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THE ESSENCE OF JUSTICE: INDEPENDENT, ETHICAL,
AND ZEALOUS ADVOCACY BY JUVENILE DEFENDERS

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I.	Introduction	800
II.	Why Memphis?	802
A.	The Nation Is Watching	808
B.	Zealous Advocacy: A Sufficiently Rigorous Challenge	810
III.	The Findings and the Memorandum of Agreement	812
A.	Fundamental Misunderstandings About Roles	813
B.	Defender Services Must Be Independent	814
C.	The Role of Defense Counsel	815
IV.	Goals and Priorities	818
A.	A Unified Juvenile Defense Bar: Public and Private	819
B.	Local Standards of Practice	819
C.	Reasonable Workload Controls	820
D.	Best-Practices Advocacy	824
E.	Community Engagement	826
F.	Commitment to Systemic Reform	827
V.	Conclusion: Advocacy Is the Essence of Justice	828

“The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice.”

-*Kent v. United States*, 383 U.S. 541, 561 (1966) (Fortas, J.)

*800 I. Introduction

In April 2012, the Civil Rights Division of the Department of Justice completed its investigation of the Juvenile Court of Memphis and Shelby County acting under the authority of the Violent Crime and Law Enforcement Act of 1994¹ and Title VI of the Civil Rights Act of 1964.² The investigation found serious and systemic failures that violate due-process rights and discriminate against African-American children.³ After more than a decade of deep investment from both the public and private sectors, many consider the Department's unprecedented direct federal action in Shelby County as key to leveraging the next generation of juvenile-justice reform.⁴

***801** This Article describes the Shelby County Public Defender's role in juvenile-justice reform in Memphis, Tennessee. Part I considers why the Department of Justice (“DOJ”) took action here. Part II summarizes the DOJ's Findings and the Public Defender's obligations under the resulting Memorandum of Agreement (“Agreement”). Part III addresses the Public Defender's goals for establishing a unified specialty juvenile defense bar in Memphis and the priority areas where action is most necessary. The conclusion affirms that the Agreement reached in lieu of litigation is good ***802** news for this community and affirms the central importance of advocacy in making justice meaningful for the children of Memphis and Shelby County.⁵

II. Why Memphis?

The Department of Justice has been clear that the constitutional deficiencies found in Memphis exist in urban communities across the country.⁶ Not only is Memphis often cited as one of the most dangerous metropolitan areas in the United States,⁷ the city faces overwhelming challenges with respect to urban poverty and racial disparities. If federal action can drive successful reform in ***803** Memphis, it is a good indicator that similar interventions could be useful to initiate and guide reform elsewhere.

In 2013 Memphis was “the poorest among metro areas with populations of at least 1 million.”⁸ Racial disparities also mark poverty in Memphis: “African-Americans in Memphis and Shelby County have higher poverty rates than the state and national averages for black people, while local non-Hispanic white residents have lower rates than those for the white populations of Tennessee and the U.S.”⁹ Recent census data also shows that “the poverty rate for Hispanic residents in Memphis was 40.7[%],” while the rate for the entire county was 36.4%, making Hispanics the poorest ethnic group in the area.¹⁰

Memphis has more than 48,000 children under five years old, representing 29% of all residents under eighteen years old, while in suburban Shelby County, children younger than five years old make up 23%.¹¹ In Memphis, 39% of children live in poverty, compared to 9% in suburban Shelby County¹² and the national child poverty rate of 21.9%.¹³ In Shelby County as a whole, 30% of children live in poverty.¹⁴ Of this 30%, half are in extreme poverty.¹⁵ Fewer than half of Shelby County's children are economically ***804** secure (at or above 200% of the Federal Poverty Level).¹⁶ Racial demographics of Memphis children differ from those of Tennessee and the United States. In Memphis, 71% of children are black and 17% are white.¹⁷ In Shelby County the pattern is “similar but less pronounced (58 and 29[%], respectively).”¹⁸ Statewide and nationally, “the black-white ratio is roughly the opposite of our community.”¹⁹

The community already has a number of initiatives and organizations in place working to improve the quality of life for children in our unique community. For example, Operation: Safe Community's broad strategies to make Memphis and Shelby County safer are confronting issues directly related to juvenile-justice reform in Memphis. Seeking “to make Memphis [and] Shelby County one of the safest communities of its size in the nation,” the initiative is spearheaded by the Memphis Shelby Crime Commission and is sustained by key community leadership at all levels.²⁰ This initiative prioritizes “a special new focus on youth violence prevention and intervention, with strategies having been developed through a unique partnership with the U.S. Department of Justice.”²¹ These youth-violence prevention strategies include “[e]xpand[ing] case-managed wrap-around services (e.g. mentoring, mental health counseling, afterschool programming, job training and placement, etc.) for troubled youth involved in Juvenile Court or known to be gang-involved”;²² “[e]xpand[ing] graduated sanctions that balance penalties and accountability with support services”;²³ and “[e]xplor[ing] additional sentencing options in juvenile justice with emphasis on what impact such changes would have on public safety, costs, rehabilitation, and recidivism.”²⁴

***805** Shelby County is also the recipient of a Department of Justice Defending Childhood Initiative grant to address children exposed to violence and trauma, a necessity in the community:

In 2006, Memphis had the second highest violent crime rate in the country [N] eighborhoods with the highest crime rates also have the highest density of children. 2010 data from the Memphis Police Department and Shelby County law enforcement[] indicates approximately 25,000 incidents of domestic violence per year, half of which occur where children are present.²⁵ With the grant, “Shelby County is utilizing four strategies: (1) targeted prevention activities; (2) community awareness and engagement campaigns; (3) development of coordinated service delivery systems, [and] (4) policy reform efforts” to address this critical issue for the community's children.²⁶

The remedial efforts will require alignment of juvenile justice priorities with these and other key community initiatives that support creating a healthy and safe community by providing opportunities and services to the same children most at risk for involvement in the juvenile justice system. Successful strategies should be scaled and made available to children involved with, or at risk of involvement with, the juvenile justice system.

Scholars and practitioners must realize that “[t]he vast majority of children involved in the juvenile justice system have survived exposure to violence and are living with the trauma of that experience.”²⁷ The connection between childhood trauma and the juvenile justice system is clear: “By the time children come into contact with the juvenile justice system, they have almost always *806 been exposed to several types of traumatic violence over a course of many years.”²⁸ This connection is not a coincidence:

Exposure to violence often leads to distrust, hypervigilance, impulsive behavior, isolation, addiction, lack of empathy or concern for others, and self-protective aggression. When young people experience prolonged or repeated violence, their bodies and brains adapt by becoming focused on survival. This dramatically reduces their ability to delay impulses and gratification, to a degree even beyond that of normal adolescents. Youth who are trying to protect themselves from more violence, or who do not know how to deal with violence they have already experienced, may engage in delinquent or criminal behavior as a way to gain a sense of control in their chaotic lives and to cope with the emotional turmoil and barriers to security and success that violence creates.

....

...What appears to be intentional defiance and aggression, however, is often a defense against the despair and hopelessness that violence has caused in these children's lives. When the justice system responds with punishment, these children may be pushed further into the juvenile and criminal justice systems and permanently lost to their families and society.

