would

recognize public defenders as “real lawyers” who provide a valuable service worthy of governmental encouragement.

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1 U.S. Const. Amend. VI.

2 *Gideon v. Wainwright*, 372 U.S. 335 (1963).

3 *McMann v. Richardson*, 397 U.S. 759, 771 (1970) (emphasis added).

4 *United States v. Cronin*, 466 U.S. 648, 656 (1984). See also *Jones v. Barnes*, 463 U.S. 745, 758 (1983) (Brennan, J., dissenting); *Ferri v. Ackerman*, 444 U.S. 193, 204 (1979).

5 *Herring v. New York*, 422 U.S. 853, 862 (1975). See *Nix v. Williams*, 467 U.S. 431, 453 (1984) (a criminal conviction is to be the product of an adversarial process, rather than the *ex parte* investigation and determination of the prosecution); *Wheat v. United States*, 486 U.S. 153, 158 (1988) (the right to counsel “was designed to assure fairness in the adversary criminal process”).

6 See *Cuyler v. Sullivan*, 446 U.S. 335, 343 (1980). See *United States v. Cronin*, 466 U.S. at 656-57.

7 Carol J. DeFrances, *State-Funded Indigent Defense Services 1999* (Bureau of Justice Statistics, U.S. Dep’t of Justice, Wash., D.C.), September 2001/revised October 2001, available at <http://www.ojp.gov/bjs/pub/ascii/sfids99.txt> (last visited March 20, 2009).

8 *Resources of the Prosecution and Indigent Defense Functions in Tennessee* (The Spangenberg Group, Boston, Mass.), June 2007, at 17-18, available at [http://www.abanet.org/legalservices/sclaid/defender/downloads/TN\\_CompStudyFINAL\\_7.30.07.pdf](http://www.abanet.org/legalservices/sclaid/defender/downloads/TN_CompStudyFINAL_7.30.07.pdf) (last viewed on Mar. 20, 2009).

9 Laurence A. Benner, Lorenda S. Stern, Alex Avakian, *Systemic Factors Affecting the Quality of Criminal Defense Representation, Preliminary Report*, 2007, at 16, available at [http://www.cwsl.edu/content/news/Preliminary%20Report%20\(2\).pdf](http://www.cwsl.edu/content/news/Preliminary%20Report%20(2).pdf) (last viewed Mar. 20, 2009).

10 Numerous reports document these common failings of indigent defense systems stemming from inadequate funding and lack of administrative oversight: David Carroll, *Evaluation of Trial Level Indigent Defense Services in Michigan, A Race to the Bottom, Speed & Savings Over Due Process: A Constitutional Crisis* (NLADA, Wash. D.C.), June 2008, available at [http://www.mynlada.org/michigan/michigan\\_report.pdf](http://www.mynlada.org/michigan/michigan_report.pdf) (last viewed on Mar. 23, 2009); Laurence A. Benner, Lorenda S. Stern, Alex Avakian, *Systemic Factors Affecting the Quality of Criminal Defense Representation, Preliminary Report*, 2007, available at <http://www.ccfaj.org/documents/reports/prosecutorial/expert/Benner%20Systemic%20Factors.pdf> (last viewed on Mar. 23, 2009); *Final Report to the Chief Judge of the State of New York* (Commission on the Future of Indigent Defense Services, Albany, NY), June 2006, available at [http://www.courts.state.ny.us/ip/indigentdefense-commission/IndigentDefenseCommission\\_report06.pdf](http://www.courts.state.ny.us/ip/indigentdefense-commission/IndigentDefenseCommission_report06.pdf) (last viewed on Mar. 23, 2009); *A Comprehensive Review of Indigent Defense in Virginia* (The Spangenberg Group, Boston, MA), January 2004, available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/va-report2004.pdf> (last viewed on Mar. 23, 2009); *Assembly Line Justice: Mississippi’s Indigent Defense Crisis* (NAACP Legal Defense and Educational Fund, Inc., New York, NY), March 2003, available at [http://www.sado.org/fees/2003-02-01-Assembly\\_Line\\_Justice.pdf](http://www.sado.org/fees/2003-02-01-Assembly_Line_Justice.pdf) (last viewed on Mar. 23, 2009); *In Defense of Public Access to Justice: An Assessment of Trial-level Indigent Defense Services in Louisiana 40 Years After Gideon* (NLADA, Wash., D.C.), March 2004, available at <http://www.nlada.org/DMS/Documents/1078863541.49/Avoyelles%20Parsh%20Body%20Text.pdf> (last viewed on Mar. 23, 2009); *If You Cannot Afford a Lawyer . . . A Report on Georgia’s Failed Indigent Defense System* (Southern Center for Civil Rights, Atlanta, GA), January 2003, available at <http://www.deathpenaltyinfo.org/jan.%202003.%20report.pdf> (last viewed on Mar. 23, 2009); *Maryland: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (ABA



