

**Testimony of Melanca D. Clark¹, Counsel
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Before the Senate of Maryland Judicial Proceedings Committee
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Mr. Chairman and members of the committee, the Brennan Center is greatly appreciative for your leadership in holding a briefing on the direction of the Public Defender's office. Thank you for having me here today.

The purpose of my testimony is to provide a national perspective on the community oriented defense movement and to share with you the reasons why the state should applaud the Office of the Maryland Public Defender's commitment to the provision of high quality defender services, based on this model, through its creation of Neighborhood Defenders Northwest.

Introduction

The Brennan Center for Justice at New York University School of Law was founded in 1995 as a living tribute to the late Supreme Court Associate Justice, William J. Brennan, Jr. The Center is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. The Justice Project at the Brennan Center is dedicated to securing the nation's promise of equal justice, and focuses much of its work on ensuring fairness in the criminal justice system.

At the Brennan Center I have the privilege of directing the Community Oriented Defender Network. We coordinate a national coalition of defenders pursuing community-based outreach and systemic policy reform in communities across the country.

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The Brennan Center created the Community Oriented Defender Network in 2003 as a way to honor *Gideon's* fortieth anniversary, and to support and encourage a movement that recognizes that the representation of individuals charged with crimes is most effective when it takes into account the life circumstances that bring individuals into contact with the criminal justice system, and when defenders fully engage the communities in which the individuals live.

The community oriented defender movement is a response to the limitations of traditional case-specific representation. In the 1970s and 80s, the breakdown of certain sections of the social safety net left public defenders handling a wider range of problems than in the past,² and public defenders began to see the same clients, particularly those suffering from severe addiction and mental illness, over and over again.³ In the 1980s, an increased societal emphasis on “tough on crime” policies, coupled with new support for law enforcement and prosecution -- without an equivalent commitment to indigent defense services⁴ -- left defenders representing more clients with less funding. The community oriented defender movement gained traction as innovative communities sought more efficient ways for defenders to carry out the defense function.⁵

These “holistic” or “community oriented” defenders are dedicated to providing every individual with a zealous defense while also breaking the cycle that leads individuals into multiple encounters with the criminal justice system. Community oriented defenders achieve this goal by:

- **Engaging in whole client representation:** defenders focus not just on case resolution but also on addressing negative life circumstances that may impede effective representation or lead to re-arrest or reincarceration.
- **Securing community services:** defenders harness community resources and line up essential support, including substance abuse treatment, family counseling, and medical care.
- **Fixing structural problems:** defenders partner with community leaders and other stakeholders to improve the administration of the criminal justice system and address broader societal ills.

² See Cait Clarke, *Problem Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor*, 14 GEO. J. LEGAL ETHICS 401, 425 (2001).

³ See *id.* at 421.

⁴ See Kim Taylor-Thompson, *Effective Assistance: Reconceiving the Role of the Chief Public Defender*, 2 J. INST. STUD. LEG. ETH. 199 (1999).

⁵ See Kyung M. Lee, Comment, *Reinventing Gideon v. Wainwright: Holistic Defenders, Indigent Defendants, and the Right to Counsel*, 31 AM. J. CRIM. L. 367, 371 (2004); Michele Sviridoff et al., *Developing and Implementing a Community-Based Defense Service: Pilot Operations of the Neighborhood Defender Service of Harlem* 42-43 (Vera Institute of Justice Research Department, 1991), available at <http://www.vera.org/content/developing-and-implementing-community-based-defense-service-pilot-operations-neighborhood-de>.

The network we coordinate has grown from 8 to over 50 agencies.⁶ Given the increasing embrace of this model around the country, it is particularly troubling to see the Board of Trustees question the state's commitment to a model that has proven its value not only to clients, but to society at large.

Neighborhood Defenders Northwest

The Neighborhood Defenders Northwest (“NDN”) office opened its doors in 2007 in the Park Heights neighborhood of Baltimore, a community named as a primary ex-offender reentry point in Maryland by a 2003 study by the Urban Institute.⁷

In addition to fulfilling the traditional functions of a defender program by providing high quality representation in the courtroom, the NDN has been a leader in the community oriented defender movement with its focus on breaking the cycle of recidivism that results from mental illness, addiction and joblessness.