By failing to correctly identify and treat children exposed to violence, the system wastes an opportunity to alter the delinquent or criminal conduct of the children. This failure makes our communities less safe and results in the loss of the valuable contributions *807 of these children—in youth and into adulthood—to their communities.²⁹

Evidence-based interventions can heal the “emotional damage done to children as a result of exposure to violence and that can put them on a course to be well-adjusted, law-abiding, and productive citizens.”³⁰ The Report of the Attorney General's National Task Force on Children Exposed to Violence also noted that

[r]ethinking how we approach young people in the justice system requires people outside the system to accept that children in the justice system are not ‘bad kids’ but, instead, are traumatized survivors who have made bad decisions but can still turn things around if they have help.³¹

The foremost experts in juvenile-justice reform believe that a trauma-informed approach can use existing programs and, by effectively assessing the needs of youth in the juvenile justice system, guide these children toward a healthier, more productive path.³²

The Memphis-based Urban Child Institute, through data-driven research and result-oriented initiatives, also seeks to address many problems facing Shelby County's children by addressing the impact of trauma on children during the critical ages of zero to three.³³ The Institute advocates for public policies that are good for children, initiates prevention-based strategies, and launches intervention programs that focus on children in our community. These projects include Baby Small; the Child Data

Book; Touch, Talk, Read, Play; and the Conditions Affecting Neurocognitive Development and Learning in Early Childhood (CANDLE) research study.³⁴

***808** Memphis is a unique community with stark racial disparities and a high number of children living in poverty. However, Memphis is actively engaged in addressing these issues in a way that provides a strong foundation for juvenile-justice reform. This work is consistent with research that underscores the “important behavioral differences between adults and adolescents with direct bearing on the design and operation of the justice system, raising doubts about the core assumptions driving the criminalization of juvenile justice policy in the last decades of the 20th century.”³⁵ It is essential that juvenile-justice reform in Shelby County be informed by what we now know about advances in behavioral and neuroscience research.

A. The Nation Is Watching

The systemic deficiencies described in the DOJ investigation could be found in any urban area in the United States. While the challenges in Memphis may seem overwhelming, they are certainly not unique, and it is clear that the DOJ is initiating action in other communities to assure that juvenile justice systems meet constitutional obligations. Since the investigation in Shelby County began on August 11, 2009, the DOJ has launched investigations in Meridian, Mississippi (investigation beginning December 2011 and lawsuit filed October 2012, alleging that the system “systematically violate[s] the due process rights of juveniles”)³⁶ and the St. Louis Family Court in Missouri (investigation beginning November 2013).³⁷

Clearly, juvenile-justice stakeholders across the country are watching closely how the Memphis community responds to the DOJ action. We believe that the Agreement provides an important opportunity to renew our commitment to serving children in contact with the justice system in a manner that assures accountability ***809** but is also informed by what works best in responding to the needs of children growing up in a poor, often dangerous world.³⁸

When Robert Listenbee, Administrator of the Office of Juvenile Justice and Delinquency Prevention, spoke at the 2013 National Juvenile Defender Center Summit, he highlighted the importance of Shelby County:

We cannot litigate our way out of bad delivery systems for juvenile justice. We need to learn the lessons from Shelby, the lessons from Luzerne, and other places where the Justice Department has been involved. Then we need to develop county-level, self-assessment tools to help counties across the country determine when they have problems so that they can find their way out of those problems.³⁹

Patricia Puritz, Executive Director of the National Juvenile Defense Center (NJDC), echoed this idea: “Other states and jurisdictions are looking at how these issues are managed in Shelby and will assuredly take away lessons learned There is an opportunity to replicate good reforms that come out of Shelby, nationally”⁴⁰ Josh Dohan, Director of Massachusetts’ Youth Advocacy Division elaborated on Shelby County’s unique opportunity:

Every bit of research on crime prevention tells us that a fair, effective and developmentally appropriate juvenile justice system is far more cost effective than adult corrections In order for juvenile justice systems to be any of those things, the young ***810** people must have early and sustained access to skilled advocates. Smart communities insist that public defender systems make the representation of children and youth a priority. Shelby County has the opportunity to start almost from scratch.⁴¹

Under the Agreement, the Public Defender is charged with a responsibility for supervision and oversight of juvenile delinquency representation in Shelby County. Although the Public Defender has not provided direct representation in Juvenile Court for more than thirty years, staff members are now actively engaged in the process of responding to Shelby County’s obligations under the Agreement.

B. Zealous Advocacy: A Sufficiently Rigorous Challenge

Shelby County's experience with the DOJ can lead to positive changes here, but the improvements are not limited to Shelby County. Effective juvenile defender services will improve outcomes for children in all communities by reducing involvement in the juvenile and adult justice systems. This level of involvement can improve educational and social outcomes, thereby creating a stronger workforce for the future. Everyone benefits from an increasingly effective juvenile justice system.

Despite the stated purpose of the Tennessee juvenile justice system—to “remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and substitute therefor a program of treatment, training and rehabilitation”⁴²—the juvenile justice system since the late 1980s has become more punitive,⁴³ with more collateral consequences that impact children beyond an adjudication of delinquency. The Tennessee Supreme Court has noted the complexity of juvenile cases: “Juvenile delinquency hearings literally bristle with tantalizing and *811 technical questions of constitutional and statutory law.”⁴⁴ Representing children in delinquency proceedings is a “complex specialty in the law that is different from, but equally as important as, the representation of adults in criminal proceedings.”⁴⁵

Advocacy is what ensures the integrity of our justice systems. The DOJ's investigation report explains the role of defense advocacy: “Adversarial testing occurs when there is a sufficiently rigorous challenging of the state's evidence to ensure due process at the probable cause hearing and trial.”⁴⁶ Since the Agreement, juvenile court magistrates have made several decisions that affirm zealous advocacy. In one case involving the suppression of a videotaped confession, the judge noted that “the video ‘speaks volumes’ that ‘the failure to meet the constitutional minimums of Miranda are so obvious’D’ when he granted the defense's motion to suppress the statement.”⁴⁷ In another case, the judge dismissed first-degree murder charges and acknowledged that the child's confession was false after defense counsel vigorously challenged the prosecution's case.⁴⁸ These cases highlight the critical role of a *812 highly specialized defense bar of public defenders and private appointed counsel to safeguard against injustices and to bolster the integrity of the system.

III. The Findings and the Memorandum of Agreement

The DOJ investigation into the Juvenile Court of Memphis and Shelby County (“JCMSC”) marks the first time the Civil Rights Division has taken action against a juvenile court system under the Violent Crime and Law Enforcement Act of 1994.⁴⁹ The DOJ's findings, released in April 2012, harshly convey the systemic barriers to independent, ethical, and zealous advocacy: JCMSC's failures interfere with the proper administration of juvenile justice, erode public confidence in the system, and fail to promote public safety. Due process and equal protection guarantees are critical elements of a functioning justice system, especially where the court's obligation is to provide for the “care, protection, and wholesome moral, mental and physical development of children” while ensuring the protection of the community. [Tenn. Code Ann. § 37-1-101 \(a\)\(1\)](#) (West 2011). Unfair and unequal treatment undermines the rehabilitation of young people who encounter the justice system.⁵⁰ The Findings also highlight a path to progress, revealing the shortcomings that must be addressed to improve the quality of juvenile defense, but also of the juvenile court system itself.

