

## ACCD Formally Launched by NLADA

The American Council of Chief Defenders was formally launched as a new section of NLADA in August 2000 in Washington, DC.

The ACCD's mission is to secure a fair justice system by advocating sound public policy and ensuring quality legal representation of indigent people facing a loss of liberty or accused of a crime. Goals include promoting defender independence, resource parity and a seat at the table with the other criminal justice agency leadership groups for every discussion of criminal justice policies or funding.

"The creation of the ACCD, and the commitment of NLADA and the attorney general, comes at a time of a crisis of public confidence in the accuracy, fairness and integrity of the criminal justice system," Cook County (Illinois) Public Defender and ACCD Co-Chair Rita Fry said in a press release. "It reflects a rising tide of public concern about convictions of the innocent and the competence and effectiveness of legal representation for the poor."

Former Attorney General Janet Reno recognized the creation of the ACCD by hosting the Chiefs at the Department of Justice. During the meeting, Reno and ACCD members dis-

cussed topics including parity of resources between prosecution and defense, student loan forgiveness and defender concerns about problem-solving courts.

Reno also presented the ACCD's newly created Robert F. Kennedy Award for extraordinary contributions to the field of indigent defense by a criminal justice system leader other than a defender. The award was presented to Nancy Gist, then director of DOJ's state-and-local grant-making arm, the Bureau of Justice Assistance. A second meeting between the ACCD and Attorney General Janet Reno was held at NLADA's 2000 National Conference in December.



This is the premier issue of *Executive Summary*, the newsletter of the American Council of Chief Defenders. *Executive Summary* will be published monthly by the National Legal Aid & Defender Association to provide America's defender Chiefs with news, updates and community resources information.

### ACCD Adopts 'Ten Tenets of Problem-Solving Courts'

The American Council of Chief Defenders has adopted a list of 'Ten Tenets of Problem-Solving Courts,' in response to growing concerns expressed by defender chiefs across the country.

After holding discussions on the topic at several ACCD meetings, defense executives voted to create a document to address the most frequent and troubling aspects of the courts, including, among other things, a lack of defense participation

in their creation and undue restrictions on both clients' due process rights and defense counsels' ethical responsibility of zealous representation.

An initial draft of the Tenets was sent to Attorney General Janet Reno and was one of several issues ACCD members discussed in their first Reno meeting. On December 2, 2000, ACCD members discussed comments to the draft, making minor changes before approving the now final document. (See p. 3 for document)

THE AMERICAN COUNCIL OF CHIEF DEFENDERS (ACCD) IS DEDICATED TO SECURING A FAIR JUSTICE SYSTEM BY ADVOCATING SOUND PUBLIC POLICY AND ENSURING QUALITY LEGAL REPRESENTATION OF INDIGENT PEOPLE FACING A LOSS OF LIBERTY OR ACCUSED OF A CRIME. THE ACCD IS A SECTION OF THE NLADA. ACCD MEMBERSHIP IS OPEN TO CHIEF AND DEPUTY CHIEF DEFENDERS OF STATE, COUNTY, LOCAL AND FEDERAL DEFENDER SYSTEMS AND PROGRAMS IN ALL 50 STATES, THE DISTRICT OF COLUMBIA, PUERTO RICO, AMERICAN SAMOA AND THE VIRGIN ISLANDS.

## ACCD's 'Ten Tenets' Headed to the Hill

Almost all of the ACCD's 'Ten Tenets of Problem Solving Courts,' including indigent defense participation, have been incorporated into draft legislation to create a new federally funded grant program aimed at diverting the mentally ill from the criminal justice system into appropriate services.

The "Criminal Justice and Mental Health Collaboration Act of 2001" is built upon a set of principles agreed to by a diverse criminal justice coalition, of which NLADA is a member. It would provide \$290 million to states and localities to encourage them to "experiment with progressive solutions to the problem of the involvement of the mentally ill in the criminal justice system," come up with "community based treatment approach[es]" and address other systemic "inadequacies ... which currently result in individuals with serious mental illness falling through the cracks ... ."

The as-yet-unintroduced proposal has caught the interest of a key Republican senator who may introduce it, therefore the measure has a reasonable prognosis for success.

## Free Technical Assistance!

NLADA advocacy has resulted in two sources of **free** technical assistance opportunities available to public defense agencies. Both programs provide you with practical help, usually through an expert visiting your site, in the assessment and implementation of management changes in your office. One of these programs can help you with technology, the other with everything else. The U.S. Department of Justice's Bureau of Justice Assistance (BJA) funds both programs.

