

EXECUTIVE

An Update For and About The AMERICAN COUNCIL of CHIEF DEFENDERS

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Summary

October 2002

ACCD MEETING NEWS

Austin Meeting Reveals Impacts of Economic Downturn on Indigent Defense Sparks New Focus on Misdemeanor Representation in the "Post-Shelton" Era

The ACCD met in Austin, Texas, September 17-19 with a focus on quality, resources and reform. As always, the Texas meeting was designed to maximize the sharing of information and ideas among indigent defense leaders from across the country with the goal of peer-to-peer help in running and improving programs and increasing defender impact on local and national criminal justice policies and practices. For the first time, however, several different events overlapped with the ACCD meeting, including the National Defender Leadership Institute (NDLI) conference and the Forum on Cost-Effective Indigent Defense Systems in Texas.

Funding was a leading topic, as almost without exception, chiefs expressed concern that their programs were facing potential negative impacts from the downturn in the economy. Nevertheless, many chiefs reported funding victories in the form of modest increases or success in fending off potential cuts. Participants shared some of the ways programs have achieved funding success despite more challenging fiscal climates, or were utilizing the slow economy to support progressive reform efforts, including:

- Federal grants, like Byrne and JAIBG, to hire new staff

(Connecticut state system, Los Angeles County)

- "Blue Ribbon Commission" studying and documenting system's shortcomings (Kentucky state system)
- Thorough data, driven by new state-of-the-art, Web-based case management system and performance-based budgeting (New Mexico state system)

- Having breakfast every week with the district attorney, to collaborate on budget projections and presentations (Riverside County, California)
- Linking compensation rates to prosecutors and county lawyers (Santa Clara County, California)

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NLADA Enters New "Defending Immigrants Partnership"

Immigrant defendants and defense counsel are often shocked by harsh and unexpected immigration consequences of criminal convictions. In this time of increased immigration restrictions in which it has become more difficult to separate criminal defense from immigration defense, NLADA has joined with the Immigrant Legal Resource Center, the Immigrant Defense Project of the New York State Defenders Association, and the National Immigration Project of the National Lawyers Guild, Inc., to launch the "Defending Immigrants Partnership." The goals of the initiative are to insure that immigrant defendants have informed, effective counsel and for the defender community to embrace the

issue of immigration consequences of their clients as part of their work, and, working with immigrant advocates, to develop and institutionalize expertise in defender offices.

Under the direction of Lory Diana Rosenberg, who has joined the NLADA staff, the Partnership will provide information, training, and other legal back-up to state and federal public defenders, appointed counsel and private defense counsel that can help individuals avoid many of the immigration consequences flowing from criminal prosecutions and convictions. Lory is recognized nationally and internationally as an expert on immigration issues who has trained and written extensively on the topic,

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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 Meeting News

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- Getting a NLADA program audit, which has led to significantly increased staffing (Riverside County and San Bernardino County, California)

In a revealing discussion about potential strategies for improving representation in light of the U.S. Supreme Court's *Shelton* decision, most chiefs indicated that there were serious gaps in misdemeanor representation in their jurisdiction. For example, Gary Windom, head of a California program that is attempting to convince county officials to provide sufficient support for misdemeanor representation, reported that there were more than 12,000 uncounseled misdemeanor guilty pleas in Riverside County last year alone. Expressing concern over the often unknown collateral consequences associated with such convictions, such as loss of public benefits or deportation, ACCD members decided to form a working group to discuss ways in which NLADA and

the ACCD might promote better representation in the misdemeanor arena. If you are interested in participating in this working group please contact Scott Wallace at (202) 452-0620, ext. 212 or s.wallace@nlada.org.

Indigent Defense Toolkits

Austin meeting participants were the first to receive the new NLADA "Indigent Defense Communications Toolkits." Based upon public opinion research that began in 2000, the toolkits have resources specially designed to help defenders communicate more effectively with the media, community members and policymakers to secure their support.

The toolkit contains samples of items such as a letter to the editor, press advisory, op ed, and letters to policymakers and community leaders. It has short, accessible pieces on "Writing and Placing Op Eds" and other strategies and tools that are instructive yet easy for busy people to read and replicate. One particularly exciting feature of the toolkit is a "postcard" that contains a powerful public education message about the

importance of public defense. The "postcard" is provided on a CD that will allow defender programs to imprint the card with their organization's contact information and instructions on how to reproduce the card for their own distribution. Toolkits will also be distributed at the NLADA 2002 Annual Conference in Milwaukee.