*813 A. Fundamental Misunderstandings About Roles

The Findings focused on due-process⁵¹ and equal-protection concerns, stating, “We find that JCMSC fails to provide constitutionally required due process to children of all races. In addition, we find that JCMSC's administration of justice discriminates against Black children.”⁵² Additionally, a critical deficiency concerning counsel outlined in the Findings is the

“fundamental misunderstanding about the purpose of juvenile court and the roles and responsibilities of its participants.”⁵³ This misunderstanding includes a lack of adversarial testing of facts, described as “sufficiently rigorous challenging of the state's evidence to ensure due process at the probable cause hearing and trial.”⁵⁴

The DOJ found that “[m]isunderstandings about the role of defense counsel seem particularly acute. Several JCMSC staff also expressed resistance to the idea that JCMSC would be stronger overall with a more adversarial system. This misunderstanding and resistance, if allowed to continue, could frustrate JCMSC's efforts to fully comply with Gault.”⁵⁵ These misunderstandings are especially problematic regarding the role of defense counsel and the critical need for independent, ethical, and zealous advocacy for children:

Defense attorneys play a central role in the proceedings. A Juvenile Defender is the sole participant responsible for advancing the interest or position the child articulates. Unlike probation officers, psychiatrists and others, the defense counsel must protect the youth's expressed interest and cannot supplant it with his or her judgment about what ***814** is in the youth's best interest. Vigorous advocacy by defense counsel ensures that the youth's voice is heard in the process and a fair, just and appropriate result is achieved.⁵⁶

The Findings are harshly critical of defense counsel struggling “[a] gainst the backdrop of a court culture that frequently discourages an adversarial testing of facts for children and misinterprets the proper role of defense counsel.”⁵⁷ This struggle is common to juvenile defenders working to practice zealous advocacy in hostile environments: “In many jurisdictions, even those defenders who wish to honor their client's expressed-interests face tremendous systemic opposition from judges, prosecutors, and probation officers who expect defense counsel to participate as a part of the juvenile justice team.”⁵⁸

B. Defender Services Must Be Independent⁵⁹

The Findings starkly criticize the lack of independence of the assigned-counsel system used to deliver services in Shelby County for many years. All national standards require independence as a threshold issue for any defender system.⁶⁰ Independence is required to provide ethical and zealous advocacy, and the sustainability of reforms in Shelby County will require a commitment to independence in defender service delivery. In the 1981 case *Polk County v. Dodson*,⁶¹ the United States Supreme Court held that states have a “constitutional obligation to respect the profes- ***815** sional independence of the public defenders whom it engages.”⁶² Observing that “a defense lawyer bests serves the public, not by acting on behalf of the State or in concert with it, but rather by advancing ‘the undivided interests of the client,’”⁶³ the Court concluded that a “public defender does not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding.”⁶⁴ Furthermore,

With the first of the American Bar Association (ABA) Ten Principles explicitly stating that the “public defense function, including the selection, funding, and payment of the defense counsel, is independent,” DOJ is making it clear that none of the other Principles can be met with the Shelby County judiciary remaining in control of the attorneys providing representation to children. After all, the commentary to the first Principle states that the “public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel” noting specifically that “[r]emoving oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.”⁶⁵

C. The Role of Defense Counsel⁶⁶

Standard 1.1 of the National Juvenile Defense Standards requires that “[c]ounsel must provide competent, diligent, and *816 zealous advocacy to protect the client's procedural and substantive rights.”⁶⁷ The Agreement echoes the Standard in requiring that the Shelby County Government “shall take action to ensure independent, ethical, and zealous advocacy by the juvenile defenders representing Children in delinquency hearings.”⁶⁸ This directive obligates the Shelby County Government to ensure that adequate resources are available to provide the independent, ethical, and zealous advocacy required under the Agreement. The Shelby County Government has several obligations regarding the Public Defender's Office and the juvenile-defense function: (a) “[c]reating a responsibility for the supervision and oversight of juvenile delinquency representation to the Shelby County Public Defender's Office (“SCPD”) and supporting the establishment of a specialized unit for juvenile defense”; (b) “[s]upporting SCPD training for juvenile defenders”; (c) “[e]nsuring that juvenile defenders have appropriate administrative support, reasonable workloads, and sufficient resources to provide independent, ethical, and zealous representation to Children in delinquency matters”; and (d) “[i]mplementing attorney practice standards for juvenile defenders; supporting the training of attorneys within the SCPD specialized unit and the independent panel system on the practice standards; and supporting supervision and evaluation of said attorneys against such practice standards.”⁶⁹

The scope of representation proscribed in the Agreement is broad: “Representation of Children shall cover all stages of the juvenile delinquency case, including pre-adjudicatory investigation, litigation, dispositional advocacy, and post-dispositional advocacy for as long as JCMSC has jurisdiction over a Child.”⁷⁰ The Agreement requires that children be presumed indigent for both bond⁷¹ and the appointment of counsel,⁷² and that children may not waive the right to counsel pre-petition without the advice of counsel. *817⁷³ Children in Tennessee have a right to post-disposition access to counsel,⁷⁴ but currently scarce resources in Shelby County make it difficult to provide the critical advocacy required by the Agreement.

The Agreement imposed obligation that the juvenile court “shall take action to ensure independent, ethical, and zealous advocacy by the juvenile defenders representing Children in delinquency hearings” is accompanied by responsibility to support defense function throughout the Agreement.⁷⁵ These obligations regarding the juvenile defender function include (a) early appointment of counsel at detention and probable cause hearings; (b) establishing an independent juvenile-defender panel system “to handle any delinquency cases that either pose a conflict for the specialized unit for juvenile defense or would cause the juvenile unit to breach [sic] workload restrictions”; (c) “[s]upporting the promulgation and adoption of attorney practice standards for juvenile defenders; supporting the training of [all juvenile defenders] on the practice standards; and supporting supervision and evaluation of said attorneys against such practice standards”; and (d) “ensuring that juvenile defenders have a confidential meeting space to confer with their clients within the [Juvenile Court].”⁷⁶ These changes in juvenile court will allow both public defenders and appointed private counsel to better practice the independent, ethical, and zealous advocacy our children deserve.

***818 IV. Goals and Priorities⁷⁷**

The Public Defender's Office recognizes the critical importance of clear and measurable goals as we begin to move our practice into juvenile court. The Office's four primary goals encompass a comprehensive approach to juvenile representation. The goals and the Public Defender's Office's means in implementing them are not limited to Shelby County, and they could serve other public defender offices well. The first goal is to defend the rights and dignity of children in Shelby County's juvenile justice system through providing, supporting, and overseeing independent, ethical, zealous, holistic, skilled, and client-directed legal representation. The second is to win strong legal and life outcomes for Shelby County's system-involved children by minimizing harmful involvement in the juvenile justice system and advocating for the supports and opportunities children need to thrive in their own homes, families, and communities. The third goal is to empower children, their families, and their communities through a community-oriented defense practice that responds to community needs, goals, and concerns. Finally, the Public Defender's Office strives to promote the evolution of a fair and compassionate juvenile justice system through partnerships for policy-reform advocacy.

In order to achieve these goals, the Public Defender's Office will take action in several priority areas. These priority areas speak to concerns raised by the DOJ Findings and reflect the principles articulated in the seminal "Ten Core Principles for Providing Quality Delinquency Representation," released jointly by the American Council of Chief Defenders and the National Juvenile Defender Center.⁷⁸

***819 A. A Unified Juvenile Defense Bar: Public and Private**

A unified juvenile defense bar comprised of public and private attorneys is necessary to meet the demand for juvenile advocacy in Shelby County. The Public Defender's Office does not currently have the resources to meet the entire need for children who require representation in Shelby County. Nor would it be able to do so ethically, as the Rules of Professional Conduct prohibit one law office from representing clients with conflicting interests.⁷⁹ The Agreement specifically requires a "juvenile defender panel system to handle any delinquency cases that either pose a conflict of interest for the specialized unit for juvenile defense or would cause the juvenile unit to breach [sic] workload restrictions."⁸⁰ The Public Defender's Office will partner with an increasingly strong and organized juvenile defense bar representing children in delinquency proceedings through appointment under [Tennessee Supreme Court Rule 13](#).⁸¹

The Agreement recognizes the importance of a unified juvenile defense bar, requiring common training, practice standards, and accountability.⁸² We understand that these requirements must be buttressed by practice supports that make high-level advocacy possible. By creating a shared infrastructure that will support both private counsel and public defenders, we can provide the necessary support and training for all juvenile defenders in Shelby County. We have taken steps to provide training and to unite the public and private counsel in Shelby County by offering over four in-depth sessions to be completed by Fall 2014 in partnership with the National Juvenile Defender Center the Juvenile Training Immersion Program ("JTIP").

