

**CITIZENS ADVISORY COMMITTEE FOR THE  
CHARLOTTESVILLE-ALBEMARLE  
PUBLIC DEFENDER OFFICE**

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March 28, 2008

The Honorable Kenneth C. Boyd  
Chairman of the Board of Supervisor  
401 McIntire Road  
Charlottesville, VA 22902

Dear Mr. Boyd,

I am very pleased to send you a copy of the 2007 annual report from the Citizens Advisory Committee of the Charlottesville-Albemarle Public Defender Office. I am very proud of the work and accomplishments of the Committee during the past year. Albemarle's willingness to appoint quality individuals has certainly contributed to our successes.

Mr. Hingeley's commitment to service for the indigent is remarkable. It is good to recognize his involvement with various organizations to support and provide quality service for the indigent. He commits countless hours of his personal time to ensure continued improvements for the indigent. We applaud his staff for outstanding service.

We also express our sincere thanks to you for your support, both locally and legislatively. All of our meetings are open to the public and meeting dates are posted in advance. Your presence is always welcomed. Please do not hesitate to contact me or any member of our committee if you have questions, ideas, or concerns.

Sincerely,



Rauzelle J. Smith, Chair

**CITIZENS ADVISORY COMMITTEE FOR THE  
CHARLOTTEVILLE-ALBEMARLE  
PUBLIC DEFENDER OFFICE  
ANNUAL REPORT 2007**

**Background**

The Committee held four regular meetings January 17<sup>th</sup>, May 5<sup>th</sup>, August 14<sup>th</sup>, and October 30<sup>th</sup>. A year-end meeting was planned for December 18<sup>th</sup> but was canceled due to major conflict in personal schedules. One sub-committee meeting was held on November 7<sup>th</sup>, to discuss plans for the celebration of the 10 year anniversary of our Public Defender Office. Alan Rasmussen was appointed as the Legislative representative. Once again it is with regrets that the NAACP did not appoint a representative to fill the open seat on the committee.

Due to the increase in the Latino community, the Committee felt passionate about having representation for them. At the May 5<sup>th</sup> meeting the Committee approved a motion to increase the membership from six to seven members, and Gloria Rockhold was appointed to fill that seat. Gloria is a Mental Health Counselor working full time with at risk students through Albemarle County Schools. She grew up in South America, and is bilingual. Her job allows her to meet with families who have children enrolled in the Albemarle County School system. Gloria is also a member of the Foothills Child Advocacy Board. In that capacity, she hears about many of the needs of this community.

**Committee's Activities**

Committee members remain committed to making themselves available to community members to provide information about the services offered by the Public Defender Office. During the past year, our focus and efforts were directed toward the following areas.

1. The Governor's and Attorney General's Criminal Justice Reform Working Group, which is part of a new and innovative approach to criminal defense funding requests. The process involves bringing together a broad base of stakeholders (defense lawyers, prosecutors, representatives from the Supreme Court, Attorney General, the Virginia Bar Association, and lawyers in business practices.) All these individuals have a stake in how effectively the criminal justice system operates. The group made formal recommendations to Governor Kaine. This was a significant time for Governor Kaine, who made a commitment to improving indigent defense, and has found more money to make these improvements than any governor in at least 30 years. The plan proposed involves a small increase in prosecutor salaries, and increases for public defenders and court-appointed lawyers. It also provides a process for waiving fee caps, although there is a problem in funding this proposition as no one knows how much this will cost. We know that the fee waiver claims submitted will exceed the over \$9 Million proposed, which is a huge amount compared to what was allocated in the past. \$9 Million dollars was requested; \$8.2 Million was funded, which is anticipated to pay for 25% of waivers. Delegate David Toscano was 100% behind this request and is a member of the Courts of

Justice Committee. The 10% increase proposed for the Virginia Indigent Defense Commission (VaIDC) is the largest ever. This increase will begin to address the inequities between prosecutors and public defenders. Increased staffing is also important because of caseloads. A Supreme Court Committee will manage the fee waiver fund fairly and collect data.

2. The Committee takes great pride in the fact it was able to convince localities to supplement public defenders salaries, even though legislation would not permit them to do so.
3. Standards of practice for assigned counsel have always been of concern for the committee. While the previous "Public Defender Commission" was responsible only for the administration of public defenders and staff, the newly formed "Indigent Defense Commission" (IDC) also includes responsibility for oversight of all court-appointed counsel and has put certification standards into place. Court-appointed attorneys are now required to attend a specific number of training hours and be certified. The IDC requires Continuing Legal Education (CLE) requirements specifically in criminal defense training. As of 4/1/07, standards of practice have been established, meaning that if lawyers are going to serve in this capacity, they will have to follow these standards. The IDC has proven to be a valuable tool, and funding has been added for administrative staff to oversee these standards.
4. Assistant Public Defender Liz Murtagh made a presentation to the Committee on the landmark U. S. Supreme Court decision, "In re Gault." There was a time when juvenile court was not considered a real court, but we are at the 40<sup>th</sup> anniversary of a very important decision. Juvenile courts have been around for about 100 years. Before that, juveniles were viewed as "property." The idea was that juvenile court was a "benevolent parent" and that kids were placed into the system as there was no place else to put them. Following the Gault decision, children were given the right to have a lawyer. Virginia is now on the cutting edge with this issue. In addition to criminal law training, lawyers certified to practice in juvenile court must learn specific skills helping them to better relate to juveniles. Separate standards of practice are required. It is good to have more due process as the juvenile system is becoming more like the adult system, with more potential consequences and increasingly severe sanctions. The theory is that every child has a right to a public trial. She stated, "More and more we are finding ourselves representing children from foreign countries. We are fortunate to have an excellent local and juvenile court judge, Susan Whitlock".
5. July 1, 2008 will be the 10 year anniversary of the Public Defender Office. The Committee will play a major role in planning and hosting a celebration of this anniversary. We hope to involve speakers who represent the community.
6. Mr. Hingeley declared this year a banner year with the culmination of over 30 years of effort to change the Indigent Defense System. His point of reference was an article in Champion Magazine entitled, "Decades of Struggle" noting that Virginia made national news because so much was accomplished. The article puts everything together very comprehensively, which shows the improvements between the "report card" from 2003