The award winning staff at NDN is deeply engaged with key institutions in the Baltimore community – sustaining a reliable connection between individuals charged with crimes and the housing, treatment, and employment programs that can make a difference in the individual's life. Law student volunteers help the office expunge minor criminal records that have proven to be a persistent barrier to employment opportunities.

Notably, NDN's three circuit court attorneys and four district court attorneys each handle as many, or more, than the state-wide per-attorney average number of cases.

The Action Taken by the Board of Trustees

As you are aware, in July 2009, Mr. T. Wray McCurdy, a member of the three-person Board of Trustees of the Maryland Public Defender, wrote a letter to then-Public Defender Nancy Foster demanding that she disband NDN, along with the public defender's capital crimes and juvenile defense units. In addition, Mr. McCurdy's letter demanded that Ms. Forster justify which, “if any, social workers are necessary,” and identify further actions that would “refocus” the defender's mission away from a “holistic approach” and toward “effective representation.” Finally, his letter stated, “[t]he effort to rehabilitate and life-assist individuals charged and convicted with crimes is not a duty or responsibility of the [office of the Public Defender].”

⁶ Notably, a 2001 Brennan Center survey of 127 defenders across the country found that 85% of respondents said that community collaboration was an important aspect of their practice, with 18% calling it essential. Brennan Center for Justice, *Community-Oriented Defender Fact Sheet* (Feb. 2002), http://www.brennancenter.org/content/resource/community_oriented_defense_fact_sheet/.

⁷ See Nancy G. La Vigne & Vera Kachnowski, *A Portrait of Prisoner Reentry in Maryland* (Urban Institute, Mar. 2003).

Benefits of the Community Oriented Defender Model

The notion that providing holistic defense services, or services that reach outside the confines of a legal case, is in some way inconsistent with “effective” representation is clearly misguided. As an initial matter, the state legislature has long recognized the specific obligation of the Office of the Public Defender “to provide . . . *related necessary services*” beyond the representation required in the courtroom itself.⁸

Moreover, through its extensive experience running the Community Oriented Defender Network, and partnering with NDN and other community oriented defenders across the country, the Brennan Center has witnessed the many ways that the community oriented defense model adds value – to clients, to defenders managing overwhelming cases loads, and finally, to society at large.

Community oriented models of defense allow defenders to:

1) Engage in More Effective Representation

A community based model is not only consistent with zealous advocacy – it makes defenders’ advocacy more effective. The experiences of the Community Oriented Defender Network make clear that having an office in the community and providing holistic services to clients are both extremely valuable tools for defenders.

First, having a defender office located in the community it serves, as NDN does with its Park Heights location, aids defenders at every stage of representation. A neighborhood office promotes earlier and more frequent communication between client and defender, a precondition to effective representation. The community connections that neighborhood defender offices are able to develop can be critical to defenders’ pretrial investigations, which are the foundation for developing a proper defense. Community based defenders have broad community networks and daily contact with the neighborhoods where crimes take place. Their location in the community facilitates the process of identifying potential witnesses, and gives defenders invaluable background knowledge when interviewing or cross examining witnesses.

Furthermore, while defenders in traditional offices are usually assigned cases at the courthouse, community based defenders often see defendants come to their offices even before arraignment. These defenders are able to immediately track down witnesses and investigate crime scenes, both of which may be harder to access with the passage of time.

Improved investigations and greater information-sharing has a direct effect on case outcomes. For example, community oriented defenders can provide more reliable information to prosecutors and judges, reducing incarceration rates and leading to shorter sentences. A study by the Vera Institute of Justice found that the community-based Neighborhood Defender Service of Harlem had fewer cases result in incarceration, and shorter terms of incarceration, as compared to similar cases tried by other attorneys. The

⁸ MD. CODE ANN., CRIM. PROC. § 16-201 (emphasis added).

