

SOUTHERN JUVENILE DEFENDER CENTER

Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina

ENSURING EXCELLENCE IN JUVENILE DEFENSE AND PROMOTING JUSTICE FOR ALL CHILDREN.

Remarks to the Georgia Public Defender Standards Council September 24, 2004

Good morning. I am Karen Worthington, Director of the Southern Juvenile Defender Center and the Barton Child Law and Policy Clinic at Emory Law School. Thank you so much for allowing me to speak with you this morning. What you are doing in this room is history in the making and I feel honored to be with you.

Eight years ago Mike Mears' Brief History of the Georgia Indigent Defense Act taught me much about the process of making policy and enacting legislation in Georgia. One lesson I carried away from that book is that patience and persistence (to the tune of decades) are needed if you want to enact significant statewide reforms in Georgia. Well, with the dawning of a new millennium, Mike and others have a new lesson to teach young lawyers: sweeping changes can occur within the brief span of a year or two.

In the last two years the face of indigent defense in Georgia has dramatically changed. The next few years will be even more revolutionary and exciting as the system matures and becomes a national model.

I am here to urge you to use this rare opportunity—that of shaping a statewide public defender system-- to bring to life the dream of *Gault* as well as the dream of *Gideon*. In *In re Gault*, the Supreme Court of the United States said that many of the constitutional protections guaranteed to adult criminal defendants apply to children who are subject to a loss of liberty. In particular, the Supreme Court said “the assistance of counsel is essential ...” for proceedings involving the determination of delinquency that carry with them “the awesome prospect of incarceration” The Court said, “[t]he juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child ‘requires the guiding hand of counsel at every step in the proceedings against him.’”

The Southern Juvenile Defender Center, SJDC, is one of nine regional support centers for attorneys and other professionals representing children accused of crimes in juvenile and adult courts. The regional centers were created by and carry out the work of the ABA National Juvenile Defender Center (ABA Center). SJDC serves Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina.

SJDC works to ensure excellence in juvenile defense and promote justice for all children. The mission of the SJDC is to improve the lives of children in their encounters with the

juvenile and criminal justice systems in the region. This is achieved by enhancing the quality of representation, the capacity of the juvenile defense bar, and by educating society on the issues and processes affecting children with research and policy analysis.

As a small regional center we are limited in what we can accomplish in each state, particularly in the area of policy development. That is why we work with effective local partners who are in a position to effect systemic reforms.

GPDSC is at the forefront of systemic reforms in Georgia and I come to you to offer support and assistance as you work to achieve the goal of having state-funded specialized public defenders for juveniles in every circuit defender office in the state.

First I will share some information about SJDC. After that I will offer suggestions for your consideration as you solidify the defender system in Georgia. Finally, I would like to hear your thoughts on how a partner outside the indigent defense system can help you achieve your goals.

SJDC was moved to Emory Law School in August of 2001. Prior to that it had been located in New Orleans, LA. The director of SJDC was recruited to the national office so the national office was looking for a new director, and I was asked to take over the center and move it to Emory Law School. I accepted the directorship in addition to my duties as director of the Barton Child Law & Policy Clinic, with the hopes that I would be able to raise funds to hire staff.

Today, with the generous assistance of Emory Law School, we have a full time managing attorney, Amy Howell. Amy has just completed a two-year Equal Justice Works Fellowship with SJDC and is staying with us. I remain as the part-time director of SJDC. As grant funds allow, we also hire contract attorneys to work on specific projects.

SJDC is an externship placement for Emory and Georgia State Law students and Georgia State Masters of Social Work students. The students earn academic credit for conducting research, writing position papers, engaging in legislative analysis and tracking, handling requests for technical assistance, and assisting Amy with her caseload.

As part of her Equal Justice Works fellowship, Amy represented children with mental health and other special needs who were facing delinquency or unruly charges in some rural counties in Georgia. She is continuing her direct representation work in those counties as well as in the metro Atlanta area. Students work with Amy on all aspects of her representation.

On the policy side, SJDC recently published *From Classrooms to Courtrooms*, a paper reviewing the history and interpretation of zero tolerance laws nationally and in Georgia. It analyzes the legal and programmatic weaknesses of zero tolerance and makes recommendations to lessen its negative effects.

In terms of technical assistance and training, we have just published *Representing the Whole Child: A Guide to Juvenile Defense*. With the financial support of the Children and Youth Coordinating Council, Amy has written a comprehensive guide to appropriate and zealous advocacy on behalf of youth in juvenile court. The guide provides attorneys with the basics of juvenile court procedure and laws affecting youth. It takes a holistic approach to juvenile defense, evaluating all the factors that may have contributed to the delinquent behavior to assist with proper representation and handling through the system. The Children and Youth Coordinating Council has committed to assisting Amy in conducting trainings for juvenile defenders based on this guide.

Our legislative and policy work around the region tends to focus on access to and quality of representation; children tried in the adult criminal justice system; differential treatment and overrepresentation of children of color; girls in the juvenile justice system; and mental health and other special needs of children involved with the juvenile justice system.

