

East Tennessee A Living Laboratory for Serbian Seeking Community-Based Solutions

By *Bill Murrab*
*Community Economic Development
Specialist at Legal Aid of East Tennessee*

The mountains and hollows of Southern Appalachia may seem like an unlikely destination for a Serbian man searching for models of community-based economic development. But a recent visitor from Eastern Serbia found exactly what he was looking for with the help of Legal Aid of East Tennessee.

Last fall, Dragan Milutinovic, who lives and works in the mountainous region of Eastern Serbia near Bulgaria, was a participant in the Visiting Fellows program of the international Freedom House organization. Because of similarities

between Eastern Siberia and Southern Appalachia, and his interest in locally generated economics, he was linked with the community economic development (CED) program of Legal Aid of East Tennessee (Legal Aid). Through the extensive network of CED organizations with which Legal Aid works, Milutinovic found numerous organizations based in low-income communities that serve as living laboratories for how a more community-serving economy might work.

Milutinovic works for the Timok Club, an organization that has as its mission the growth of both nonprofit organizations, that they call non-governmental organizations or "NGOs," and community-based economic projects. In the after-



Dragan Milutinovic

math of war and political/economic deterioration, organizations like the Timok Club are receiving international support to seek solutions.

"The economy of the Timok region is totally destroyed," said Milutinovic. "The unemployment rate is 26 percent, and over 100,000 (out of 400,000) live below the poverty line. Almost two-thirds of employed people work in so-called 'state firms,' which have no economic perspective. Today, citizens of Serbia and Timok know very little about small business and its importance and role."

"In the Timok region there is one city in which there is not one NGO, and in three cities there is only one NGO," he continued. "This is why my experience from the USA is so important. The main problem of all NGOs in the Timok region is lack of experience and knowledge. I'm trying to tell people about the American experience in forming NGOs, about reasons for the existence of NGOs."

Milutinovic and his organization feel that community controlled nonprofit organizations are essential to rebuilding "civil society."

NLADA's 2003 Exemplar Awards to Honor José de Lasa and Frank Moseley

By *Mizue Suito*
NLADA Director of Development

With the theme "Upholding the Promise of Justice," the NLADA 2003 Annual Exemplar Awards Dinner will be held on Thursday, June 12, at The Mayflower Hotel in Washington, DC. NLADA will present its 2003 awards to José M. de Lasa, senior vice president, secretary and general counsel of Abbott Laboratories, and Frank S. Moseley, partner of Davis Polk & Wardwell, for their commitment to equal justice and outstanding contributions to pro bono legal assistance for disadvantaged people. Frank Cicero of Kirkland & Ellis, Robert Helman of Mayer, Brown, Rowe & Maw and Charles Morgan of Bell South Corporation will serve as co-chairs of this year's event.

José M. de Lasa has been a dedicated pro bono volunteer from early in his legal career. While balancing his responsibilities as chief legal officer of a Fortune 500 company, he continues to contribute his personal time and talents to assist Spanish-speaking clients at Prairie State Legal Services in Illinois. Under de Lasa's leadership, Abbott Laboratories' legal department has taken on many pro bono projects, ranging from immigration to business law, including an award-winning partnership with Midwest Immigrant & Human Rights Center. He has served on NLADA's Corporate Advisory Committee since

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Message to Members

Our Glass is Definitely Half-Full

By Jean Faria, Assistant Federal
Public Defender & NLADA
Board Chair



Embarking on a second year as chair of the NLADA Board of Directors, I have recently reflected on the Association's contributions to supporting the national equal justice community. We sometimes fail to see the direct connections between the work of NLADA and the services its members are able to provide to their clients. But to me, right now, in spite of budget shortfalls and the many other incredible challenges facing NLADA's members in 2003, the positive impact of the Association has never been clearer. I have listed here several initiatives – long in the works – that have recently resulted in significant tangible benefits for NLADA members.

Public Defender Gains an 8.4 Percent Budget Increase

In a year in which most public defender offices would consider flat funding to be a major victory, the Maryland State Public Defender's office has gained 59 new positions, including 35 attorneys, to alleviate caseload pressures. New Republican Governor Robert L. Ehrlich, Jr. included the necessary \$2.8 million in his proposed budget, and the state legislature left it entirely intact, handing the agency an 8.4 percent increase over fiscal year 2003.

