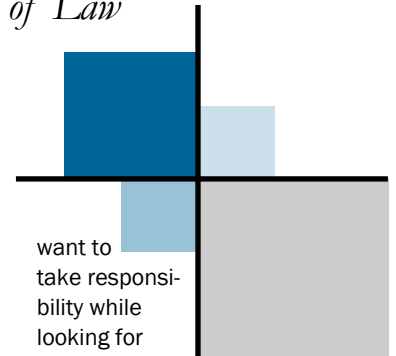


COD Network News

A Newsletter for the Community Oriented Defender Network

The Brennan Center for Justice at NYU School of Law



Materials on the Homeless Court Program:

The Homeless Court Program developed a number of materials to foster growth and replication of the court. These materials include:

- “And Justice for All...” a half-hour documentary video on the Homeless Court released in November 1999.
- “Is it a crime to be homeless?” a pamphlet that describes how to access and prepare for Homeless Court.
- Published in September 2002, the American Bar Association/Commission on Homelessness and Poverty’s “Taking the Court to the Streets,” a Homeless Court Program how-to manual.
- Released in September 2003, a second half hour video, “Taking the Court to the Streets” which highlights participant efforts and accomplishments.

Inside this issue:

Reshaping the Plea Negotiation Process	2-3
Fellowship Funding Available	4
Getting to Know Your “Local” Federal Funders	4
The Brennan Center Needs Your Help	5
Community Defenders in the News	6-7
Community Collaboration Pays Off	8
Tips for Shaping Public Perceptions of Your Defender Agency	8

The San Diego Homeless Court Program

By Steve Binder

Office of the San Diego Public Defender

The Homeless Court Program (HCP) is a special Superior Court session for homeless defendants — convened in a homeless shelter — to resolve outstanding misdemeanor offenses and warrants.

The idea for the HCP emerged from work with homeless veterans participating in “Stand Down,” typically one to three day events providing services such as food, shelter, clothing, health screenings, benefits counseling. First organized in 1988 by a group of Vietnam veterans in San Diego, today Stand Downs are now part of a national effort to provide services to homeless veterans across the country.

A survey found one in five homeless veterans needed help with a criminal justice problem. Consequently, as part of Stand Down in 1989, San Diego held a special court session at local shelters to resolve outstanding misdemeanor criminal cases. At the first HCP session the court reported 130 defendants adjudicated 451 cases. The following year, 237 homeless veterans addressed 967 cases. Between 1989 and 1992, 942 people resolved 4,895 cases.

The HCP builds on partnerships between the court, local shelters and service agencies, and the prosecutor and public defender. It works to resolve the problems that homelessness represents with practical solu-

tions. Initial referrals to Homeless Court originate in shelters and service agencies. The prosecution and defense review the cases before the court hearing. The court order for sentencing substitutes participation in agency programs for fines and custody. The majority of cases that come before the HCP are dismissed while the court sentence is “credit for time served” in homeless service agency program activities. The HCP is designed for efficiency: the majority of cases are heard and resolved, and people are sentenced, in one hearing.

Currently, the HCP is replicated in 14 communities in California (while 7 communities are in the developmental stages), 13 jurisdictions across the United States, and Stand Down events across the country. The ABA Commission on Homelessness and Poverty is a key collaborator and major impetus for the replication of the HCP having produced an HCP how-to manual (2002), an ABA resolution supporting the HCP (2003), and a national conference (2004). HCP serves as a model of how other jurisdictions can establish a program to better serve homeless defendants and meet their special needs.

When homeless people request help with criminal cases, they seek justice and respect. They

want to take responsibility while looking for opportunity.

While the continued problem of homelessness is discouraging and frustrating, it is important to remember: it is the condition of homelessness that is undesirable, not the people.

When the participant stands before the HCP, he/she stands before the court as a human being. The court sees the participant as someone who has struggled through hard times and is making great effort to overcome hardship, be it problems with addiction, mental health, economic calamity, or a host of other issues. The court acknowledges each participant’s accomplishments. It is with this understanding that the HCP states, “No one is going into custody.” At the HCP, it is not uncommon for the court and participant to engage in conversation or for the judge and participant to shake hands at the conclusion of proceedings.

The challenge and opportunity facing us today is to reach out and build communities committed to delivering justice for all...Bringing law to the streets, the court to shelters and homeless people back into society.