Neighborhood Defender Service attributed this difference to the additional information that it was able to present to prosecutors and judges, based in part on working on cases earlier and knowing clients and the community better.⁹

The value of addressing a client's extra-legal needs is particularly salient in the context of sentencing or bail arrangements. For instance, if a client is homeless, a judge is less likely to consider probation in lieu of jail. Conversely, a judge may be more amenable to non-prison sentences for clients who have already sought to address drug problems or in cases where an attorney identifies extenuating circumstance such as mental illness. In these ways, the community oriented defender model supports defenders in providing the strongest possible representation to their clients.

2) **Improve the Administration of Justice**

Community oriented defenders are also well-placed to support activities and reforms that make the criminal justice system operate more efficiently.

For example, community oriented defense models allow for more sustained contact between attorneys and defendants, beginning much earlier in the criminal justice process. This close contact makes clients less likely to miss court appearances – in fact, NDN's failure-to-appear rate for clients appears to be less than other police districts' by nearly half. This means that sheriffs do not need to serve as many warrants and fewer defendants spend time in jail awaiting trial, saving the state money and avoiding the disruptions to families and employment that pretrial jail time causes. NDN attributes its low failure to appear rate to the effective communication and relationship with clients, which are fostered by the office's neighborhood based model.

There is also evidence that sustained contact between attorneys and defendants has other positive implications. Studies suggest the amount of time that defendants spend with attorneys positively affect their perceptions that the criminal proceeding in which they are involved is fair.¹⁰ This perception may enable a defendant to be more accepting of the outcome of the proceeding, even when that outcome results in a conviction or jail time, which in turn may form the basis for a defendant's positive reentry into his or her community when a sentence is completed.

Community oriented defenders that think beyond individual cases to give fuller consideration of the institutional forces affecting multiple clients are also particularly well positioned to hold the government accountable for failed policies, and to help devise solutions to systemic problems. For example, the Seattle and King County public defender office worked with community leaders, the police, and other stakeholders to develop the Clean Dreams program, a community-based pre-arrest diversion and community re-entry program that was created as an alternative and potentially more

⁹ Christopher Stone, Vera Institute of Justice, *Lessons of Neighborhood Focused Public Defense, in Crime and Place: Plenary Papers of the 1997 Conference on Criminal Justice Research and Evaluation* 98-99 (1998).

¹⁰ Jonathan D. Casper et al., *Procedural Justice in Felony Cases*, 22 LAW & SOC'Y REV. 483, 487 (1988).

effective response to the drug trade than law enforcement drug raids. The program, which relies on peer-based intervention, helps at-risk criminally involved individuals find employment, housing, educational opportunities, and drug and mental health treatment. An initial evaluation shows that the recidivism rate of those entering the program with a felony record was only 18%, as compared to a re-conviction rate of 59% in the county where the program is located.¹¹ The work of community oriented defenders thus increases the integrity of the justice system, promoting safe communities and ensuring that it is accountable to all stakeholders.

3) Break the Cycle of Re-arrest and Incarceration

Community oriented models also engage in creative problem-solving approaches to address the root causes of crime. Defenders can take advantage of their unique relationship as counselor to the defendant, *vis a vis* other actors in the criminal justice system, to link clients with services for addiction, mental illness, unemployment, and other problems that impede life success and may lead to criminal activity. The impact of this client-centered approach has been shown to be significant.¹²

In-house social workers are an integral part of this approach. Their particularized expertise helps defenders better identify client needs, as well as programs most appropriate to address those needs. Not only do social workers' expertise make interventions more effective, but their presence also frees defenders time to develop their legal case.¹³

Community defenders' openness to collaborate with neighboring community members, community groups, local social service providers, and a broad range of other institutional players, produces life-changing opportunities for clients – opportunities far less likely to

¹¹ See Alexis Harris, *Program Evaluation of "Clean Dreams"* 6-7 (Sept. 2008).