NLADA's technical assistance arm, according to Chief Defender Stephen Harris, was a "critical partner" in the successful effort. Our role began in the spring of 2002 when the agency contacted NLADA requesting assistance in remedying a growing caseload crisis. After conducting roundtable discussions with agency administration, and studying reported caseloads, NLADA found that the entire public defender system was in the midst of a caseload crisis and recommended that the agency evaluate and reconsider how it has traditionally approached

requests for increased staffing. A series of meetings, with state auditors and with key legislators, ensued. In addition, NLADA facilitated a mentoring relationship between the agency and its Connecticut counterpart, which had weathered similar caseload challenges. Once formal budget hearings before the Maryland legislature were underway, NLADA's role was to present an analysis of the Maryland situation from a national perspective. (For the full story, see page 8.)

Lost Census-based Funding Partially Restored

In February, 26 states that stood to lose Legal Services Corporation (LSC) funds as a result of shifts in low-income populations reflected in the 2000 census learned that they would recover – for this year at least – half of the losses with which they were threatened. In a move unprecedented in recent years, Congress added \$9.5 million to the FY 2003 LSC appropriation, specifically to soften the blows sustained by those 26 states. The increase was the result of a Harkin-Domenici-Smith Amendment passed in the Senate that called for a \$19 million increase and would have protected the states from any loss due to the census reallocation. The final \$9.5 million amount was the result of a compromise in the conference committee in which representatives from the Senate and House agreed to split the difference. (For more information, see Washington Watch on page 3.)

The NLADA staff is modest about its role in this victory, but as the board chair, I don't have to be. Here is one comment the government relations division received that I think probably speaks for most everyone who benefited: *"I do not believe in Santa Claus or miracles, but I am now reconsidering my beliefs in light of the Congress' decision to add \$9 million to the LSC pot. I know that this could not have happened without your efforts. ... This lobbying feat was an*

incredible long shot and my bat is off to all of you who made this happen."

IOLTA Victory

After years of struggle in the courts, a tremendous victory was won for the entire civil justice community with the 5 to 4 favorable decision in the U.S. Supreme Court in the IOLTA case, *Brown v. Legal Foundation of Washington*, No. 01-1325 (formerly *Washington Legal Foundation v. Legal Foundation of Washington*). (See story on page 17.)

Throughout the life of the case, NLADA worked closely with the American Bar Association (ABA), the National Association of IOLTA Programs and others to coordinate support and disseminate information to the national community of organizations and individuals whose good and important work depends on IOLTA funds. Last fall, as part of a strong and dedicated team of national organizations, including the ABA, AARP, Legal Counsel for the Elderly and the Brennan Center for Justice, NLADA filed an amicus brief in the case that we believe influenced the outcome. The amicus brief and a link to the opinion are accessible on-line at www.nlada.org/Civil/Civil_IOLTA.

Nevada Program Evaluation Results in Commitment for Additional Funding

NLADA recently completed another of its top-to-bottom defender management evaluations, this one for the largest public defender offices in Nevada. As a result, the county manager promptly responded by promising to seek the additional funding to implement the reforms recommended by NLADA. (Read about it on page 5.)

These are just a few of the many initiatives NLADA carries out on behalf of members. No doubt you can see why I am proud of the work of this Association. I hope you share my pride. ♦

Washington Watch - Civil

Congress Finally Passes FY 2003 Measures, Moves to 2004

By Julie Clark, NLADA Senior Vice President for Government Relations and Support

The omnibus appropriations bill (H J Res 2), containing FY 2003 spending levels for numerous government agencies, finally passed in mid-February. The comprehensive measure contains \$338.8 million for the Legal Services Corporation (LSC), an increase of approximately \$9.5 million over last year's level of \$329.3 million.

The language of the bill is as follows:

Payment to the Legal Services Corporation

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, \$338,848,000, of which \$9.5 million is to provide supplemental funding for basic field programs, and related administration, for service areas (including a merged or reconfigured service area) that will receive less funding under the Legal

Services Corporation Act for fiscal year 2003 than the area received for fiscal year 2002, due to use of data from the 2000 Census, and of which \$310,048,000 is for basic field programs and required independent audits; \$2.6 million is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; \$13.3 million is for management and administration; and \$3.4 million is for client self-help and information technology.

The additional \$9.5 million will be distributed among those service areas whose funding decreased as a result of the redistribution of funds according to the decennial census. The relevant language in the conference report pertaining to this is, "The LSC will provide 9 million 500 thousand in one-time grants equitably distributed among those service areas that will receive less funding in FY 2003 than they did in FY 2002 because of census-based reallocations."

NLADA wishes to thank everyone who worked so hard on behalf of this increase. Numerous state coordinators, board chairs and bar executives across the country spent countless hours contacting appropriations subcommittee members on behalf of the affected states. From Iowa to West Virginia, Ohio to Virginia, and Louisiana to Minnesota, legislators heard the message. In the end, some members who mounted the strongest defense were from states that do not lose money under the redistribution of funds. Senate ranking member Fritz Hollings (D-SC), and Senators Pete Domenici (R-NM) and Gordon Smith (R-OR) weighed in at a critical time, while their colleagues Dave Obey (D-WI), Jose Serrano (D-NY), Frank Wolf (R-VA) and Tom Latham (R-IA), all from states that are negatively affected by the redistribution, were fighting for the increase in the House.

