

EXECUTIVE

An Update For and About The AMERICAN COUNCIL of CHIEF DEFENDERS

A Publication of NLADA

Summary

November 2002

Post-Election Wrap-up

Results of the November 5 congressional elections have dimmed but not extinguished prospects for passage of NLADA defender legislative priorities. Now that Republicans have gained control of the Senate as well as the House, chairmanship of the Senate Judiciary Committee will pass from Vermont Democrat Patrick Leahy, a leading congressional champion of death penalty defense improvement and public defender student loan forgiveness, to Utah Republican Orrin Hatch. Republican Senate leaders promise quick action on Bush judicial nominees, and retirement speculation is already focusing on Justice O'Connor and Chief Justice Rehnquist. A brief run-down on NLADA/ACCD issues:

Innocence Protection Act (S. 486, H.R. 912), including \$100 million annually in grants to states to improve death penalty defense and declaring a constitutional right to DNA testing. This bill is dead for the year, and its prospects look bleak for the 108th Congress convening in January. Even though it gained great momentum this year, including approval by the Senate Judiciary Committee in July and 237 cosponsors in the House, it is implacably opposed by Republican leaders in both Houses, who see it simply as an effort to weaken the death penalty and restore the Death Penalty Resource Centers that Congress

defunded in 1998. A watered-down version may be possible – e.g., encouraging improvements but providing no enforcement or funding – but may foreclose better reforms later and hence not be worth the trouble.

Loan Forgiveness

The public defender student loan forgiveness provisions that were amended to the IPA by Senator Durbin (D-Ill.), died with the IPA but may have independent vitality next year. Not only does the Judiciary Committee report on the loan forgiveness provisions present a comprehensive case for them, but the dissenters, after extensively attacking the IPA and the premise that innocent people are ever sentenced to death, summarily express support for the loan forgiveness provisions. Reflecting NLADA's role in the process, the Judiciary Committee's report is laced with various references to NLADA and ACCD members, including **Susan Hendricks** of the NY Legal Aid Society and **Bill Leahy** of Massachusetts' Committee for Public Counsel Services.

Indeed, the report not only documents the case for loan forgiveness, but offers broader rhetoric which may be useful authority for defenders advocating on a range of issues, such as: *"Nowhere in public service is it more important to encourage the recruitment of competent lawyers and the retention of*

experienced ones than in the disciplines of prosecution and public defense, where people's lives and liberty hang in the balance."

It concludes, after citing the authority of the Justice Department's reports on its two indigent defense symposia (both written by NLADA): *"For the adversarial system of criminal justice to operate effectively, efficiently, and reliably, there must be balanced resources between prosecution and indigent defense."*

In light of the IPA dissenters' support for loan forgiveness, NLADA will urge that it be introduced as a free-standing bill next year. For details, see the Loan Forgiveness item in the "Of Interest" box on the "Defender Resources" page at www.nlada.org.

Defender Training

After Chief Justice Rehnquist rebuffed House Democratic Leader Richard Gephardt's request to conduct a study of the concept of a National Defender Training College, NLADA initiated efforts before both appropriating and authorizing committees.

On the authorizing side, NLADA had obtained an agreement among House and Senate conferees on the Department of Justice Authorization bill, S. 2215, to include language authorizing federal grants to NLADA both to conduct national defender training and to study the concept of a national defender college. Unfortunately, this language, as well as compan-



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. Membership is open to chief and deputy chief defenders of state, county, local and federal defender programs.

ion language authorizing federal funding for prosecutor training, was deleted at the last minute at the insistence of House Judiciary Committee Republican leaders.

On the appropriations front, NLADA is pursuing an "earmark" for a study in the fiscal 2004 appropriations bill covering justice issues. Gephardt's resignation as Democratic Leader raises the need for additional appropriations champions. The cycle for this bill begins in January, with the submission of President Bush's budget.