Reshaping the Plea Negotiation Process for Clients with Mental Health and Substance Abuse Issues

By Jeanie Vela

Office of the Colorado Public Defender

“The prevailing ‘underlying problems’ facing the criminal justice system today include the overwhelming number of people with a history of substance abuse or mental health issues who are charged with a criminal offense.”

Upcoming Conferences:

- OJJDP Conference on Disproportionate Minority Contact, September 7-10, 2006, New Orleans, LA.
- NLADA 2006 Annual Conference, November 8-11, 2006, Charlotte, NC.
- COD Network Meeting, December 11–13, 2006, New York, NY.
- 17th Annual Youth at Risk Conference, March 5-8, 2007, Savannah, GA.

Most public defenders will tell you they became a PD because they want to help people. How many times have you sat down in the lunch room and talked about a particular client – describing the offense, but also depicting your client in great detail after coming to the conclusion that “this person doesn’t need to go to prison. All (s)he really needs is . . . If I only knew of a program that treats. . .”

Lawyers who are drawn to the world of criminal defense love to litigate. But let’s face it, very few of our clients go to trial. Most of our clients do get sentenced, though. The reality is, for the purposes of plea bargaining and sentencing, prosecuting attorneys and judges want to see our clients do something to address the underlying problem that caused them to break the law in the first place. Accomplishing this task is easy for an individual who has money, insurance, flexible job benefits, and other resources. However, it is incredibly difficult and time consuming for most of our clients – who have nothing.

The prevailing “underlying problems” facing the criminal justice system today include the overwhelming number of people with a history of substance abuse or mental health issues who are charged with a criminal offense. Many individuals who fit this profile are arrested for non-violent offenses, and their risk of harm to society, if released, is minimal. Colorado’s Task Force for the Continuing Consideration of Persons with Mental Illness in the Criminal Justice System reports that it is

widely accepted that a large number of individuals with mental illness in state prisons, and particularly those in county jails, are there because they displayed the symptoms of untreated mental illness in public.

These non-violent offenders with special needs present an added strain to the criminal justice system in many ways. They cost more to house in jail and prison facilities, and they often become “frequent flyers,” picking up new cases on a regular basis, which require courts to expend more time processing these simple, yet complex, cases.

So who is the likely choice to help public defenders sort out a client’s underlying problems? Enter the social worker. In 2003, the Edward Byrne Memorial State and Local Law Enforcement Assistance Program awarded funding to the Colorado Public Defenders to begin a pilot project in our Jefferson County regional office that, for the first time in Colorado, partnered the clinical skills of social workers with attorneys to assess individuals with a history of mental health or substance abuse issues, who also have a pending non-violent felony charge. This collaborative relationship between public defenders and social workers, protected by the attorney-client privilege, has shown promising results since it began in 2003.

A case in point is Alex. Alex is a 19-year old individual who entered a grocery store to use the restroom. On the way to the restroom, Alex passed the employee break room and saw an open locker. Alex admits enter-

ing the break room and taking a look inside the locker, but does not remember removing anything. After using the restroom, Alex exited the store and returned a short time later to ask if anyone could drive him to another grocery store. The employee/victim noticed that a pair of sunglasses hanging from his shirt collar matched the pair that was removed from her locker. When police officers emptied Alex’s pockets, they found perfume and headphones, both of which had been removed from the locker. Alex also had the victim’s checkbook, but could not remember how he got it. Alex was charged with third-degree burglary (class 5 felony) and theft (class 2 misdemeanor), and faces a possible 1 to 3 years in prison.

Colorado’s Task Force also reports that most mentally ill offenders, if properly stabilized, stop committing crimes and become productive citizens and that providing offenders community supervision and treatment decreases repeat arrests by 44%. In Alex’s case, the prosecuting attorney was willing to consider a sentence to probation, but would not agree to a pretrial disposition without assurances that Alex would have sufficient community-based supervision to insure that he would not re-offend. Both the prosecuting attorney and defense counsel agree that Alex’s needs could be met in the community at a substantial cost saving (approximately \$800 per year for probation supervision plus the cost of individualized drug treatment versus the average annual cost of \$26,248 to house an inmate in the Colorado Department of Correc-

Reshaping the Plea Negotiation Process (cont'd)



tions).

