

**TESTIMONY OF RICHARD NODEL, PRESIDENT
JEWISH COMMUNITY RELATIONS COUNCIL OF METROPOLITAN DETROIT**

**FOR THE HEARING ON INDIGENT DEFENSE BEFORE
THE MICHIGAN HOUSE JUDICIARY COMMITTEE**

MICHIGAN HOUSE OF REPRESENTATIVES

Representative Mark Meadows, Chairman

December 14, 2009

Chairman Meadows and members of the committee, thank you for your time and for addressing the critical issue of public defense. And thank you for allowing me the opportunity to provide this testimony.

My name is Richard Nodel. I am the president of the Jewish Community Relations Council of Metropolitan Detroit. The JCRC was founded in the 1930s as the public affairs voice of the Detroit Jewish community. Our statewide association, the Michigan Jewish Conference, has asked me to speak on behalf of the Jewish communities throughout Michigan as well.

Our community leadership is deeply concerned about our state's public defense system. It is failing. The Jewish Community Relations Council Board has joined the Campaign for Justice coalition in their efforts to address our state's crisis in indigent defense.

To our board, this is a question of providing equal access to legal services for anyone accused of a crime. The role of government should be to maintain, establish and protect a baseline of rights and adequate representation for the accused. A just society is judged on how it treats those with the least resources, who are isolated and vulnerable.

This hearing has been informative. It is heartening to see our legislators gathering information on this critical matter and listening to so many voices from across our state. I hope and pray that your efforts will yield concrete actions to protect the rights of individuals who have been accused of committing crimes. We are pleased with last week's introduction of House Bill 5676, which would bring about necessary reforms.

The Jewish community is keenly aware of the vulnerability that attaches to being a minority. During many dark periods in our history we have felt the isolation and persecution that flows from having our rights infringed upon. We have known what it is like to be accused. We have known what it is like to be

incarcerated. We have known what it is like to face punishment without counsel, without defense, without justice.

In America today, we know the blessings of our Constitutional guarantees of due process and freedom. But we also know that these rights are not equally available.

The rabbis of antiquity knew the awesome power that a society has when it takes from someone their freedom. This understanding led them to make it extremely difficult to convict someone of a crime. In the portion of the Talmud called Sanhedrin, the rabbis go into great detail about criminal law and how the accused must be treated, the rules of evidence, and the qualifications of judges and witnesses. This ancient body of sacred law teaches us and reminds us that the administration of justice takes expertise. More complex cases call for more sophisticated representation. The standards for convicting a person should be high.

When we live in a society where the judicial system has a diminished reverence for the rights of the accused, it is our obligation to correct that. Our magnificent Constitution guarantees our freedom by promising that any citizen accused of a crime can be represented in a fair proceeding. Access to competent counsel is constitutionally mandated. And it is essential to prevent the miscarriage of justice.

Every individual, regardless of income or background, has a constitutional right to an effective defense. A state-funded public defense system that meets the Eleven Principles of a Public Defense Delivery System¹, which was adopted by the State Bar of Michigan, would ensure a more effective, efficient and ethical system that upholds this fundamental constitutional right.

Full funding of our courts and the public defender system, including access to DNA evidence where appropriate, is vitally needed to ensure that justice is neither delayed nor denied. And there can be no doubt that when the outcome of a criminal proceeding hinges arbitrarily on a defendant's finances, justice is denied.

¹Adopted by the State Bar of Michigan Representative Assembly, April 2002

The right to counsel:

The Sixth Amendment of the United States Constitution states that “in all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense.” The Constitution does not make a distinction between those who can and those who cannot afford an attorney. In Michigan, however, those who cannot afford an attorney are often denied this right.

The National Legal Aid and Defender Association (NLADA) found, in a year-long study of ten representative Michigan counties,² that in many jurisdictions the accused are not represented at pre-trials, even if an attorney has been requested. Court observations revealed that many individuals – both adults and children – waive their right to counsel in part because of the fees that may be assessed if counsel is requested, or because they are told to speak to the prosecutor to work out a deal before considering a request for counsel.

This is not the justice intended by the drafters of the Bill of Rights. And it is not the justice we expect in a modern democracy.

Our state lacks any statewide eligibility standards for providing representation. We lack adequate screening to ensure a uniform application of our defense system. We lack a uniform requirement for prompt appointment of counsel. We lack a uniform rule for enforcement of the right to counsel. We lack adequate training for public defense lawyers. And we lack a statewide standard for the representation they provide.

And, most lawyers who work in our criminal courts will tell that the system is being pressed beyond its reasonable limits. Public defense lawyers are overworked and under-resourced. There is little to no funding to investigate, call expert witnesses, or take other measures that are not only routinely available to those with deeper pockets – and these measures are directly linked to just results. The unimaginable burdens placed on public defense lawyers results in accused individuals often meeting their lawyer for the first time just a few minutes before a court hearing that can materially impact their freedom.

² National Legal Aid and Defender Association, “A Race to the Bottom: Speed & Savings over Due Process – A Constitutional Crisis” (June 2008).

Wrongful convictions and public safety:

In Michigan, recent exonerations of wrongfully incarcerated individuals such as Ken Wynnemko have clearly demonstrated that change must be made in order to ensure a justice system that promotes public safety.

The failure of our public defense system is evident in these cases – and many more. In Ken Wynnemko's case, his first attorney neglected to return numerous calls. Then he quit. The second attorney had only two days to prepare – over a weekend. Crucial biological evidence that would have supported Wynnemko's innocence was never even analyzed, let alone presented in court. Eight years later, DNA testing proved him innocent. During those eight years, he languished in prison. And every one of us was more vulnerable to crime, because the real perpetrator was free. How many times has this pattern been repeated?

Conclusion:

The pursuit of justice is a core Jewish value and also a fundamental principle of American democracy. Michigan's public defense system has been singled out numerous times over the past few decades for its failures in upholding the constitutional right to counsel. The Jewish Community Relations Council and Jewish communities throughout Michigan believe that now is time that our lawmakers to enact public defense reform legislation in order to ensure that Michigan residents have a justice system that works for all. Thank you for the opportunity to submit this testimony.

"Justice, justice you shall pursue."

– Deuteronomy 16:20

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