B. Local Standards of Practice

In late 2012, the National Juvenile Defender Center ("NJDC") released new National Juvenile Defense Standards, which "present a national approach to systematizing zealous, competent *820 and diligent defense practice in juvenile court and set out a framework for representation that is anchored in the law, science, and professional codes of responsibility."⁸³ Under the Agreement, the Shelby County Government and the juvenile court must support "the promulgation and adoption of attorney practice standards for juvenile defenders" within the Public Defender's Juvenile Unit and private appointed counsel.⁸⁴ The Public Defender's Office has begun the process of adapting NJDC's national standards to reflect Tennessee law and local practice, in addition to creating a comprehensive practice manual to supplement the standards; both are planned for submission in Winter 2014 for approval by the Department of Justice.

The Agreement requires representation at "all stages of the juvenile delinquency case, including pre-adjudicatory investigation, litigation, dispositional advocacy, and post-dispositional advocacy for as long as JCMSC has jurisdiction over a Child."⁸⁵ Our standards and practice manual will encode constitutional rules, embody national best-practices, incorporate stakeholder feedback, and respond to the particular demands of juvenile defense in Shelby County. These practice standards will be a floor, not a ceiling, and will allow juvenile-defense advocacy to go beyond these standards in pursuit of ethical and zealous representation of Shelby County's children.

C. Reasonable Workload Controls⁸⁶

As in other jurisdictions, workload controls are vitally important due to the sheer volume of delinquency proceedings that now require publicly funded representation. The Agreement requires workload controls for public defenders and private counsel

practicing in juvenile defense.⁸⁷ The importance of workload control ***821** is highlighted in the Statement of Interest filed by the DOJ in a recent U.S. district court action.⁸⁸

The U.S. Department of Justice's Statement of Interest in *Wilbur v. City of Mount Vernon* describes the important distinction between “caseload” and “workload”:

In its Order for Further Briefing, the Court asked about “hard” caseload standards, which provide valuable, bright-line rules that define the outer boundaries of what may be reasonably expected of public defenders. However, caseload limits alone cannot keep public defenders from being overworked ***822** into ineffectiveness; two additional protections are required. First, a public defender must have the authority to decline appointments over the caseload limit. Second, caseload limits are no replacement for a careful analysis of a public defender's workload, a concept that takes into account all of the factors affecting a public defender's ability to adequately represent clients, such as the complexity of cases on a defender's docket, the defender's skill and experience, the support services available to the defender, and the defender's other duties. Making an accurate assessment of a defender's workload requires observation, record collection and analysis, interviews with defenders and their supervisors, and so on, all of which must be performed quarterly or every six months over the course of several years to ensure that the Court's remedies are being properly implemented.⁸⁹

Independence of the juvenile-defense function as contemplated in the DOJ Findings and the Agreement is key to effective workload controls because the Public Defender's Office must be able to decline additional appointments cases when the unit is at capacity.⁹⁰ Without meaningful workload controls, the specialized juvenile-defense unit's ability to provide zealous and ethical representation is not sustainable.⁹¹ As the Public Defender's Office moves into different aspects of representation at the juvenile court, we will collect empirical data that will allow us to construct and monitor workload controls.

National caseload standards do exist, but they are inadequate for this purpose. The DOJ's National Advisory Council on Criminal Justice Standards and Goals (“NAC”) developed caseload guidelines in 1973: for juvenile defenders, annual delinquency ***823** caseload should not exceed two hundred cases.⁹² Some have vigorously criticized these standards for lacking empirical validation and for failing to consider varying case complexity.⁹³ Additionally, these guidelines are forty years old and do not account for changes and increasing complexity in criminal law, as well as the increased punitive nature of juvenile proceedings—including serious collateral consequences like sex-offender registration and the risk of transfer to adult court.

Workload controls are different from caseload standards. Workload needs to account for factors such as “case complexity, support services, and an attorney's nonrepresentational duties.”⁹⁴ Furthermore,

[T]he United States believes that, should any remedies be warranted, defense counsel's workload should be controlled to ensure quality representation. “Workload,” as defined by the ABA Ten Principles of a Public Defense Delivery System, takes into account not only a defender's numerical caseload, but also factors like the complexity of defenders' cases, their skills and experience, and the resources available to them. Workload controls may require flexibility to accommodate local conditions.⁹⁵

Tennessee does not have caseload standards,⁹⁶ making the creation and implementation of workload controls more challenging. Introducing ***824** the work in phases will allow the Public Defender's Office to shape its practice around a developing understanding of the reasonable workload controls that the Agreement requires,⁹⁷ so that it can provide consistent and sustained quality of representation.

D. Best-Practices Advocacy

Legal representation of children is a highly specialized practice of law.⁹⁸ Our specialized juvenile-defense unit will help children meet their legal and life goals through advocacy that is client-directed, zealous, holistic, cross-disciplinary, and continuous. These themes should be relevant to any juvenile-defense unit. In a collaborative model the attorney acts in collaboration with the child's expressed interests, "maximizing the child's participation in the relationship and giving true allegiance to the child's decisions after extensive and reasoned consultation."⁹⁹ This model drives the client-directed and zealous-advocacy themes: "[B]y increasing the child's participation and earning the child's cooperation, the [collaborative] model should improve the overall success of rehabilitation in juvenile court [[and] increase public safety."¹⁰⁰ Both public defenders and assigned private counsel will understand their unique roles in representing the client's voice. They will build their practices around that understanding and around a dedication to integrity, loyalty, and perseverance on behalf of their clients, in accordance with both Tennessee's ethical rules and with national standards of practice on juvenile defense. Chronic underfunding of indigent defense is a barrier to developing this highly specialized practice area.¹⁰¹ To address this issue, the Public Defender's Office must exhibit excellence in practice and demonstrate ***825** what that excellence means in qualitative and quantitative terms that will allow it to pursue adequate resources.

Holistic advocacy allows juvenile defenders to make long-term differences in their clients' lives by integrating legal representation with positive youth-development principles and standing up for the full range of children's rights implicated by juvenile-court prosecution—from the right to equal justice to the right to a great education. Holistic advocacy can help children become better decision makers, as "a child who is well counseled in the trusting and safe environment of his lawyer's office may render thoughtful, well reasoned case-related decisions even if he is likely to exercise poor judgment and make bad choices on the street or in peer-to-peer interactions."¹⁰² Educational advocacy will be key in our practice; even though school-based arrests in Shelby County have fallen, expulsions and suspensions remain high, and we can expect that many children involved with the juvenile justice system will need intensive educational advocacy to help them stay in school and access the educational supports that they need to thrive.¹⁰³ Holistic representation will minimize justice-system contact, keep children in their homes and communities, reduce recidivism, and strengthen the safety and prosperity of Shelby County.

A cross-disciplinary team of specialists will help clients succeed in court, in school, and in life. By incorporating social workers, education advocates, and investigators into advocacy teams alongside defense attorneys, we will adapt the best social-service practices into the defense-advocacy context. Our defense teams will assess client needs, develop comprehensive service plans, connect clients with reinforcement and connections within the community that they need to flourish, and provide ongoing case management, mentorship, and support. The use of crossdisciplinary ***826** advocacy teams will respond to a central deficit noted in the existing system—the inability of defense counsel to present evidence at critical stages in the adversarial process, including transfer hearings.¹⁰⁴

Continuous advocacy provides children with the same defense team from the earliest possible moment of justice-system exposure through to their complete discharge from all state supervision. It begins prior to a petition being filed and extends through detention and transfer hearings, adjudication, disposition, and post-disposition advocacy. This representation will allow the Public Defender's Office to build strong relationships based on trust between clients, families, and defenders. Trust between the attorney and child is necessary for the representation to be successful because "the child's decision-making capacity may be inhibited when the attorney fails to earn his client's trust."¹⁰⁵ Furthermore, the obligation to represent children until they are no longer under the juvenile court's jurisdiction will ensure that defenders can seal or expunge records and address any lingering issues from the juvenile-court involvement, such as suspension of driving privileges. This ensures that when the child exits the system, he or she is not burdened with additional tasks to keep his or her juvenile-court contacts from impacting his or her adult life.