Prior to the Public Defender's pilot project, however, there was no mechanism in place to begin the assessment process until *after* the defendant had pled guilty to a felony offense and was awaiting sentencing. By that time, however, it is too late to have any meaningful effect on the plea negotiation process, and, due to average case processing times in Jefferson County, the non-violent individual has typically spent more than 120 days in detention at a significant cost to Jefferson County taxpayers (average cost of \$65 per day).

Alex's case is a good example of the type of work our social workers undertake. Alex's need assessment revealed that he suffered a severe brain injury when he was 14 years old and was in a coma for 6 weeks. Alex then spent 7 months at Children's Hospital recuperating from his injury. As a result of his injury, Alex has difficulty with speech, his left side is paralyzed, and he wears a leg brace. After extensive research, the social worker assigned to Alex's case was able to work with the Jefferson County School District to develop an individualized education plan for him so that he could return to school and work toward his GED certificate. More importantly, however, the social worker contacted the Colorado Brain Injury Association and assisted Alex in applying for a treatment grant. Ulti-

mately, the Brain Injury Association awarded Alex a grant that will be used to pay for the majority of his short-term treatment needs. Without the social worker's ingenuity in this case, the sentencing options for Alex would have quickly dwindled due to his age and circumstances.

Additionally, in cases where the client is facing his/her first felony conviction, the information provided by social workers may be valuable in persuading the district attorney to agree to a misdemeanor plea. For clients without a prior felony conviction, a misdemeanor offer maintains the client's "felony-free" status and retains the client's eligibility for programs and housing benefits that would provide important structural elements beneficial to any alternative sentencing plan. These elements are often critical pieces of a "safety net" that helps special needs offenders remain in compliance with a court sentence.

Between January 2004 and December 2005, the Public Defender's pilot project received 126 new referrals that have concluded through to sentencing. Remarkably, 67% of these clients were diverted from serving a jail, community corrections, or prison sentence. As a result, this project theoretically saved the State of Colorado an estimated \$4.5 million in prison supervision costs, plus the unspecified cost of parole supervision, for those individuals who were diverted from serving a prison sentence.

Traditionally, in Jefferson County, the number of days between arrest and sentencing for the public defender's gen-

eral non-violent felony caseload has steadily increased to nearly 120 days. However, 12 clients who were referred to the project were able to post bond after spending an average of only 74 days in jail. Had these 12 clients spent the additional 46 days in custody prior to resolving the criminal charges, it would have cost the Jefferson County Jail an additional \$35,000 – roughly 77% of the federal funding requested by the Colorado Public Defenders last year alone to continue this project. A further review of the clients who posted bond revealed that they spent an average of only 46 days in custody between the date they were referred to the project and the date bond was posted. To maximize results, program staff are working to reduce the time between arrest and referral to a social worker over the next year.

Although the ability to post bond is one performance indicator used to gauge the project's success, our real goal is to reduce the overall number of days a client is detained in jail pending the resolution of criminal charges. Therefore, another performance indicator that is equally, *if not more*, important to evaluate is the number of days between arrest and sentencing. This data is important because once a social worker identifies appropriate services for a client, the assigned public defender may elect to bypass the bond reconsideration process and work to quickly resolve the case through plea negotiations to effect the individual's release from jail and allow the individual immediate access to identified services as part of an alternative sentence.

Preliminary statistics show that cases referred to this project are resolved in an average of 102 days, a 15% reduction in court case processing time over the average 120 days to resolve a non-violent felony case in Jefferson County. Over the 2-year time span referenced above, 68% of referred cases were resolved in fewer than 120 days – remarkably, 59% were resolved in fewer than 90 days. When considering the complexity of issues presented by individuals with mental health and substance abuse issues who are also charged with a felony offense, the impact of a 15% reduction in court case processing time is striking and positively impacts the entire criminal justice system in Jefferson County at a time when all agencies are trying to maximize resources while minimizing cost.

The success of this project is measured by the overwhelming support of each agency that comprises the criminal justice system in Jefferson County. The judiciary has steadfastly supported the project because it provides, and arranges for, sentencing options that would not normally exist. Jefferson County's Criminal Justice Planning Unit reports that the county's top officials have committed to designing ways in which the essential features of this project are made a permanent part of jail and court processing for individuals with mental illness and that this project has provided them the opportunity to establish the permanency of the program's critical processes. In the coming year, Public Defender staff will continue to work with Jefferson County officials to ensure the rights of the accused are safeguarded throughout this planning process.