and the report card from 2007. The Champion article references the report card, which was developed by a group named the "Virginia Fair Trial Project".

7. We are concerned that \$8.2 Million dollars was allocated for fee waivers and these funds have not been requested to the full extent that was anticipated. Lawyers are not making claims for the additional compensation. It is speculated there may be confusion on the part of the clerks' offices. There are new forms to deal with and there may be problems in transitioning to the new system. It is hoped these funds will be better utilized January through July, 2008. Another area we hope to help improve is the access to expert services for indigent clients. At present, if one wishes the court to approve funding for expert services, one has to reveal their reasons (to the prosecutor and the court) for asking for same, which can expose the defense strategy. The defense team should not have to potentially compromise its case by showing its hand. We would ask the legislature to allow an indigent defendant to ask for expert assistance ex-parte (without the prosecutor present) so as not to prejudice the case. Finally, the issue of recording of preliminary hearings is troubling. In many instances indigent defendants do not have the means to pay a court reporter to record preliminary hearings. Fortunately for us, in Charlottesville and Albemarle County, all preliminary hearings are recorded and transcribed. To other jurisdictions without this policy this significant improvement to the system costs relatively little. The Criminal Justice Conference has adopted this issue as one of their recommendations.

### **Special Guests Attending Meetings**

Samantha Brock, Public Defender Office  
Valerie L'Herrou, Public Defender Office  
Liz Murtagh, Public Defender Office  
David Toscano, Delegate  
Jenny Hogan, Legislative Assistant  
Liesel Nowak, Reporter for The Daily Progress  
Gloria Rockhold, Albemarle County School System  
Hunter Schwartz, ACAC

### **Recognition**

The committee applauds Mr. James Hingeley for continued successful operation of the Public Defender Office with limited financial resources, and his participation and leadership in the following organizations.

- Tom von Hemert commended Mr. Hingeley for his initiative and outstanding leadership in the development of the Crisis Intervention Team concept which is being developed in the Charlottesville/Albemarle community. One of the most important issues driving this concept is safety, for the mentally ill consumer, the community, and for the police.

- In 2007, Mr. Hingeley completed his second year of service as the Chair of the Virginia Fair Trial Project and his first year as Chair of the Criminal Law Section of the Virginia Bar Association.
- Virginia Association of Criminal Defense Lawyers
- Champion of Justice Award given to Mr. Hingeley in November, 2007. The award recognized his leadership during many years in the battle to improve Virginia's indigent defense system.

### **Issues and Concerns**

Our Committee remains concerned over the following realities:

- Lower salaries are paid to public defender lawyers than those paid to lawyers serving in the Commonwealth Attorney's offices or working in the private sector. Local governing authorities are currently providing subsidies for the prosecutors, but by state law are not allowed to provide subsidies for public defenders.
- Public defender offices offer extensive training to lawyers starting in their professions, but continue to lose these individuals to other offices offering higher pay.
- Educational debt is a significant barrier for lawyers interested in public service careers and while there is a Career Prosecutor Program, similar programs for public defenders do not exist.
- The current political philosophy of cutting funding from relatively costly hospital treatment programs with the rationale of treating the mentally ill in the community results in many mentally ill individuals becoming inappropriately and unnecessarily involved in the criminal justice system.
- Concerns have been expressed and discussed regarding the Latino communities in the Charlottesville and Albemarle County areas, related to bondsmen who often charge 55% of the amount of bond set (which is significantly higher than the percentage rate normally charged) to post bond.

### **Future Goals**

- Continue to work with Albemarle County and Charlottesville, or the General Assembly, as appropriate, to achieve pay equity for public defenders.
- The Committee embraces the idea of improving minority recruitment. This issue remains a concern to our Committee and Mr. Hingeley.
- Continue efforts to explore the development of a Career Defender Program, modeled after the Career Prosecutor Program.

- Increase awareness of and support for the Public Defender Office and its role in strengthening the Criminal Justice System by offering quality legal service to the indigent and advocating for sentencing alternatives that benefit both the offender and the community.
- Continue to make available to the public, through public forums and other means, information about public policy issues significantly affecting the welfare and interests of Public Defender clients.
- Continue our support of the Virginia Fair Trial Project and our work with the Brennan Center for Justice Community-Oriented Defense Network (COD).
- Explore the quality and quantity of client support services in our community with a view toward improving services and/or advocating for additional services where appropriate.

Approved:

Citizens Advisory Committee  
Rauzelle J. Smith, Chair  
January 31, 2008