Representing children is a specialized area of legal practice requiring ongoing training and a full-time commitment to the practice. Representing children should be a career choice rather than a step on a career ladder. Zealous advocacy demands that lawyers representing children have to not only be good trial lawyers and understand criminal and juvenile law, they have to know about child development; the effects of trauma on brain development; adolescent development; competence and culpability issues; how to ethically work with young clients; how to speak with children; what treatment and intervention options are available; how to access funds to get children the services they need; the requirements of the Individuals with Disabilities Education Act; and the list goes on. I urge you, as you shape Georgia's indigent defense system, to create a system that values the constitutional rights of children and values and supports those who protect the rights of children.

As you all know, one of the first steps to implementing reforms is assessing where you are and what is needed. The ABA Center is working to assist every state in conducting an Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings. To date, twelve assessments have been completed and several others are underway. Georgia's assessment was completed in 2001 and the report was written by the Southern Center for Human Rights and the ABA Center. You have a copy of this assessment in your folders. Some of the recommendations from that Assessment are being addressed by GPDSC. However, as with the representation of adults, we have a long way to go before the dreams of *Gault* and *Gideon* are realized.

Another southern state that has completed its Assessment is North Carolina. North Carolina proves that radical change can occur at a rapid pace. The North Carolina Assessment was released in October 2003. One year later, in October 2004, North Carolina will have filled the newly created *and funded* position of Statewide Juvenile Defender. This position is unique in this country, as it is the only officially identified state level position that is solely dedicated to supporting and promoting the practice of juvenile defense work. SJDC conducted research for IDS to identify similar positions to

use as examples in drafting their job description and found none. The closest thing to the ideal that North Carolina was trying to create was Georgia's Juvenile Advocacy Division.

Many states have a person or office that fulfills some of the duties assigned to the North Carolina Juvenile Defender, but in every other state, including Georgia, those persons have job titles and responsibilities that are broader than supporting juvenile defense work. If we are to set a national standard of juvenile defense practice as a specialty area of law, we must lead by example and create leadership positions that reflect the belief that this is a dedicated career path rather than something to be done on the side, along with other responsibilities.

The North Carolina Juvenile Defender's job description is in your folder. The responsibilities include:

- Serve as a central resource and contact person for individual juvenile defenders across the state, as well as existing statewide and local juvenile defense committees and associations.
- Identify best practices and programs that provide effective representation for juveniles
- Develop training programs for juvenile defense attorneys
- Compile a clearinghouse of materials on North Carolina juvenile law and practice
- Establish in each judicial district a network of experienced juvenile defense attorneys who can serve as mentors for new attorneys handling delinquency cases
- Work with other system actors to implement more effective practices and procedures, such as better docketing practices, where needed
- Prepare materials and reports for the General Assembly about juvenile defense issues

The starting salary for this position is "\$70,000 or more, depending on experience."

Some of the work that will be assigned to the North Carolina Juvenile Defender has already been accomplished by GPDSC, or is in the works. However, I cannot overstate the symbolic value of having a declared office that is solely dedicated to the development of juvenile defense as a specialty area of law. This sends a message to the executive and judicial branches that children's rights are taken seriously and that children are not going to be the first group offered up when resources are being cut. The job responsibilities and salary of the North Carolina Juvenile Defender indicate that IDS considers juvenile defense to be of the same import as adult criminal defense.

It would be wonderful if Georgia were to make as bold a statement on this front as North Carolina has.

From my conversations with Mike, I know that GPDSC is committed to supporting and enhancing juvenile defense work in Georgia. As you already know, there is a broad constituency concerned about juvenile defense in Georgia. We are available to help you in your endeavors and we will continue to be assertive in a variety of venues about the need for juvenile defense issues to be a priority in this state. When difficult decisions have to be made about the allocation of resources, the timing of reforms, or the ordering

of conflicting priorities, we will be vocal in our assertion that juvenile defense should be considered on equal par with other indigent defense issues.

With my remaining time I would like to mention a few areas that are likely to come up in the development of Georgia's system, and where the ABA has made recommendations or taken positions.

The most immediate issue SJDC is concerned about is state funding for public defenders for juveniles. I urge you to continue to press for statewide funding for public defenders for adults and children, and to draw upon whatever partnerships and other resources are necessary to ensure this happens. Representative Mary Margaret Oliver, chair of the House Judiciary Committee, will address this topic in a moment.

The second concern has to do with *Gault's* promise that the Due Process Clause of the Fourteenth Amendment guarantees a right to counsel when a juvenile is facing a loss of liberty. I urge you to create a standard for determining indigence that presumes indigence when the accused is a juvenile. Parents are often in an adversarial role in relation to their children in juvenile court proceedings so it is inappropriate to use their income in determining the child's indigence. Related to this, there should not be an application fee to determine indigence for juveniles requesting a public defender.

Third, I urge you, over the next few years, to work with a coalition of attorneys, judges, and advocates to enact legislation prohibiting juveniles from waiving their right to counsel without first consulting with an attorney. Significant research from a variety of disciplines supports the proposition that juveniles should not be able to waive their right to counsel, or if they can waive it, they should only do so after consultation with an attorney. Juveniles are vulnerable in ways that adults are not and research shows that more often than not, they lack the capacity for a knowing and voluntary waiver of counsel.

In closing, I urge you to create a national model of juvenile defense as a specialty area of law. Examine the North Carolina model and then go even further in providing status, support, and resources to juvenile defenders representing the most vulnerable among us: our children.

I appreciate your time and attention to my remarks and invite your thoughts on how a partner such as SJDC can help you achieve your goals.