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Juvenile Justice Center & Mid-Atlantic Juvenile Defender Center, Wash., D.C.), October 2003, available at <http://www.njdc.info/pdf/mdreport.pdf> (last viewed on Mar. 23, 2009); *Montana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (ABA Juvenile Justice Center, National Juvenile Defender Center, Albin Law Firm and Cascade County Law Clinic, Wash., D.C.), October 2003, available at <http://www.njdc.info/pdf/mtreport.pdf> (last viewed on Mar. 23, 2009); ABA Juvenile Justice Center and Juvenile Law Center, *Pennsylvania: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (October 2003), available at <http://www.njdc.info/pdf/pareport.pdf> (last viewed on Mar. 23, 2009); *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (ABA Juvenile Justice Center, Juvenile Law Center and Youth Law Center, Chicago, Ill. ), June 2002, available at <http://www.njdc.info/pdf/cfjfull.pdf> (last viewed on Mar. 23, 2009); *The Children Left Behind: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Louisiana* (ABA Juvenile Justice Center & Juvenile Justice Project of Louisiana, Wash., D.C. ), June 2001, available at [http://www.jjpl.org/PDF/Children\\_Left\\_Behind.pdf](http://www.jjpl.org/PDF/Children_Left_Behind.pdf) (last viewed on Mar. 23, 2009); *Muting Gideon's Trumpet: The Crisis in Indigent Criminal Defense in Texas* (Committee on Legal Services to the Poor in Criminal Matters, State Bar of Texas, Austin, TX), Sept. 2000, available at <http://www.uta.edu/pols/moore/indigent/last.pdf> (last viewed on Mar. 23, 2009).

11 Thirty-seven percent (37%) of state prisoners represented by public defenders reported meeting with counsel within a week of their arrest as compared to 60% of prisoners represented by private counsel. Twenty-seven percent (27%) of those represented by public defenders met with their attorneys at least four times before disposition as compared to 58% of prisoners with private counsel. Caroline Wolf Harlow, *Defense Counsel in Criminal Cases* (Bureau of Justice Statistics, U.S. Dep't of Justice, Wash. D.C.), Nov. 2000, available at <http://www.ojp.gov/bjs/abstract/dccc.htm> (last viewed on Mar. 20, 2009).

12 *United States v. Cronin*, 466 U.S. at 656.

13 *Sourcebook of criminal justice statistics Online*, at Table 2.10.2007, available at <http://www.albany.edu/sourcebook/pdt/12102207.pdf> (last viewed on Feb. 10, 2009).

14 *Id.* (2007 data); *Sourcebook of Criminal Justice Statistics 2003*, at Table 2.11, available at <http://www.albany.edu/sourcebook/pdf/t211.pdf> (last viewed on Feb. 10, 2009) (2003 data).

15 *Jail Incarceration Rates by Race and Ethnicity, 1990-2007* (Bureau of Justice Statistics, U.S. Dep't of Justice, Wash. D.C.), June 6, 2008, available at <http://www.ojp.usdoj.gov/bjs/glance/jailair.htm> (last viewed on Mar. 5, 2009).

16 For the United Nations, see Committee on the Elimination of Racial Discrimination, February 18 – March 7 2008, 72<sup>nd</sup> Sess., *Concluding Observations of the Committee*, ¶ 22, U.N. Doc. CERD/C/USA/CO/6 (Mar. 7, 2008): [http://www.aclu.org/pdfs/humanrights/cerd\\_concluding\\_report.pdf](http://www.aclu.org/pdfs/humanrights/cerd_concluding_report.pdf) (last viewed Mar. 23, 2009).