DOJ Authorization/DTAP

S. 2215, stripped of the authorization for defender training, was signed into law on November 2 (P.L. 107-273). In a victory for the ACCD and NLADA, another important item was stripped out, an authorization for grants to prosecutors to run drug treatment programs – called Drug Treatment Alternatives to Prison grants, or DTAP.

Other provisions included in the DOJ authorization bill are –

- a \$350 million authorization for Juvenile Accountability Block Grants for which indigent defense programs are expressly eligible (§1801);
- an authorization of training and technical assistance grants to public defense and other agencies working with juveniles charged in delinquency proceedings (§12211);
- a federal reentry program (§2411);
- a modest \$15 million in grants for state reentry programs (§2421);
- an authorization for drug court grants to states (§2301), and
- a federal rules change requiring pretrial disclosure to the defense of expert testimony relating to the defendant's mental condition (§11019).

Diversion of Mentally Ill

At the end of the Congress in late October, this long-awaited bill was introduced by Senator Dewine (R-Ohio), as S. 3147, with bipartisan cosponsorship, and Rep. Strickland (D-Ohio), as H.R. 5701. Key points in the bill's \$100 million

KUDOS

Congratulations to Molly Huskey on her elevation to be the Idaho State Appellate Public Defender ... Miami/Dade County Public Defender **Bennett Brummer** for winning the ACLU Foundation of Florida's highest civil liberties award, the Nelson Pointer Award, and the Florida Bar Criminal Law Section's highest award, the Selig Golden Award (and thanks for representing NLADA at the First Interamerican Congress of Public Defense Offices of the Americas, in Costa Rica in late October) ... Criminal Division deputy **Susan Hendricks** and the rest of the crew at the New York Legal Aid Society, for establishing a wrongful convictions project which has already achieved four exonerations ... South Carolina Public Defender Association Executive Director **Ashley Pennington** for receiving the Lawyer of the Year Award from the Association's board, and the Order of the Palmetto from Governor Jim Hodges.

Cool Media Hits: San Francisco chief defender **Jeff Adachi**, featured together with five others in his office in a gritty PBS documentary, "**Presumed Guilty: Tales of the Public Defenders**" (to be shown at NLADA's annual conference) with its own Web site: www.pbs.org/presumedguilty ... Seattle chief defender **Bob Boruchowitz**, who got a couple of bar-leader friends to submit an op ed to the *Seattle Post-Intelligencer* about the value of well-funded public defense.

annual grant program, drafted with NLADA/ACCD help, include:

- The term "criminal justice agency" is defined to include a state or local defender agency. One effect would be to overrule the FBI's unilateral withdrawal of defender access to the NCIC criminal history database in 1985 on the grounds that indigent defense agencies are not "criminal justice agencies."
- Indigent defense agencies are eligible to be a grantee. Each project need only include two agencies – one criminal/juvenile justice, one mental health.
- Early entry of defense counsel: Grant applicants "shall strive to ensure prompt access to defense counsel by criminal defendants with mental illness who are facing charges that would trigger a constitutional right to counsel."
- Grants could be used by defender programs for training agency personnel, or to create or expand "diversion programs (including crisis intervention teams and treatment accountability services for communities)."

TRAINING NEW DEFENDER LEADERS

NLADA's National Defender Leadership Institute (NDLI) held its second successful training event, **New Leadership: A Defender Conference on Building Leadership and Political Outreach Skills**. Following the ACCD's September meeting in Austin, Texas, 36 defenders worked in plenary sessions and small groups to hone their leadership strategies and management skills. The entertaining faculty consisted of three professional trainers who specialize in leadership, facilitation and communication skills, as well as several defender chiefs. The objectives of this innovative and lively leadership training: 1) defining good leadership; 2) applying it to a defender organization; and 3) building strong strategic alliances outside the defender office. One participant commented, "A wonderful conference! I have every intention of trying to attend more in the future!!"

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