E. Community Engagement

The juvenile-defender system will brush against and have profound effects upon the rest of the justice system and on the other systems that touch the lives of its children, including education, mental health, vocational training, and afterschool youth development. Defenders must be actively engaged with the full range of those systems and families while maintaining their primary obligation—to zealously represent the child client. The Public Defender's Office will also work to support schools and community-based service providers that seek to give our clients the support and opportunities *827 that they need to thrive in their own homes and communities by facilitating connections between vulnerable youth and those services. And we will train our staff and the entire juvenile defense bar on existing community resources, even as we work to expand that universe of resources.

To be successful, the Public Defender's Office will need to gather input from community stakeholders, including children and parents involved in the juvenile justice system. This requires open lines of communication, a willingness to listen to criticism, and a commitment to work together to improve outcomes for all of our children. At a public meeting in 2012, the mother of a fourteen-year-old child transferred from juvenile court and sentenced as an adult tearfully told the committee working to reform the juvenile court: “You destroy people You don't just hurt the child, you hurt the parents Y'all need to do better.”¹⁰⁶ We must always strive to do better; transfer to adult court should always be reserved for the rarest cases.

F. Commitment to Systemic Reform

The national juvenile reform community is watching to see what Shelby County will do with the cause of juvenile defense, and we must be ready to demonstrate leadership and commitment to this vital cause. Juvenile defenders are uniquely situated to advocate for individual clients and for systemic reform. Our defenders will have both exposure to the real workings and impact of the juvenile justice system and access to tools that shape meaningful policy change, including legal expertise, data on the needs and outcomes of system-involved young people, and narratives about the experiences of Shelby County's most vulnerable children. We are prepared to work alongside other stakeholders to protect and defend our clients by working towards a system that is just and empathetic, respectful of every child's rights, and truly supportive of each child's potential for positive growth. The Public Defender's *828 Office has embraced juvenile-justice reform as envisioned by the National Juvenile Defender Center and the extensive body of work from the John D. and Catherine T. MacArthur Foundation's Models for Change. For successive years, key members of the staff have attended the NJDC's annual Leadership Summit, a valuable opportunity learn from national juvenile defense experts.

V. Conclusion: Advocacy Is the Essence of Justice

The Juvenile Court of Memphis and Shelby County was founded in 1910,¹⁰⁷ the same year Supreme Court Justice Abe Fortas was born in Memphis. In 1963, Fortas successfully argued for the right to counsel in *Gideon v. Wainwright*.¹⁰⁸ Also born in 1910, Clarence Gideon's lifetime involvement with the criminal justice system began in his early teens, long before his 1961 arrest in Panama City, Florida.¹⁰⁹ Fortas's oral argument in *Gideon* reveals the importance of the right to counsel that Fortas later articulated in his opinions in *Kent* and *Gault*:

[W]e cannot proceed on the assumption that there is any such thing as a fair criminal trial where the defendant is not represented by counsel....

....

And I do believe that it is a proposition that proves itself. That is to say the Fourteenth Amendment requires *829 a fair trial. You cannot have a fair trial unless the defendant has counsel.¹¹⁰

Fortas was appointed to the Supreme Court in 1965 and authored the key opinions establishing due-process rights for juveniles, *Kent v. United States*¹¹¹ and *In re Gault*.¹¹² In *Kent*, Fortas wrote, “The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice.”¹¹³ In *Gault*, he upheld the right to counsel and other key due-process rights in juvenile-delinquency proceedings:

The 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.”¹¹⁴

The DOJ Investigation and the resulting Agreement are good news for Memphis. By keeping children out of the juvenile justice system, we lessen the negative consequences of contact with that system and provide services that give our children the tools they need to be successful. By minimizing the contact with the adult criminal justice system that often follows juvenile-court contacts, we can help to lay the groundwork for a new workforce in Memphis and provide hope that can break the grip of generational poverty and violence that mark our community.

What has been missing from our juvenile court—and juvenile courts across the country—is access to quality defense attorneys in juvenile delinquency proceedings.¹¹⁵ Just as Fortas fought for the right to counsel for adults and children, zealous advocacy from the juvenile-defense community will restore confidence and *830 integrity in our juvenile justice system. It is of the essence of justice. Although the failings noted by the DOJ findings are commonplace in juvenile justice systems across the nation, the light they shine on our system exposes a rare opportunity for us as a community to renew our commitment to justice for all children in Memphis and to effect positive change. As Fortas wrote in *Gault*, “Under our Constitution, the condition of being a boy does not justify a kangaroo court.”¹¹⁶ Our children—if they must go to court—must go as full participants with steadfast and zealous advocates at their sides. Our children and our community deserve nothing less.

Footnotes

a1 Shelby County Public Defender, Memphis, TN

aa1 Assistant Public Defender, Juvenile Defender Unit, Shelby County Public Defender, Memphis, TN.

1 Pub. L. No. 103-322, 108 Stat. 1796 (relevant provisions codified at 42 U.S.C. § 14141 (2012)).

2 Pub. L. No. 88-352, 78 Stat. 241 (codified at 42 U.S.C. §§ 2000d to d-7 (2012)).

3 See Letter from Thomas E. Perez, Assistant Attorney Gen., to the Honorable Curtis S. Person, Juvenile Court of Memphis & Shelby Cnty. (Apr. 25, 2012), available at http://www.justice.gov/crt/about/spl/documents/shelbycountyjuv_findingscover_4-25-12.pdf.

4 In 1995, A Call for Justice highlighted the importance of the role of counsel in juvenile delinquency proceedings to fulfill the promise of *Gault*. AM. BAR ASS'N JUVENILE JUSTICE CTR., JUVENILE LAW CTR. & YOUTH LAW CTR., A CALL FOR JUSTICE: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 5 (photo. reprint 2002) (1995) [hereinafter A CALL FOR JUSTICE]. In the past twenty years, developments in juvenile-justice reform have embraced evidence-based approaches that recognize the differences between children and adults, hold children accountable while developing their potential, and support community safety. The MacArthur Foundation began making grants to organizations in the juvenile justice field in 1996 and launched the MacArthur Research Network on Adolescent Development and Juvenile Justice, which “produced groundbreaking research documenting the developmental differences between adolescents and adults, and the need for a separate system of justice for youth.” Background and Principles, MODELS FOR CHANGE, <http://www.modelsforchange.net/about/Background-and-principles.html> (last visited Apr. 1, 2014).

Models for Change launched a few years later “to harness and direct local reform work into a larger, coordinated effort to share replicable models of reform and catalyze change across the nation.” *Id.* The evidence-based core principles of Models for Change are “fundamental fairness; developmental differences between youth and adults; individual strengths and needs; youth potential;

responsibility; and safety.” Id. “Models for Change supports a network of government and court officials, legal advocates, educators, community leaders, and families working together to ensure that kids who make mistakes are held accountable and treated fairly throughout the juvenile justice process.” About, MODELS FOR CHANGE, [http:// www.modelsforchange.net/about/index.html](http://www.modelsforchange.net/about/index.html) (last visited Apr. 1, 2014). It “provide[s] research-based tools and techniques to make juvenile justice more fair, effective, rational and developmentally-appropriate.” Id.