The Austin meeting also included information sharing about recent indigent defense "successes and challenges" across the nation; break-out group discussions on mental health courts and similar initiatives, led by Problem-Solving Courts Committee Chair Lisa Schreibersdorf, and race-based community initiatives that can help defender programs, led by Riene Thukral from the Brennan Center; strategy discussions on loan forgiveness and the Innocence Protection Act; planning for the upcoming Gideon anniversary; reports from ABA Staff member Shubi Deoras and NACDL representative Kate Jones on current initiatives of shared interest; and a variety of ACCD Committee reports

Forum on Cost-Effective Indigent Defense Systems in Texas

September saw a new utilization of peer-to-peer expertise to promote indigent defense reform on a large scale. ACCD members voted to hold the September meeting in Austin to take advantage of members' expertise in directing and improving public defense systems to support Texas' indigent defense reform efforts. The ACCD's Executive and Emerging Systems Committees helped to shape a series of panel presentations on providing quality representation. The "Forum on Providing Cost Effective Indigent Defense in Texas" was held in partnership with the Texas Equal Justice Center, the State Bar, the Texas Criminal Defense Lawyers Association and others, and showcased different models for creating and running urban defender

programs, assigned counsel and contract programs.

The next ACCD meeting will be Saturday, November 16 in Milwaukee at the NLADA 2002 Annual Conference. The ACCD Legislative Committee and the ACCD Diversity Committee will meet from 8:00 a.m. to 9:15 a.m. The full ACCD meeting will be from 9:30 a.m. to 1:00 p.m. Check NLADA's Web site for the meeting agenda.

The ACCD will meet in Washington, D.C., during the week of March 12, 2003, with a focus on congressional advocacy issues, such as public defender student loan forgiveness and Gideon's 40th anniversary. Exact dates and the meeting location will be available on the NLADA Web site in November.

Defending Immigrants Partnership

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most recently as a judge on the federal Board of Immigration Appeals.

The Defending Immigrants Partnership's initial mandate is to address the law and practice in New York, California, Texas, Illinois, Florida and New Jersey, which are the six most immigrant populous states, as well as to work with federal defender programs across the country. The partnership will create legal reference charts that examine state offenses and their immigration consequences in the six targeted states, coordinate training with immigration experts and interested defense counsel in these states and develop relevant legal analysis and strategies that are applicable nationwide.

Defender Division Launches On-line Training

Partnership with Practising Law Institute Brings Eyewitness Identification Seminar to Defenders' Desktops

As a result of a new Web-based training module launched this summer, defenders can now attend a free training session with a nationally renowned expert on eyewitness identification. Through a partnership with the Practising Law Institute (PLI), NLADA's Defender legal services division has made its "maiden voyage" in Internet-based training programs. While not intended to replace national or regional training events, on-line training is a new resource that NLADA will continue to explore as one way of providing training to members of our community who have limited or no training resources available.

The training module features Dr. Gary Wells, a professor of psychology at Iowa State University, who is an internationally recognized scholar in scientific psychology. Every defense attorney who has to represent a client in a case involving eyewitness identification and every defender interested in promoting fair criminal justice policies and procedures needs to be aware of Wells' ground-breaking research.

Wells' research on eyewitness identification has demonstrated that rates of mistaken eyewitness identification are exacerbated by the methods that crime investigators commonly use in conducting lineups and "photo spreads." His research has led to the development of the "sequential lineup," now widely regarded as a superior way of obtaining eyewitness identification evidence. Wells has served as an expert and trainer for judges, prosecutors, and police as well as defense attorneys. He played a central role in the development of the U.S. Department of Justice (DOJ) guidelines for eyewitness evidence and co-chaired the DOJ group that wrote the training manual for law enforcement on the collection and preservation of eyewitness evidence.

His proposal for the adoption of sequential line-ups, where individuals view potential suspects one-at-a-time, has been incorporated

into a package of "Innocence Reforms" promoted by Cardozo Law School's Innocence Project and others. The reforms are aimed at correcting some of the common factors leading to wrongful convictions and generally increasing the fairness of criminal justice systems.

You may access Wells' lecture through NLADA's Web site or by going to www.pli.edu and using the "search" tool there to look for "Gary Wells." On the "search results" page, click on the title "Gary Wells' Lecture on Eyewitness Identification Training." This will take you to a page with a description of the program and information on how to "order" (gain access to) the training module. Press the "add to cart" button at the bottom of the page. This will take you to a login page. The price of the training is \$0 so you will never be prompted

for payment. However, if you are a new user of the PLI Web site you will need to register with PLI as part of the 'purchase' process. It is necessary to go through the purchase process so PLI can create a record of each user for CLE administration. Once you have registered and 'purchased' the program, you can view the program by going to the "Your Account" section of the site (accessible by clicking the "Your Account" button at the top of the page).

