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News Story

Changes likely for struggling indigent defense system

Scheck's speech highlights need for funding reform in Michigan

By **Molly F. Dilbeck, J.D.**

Indigent defense funding update

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"How long? Not long!"

Quoting Dr. Martin Luther King Jr.'s historic speech from the 1965 March on Montgomery, Barry C. Scheck took to the podium at the State Bar of Michigan's Annual Meeting to address an enthused collection of attorneys about the current condition of Michigan's funding of an indigent defense counsel system.

According to Scheck, who co-founded the Innocence Project, a nonprofit organization that has exonerated 183 wrongfully convicted people with DNA evidence, Michigan is currently ranked 47th in the country in terms of money put into its indigent defense system.

However, he ardently told the audience it would not be long until the state improved this ranking because "adequately funding criminal defense is a win-win proposition."

Referring to criminal defense attorneys as "liberty's last champions," Scheck urged lawyers to be vigilant when it comes to protecting their clients from wrongful convictions. This means attorneys must have the resources to monitor police work and, to do that, there must be sufficient funding, he said.

In Michigan, however, funding such a system has been no easy task.

For the last several years, the legal community has been working to solve this problem of "underfunding," which many believe leads to wrongful convictions, improper sentences, and unnecessarily lengthy prison terms.

In an effort to address this growing problem, the Task Force on Improving Public Defense was started in 2001 with the aid of an American Bar Association grant.

Elizabeth Arnovits, executive director of the Michigan Council on Crime and Delinquency, said after 18 months of research and "comparing Michigan's system to national standards," the task force found "Michigan was in non-compliance with almost all national standards" of public defense.

However, she does see improvements being made, particularly with the passage of Senate Joint Resolution 39.

The resolution, sponsored by Sen. Alan Cropsey, R-DeWitt, endorses a study between the State Bar of Michigan and the National Legal Aid and Defenders Association to further research the state's current climate surrounding public defense.

The study will likely "determine how much money is currently being spent," as well as "what the caseloads are" around the state, said Arnovits.

Beyond the media buzz

Still, even with this pending report, public defense system proponents worry the point is being missed. With all the exposure surrounding cases where DNA evidence has cleared a defendant or shoddy police work led to a wrongful conviction, Arnovits believes it's easy to forget what this issue is really about.

"While the innocents are the big thing we look at and it makes major media play when someone who is innocent is convicted due to lack of effective counsel and because the system is not funded or monitored, the real problem is a system's breakdown problem," she said.

To her, this is less a matter of innocence and more a matter of "due process" and "fundamental fairness."

However, because only the high-profile cases of exonerated defendants generate a great deal of publicity, some wonder where the evidence linking wrongful imprisonment or ineffective counsel to underfunding is.

Arnovits says skeptics need only look at the appellate dockets for proof.

"If one took a look at how many cases get some redress in the appellate courts because of inadequate defense," she is certain those doubts would be resolved.

"Clearly, resources are an issue," Arnovits said, further explaining there are "communities where people are taking major felony cases who have had no training, are fresh out of law school, and are not qualified to take such cases."

Detroit attorney James R. Neuhard, director of the State Appellate Defender Office (SADO), agrees, and also said quality of representation is a huge problem.

With limited resources and so little pay given to those who represent indigent defendants, "you don't get that seasoned veteran" because "the turnover is astounding," he explained.

More than just innocence

Moreover, Arnovits emphasized "this isn't so much about innocence as it is about making sure that we're getting the right sentence for the right crime, and that people are getting the defense the Constitution says they should have."

Making sure defendants are sentenced to the right crime is paramount, she said.

Likewise, Neuhard said though we may never have a handle on how many defendants are wrongfully convicted, "we do know in Michigan on the sentencing side, an enormous amount of people get incorrect sentences."

And these sentences are due to lack of training, accountability, and resources, he stated.

"In our office when we take cases to court, we are getting one-third of those cases amended, set aside, resentenced, or [we are having] the presentencing report corrected so that the person's parole eligibility is advanced," he said. "That's an alarming number of cases in which there are mistakes made in the sentencing."

Additionally, Arnovits believes underfunding contributes to lengthier prison terms for defendants, something which the director sees as easily remedied.

"A great example of where the system is working properly is in Ann Arbor in Washtenaw County," she said.

Describing that county's system as "a funded public defender office that is integrated into the criminal justice system," Arnovits explained the "county has the lowest commitment rate to prison of any county in the state. And they don't have some sort of crime wave going on. What you see there is a functioning system, and yet they're not necessarily sending lots of people for long periods of time to the state system."

Moving forward

With the State Bar's report expected in the early months of 2007, the face of Michigan's indigent defense system will likely be changing a great deal over the coming years.

Neuhard hopes these changes will help counties in their ability to subsidize public defense.

"The counties in virtually every state — particularly in Michigan — are not able to adequately fund indigent defense," he said.

Though "there is a constitutional obligation and it's something the counties must do," Neuhard recognizes "the limitations and the state of the economy" make it difficult for counties to "bear the cost of improving public defense services" alone.

Therefore, he's hopeful Michigan will join the "vast majority of states that have the money provided by the state for trial level services."

Neuhard would like to see the "state provide some of the public defense services in Michigan to take the burden off the counties" because "you can't put this burden on the counties and expect uniform services across the state."

As for Arnovits, she expects the report to show some money is already being spent, but that caseloads remain "too high for the amount of money being spent."

For now, she is looking forward to what the report reflects and is expectant it will provide "some information upon which to make changes in the current system to bring it into line with national standards."

If you would like to comment on this story, please contact Molly F. Dilbeck at (248) 596-2700 ext. 39 or molly.dilbeck@mi.lawyersweekly.com.

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