The most recent resolution of the Conference of State Court Administrators states that the provision of qualified and adequately compensated attorneys to represent the poor in criminal matters as “fundamental to any effort to change reality and perception about bias in the justice system” and concludes that “[w]ithout improvement in this critical area, the reality and perception of bias will continue.” Conference of State Court Administrators, *Position Paper on State Courts' Responsibility to Address Issues of Racial and Ethnic Fairness* (National Center of State Court, Williamsburg, VA), Dec. 2001, at 10, available at <http://cosca.ncsc.dni.us/WhitePapers/racialethnicwhitepapr.pdf> (last viewed on Mar. 20, 2009). This paper has been endorsed by the Conference of Chief Justices. Conferences of Chief Justices, *Resolution 28, In Support of State Courts' Responsibility to Address Issues of Racial and Ethnic Fairness*, adopted August 1, 2002 available at [http://www.consortiumonline.net/Resolutions/CCJRes\\_No28\\_8-1-02.pdf](http://www.consortiumonline.net/Resolutions/CCJRes_No28_8-1-02.pdf) (last viewed on Mar. 20, 2009).

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For individual state reports, see, e.g., *Report on the Commission of Racial and Ethnic Fairness in the Justice Process* (Baltimore, Maryland), June, 2004, at 28-30, available at <http://www.courts.state.md.us/publications/raciaethnicfairness04.pdf> (last viewed on Mar. 20, 2009); *Report of the Oregon Supreme Court on Racial/Ethnic Issues in the Judicial System*, May 1994, at 43, available at [http://www.ojd.state.or.us/osca/cpsd/courtimprovement/access/documents/rac\\_eth\\_TFR.pdf](http://www.ojd.state.or.us/osca/cpsd/courtimprovement/access/documents/rac_eth_TFR.pdf) (last viewed Mar. 20, 2009); *Report of the Ohio Commission on Racial Fairness*, 1999, at 39, available at <http://www.sconet.state.oh.us/publications/fairness/fairness.pdf> (last viewed on Mar. 20, 2009); *Final Report of the Utah Task Force on Racial And Ethnic Fairness in the Legal System*, Sept. 2000, at 28, available at <http://www.utcourts.gov/specproj/retaskforce/Reportfinal.pdf> (last viewed Mar. 20, 2009); *Governor Jim Doyle's Commission on Reducing Racial Disparities in the Wisconsin Juvenile Justice System* (Office of Justice Assistance, Madison, WI.), Feb. 2008, at 10-11, available at <ftp://doaf04.doa.state.wi.us/doadocs/web.pdf> (last viewed on Jan. 17, 2009).

17 See Terence F. MacCarthy, *Unanimous Resolution*, THE CHAMPION (National Assoc. of Crim. Def. Lawyers, Wash. D.C.), Apr. 1999, at 25, available at <http://www.nacdl.org/public.nsf/championarticles/99apr02?opendocumen> (last viewed on Mar. 4, 2009).

18 Caroline Wolf Harlow, *Defense Counsel in Criminal Cases* (Bureau of Justice Statistics, U.S. Dep't of Justice, Wash. D.C.), Nov. 2000, available at <http://www.ojp.gov/bjs/abstract/dccc.htm> (last viewed on Mar. 20, 2009).

19 Committee on the Elimination of Racial Discrimination, February 18 – March 7 2008, 72<sup>nd</sup> Sess., *Concluding Observations of the Committee*, ¶ 22, U.N. Doc. CERD/C/USA/CO/6 (Mar. 7, 2008): [http://www.aclu.org/pdfs/humanrights/cerd\\_concluding\\_report.pdf](http://www.aclu.org/pdfs/humanrights/cerd_concluding_report.pdf) (last viewed on Mar. 23, 2009).

20 Samuel Gross *et al.*, “Exonerations in the United States 1989 through 2003,” *Journal of Criminal Law and Criminology* Vol.95, No.2 (2005), p.523, 524.