¹² For example, the Georgia Justice Project reports that the recidivism rate for its clients is only 18%, while statewide data indicates that 36% of Georgia prisoners released in 2000 returned to jail within three years. Compare Georgia Justice Project, <http://www.gjp.org/about> (last visited October 13, 2009) (describing recidivism rates for Georgia Justice Project), with Nancy G. La Vigne & Cynthia A. Mamalian, Urban Institute, *Prisoner Reentry in Georgia* 18 (Nov. 2004), available at http://www.urban.org/UploadedPDF/411170_Prisoner_Reentry_GA.pdf (describing statewide recidivism rates). The results of an arraignment intervention program by the Rhode Island Public Defender are similarly positive. The program promoted dispositions that address client needs, such as substance abuse treatment, often in lieu of incarceration or with a shortened sentence. In addition to improving life outcomes and reducing strains on jails, the program also resulted in 654 probation and bail violations being withdrawn or not filed, reducing court congestion, saving prisoner transportation costs, and allowing municipalities to avoid having to send police officers and other witnesses to testify. See Letter from John J. Hardiman, Rhode Island Public Defender, May 9, 2006, available at http://brennan.3cdn.net/12bcedb94b45a4f1e4_g0m6i682b.pdf. For additional information on potential benefits from a community oriented defense model, see Mark H. Moore et al., *"The Best Defense is No Offense": Preventing Crime Through Effective Public Defense*, Program in Criminal Justice Policy and Management of the Malcolm Wiener Center for Social Policy, John F. Kennedy School of Government (Aug. 2002), available at http://www.hks.harvard.edu/criminaljustice/publications/best_defense.pdf.

¹³ See Moore et al., *supra* note 13, at 14 (asserting that social workers are an essential component of good defense work).

become available when representation is provided exclusively on the traditional model. For example, the Office of the Public Defender is partnering with Montgomery County Correctional Re-Entry Unit (MCCF), and the Montgomery County Health & Human Services (HHS) to focus on reentry for formerly incarcerated individuals. Along with other community partners, they offer reentry programs in correctional facilities and host Family Outreach Nights that provide information about resources available to families that are assisting loved ones in their transition from jail back to the community.¹⁴ Similarly, with the help of paralegals and law student interns, the NDN office is providing expungement services to public defender clients that helps relieve the collateral consequences of arrest or convictions for minor crimes that can have a devastating impact on the ability to secure a job, access credit, and find a place to live.¹⁵

Needless to say, defender problem-solving approaches that lead to better chances of success for clients and the attendant reductions in recidivism can result in dramatic costs savings to the state.¹⁶ A focus on up-front defense expenditures for social workers and expungement programs which fails to acknowledge the longer-term benefits of helping clients get on their feet and stay off the streets is woefully short-sighted.

Conclusion

Public defenders throughout the nation have recognized that addressing client needs and developing community relationships improves legal outcomes, while also promoting safer communities, lowering costs, and fostering greater respect for the criminal justice system. The Office of Public Defender, through its NDN office, has created a laboratory to experiment with the community oriented approach, and indeed that experiment is paying off. The office is a valued resource and its loss to the Park Heights community would be devastating. The state should not break faith with the promise of the approach, and it should not squander a treasured resource.

¹⁴ Maryland Office of the Public Defender, <http://www.opd.state.md.us/neighborhood.html> (last visited Oct. 19, 2009).

¹⁵ See e.g., Harry J. Holzer, Stephen Raphael & Michael A. Stoll, Will Employers Hire Ex-Offenders? Employer Preferences, Background Checks, and Their Determinants (Inst. for Research on Poverty, Discussion Paper No. 1243-02, 2002) (finding that in a survey of over 3,000 employers from four major metropolitan areas in the United States, 60 percent stated that they would 'probably' or 'definitely' not be willing to hire an applicant with a criminal record); Mark Joseph, The Effect of Arrests on the Earnings of Young Men: Evidence from the National Youth Survey 19-21 (Harris Graduate School of Public Policy Studies, University of Chicago, Working Paper, 2001); Devah Pager, The Mark of a Criminal Record, 108 AM. J. SOC. 937 (2003).

¹⁶ See, e.g., Stone, *supra* note 9, at 98-99 (finding that the Neighborhood Defender Services of Harlem saved the state approximately \$10 million in reduced prison bed-days, more than twice the NDS budget at the time); see also Letter from John J. Hardiman, *supra* note 13 (describing cost savings from the Rhode Island Public Defender arraignment intervention program).