The Annie E. Casey Foundation created The Juvenile Detention Alternatives Initiative (JDAI) to “support the Casey Foundation’s vision that all youth involved in the juvenile justice system have opportunities to develop into healthy, productive adults.” Juvenile Detention Alternatives Initiative, ANNIE E. CASEY FOUND., [http:// www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative](http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative). (last visited Apr. 1, 2014). “After more than 20 years of innovation and replication, JDAI is one of the nation’s most effective, influential, and widespread juvenile justice system reform initiatives.” Id. With over 200 JDAI sites (including Memphis, Tennessee), JDAI has successfully demonstrated that jurisdictions can rely less on secure detention and more on detention alternatives that “reduce reliance on secure confinement; improve public safety; reduce racial disparities and bias; save taxpayers’ dollars; and stimulate overall juvenile justice reforms.” Id.

The Office of Juvenile Justice and Delinquency Prevention (“OJJDP”), a component of the Office of Justice Programs, U.S. Department of Justice, “sponsors research, program, and training initiatives; develops priorities and goals and sets policies to guide federal juvenile justice issues; disseminates information about juvenile justice issues; and awards funds to states to support local programming” in its efforts to “strengthen the juvenile justice system’s efforts to protect public safety, hold offenders accountable, and provide services that address the needs of youth and their families.” About OJJDP, OFFICE OF JUV. JUST. & DELINQUENCY PREVENTION, [http:// www.ojjdp.gov/about/about.html](http://www.ojjdp.gov/about/about.html) (last visited Apr. 1, 2014). OJJDP has provided significant funding to areas across the United States, including Shelby County, Tennessee. See OJJDP FY 2013 Awards, OFFICE OF JUV. JUST. & DELINQUENCY PREVENTION, <http://www.ojjdp.gov/funding/fy13awards.html> (last visited Apr. 1, 2014).

5 The DOJ expected and encouraged Shelby County to engage partners to facilitate remedial efforts, including subject matter experts to provide technical assistance. This Article has been influenced by and benefits from this continuing collaborative process. Accordingly, the authors do not consider this Article to be a work of complete original scholarship. The authors are grateful for general guidance available through the MacArthur Foundation’s Models for Change portfolio, and to many who have provided support and technical assistance through the National Juvenile Defender Center.

6 See, e.g., Kim Severson, Deal Signed to Overhaul Juvenile Justice in Tennessee, N.Y. TIMES (Dec. 17, 2012), [http:// www.nytimes.com/2012/12/18/us/tennessee-county-agrees-to-changes-in-juvenile-justice-system.html](http://www.nytimes.com/2012/12/18/us/tennessee-county-agrees-to-changes-in-juvenile-justice-system.html) (“‘We’re hoping our agreement will serve as a template for other jurisdictions,’ Mr. Perez [an Assistant Attorney General in the Justice Department’s Civil Rights Division] said.”). The DOJ recently opened a similar investigation in the St. Louis Family County Court (Missouri), stating in its press release, “The department has conducted similar investigations in other jurisdictions, and most recently obtained important reforms in its investigation of the Juvenile Court of Memphis and Shelby County, Tennessee.” Press Release, Office of Pub. Affairs, U.S. Dep’t of Justice, Department of Justice Announces Investigation of the St. Louis County Family Court (Nov. 18, 2013), available at <http://www.justice.gov/opa/pr/2013/November/13-crt-1232.html>.

7 See, e.g., Chris Conley, Memphis Leads U.S. in Violent Crime, COM. APPEAL (Sept. 27, 2007, 12:00 AM), [http:// www.commercialappeal.com/news/2007/sep/27/memphis-leads-us-in-violent-crime/](http://www.commercialappeal.com/news/2007/sep/27/memphis-leads-us-in-violent-crime/); Danielle Kurtzleben, The 11 Most Dangerous Cities, U.S. NEWS & WORLD REP. (Feb. 16, 2011, 4:00 PM), <http://www.usnews.com/news/articles/2011/02/16/the-11-most-dangerous-cities>; Matt Woo, Forbes Ranks Memphis Second Most Dangerous City, COM. APPEAL (Apr. 26, 2009, 12:04 AM), [http:// www.commercialappeal.com/news/2009/apr/26/citys-no-2-with-a-bullet/](http://www.commercialappeal.com/news/2009/apr/26/citys-no-2-with-a-bullet/).

8 Tom Charlier, Memphis Again Nation’s Poorest Large Metro Area as Local Poverty Rates Climb, COM. APPEAL (Oct. 20, 2013, 12:05 AM), [http:// www.commercialappeal.com/news/2013/oct/19/memphis-again-nations-poorest-large-metro-area/](http://www.commercialappeal.com/news/2013/oct/19/memphis-again-nations-poorest-large-metro-area/).

9 Id. The poverty rate for non-Hispanic whites is 11.9% in Memphis and 8.7% in Shelby County; for blacks the rates are 33.6% and 30.3%, respectively. Id.

10 Tom Charlier, Hispanics Now Memphis’ Poorest Ethnic Group; 4 in 10 Live Below Poverty Line, COM. APPEAL (Jan. 4, 2014, 6:49 PM), [http:// www.commercialappeal.com/news/2014/jan/04/hispanics-now-memphis-poorest-ethnic-group-4-in](http://www.commercialappeal.com/news/2014/jan/04/hispanics-now-memphis-poorest-ethnic-group-4-in).

11 URBAN CHILD INST., DATA BOOK: THE STATE OF CHILDREN IN MEMPHIS & SHELBY COUNTY 18 (Catherine Joyce & Marc Goodman-Bryan eds., 2013), available at http://www.urbanchildinstitute.org/sites/all/files/databooks/TUCI_Data_Book_VIII_2013.00_complete.pdf.

- 12 Id. at 22. Suburban Shelby County is defined as areas of the county outside the Memphis city limits. Id. at 18.
- 13 Id. at 22.
- 14 Id.
- 15 Id.
- 16 Id.
- 17 Id. at 18.
- 18 Id.
- 19 Id.
- 20 MEMPHIS SHELBY CRIME COMM'N, OPERATION: SAFE COMMUNITY: ACTION AGENDA WITH DETAILED ACTION PLANS 2012-2016, at 3 (2012), available at http://www.memphiscrime.org/assets/1294/osc_2012-2016_action_agenda_with_detailed_action_plans_final_102212.pdf.
- 21 Id.
- 22 Id. at 11.
- 23 Id. at 12.
- 24 Id.
- 25 Defending Childhood Initiative, FUTURES WITHOUT VIOLENCE, http://www.futureswithoutviolence.org/section/our_work/child_wellbeing/defending_childhood_initiative#Shelby (last visited Apr. 1, 2014).
- 26 Id.
- 27 ROBERT L. LISTENBEE, JR. ET AL., REPORT OF THE ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE 171 (2012), available at <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.
- 28 Id.
- 29 Id. at 171-73.
- 30 Id. at 173.
- 31 Id.
- 32 Id. at 176.
- 33 See Our Story, URBAN CHILD INST., <http://www.urbanchildinstitute.org/about-us/our-story> (last visited Apr. 1, 2014).
- 34 Our Projects, URBAN CHILD INST., <http://www.urbanchildinstitute.org/projects> (last visited Apr. 1, 2014).
- 35 NAT'L RESEARCH COUNCIL OF THE NAT'L ACADS., REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 1 (Richard J. Bonnie et al. eds., 2013).
- 36 Special Litigation Section Cases and Matters, U.S. DEP't OF JUST., <http://www.justice.gov/crt/about/spl/casesummaries.php#meridian-summ> (last visited Apr. 1, 2014); see also Complaint at 1-5, United States v. City of Meridian, No. 4:12-cv-00168 (S.D. Miss. filed Oct. 24, 2012).
- 37 See Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, *supra* note 6.