The ability for busy defenders to obtain CLE credit at any time that they choose – day or night – is another reason for NLADA's exploration of on-line training. Defenders in states that allow CLE credit for on-line training can get credit for "attending" Professor Wells' lecture by clicking

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COMINGS, GOINGS & KUDOS

Welcome Yvonne Segar, recently appointed to lead the New Jersey Public Defender System; and **Peter Ozanne**, the new executive director of Oregon's newly established statewide oversight agency, the Office of Public Defense Services.

Bid Farewell to Rita Fry, Cook County (Illinois) Public Defender, who recently announced her resignation. Rita hopes to be able to attend the next meetings before her official departure date of March 31, 2003.

Kudos to Ernie Lewis, Ed Monahan and the Kentucky Department of Public Advocacy for the first victory of the department's new Innocence Project. As a result of their work, an innocent man is now "adjusting to his new life and catching up on 13 years he missed with his family" ... **Jim Neuhard** for being the first criminal defense lawyer and public defender ever to receive an award from the State Bar in Michigan. Jim says that the Bar's Champion of Justice Award really focused positive attention on the importance of the defender role and is "not a bad strategy for others to consider" ... **Henry Martin** for following up the state-federal "Quality Lawyering" Conference by hosting a meeting to explore state/federal and civil/defender collaboration in Tennessee.

Errata: the "kudos" in the last issue of the Executive Summary that went to a "federal public defender in Pennsylvania for following through on some of the information presented at the State-Federal Defender conference on "Quality Lawyering" to create a new social work position in his office" should have gone out to **Jim Wyda**, not **Jim Wade**.

Editor's Note: Please share your news with your colleagues by sending an e-mail to: defender@nlada.org.

Defender Policy Group and ACCD Members Discuss National Data Collection Initiatives

Data collection by and for indigent defense providers is both an alluring concept for its potential benefits and one that is fraught with concerns. Defenders often point to other systems that are better off (higher salaries, better benefits, lower caseloads, etc.) to help them secure adequate resources, but no one wants to be the one pointed at, out of fear that hard-won gains will be lost by comparisons to systems that deliver services faster, cheaper and with no concern for quality.

Despite concerns, there are many in the indigent defense community who are both passionate and vocal in their belief that ready access to data is critical to improving indigent defense services in this country. Besides individual programs that need data in pursuit of adequate funding, national organizations need data to move our community's issues with state and local legislators and in Congress, and to increase public awareness and support.

Important chances to get the press interested in our issues are missed every week because requests for data cannot be met.

In the face of urgent pleas for increasing the field's ability to access quality data, NLADA has initiated discussions with indigent defense practitioners from around the country about the problems and benefits of national data collection, with an aim of eventually establishing a national data repository. Toward this end, NLADA invited public defense managers on both sides of the issue to create an advisory capacity as we consider how or if to proceed. The immediate result of the fruitful end-of-summer meeting was a unanimous recommendation that work on the initiative should continue. Another result was the identification of a need to provide on-going training in the community on the effective use of data to manage and improve programs, which has led to the inclusion of a data collection session at NLADA's

Defender Division Launches On-line Training

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the "Click here to continue" button in the Time Stamp window. This window will pop up approximately every 6 minutes. The program will continue to play even if the button is not clicked but you will not receive credit if you do not continue to press the button at each prompt because PLI will not be able to verify attendance as required by CLE boards. After you view the entire program you must click the "MCLE Registration" button, complete the form and then click on "submit." PLI will then mail or e-mail a Certificate of Completion, usually within 2-4 weeks.

Milwaukee conference. For more information or if you are interested in work on the project please contact David Carroll at d.carroll@nlada.org.



The 2002 NLADA Annual Conference

justice in action

Defenders...

Don't make the mistake of thinking that NLADA's 2002 Annual Conference will be just an ordinary training event! This one is special! Tracks include:

- *From Innocence to the Right to Counsel: Leveraging the "Innocence Movement" to Support Quality Defense*
- *Joint Training for State & Federal Defenders: Sentencing Issues in State and Federal Courts — Tips for the Unwary*
- *Preparing for the Tidal Wave of Prisoner Reentry: Equipping Civil Legal Aid and Defense Lawyers to Represent the Whole Client*
- *Defender Workshops "Celebrating Gideon's 40th Anniversary — Stepping Closer to the Promise"*

You owe it to yourself and to your clients to attend!

Groups of 10 or more from a single agency receive a 25 percent discount off the registration fee.

For more information, visit www.nlada.org.

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