Assistance with technology issues is provided by SEARCH, the National Consortium for Justice Information and Statistics. Long a resource only for police and prosecution, it is now open to indigent defense. For information on technical assistance with any technology challenge, go to [www.search.org/tech-assistance/default.asp](http://www.search.org/tech-assistance/default.asp). They also run a special clearinghouse to help jurisdictions integrate the technology systems of all their justice agencies. See [www.search.org/integration/default.asp](http://www.search.org/integration/default.asp).

The Criminal Courts Technical Assistance Project (CCTAP) will provide support in other areas. NLADA has been a consortium partner in the CCTAP since its founding a few years ago. When a defender technical assistance request comes in it is reviewed against the selection criteria (see below). CCTAP (through NLADA) then matches the request with defender/experts to provide the needed consultation and assistance. Travel and time costs are picked up by CCTAP, and typically run several thousand dollars. CCTAP gives

priority to projects that meet one or more of the following criteria:

- Results in statewide impact on judicial system operations;
- Promotes prompt and effective handling of cases involving violent or drug offenses;
- Addresses a serious dysfunction in the conduct of the adjudication process with substantial negative implications for the public image of the judicial system or judicial system inter-agency relations;
- Addresses a problem that significantly affects a BJA grantee agency; or
- Presents an emergency situation.

**If you would like to take advantage of this free program you should apply quickly, as the change of administration could impact funding.** For additional information go to: [www.american.edu/justice/training.html](http://www.american.edu/justice/training.html).

(Note: For more information on technology integration from a defender perspective, see NLADA's "Defender Guidebook to Technology Integration in Criminal Justice Information Systems," at [www.nlada.org/indig/novdec99/techinthndbk.htm](http://www.nlada.org/indig/novdec99/techinthndbk.htm) (text only; if you want the full guide with appendices, order it from [s.stall@nlada.org](mailto:s.stall@nlada.org)). For more on CCTAP visit NLADA's Web site at: [www.nlada.org/indig/janfeb98/input.htm](http://www.nlada.org/indig/janfeb98/input.htm), or see the BJA flyer, including descriptions of NLADA's "Model Contract for Public Defense Services," as well as the "Technology Integration Guidebook," at [www.ncjrs.org/pdffiles1/bja/185780.pdf](http://www.ncjrs.org/pdffiles1/bja/185780.pdf)).

# TEN TENETS OF FAIR AND EFFECTIVE PROBLEM-SOLVING COURTS

## Introduction

“Problem-Solving Courts” are spreading across the country. Though the current wave of interest started with the creation of Miami’s Drug Court in 1989, the nation’s courts had a long prior history of seeking to solve the problems of offenders and communities through the imposition of sentences with rehabilitative conditions or indeterminate sentences with a chance for early release based on rehabilitation. The advent of mandatory minimums and determinate sentencing foreclosed many such options, leading to the establishment of Problem-Solving Courts as a new vehicle for effecting established rehabilitative objectives.

There currently are more than 500 drug courts operating, and more than 280 others currently in the planning process, in all 50 states. Although drug courts have existed the longest and been studied the most, “Community Courts,” “Mental Health Courts,” and other specialty courts are beginning to proliferate.

Despite Department of Justice and other publications that urge inclusion of defenders in the adjudication partnerships that form to establish “Problem-Solving Courts,” the voice of the defense bar has been sporadic at best. Although defense representation is an important part of the operation of such courts, more often than not, defenders are excluded from the policymaking processes which accompany the design, imple-

mentation and on-going evaluation and monitoring of Problem-Solving Courts. As a result, an important voice for fairness and a significant treatment resource are lost.

The following guidelines have been developed to increase both the fairness and the effectiveness of Problem-Solving Courts, while addressing concerns regarding the defense role within them. They are based upon the research done in the drug court arena by pretrial services experts and others and the extensive collective expertise that defender chiefs have developed as a result of their experiences with the many different specialty courts across the country. There is not as yet, a single, widely accepted definition of Problem-Solving Courts. For the purposes of these guidelines, Problem-Solving Courts include courts which are aimed at reducing crime and increasing public safety by providing appropriate, individualized treatment and other resources aimed at addressing long-standing community issues (such as drug addiction, homelessness or mental illness) underlying criminal conduct.

## The Ten Tenets

1. Qualified representatives of the indigent defense bar shall have the opportunity to meaningfully participate in the design, implementation and operation of the court, including the determination of participant eligibility and selection of service providers. Meaningful participation includes

reliance on the principles of adjudication partnerships that operate pursuant to a consensus approach in the decision-making and planning processes. The composition of the group should be balanced so that all functions have the same number of representatives at the table. Meaningful participation includes input into any ongoing monitoring or evaluation process that is established to review and evaluate court functioning.