- 38 See Editorial, *Juvenile Court Reform in Tennessee*, N.Y. TIMES (Dec. 31, 2012), <http://www.nytimes.com/2013/01/01/opinion/juvenile-court-reform-in-tennessee.html>; Severson, *supra* note 6; David Carroll, DOJ Announces an Agreement with Shelby County, Tennessee (Memphis) to Reform Juvenile Justice System, SIXTH AMENDMENT CENTER (Dec. 18, 2012), <http://sixthamendment.org/doj-announces-an-agreement-with-shelby-county-tennessee-memphis-to-reform-juvenile-justice-system/>.
- 39 Robert Listenbee, Adm'r of Office of Juvenile Justice & Delinquency Prevention, Address at the 2013 National Juvenile Defender Center Summit, Scottsdale, Ariz. (Nov. 2, 2013).
- 40 Lurene Kelley, *Juvenile Defense Reform in Shelby County Draws National Attention*, MEMPHIS LAW., Nov. 2013, at 6, 6 (quoting Puritz).
- 41 *Id.* at 7 (quoting Dohan).
- 42 TENN. CODE ANN. § 37-1-101(2) (2010).
- 43 See Ellen Marrus, *Best Interests Equals Zealous Advocacy: A Not So Radical View of Holistic Representation for Children Accused of Crime*, 62 MD. L. REV. 288, 327 (2003); see also Michael Finley & Marc Schindler, *Punitive Juvenile Justice Policies and the Impact on Minority Youth*, 63 FED. PROBATION 11, 11 (1999).
- 44 *State ex rel. Anglin v. Mitchell*, 596 S.W.2d 779, 790 (Tenn. 1980).
- 45 NAT'L JUVENILE DEFENDER CTR. & NAT'L LEGAL AID & DEFENDER ASS'N, TEN CORE PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION THROUGH PUBLIC DEFENSE DELIVERY SYSTEMS 2 (2d ed. 2008) [hereinafter TEN CORE PRINCIPLES]; see also *Breed v. Jones*, 421 U.S. 519, 528-29 (1975) (noting that “a gap between the originally benign conception of the system and its realities” and observing that recent cases require “that [the] courts eschew ‘the ‘civil’ label-of-convenience which has been attached to juvenile proceedings,’ ‘and that the juvenile process be candidly appraised’” (citations omitted)).
- 46 CIVIL RIGHTS DIV., U.S. DEP't OF JUSTICE, INVESTIGATION OF THE SHELBY COUNTY JUVENILE COURT 47 (2012) [hereinafter JUVENILE COURT INVESTIGATION].
- 47 Beth Warren, *Memphis Judge Explains Why He Tossed Out Teen's Confession*, COM. APPEAL (May 31, 2013, 6:21 PM), <http://www.commercialappeal.com/news/2013/may/31/memphis-judge-explains-why-he-tossed-out-teens/> (quoting Juvenile Court Judge Dan Michael).
- 48 See Joshua Tepfer, *Guest Column: Interrogators Run Amok in Tennessee*, COM. APPEAL (Dec. 21, 2013, 12:00 PM), <http://www.commercialappeal.com/news/2013/dec/21/guest-column-interrogators-run-amok-in-tennessee/>; see also Samantha Bryson & Beth Warren, *Memphis Case Highlights ‘Frighteningly High Percentage’ of False Confessions*, COM. APPEAL (Dec. 19, 2013, 8:37 PM), <http://www.commercialappeal.com/news/2013/dec/19/memphis-case-highlights-frighteningly-high-of/>; Beth Warren, *Memphis Teen Released from Jail Tuesday Says Police Pressured Him to Give False Confession*, COM. APPEAL (Dec. 17, 2013, 12:03 PM), <http://www.commercialappeal.com/news/2013/dec/17/another-memphis-teen-arrested-in-killing-of/>.
- 49 Pub. L. No. 103-322, 108 Stat. 1796 (relevant provisions codified at 42 U.S.C. § 14141 (2012)) (authorizing the Attorney General to bring a civil action based upon a “reasonable cause to believe” that a government agency has engaged in a pattern or practice of unconstitutional conduct).
- 50 JUVENILE COURT INVESTIGATION, *supra* note 46, at 4.
- 51 The due-process issues identified include lack of constitutionally sufficient notice, violations of the right against self-incrimination, failure to provide timely probable cause hearings, and lack of constitutionally adequate transfer hearings. *Id.* at 1-2.
- 52 *Id.* at 1 (footnote omitted).
- 53 *Id.* at 46.
- 54 *Id.* at 47.

- 55 Id. at 46. In re *Gault*, 387 U.S. 1, 41-42, 56 (1967), established fundamental due-process rights for children, including the right to counsel, the right against self-incrimination, the right to notice of charges, and the right to confront witnesses.
- 56 JUVENILE COURT INVESTIGATION, *supra* note 46, at 47.
- 57 Id. at 48.
- 58 Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases*, 81 NOTRE DAME L. REV. 245, 260 (2005) (citing Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083, 1128-29 (1991)).
- 59 AM. BAR ASS'N, TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM 2 (2002).
- 60 See *id.* (stating for the first principle that the defense function is independent); see also NAT'L JUVENILE DEFENDER CTR., NATIONAL JUVENILE DEFENSE STANDARDS 107 (2012) ("Counsel should conduct an independent investigation as to the options and resources available for and best suited to the individual client.").
- 61 454 U.S. 312 (1981).
- 62 Id. at 321-22.
- 63 Id. at 318-19 (quoting *Ferri v. Ackerman*, 444 U.S. 193, 204 (1979)).
- 64 Id. at 325.
- 65 David Carroll, DOJ Announces an Agreement with Shelby County, Tennessee (Memphis) to Reform Juvenile Justice System, SIXTH AMENDMENT CTR. (Dec. 18, 2012) (quoting AM. BAR ASS'N, *supra* note 59, at 2), <http://sixthamendment.org/doj-announces-an-agreement-with-shelby-county-tennessee-memphis-to-reform-juvenile-justice-system/>.
- 66 See generally ROBIN WALKER STERLING, NAT'L JUVENILE DEFENDER CTR., ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT 7-24 (2009) (explaining the roles and obligations of juvenile defenders).
- 67 NAT'L JUVENILE DEFENDER CTR., *supra* note 60, at 18.
- 68 CIVIL RIGHTS DIV., U.S. DEP't OF JUSTICE, MEMORANDUM OF AGREEMENT REGARDING THE JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY 14 (2012) [[hereinafter MEMORANDUM OF AGREEMENT]].
- 69 Id. at 14-15.
- 70 Id. at 15.
- 71 Id. at 17.
- 72 See *id.* at 9.
- 73 See *id.* at 13.
- 74 *John L. v. Adams*, 969 F.2d 228, 237 (6th Cir. 1992) ("In addition, there is an independent constitutional right to counsel for juvenile appeals that is grounded in the Sixth Amendment's right to counsel as applied to the states through the Fourteenth Amendment's Due Process Clause.").
- 75 MEMORANDUM OF AGREEMENT, *supra* note 68, at 14-15.
- 76 Id. at 15-16.
- 77 The authors acknowledge with gratitude that the Louisiana Center for Children's Rights (LCCR) originally developed many of the concepts, and much of the language, on which the "Goals and Priorities" section of this article is based. LCCR, a nonprofit law office that defends the right of children in the juvenile justice system to fairness, dignity, and opportunity, has built a model holistic juvenile

defense practice in its home city of New Orleans, and has served as a key technical assistance provider to the Shelby County Public Defender during the reform process. See generally LA. CENTER FOR CHILD. RTS., <http://www.laccr.org> (last visited Apr. 2, 2014).