Fellowship Funding Available

Consider these fellowship opportunities to support your COD work:

Soros Justice Fellowship Program. *Deadline: September 13, 2006.* Soros Justice Fellowship Program seeks applications from outstanding individuals, including lawyers, advocates, grassroots organizers, activist academics, journalists, and filmmakers, to implement innovative projects that address one or more of the criminal justice priorities of OSI's U.S. Justice Fund. Since its inception in 1997, the program has supported over 200 dynamic individuals working across the country for local, state, and national criminal justice reform. For more information visit: http://www.soros.org/initiatives/justice/news/justicefellows_20060530.

Equal Justice Works Fellowship. *Deadline: September 19, 2006.* Equal Justice Works is committed to recruiting attorneys who represent a variety of experiences and backgrounds and to providing them with a strong foundation on which to build a public interest career. Equal Justice Works

Fellowships seek to develop the public interest law leaders of the future, whether they continue to work in the nonprofit arena or become *pro bono* advocates in the private bar. For more information visit: <http://www.equaljusticeworks.org/fellows/mainpage.php>.

Skadden Arps Fellowship. *Deadline: October 4, 2006.* The Skadden Fellowship Foundation, described as "a legal Peace Corps" by The Los Angeles Times, was established in 1988 to commemorate the firm's 40th anniversary, in recognition of the dire need for greater funding for graduating law students who wish to devote their professional lives to providing legal services to the poor (including the working poor), the elderly, the homeless, and the disabled, as well as those deprived of their civil or human rights. The aim of the foundation is to give Fellows the freedom to pursue public interest work; thus, the Fellows create their own projects at public interest organizations with at least two lawyers on staff before they apply. For more information visit: <http://www.skaddenfellowships.org/>.



Getting to Know Your “Local” Federal Funders

The Office of Justice Programs awards many formula grants directly to state government administering agencies who then set local funding priorities and “pass through” these dollars to agencies within a particular state. Two examples of formula grants that are administered at the state level are the Justice Assistance (JAG) and Edward Byrne Memorial Grants.

Getting to know your local administering agency is beneficial to community-oriented defender programs on many different levels. First, when applying for a grant you are only competing against other programs from within your state—not the entire country—so the odds of getting funded improve dramatically. Second, the administering agency often coordinates local coalitions and boards to seek input from relevant stakeholders before setting local funding priorities. Participating on local coalitions is a good way to get exposure for your programs and get the word out about community-oriented defense work. To find out more information regarding your local pass-through agency, go to the Bureau of Justice Assistance's website at: <http://www.ojp.usdoj.gov/saa/>.

The Brennan Center Needs Your Help ...

Crafting the recommendations for the new public defender office in New Orleans.

At the June 2006 COD meeting, we devoted a session to advising the folks who are setting up the new public defender office in New Orleans. The Brennan Center is writing a report and recommendations we will submit to the Board of the Orleans Public Defender, which includes your suggestions on how to build the new office as a community office.

If you are interested in reviewing drafts of the report and giving us your input, please contact Chris Muller, chris.muller@nyu.edu.

Planning the next COD meeting: December 11-13, 2006, in New York.

In September we will begin putting together plans for the next COD meeting, December 11-13, 2006 at NYU School of Law in New York, NY. As always we welcome your ideas about the session's topics and designs. Thanks already for the many constructive and detailed suggestions you shared through the evaluation forms from the last session. If you are interested in

being part of the planning committee for the December meeting, contact Kirsten Levingston, kirsten.levingston@nyu.edu.

Recruiting other agencies to join the Network and attend the December 2006 meeting.

If you know of other public defender agencies that may be interested in joining the COD Network, send the office name and a contact person there to Jennifer O'Neal, onealje@verizon.net.

Community Defenders in the News

Felon Voting Law Discussed

By J.J. Stambaug
Knoxville News
Tuesday, August 8, 2006

To Angel Romero, a former drug dealer who would someday like to vote, a recent revision to state law that makes it easier for felons to regain their voting rights after serving their sentence was long overdue. Still, the new law might not go far enough, because it will likely end up discriminating against poor people, especially minorities, according to a panel that discussed the issue Monday at the Beck Cultural Exchange Center.

Romero, who said she is serving the balance of a 16-year sentence on probation, explained that voting rights are of vital importance for criminals who've turned their lives around.