2. Qualified representatives of the indigent defense bar shall have the opportunity to meaningfully participate in developing policies and procedures for the problem-solving court that ensure confidentiality and address privacy concerns, including (but not limited to) record-keeping, access to information and expungement.

3. Problem-solving courts should afford resource parity between the prosecution and the defense. All criminal justice entities involved in the court must work to ensure that defenders have equal access to grant or other resources for training and staff.

4. The accused individual’s decision to enter a problem-solving court must be voluntary. Voluntary participation is consistent with an individual’s pre-adjudication status as well as the rehabilitative objectives.

5. The accused individual shall not be required to plead guilty in order to enter a problem-

solving court. This is consistent with diversion standards adopted by the National Association of Pretrial Services Agencies. See Pretrial Diversion Standard 3.3 at 15 (1995). The standards stress, "requiring a defendant to enter a guilty plea prior to entering a diversion program does not have therapeutic value."

6. The accused individual shall have the right to review with counsel the program requirements and possible outcomes. Counsel shall have a reasonable amount of time to investigate cases before advising clients regarding their election to enter a problem-solving court.

7. The accused individual shall be able to voluntarily withdraw from a problem-solving court at any time without prejudice to his or her trial rights. This is consistent with the standards adopted by the National Association of Pretrial Services Agencies. See Pretrial Diversion Standard 6.1 at 30 (1995).

8. The court, prosecutor, legislature or other appropriate entity shall implement a policy that protects the accused's privilege against self-incrimination.

9. Treatment or other program requirements should be the least restrictive possible to achieve agreed-upon goals. Upon successful completion of the program, charges shall be dismissed with prejudice and the accused shall have his or her record expunged in compliance with state law or agreed upon policies.

10. Nothing in the problem-solving court policies or procedures should compromise counsel's ethical responsibility to zealously advocate for his or her client, including the right to discovery, to challenge evidence or findings and the right to recommend alternative treatments or sanctions.

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## ACCD Meeting News

The last two meetings of the ACCD took place in conjunction with the NLADA 2000 Annual Conference in Washington, D.C. On December 1, ACCD members bid farewell to Attorney General Janet Reno. Participants shared some of the many positive results that had occurred in the states as a result of the Department of Justice-sponsored Indigent Defense Symposium and urged the attorney general to take whatever steps she could to institutionalize the symposium as an annual event. In a plea made jointly by Federal Public Defender Jean Faria, and Georgia Public Defender Michael Mears, the ACCD urged the attorney general to file a brief supporting the appeal in *Chandler v. United States*, a case resulting in the imposition of the death penalty despite the fact that the attorney failed to present mitigation evidence. Ms. Faria and Mr. Mears stressed that in addition to the harm to Chandler, an affirmation in the *Chandler* case would strike a serious blow to the establishment of high standards of professionalism in the defense community, which the Attorney General supported so

strongly. Shortly thereafter, President Clinton commuted Chandler's death sentence to life imprisonment.

ACCD members reconvened on December 2, 2000. Members discussed how to obtain information and submit names for consideration to the Department of Justice transition team (after a president was elected and the team was formed). Participants also reviewed and discussed final comments on the "Ten Tenets of Problem Solving Courts." Malcolm (Tye) Hunter, the recently appointed director of the newly established North Carolina Indigent Defense System, told members his plans for developing the new system. Tye then listened while members shared their views on important initial steps to take in creating the new structure. Ideas included:

- Hire a good legislative person to work on budget passage;
- Hire a good trainer;
- Build a good information system so you will have the information you need to respond to all inquiries about your program;
- Include automation as a major piece in the development of the system;
- Include the clients' perspectives as consumers in your evaluation processes from the beginning of the establishment of your system;
- Ask a progressive public relations firm to work with you pro bono, hire a specialist in organizational development to start working with you right now;





- Establish workload/caseload standards for your office and have dialogues with other criminal justice agencies to find common ground on these issues;
- Establish a system in which you authorize your own forensic services;
- Hire a strategic planner outside of the defender community;
- Identify other stakeholders and invite them to work with you in community groups;
- Contact state Byrne Grants Coordinator, pitch balanced funding and get appointed to statewide Byrne Committee;
- Hire the best assistant you can;
- Negotiate to obtain access to criminal justice records;
- Begin now to visit all (criminal justice and other related) agency heads to introduce yourself and establish a dialogue; and
- From the beginning, make very conscious, specific plans to create an environment in which it is great to work.

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## **ACCD Committee News**

Three new committees were formed at the December 2, 2000 meeting of the ACCD: an Outreach Committee, Emerging Systems Committee and Governance Committee. Each of the new committees have begun meeting by teleconference.