21 This figure is calculated by multiplying 1100 years by \$22,650, the average yearly cost of incarceration in 2001.

22 Dawn Van Hoek, Chief Deputy Director, State Appellate Defender Office, *Penny-Wise and Pound-Foolish: Waste in Michigan Public Defense Spending* (State Appellate Defender Office, Lansing, Michigan), 2009, at 5-6

23 *Ramonez v. Berghuis*, 490 F.3d 482 (6<sup>th</sup> Cir. 2007).

24 Dawn Van Hoek, Chief Deputy Director, State Appellate Defender Office, *Penny-Wise and Pound-Foolish: Waste in Michigan Public Defense Spending* (State Appellate Defender Office, Lansing, Michigan), 2009, at 11.

25 *Id.*, at 2-3.

26 MCL 780.716.

27 See, e.g., *Evidence for the Feasibility of Public Defender Offices in Texas*, available at [http://www.courts.state.tx.us/tfid/pdf/PD%20Feasibility\\_Final.pdf](http://www.courts.state.tx.us/tfid/pdf/PD%20Feasibility_Final.pdf) (last viewed on Mar. 23, 2009).

28 *Facts on Post-Conviction DNA Exonerations* (The Innocence Project, NY, NY), available at <http://www.innocenceproject.org/Content/351.php> (last viewed on Mar. 20, 2009).

29 Doris J. James and Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates* (Bureau of Justice Statistics, U.S. Dep't of Justice, Wash. D.C.), Dec. 14, 2006, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/mhppji.pdf> (last viewed Mar. 21, 2009).

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30 *The Nathaniel Project: An Alternative to Incarceration Program for People with Serious Mental Illness Who Have Committed Felony Offenses*, The National GAINS Center for People with Co-Occurring Disorders in the Justice System (Policy Research Associates, Delmar, NY), Fall 2002/Revised Summer 2005, available at [http://gainscenter.samhsa.gov/pdfs/jail\\_diversion/nathaniel\\_project.pdf](http://gainscenter.samhsa.gov/pdfs/jail_diversion/nathaniel_project.pdf) (last viewed on Mar. 20, 2009).

31 *Court Advocacy and Jail Diversion Programs Improve Outcomes and Reduce Crime*, BUSINESSWIRE, at 1, available at <http://www.allbusiness.com/crime-law/crime-statistics-crime-rate/5463671-1.html> (last viewed on Mar. 20, 2009).

32 Brian C. Renauer, William Scott Cunningham, Bill Feyerherm, Tom O'Connor and Paul Bellatty, *Tipping the Scales of Justice: The Effect of Overincarceration on Neighborhood Violence*, CRIMINAL JUSTICE POLICY REVIEW, Vol. 17, No. 3, Sept. 2006, at 372-4, available at <http://cjp.safepub.com/cgi/conent/abstract/17/3/362> (last viewed on Mar. 22, 2009).

33 UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, at 171, available at <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html> (last viewed on Mar. 21, 2009).

34 UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination: resolution adopted by the General Assembly, 22 January 2009*, A/RES/63/243, available at <http://www.unhcr.org/refworld/docid/4986cfe52.html> (last viewed on Mar. 21, 2009).

35 Belden, Rossonello & Stewart, *Americans Consider Indigent Defense: Analysis of a National Study of Public Opinion*, Jan. 2002, available at <http://www.nlada.org/DMS/Documents/1075394127.32/Belden%20Rossonello%20Polling%20short%20report.pdf> (last viewed on Mar. 20, 2009).

36 See, e.g., Roscoe C. Howard, Jr., *The Defunding of the Post Conviction Defense Organizations as a Denial of the Right to Counsel*, 98 W. VA. L. REV. 863, 906-13 (1996); *An Interview with Judge Emmett R. Cox, Chair of the Judicial Conference Defender Services Committee*, THE THIRD BRANCH (Administrative Office of the U.S. Courts Office of Public Affairs, Wash. D.C.), April 1997, available at <http://www.uscourts.gov/ttb/apr97ttb/cox.htm> (last viewed on Mar. 20, 2009).