"If they're given the opportunities, encouragement and connections, I think that anyone can be redeemed," she said. "They can be productive members of society." The event was sponsored by the American Civil Liberties Union, Tennessee's Right to Vote Campaign, and the Race Relations Center of East Tennessee.

Until May, when the law in Tennessee was changed, felons had to go through the cumbersome and often expensive process of going before a judge if they wanted to regain their right to vote.

The new law, however, creates a uniform process that allows most felons to vote if they have completed their sentence, paid their court-ordered restitution, and aren't behind on child support payments.

Renee Paradis, associate counsel with the Brennan Center for Justice at the New York University School of Law, said Tennessee's child support provision was troubling because it could result in some people being barred from voting because of their financial situation. "That doesn't seem to be the kind of thing your vote should depend on," she said.

Laws that prevent felons from voting have disenfranchised more than 5 million Americans, including

nearly 600,000 veterans, and they have had a disproportionate impact on blacks and other minorities, according to the ACLU.

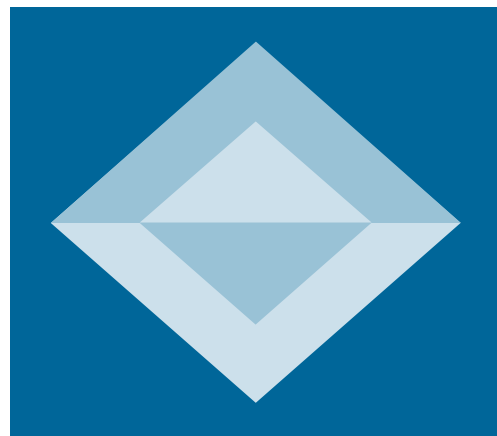
For instance, nearly 13 percent of black men in the United States can't vote because of their criminal records, the ACLU said.

Monday's panel discussion was one of eight "town hall meetings" scheduled across the state to explain the new law. The panel included Romero, ACLU-Tennessee Right to Vote Campaign coordinator Michele Flynn, and **Knox County Public Defender Mark Stephens**.

Romero, a 29-year-old single mother, said she won't be eligible to vote until her sentence expires in 2015, but she stressed how important the prospect of one day casting a ballot is to felons.

"Without it, they have no hope," she said. "If you say that I can't vote, you're saying that people like me can't change, and if that's the case, then we're really in serious trouble."

Not all felons can apply to have their voting rights restored. Depending on when they were convicted, those felons found guilty of murder, aggravated rape, voter fraud, and sexual offenses involving minors are still barred from voting.



Community Defenders in the News

Grant to help police handle mentally ill

By Liesel Nowak
Daily Progress staff writer
Thursday, July 27, 2006

“The hole,” an isolated cell designed to segregate unruly inmates from the general jail population, might be an appropriate alternative for many out-of-control prisoners, but to someone suffering from schizophrenia, isolation can be terrifying and dangerous.

The mentally ill can suffer what psychiatrists call “decompensation,” or a mental collapse, when locked up. When completely segregated, they can deteriorate further, leading to an increase in disruptive behavior and more criminal charges brought against them.

Local criminal justice advocates for the past three years have looked at ways to better handle the mentally ill, and are making plans to change the way police, jailers and the courts treat them.

They'll start with a recently awarded \$187,000 grant from the state's Department of Criminal Justice Services, which will help create a Crisis Intervention Team to ensure an appropriate response for those Thomas von Hemert and others call mentally ill “consumers.”

“This has only grown in numbers and significance,” said [von Hemert, criminal justice planner for the Thomas Jefferson Area Community Criminal Justice Board and member of the Citizens Advisory Committee of the Charlottesville-Albemarle Public Defender Office](#), a six-member panel that initiated the effort to address the needs of the mentally ill and spawned a 25-member task force.

“We really went through a tremendous process, a learning curve in understanding the issues of the mentally ill in the criminal justice system and then coming to a consensus of how to address the problem,” von Hemert said Wednesday. “Now we've come to the place where the rubber meets the road.”

The grant will help provide training in crisis intervention to 25 percent of officers in the Charlottesville, Albemarle County and University of Virginia police departments.

The idea is to train a portion of the police force, and have those officers pass the training and skills on to others in the department, keeping the know-how flowing.

The first Crisis Intervention Team, or CIT, was established in 1988 in Memphis, Tenn., after police shot and killed a mentally ill man, spurring a public outcry.