### **Outreach Committee**

The Outreach Committee was formed to work on expanding ACCD membership. NLADA has created a database of over 700 names in an ongoing project to identify all indigent defense chief executives in the United States and its territories. The Outreach Committee will work from that list to begin peer-to-peer contact to let people know about the ACCD and its activities. Committee members began their outreach efforts by sending special invitations to the Santa Fe meeting to chief defenders in the states that border New Mexico. More than 25 first-time participants have registered for the April 18-19 meeting.

### **Emerging Systems Committee**

The Emerging Systems Committee was formed to assist and support the leadership of newly formed indigent defense systems or systems attempting reform efforts. The committee has undertaken several projects. The committee is recruiting volunteers and maintaining a list of "mentor sites" that indigent defense leaders can visit to see and learn about different aspects of running indigent defense programs. The list will be maintained by topic. For example, there will be sites which focus on training, the integration of technology in office management and professional services, supporting significant legislative agendas, states systems, "whole-client" representation and many more. The committee is seeking to secure support for defenders who wish to make mentor site visits through NLADA's partnership with the American University.

The Emerging Systems Committee is also working with

NLADA to provide management information and support through the NLADA's new Web site, scheduled to launch this spring. The database driven site will serve as a repository for a management information database, including policies, forms, annual reports, grant applications and other sample documents utilized in indigent defense programs across the country.

### **Governance Committee**

The Governance Committee was created to ensure the efficient operation of the ACCD in achieving the twin goals of impacting criminal justice policies and providing peer-to-peer support as the group grows in size. The committee will make recommendations to the full ACCD concerning the structure of the section, including the composition of the Executive Committee, membership eligibility and dues issues.

Other ACCD Committees include the Executive Committee, Co-Chairs, Rita Fry and John Stuart; Public Affairs Committee, Chairperson, Michael Judge; Problem Solving Courts Committee, Chairperson Cynthia Jones; and Diversity Committee, Chairperson, Gary Windom. Committee membership is voluntary and unlimited. Anyone wishing to get involved can do so by contacting Jo-Ann Wallace, Chief Counsel, NLADA Defender Legal Services Division or the Committee Chairperson.

For schedules or full summaries of ACCD meetings or committee meetings contact Steve Stall at (202) 452-0620 or s.stall@nlada.org. Summaries and meeting schedules will be posted on the new NLADA Web site scheduled to launch in June.

## Kudos To ...

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**Ronald Coulter and the staff of the Idaho Appellate Defender** for their successful efforts in helping to steer a DNA bill through the legislative session. The bill includes the right to testing upon establishment of a *prima facie* need in both capital and non-capital cases. For more information, go to [www.state.id.us/oasis/H0242.html](http://www.state.id.us/oasis/H0242.html).

**Gerard Smythe, Susan Storey and the staff of the Connecticut Division of Public Defender Services** for the wonderful exhibit and brochure celebrating the 25th anniversary of the Connecticut Public Defender Services Commission and agency. The exhibit was housed at the Connecticut State House. To view some of the exhibit and brochure go to [www.ocpd.state.ct.us/Main/accomp.htm](http://www.ocpd.state.ct.us/Main/accomp.htm).

**Phyllis Subin and the staff of the New Mexico Public Defender** for their work in securing passage of a bill that would increase drug treatment available to their clients.

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## Support your Colleagues UNDER SIEGE ...

**Nicholas Chiarkas, Ellen Berz** and others in the Wisconsin State Public Defender System who are attempting to fend off a government-wide five percent budget cut. As is true in most defender programs with no control over caseloads and budgets that are personnel driven, across-the-board cuts impose undue and unwise burdens on defender systems, wreaking havoc on our clients, our staff and the criminal justice system.

**Steve Carroll** and others in the San Diego Public Defender Office who have come under scrutiny for their innovative use of technology. Articles about the office's creation of a database containing information on police officer witnesses were featured by National Public Radio and other sources. In response to the office's efforts to provide zealous and cost effective representation, a state senator has threatened to curtail program funding.

*(Note, since even a well-intentioned letter can interfere with a strategy to address serious issues like those raised above, you should not take any action without first contacting the defender chief whom you are seeking to assist.)*

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## NLADA Defender Training Calendar

### **Defender Advocacy Institute**

June 1 to 6, 2001  
Dayton, Ohio

### **Building on Our First 90 Years: The NLADA Annual Conference**

November 7 to 10, 2001  
Miami, Florida

### **Appellate Defender Training**

November 29 to December 2, 2001  
New Orleans, Louisiana

### **Defender Leadership & Management Training 2001**

TBA

### **Life in the Balance**

March 16 to 19, 2002  
Kansas City, Missouri

### **NLADA 2002 Annual Conference**

November 13 to 16, 2002  
Milwaukee, Wisconsin