

Main Office
613 Abbott Street
Detroit, MI 48226
313.967.5555 ph
313.962.0747 fx

Client Service Center
1240 Third Street
Detroit, MI 48226
313.967.5800 ph

Providing High Quality Legal Services to Disadvantaged Residents of Metro Detroit Since 1909.

ORAL TESTIMONY

**REGINA DANIELS THOMAS
CHIEF COUNSEL – JUVENILE LAW GROUP
LEGAL AID AND DEFENDER ASSOCIATION, INC.**

Deierdre L. Weir
President & CEO

Miriam L. Siefer
*Executive Vice President &
Chief Defender
Federal Defender Office*

Joan Glanton Howard
*Chief Counsel
Civil Law Group*

Regina Daniels Thomas
*Chief Counsel
Juvenile Law Group*

Donald L. Johnson
*Chief Defender
State Defender Office*

**SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND
SECURITY**

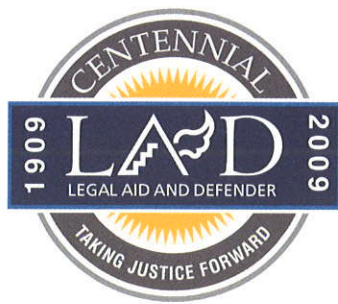
COMMITTEE ON THE JUDICIARY

of the

U.S. HOUSE OF REPRESENTATIVES

**Hearing on Representation of Indigent Defendants in Criminal
Cases:
A Constitutional Crisis in Michigan and Other States?**

March 26, 2009



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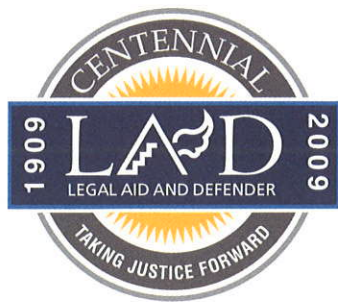
Donald L. Johnson
*Chief Defender
State Defender Office*

I sincerely thank the Chairman of the Judiciary Committee, Representative John J. Conyers, Jr.; the Subcommittee Chair, Representative Robert C. Scott; the Ranking Member, Representative Louie Gohmert; and the Members of the Subcommittee for holding the hearing today on the Representation of Indigent Defendants in Criminal Cases. I am Regina Daniels Thomas and am honored to appear before you today on behalf of the Legal Aid and Defender Association, Inc. of Detroit, Michigan.

In those counties where counsel is provided the system compromises on a daily basis the ability of attorneys to provide adequate and competent representation. Competent representation means that an attorney trained in the nuances of juvenile representation has resources to actually defend the case and a caseload that will allow the attorney to do the work that is required to provide zealous advocacy for children who find themselves charged with a delinquent act in Michigan.

Society has already recognized that children are different and incompetent to make decisions about a number of life's issues. Add this reality to the fact that the children who find themselves in Juvenile Court come from some of the most challenging backgrounds and you have a recipe for disaster. Our clients come from educational environments that are failing them, communities where violence occurs regularly, and environments of abuse and neglect. Our clients also have to deal with issues of poor health, mental illness and domestic violence. The children and families we see in court are surviving not living. They are not savvy when it comes to the Juvenile Justice System and they lack the knowledge to navigate the system to achieve successful outcomes.

A typical day in juvenile court will find hundreds of children and parents attempting to navigate a system which is operating at full capacity. Attorneys are handed a stack of files and told these are your cases for the day. Attorneys meet their clients for the first time in the hallways of the court house if the client is not in custody. If the client is in custody, the attorney meets his client in the holding area where other children are present regardless of the seriousness of the offense charged. Both meetings are superficial in that the amount of time spent is limited, the amount of



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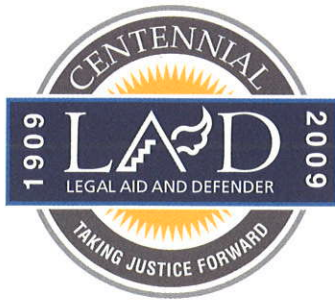
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information gathered is minimal at best and does not take place in a confidential environment. These meetings are further limited by the courts desire to move cases forward as quickly as possible. Based upon this meeting attorneys have to help their clients decide, very quickly and with very little information, how to proceed on a case. Does the client accept the plea offer? Should the matter be set for trial? Do you request a judge or judge and jury? The attorney must determine if her client actually committed the offense charged. The attorney must also determine if there are any mitigating circumstances or viable defenses. Is the client competent? What if any are the collateral consequences of my child client being found responsible? Most of the answers to these questions cannot be answered in that first meeting and without adequate training. But attorneys are expected to on a daily basis to do just that and the children and families involved are the ones who suffer. The answers to these questions can be determined through follow up meetings but burgeoning caseloads can make this difficult.

I have personally encountered children with cognitive deficiencies who have pled to offenses where I have after meeting them questioned their competency. One young man was charged with unarmed robbery for the second time. The charging document described the incident as one in which the child client put his hand in the pocket of a school mate and took \$3.00 and a cell phone. This was the second offense for the young man who was already a committed youth. A cursory review of the court file yielded information that the young man had been involved in a very serious car accident some years prior and did in fact have a closed head injury which caused him to be cognitively impaired. One specific area which was effected was his impulse control. Despite the fact that this child was already a committed youth I believed the issue of competency needed to be addressed. The court disagreed by pointing to the fact that the client had already pled responsible to the charge of unarmed robbery on a previous occasion with very similar circumstances. This young man required treatment intervention beyond what is typically available within the Juvenile Justice System but with limited options to divert this case to a more appropriate forum the county and the State have undertaken the responsibility to provide services. The lack of competent representation is not specific to court appointed counsel in Juvenile Delinquency cases. I have personally observed retained counsel have a child client with organic brain damage, which is the result of a seizure disorder, plead to an offense as charged because he had cases in another courthouse and wanted to resolve this matter as quickly as possible. While these cases on their face seem extreme this sort of thing



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occurs on a routine basis particularly, in the case where developmental delays are not immediately apparent.

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Those are the cases where the child is perhaps behind a few grades in school or, has a diagnosed mental illness, is prescribed psychotropic medications, or lives in an environment where he or she has otherwise been neglected or abused. Not having the opportunity to meet with your client for a significant period of time and not being properly trained prevents the attorney who seeks to represent children from being able to discover this information and present it to the court when appropriate.

There is also a problem with the continuity of representation. In the current system, particularly in the largest county in the State of Michigan, a child will meet a minimum of two attorneys prior to his actual trial date. What happens after trial is even more troubling. There is very little advocacy taking place in the area of having child clients placed in the least restrictive environment where they can receive services. The inability of counsel to be familiar with community based services which would allow a child to remain in the community with no risk to safety and receive treatment at a fraction of what it costs to have a child in a residential treatment facility causes an increased cost to a system which is already struggling financially.

All of these issues have created the perfect storm for our clients. Adequate competent advocacy during and after trial increases the odds for clients involved in the Juvenile Justice System to succeed once they reach adulthood. Without adequate competent representation the chips are being stacked against them in an environment where involvement in the Juvenile Justice System is no longer confidential and rehabilitative but is open and punitive and the consequences of being involved are increasing. Consequences such as being unable to enter the armed forces, the inability to enter a nursing program, problems with immigration status, the inability to apply for certain kinds of jobs and even the inability to take advantage of advanced education opportunities. These consequences are preventing children from being able to become productive adults living successful lives.