Injuries to the mentally ill and to police officers arresting them have declined since the establishment of the Memphis CIT, according to their police department. In recent years, CIT programs are popping up all over the United States.

“A number of communities around the state and certainly around the nation have experienced great success with crisis intervention teams like this,” said Reed Banks, director of mental health services at Charlottesville's Region Ten and a member of the task force.

“Recognizing that they are impaired is key,” Banks said of CIT training. “[The mentally ill] have impaired capacity and might not know they've committed

a crime. They might appear threatening, but a police officer trained to recognize this will know how to defuse the situation.”

Von Hemert said the CIT task force also plans to use the grant to establish a “crisis stabilization unit,” which can be an alternative to jail and help keep inmates and jailers safe.

[Local Public Defender Jim Hingeley](#) called the work that began with the small committee an “unqualified success.”

“It came from this committee for the purpose of benefiting the clients of the public defender's office,” Hingeley said, adding praise for local agencies that have contributed to funding the initiative.

Within 10 days of learning of the grant, the task force was able to secure matching funds - \$52,000 in all - from the Albemarle-Charlottesville Regional Jail; the Charlottesville, Albemarle and U Va police departments; Region Ten Community Services Board; the Criminal Justice Board; the Breeden Foundation; Helping Hands; and U Va's Department of Psychiatry.

Judges, prosecutors and mental health advocates have signed on to the CIT task force, too, von Hemert said.

“All this was done by consensus, and that is huge,” he said. “In the past, it was a mental health issue, now it's a public safety issue.”

Contact Liesel Nowak at (434) 978-7274 or lnowak@dailyprogress.com.

Community Collaboration Pays Off

By Linda McLaughlin

Consultant to the Brennan Center for Justice

In 2000 the Knox County Public Defender's Community Law Office (CLO) began to address a range of client issues, including literacy. The office identified the county's "One Book, One Community" campaign, launched to cultivate a culture of reading and discussion by bringing the county together around one great book, as a natural partner. The CLO purchased twenty copies of the campaign book for clients to borrow, and encouraged them to participate in related activities in the community. From there, the office identified another partner, a youth services organization, which donated 200 children's books to our office. As word of our literacy efforts spread, a local foundation that promotes

literacy awarded the CLO a \$2,000 grant for books, and also donated 50 copies each of *What to Expect When You're Expecting*, and two children's books. CLO provided each expectant client a copy of all three. Meanwhile, clients of all ages were visiting the CLO library.

Attention to client literacy and partnerships with community groups and foundations paid off for the CLO in several ways.

When it came time to apply for funding for community oriented projects in the office, the CLO had developed a base of community support among partners and participants in our literacy efforts.

Because of the grant CLO received to purchase books, the office had a chance to develop grant management experience, an asset when seeking additional grant or foundation funding.

Years after CLO started its literacy project, at a meeting of county officials, the Attorney General mentioned the importance of literacy for those in the system and pointed to the CLO reading program as an example of a successful effort.

Good things happen when defenders develop community partnerships.

Two Tips for Shaping Public Perceptions of Your Defender Agency

1. Work with staff to come up with the "one-line" description of your office. Examples drawn from real defender mission statements:

- "assists our clients and the community by seeking dispositions that are effective in addressing the underlying problems that contribute to criminal behavior, thereby reducing recidivism and enhancing public safety."
- "provides attorneys to indigent criminal defendants . . . [and] upholds the dignity of our clients."
- provides "effective and ethical defense to each accused indigent citizen whose cause has been entrusted to the office . . . and safeguard(s) the

fundamental constitutional rights of all residents in this county."

- "Our staff of attorneys, social workers, investigators, administrative support, and community developers is committed to working with our clients, their families, and their communities to address the problems that drive many of our clients into the criminal justice system - challenges like addiction, mental illness, inadequate education, lack of access to social support services, and severe family conflict."
2. Take every opportunity to educate the community about your program:
- Write a letter to your state or local

representatives telling them about a successful project outcome -- ideally offering evidence of cost savings or enhanced public safety.

- Respond to a newspaper article about a crime problem in your community with a letter to the editor putting individual cases into larger contexts, and offering a systemic solution -- ask a community member to co-sign the letter with you.
- Come up with a quick and dirty brochure offering answers to frequently asked questions about the criminal justice system, and, if you have a website, add a "Frequently Asked Questions" section.



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Save the Date

**COD Network Meeting,
December 11–13, 2006,
New York, NY**