78 See TEN CORE PRINCIPLES, *supra* note 45.

79 See MODEL RULES OF PROF'L CONDUCT R. 1.7 (2013); see also TENN. SUP. CT. R. 8.

80 MEMORANDUM OF AGREEMENT, *supra* note 68, at 15.

81 See TENN. SUP. CT. R. 13 (governing right to counsel and procedure for appointment of counsel).

82 See MEMORANDUM OF AGREEMENT, *supra* note 68, at 15.

83 Publications, National Juvenile Defense Standards, NAT'L JUVENILE DEFENDER CENTER, <http://njdc.info/publications.php> (last visited Apr. 1, 2014).

84 MEMORANDUM OF AGREEMENT, *supra* note 68, at 15.

85 *Id.*

86 See Statement of Interest of the United States at 9, *Wilbur v. City of Mount Vernon*, No. C11-01100RSL, 2013 WL 6275319 (W.D. Wash. Dec. 4, 2013) (arguing for caseload controls for public defenders).

87 See MEMORANDUM OF AGREEMENT, *supra* note 68, at 15.

88 See Statement of Interest of the United States, *supra* note 86. The action resulted in a ruling that demonstrates the importance of both adequately resourced public defender offices and the dangers of excessive caseloads:

Plaintiffs have shown that indigent criminal defendants in Mount Vernon and Burlington are systematically deprived of the assistance of counsel at critical stages of the prosecution and that municipal policymakers have made deliberate choices regarding the funding, contracting, and monitoring of the public defense system that directly and predictably caused the deprivation.

Wilbur, 2013 WL 6275319, at *1. This deprivation created a system where “[a] dversarial testing of the government’s case was so infrequent that it was virtually a non-factor in the functioning of the Cities’ criminal justice system.” *Id.* at *1.

The Court found the municipality liable under 42 U.S.C. § 1983 because “the constitutional deprivations at issue here were the direct and predictable result of the deliberate choices of City officials charged with the administration of the public defense system” and granted injunctive relief. *Id.* at *7, 9. Regarding actual caseload limits,

The Court [did] not presume to establish fixed numerical standards or a checklist by which the constitutional adequacy of counsel’s representation can be judged. The experts, public defenders, and prosecutors who testified at trial made clear that there are myriad factors that must be considered when determining whether a system of public defense provides indigent criminal defendants the assistance required by the Sixth Amendment.

Id. at *3. The Court concluded, “The notes of freedom and liberty that emerged from Gideon’s trumpet a half a century ago cannot survive if that trumpet is muted and dented by harsh fiscal measures that reduce the promise to a hollow shell of a hallowed right.” *Id.* at *12.

89 Statement of Interest of the United States, *supra* note 86, at 9-10 (citations omitted).

90 TEN CORE PRINCIPLES, *supra* note 45.

91 AM. BAR ASS’N, *supra* note 59, at 2.

92 AM. COUNCIL OF CHIEF DEFENDERS, AMERICAN COUNCIL OF CHIEF DEFENDERS STATEMENT ON CASELOADS AND WORKLOADS 2 (2007).

93 Donald J. Farole, Jr. & Lynn Langton, *A National Assessment of Public Defender Office Caseloads*, 94 JUDICATURE 87, 88-89 (2010).

94 AM. BAR ASS’N, *supra* note 59, at 2; see also Statement of Interest of the United States, *supra* note 86, at 2.

95 Statement of Interest of the United States, *supra* note 86, at 2.

- 96 [Tennessee Supreme Court Rule 13](#), concerning appointment of counsel for indigent defendants, does not allow for the public defender to decline cases due to excessive workload unless he or she “makes a clear and convincing showing that adding the appointment to counsel’s current workload would prevent counsel from rendering effective representation.” [TENN. SUP. CT. R. 13\(e\)\(4\)\(C\)](#); see also [id. R. 13\(e\)\(4\)\(A\)](#) (“[T]he court shall appoint the district public defender’s office if qualified pursuant to this rule and no conflict of interest exists, unless in the sound discretion of the trial judge appointment of other counsel is necessary.”).
- 97 See MEMORANDUM OF AGREEMENT, *supra* note 68, at 15.
- 98 TEN CORE PRINCIPLES, *supra* note 45.
- 99 Henning, *supra* note 58, at 308-09.
- 100 *Id.* at 320.
- 101 TENN. ADMIN. OFFICE OF THE COURTS, TENNESSEE’S INDIGENT DEFENSE FUND: A REPORT TO THE 107TH TENNESSEE GENERAL ASSEMBLY 9-15 (2011) (discussing the costs of indigent representation); see also NAT’L RIGHT TO COUNSEL COMM., JUSTICE DENIED: AMERICA’S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL 61 (2009) (“In the battle for adequate funding, indigent defense faces tough competition for resources . . .”).
- 102 Henning, *supra* note 58, at 284 (citing Emily Buss, [Confronting Developmental Barriers to the Empowerment of Child Clients](#), 84 [CORNELL L. REV.](#) 895, 918-19 (1999)).
- 103 DANIEL J. LOSEN & TIA ELENA MARTINEZ, CTR. FOR CIVIL RIGHTS REMEDIES, OUT OF SCHOOL AND OFF TRACK: THE OVERUSE OF SUSPENSIONS IN AMERICAN MIDDLE AND HIGH SCHOOLS, at app. C (2013) (referring to suspension data on Memphis City Schools); see also U.S. DEP’t OF EDUC., GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE 11-16 (2014) (providing guidance on the overuse of suspensions and expulsions).
- 104 SANDRA SIMKINS, JCMSC COMPLIANCE REPORT #2, at 5-6, 16 (2013), available at http://www.justice.gov/crt/about/spl/documents/Shelby_dueprocrpt2_12-12-13.pdf.
- 105 Henning, *supra* note 58, at 272 (citing Emily Buss, “You’re My What?” [The Problem of Children’s Misperceptions of Their Lawyer’s Roles](#), 64 [FORDHAM L. REV.](#) 1699, 1712-14 (1996)).
- 106 Beth Warren, ‘Y’all Need to Do Better,’ Public Tells Panel Overhauling Shelby County Juvenile Court, COM. APPEAL (Nov. 1, 2012, 8:12 PM), <http://www.commercialappeal.com/news/2012/nov/01/yall-need-to-do-better-public-tells-panel-shelby/>.
- 107 JENNIFER TROST, GATEWAY TO JUSTICE: THE JUVENILE COURT AND PROGRESSIVE CHILD WELFARE IN A SOUTHERN CITY 43 (2005).
- 108 See Oral Argument, [Gideon v. Wainwright](#), 372 U.S. 335 (1963) (No. 155), available at http://www.oyez.org/cases/1960-1969/1962/1962_155.
- 109 ANTHONY LEWIS, GIDEON’S TRUMPET 67 (1964) (referencing a letter from Clarence Gideon to Abe Fortas); see also Pre-sentence Investigation of Clarence Earl Gideon at 2 (Aug. 18, 1961) (on file with author) (listing sixteen items on Gideon’s prior record). Gideon won his retrial in Bay County, Florida, in August 1963, represented by local attorney Fred Turner. Woody Wisner, Clarence Gideon Acquitted in ‘Defender Appeal’ Trial: 2-Year Fight is Victorious for Local Man, PANAMA CITY NEWS, Aug. 16, 1963, at 1A.
- 110 Oral Argument, *supra* note 108, at 16:15.
- 111 383 U.S. 541 (1966).
- 112 387 U.S. 1 (1967).
- 113 [Kent](#), 383 U.S. at 561.
- 114 In re [Gault](#), 387 U.S. at 36 (footnote omitted) (quoting [Powell v. Alabama](#), 287 U.S. 45, 69 (1932)).

115 See A CALL FOR JUSTICE, supra note 4, at 5-6.

116 In re Gault, 387 U.S. at 28.

44 UMPSLR 799

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