As a result of the extra \$9.5 million appropriation, on February 20 an article

ran in the *Washington Post*, titled "A Little Extra Funding Means a Lot." Following is an excerpt from the article, which was written by Judy Sarasohn:

"In the big-money world of federal appropriations, sometimes relatively small amounts are nothing to sneeze at.

"Indeed, the legal services community is thrilled that Congress approved in the omnibus appropriations bill \$9.5 million more for the Legal Services Corp., a longtime target of conservative Republicans, than President Bush's request of \$329.3 million.

"Sen. Tom Harkin (D-Iowa) had sought \$19 million more, to help 26 states that would be losing significant amounts of federal legal aid funding in fiscal 2003 because of shifts in state poverty populations. Federal law requires the LSC to distribute funds based on the most recent census data. Harkin had some GOP support in the Senate, particularly from Pete V. Domenici (N.M.) and Gordon Smith (Ore.).

"While LSC lawyers are prohibited from lobbying, the National Legal Aid and Defender Association (NLADA) organized a grass-roots effort to lobby lawmakers. Lawyers in private practice, the American Bar Association and members of the National Organization of Legal Services Workers, the union representing workers in federally funded legal services programs, called lawmakers from the states that were hit hard by the new census numbers."

Bush Requests \$329.3 million for FY 2004

President Bush's proposed FY 2004 budget of \$2.23 trillion includes the same level of funding for the Legal Services Corporation (LSC) that he proposed for

"In the big-money world of federal appropriations, sometimes relatively small amounts are nothing to sneeze at."

-The Washington Post, February 20, 2003

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Washington Watch - Defender

A Giant Step in the Wrong Direction on Sentencing

By Scott Wallace,
NLADA Director of Defender
Legal Services

At a time when dozens of state legislatures are cutting back on harsh criminal sentences and reducing prison populations to ease budget pressures, the U.S. Congress has suddenly rededicated itself to an opposite course. Virtually overnight, Congress loaded down a noncontroversial bill setting up a national system of child abduction alerts, with the broadest array of mandatory sentencing provisions since the bumper crop of drug and gun mandatory minimums in 1986.

Though many provisions of the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (“PROTECT”) Act were strongly opposed by NLADA, the federal judiciary, the U.S. Sentencing Commission and many bar and advocacy organizations, the bill passed both the House and the Senate easily.

The abduction of Utah teen Elizabeth Smart provided fuel for many rhetorical fires. Senate Judiciary Committee Chairman Orrin Hatch (R-UT) decried the “mind-boggling” wave of child abuse and exploitation by “scum of the earth who deserve every ounce of punishment which we as a nation can fairly and justly mete out.”

Opponents noted the bizarre irony of the bill’s enactment a mere three days after release of a Justice Department report that the nation’s correctional populations have exceeded two million people for the first time in history, including a “staggering” 12 percent of the nation’s young African American men, as Congressman and former district attorney William Delahunt (D-MA) observed. He called the bill “a giant – and potentially catastrophic – step in the wrong direction.”

“The public may well conclude,” lamented Delahunt, “that we have taken leave of our senses.”

Provisions of the bill, S.151, include:

- 15 new mandatory minimums for many offenses involving sex, kidnapping, pornography or children, including offenses such as, Rep. Bobby Scott (D-VA) noted in House debate, an 18-year-old and a 17-year-old crossing state lines to have consensual sex;
- Eight of those new mandatory minimums are offenses qualifying for “Two Strikes and You’re Out” – mandatory life imprisonment for a second sex offense (the first offense can be a state one);
- Eight significant increases to existing mandatory minimums, to deal with what the conference-committee report called “real problems of excessive leniency” in sentencing;
- Death penalties for murder of a child, despite, as Rep. Scott pointed out, the wave of death row exonerations in recent years and the fact that legislation to remedy egregious deficiencies in capital defense representation (the Innocence Protection Act) attracted 250 cosponsors in the previous session of Congress;
- “No pretrial release for those who rape and kidnap children” (yes, that’s what the bill actually says) – a rebuttable presumption against it, for every person charged with a federal sex and kidnapping offense;
- No statute of limitations for sex offenses and kidnapping; and
- Expanded wiretap authority for sex offenses.

Testimony against these provisions on behalf of NLADA and its American Council of Chief Defenders (ACCD) was provided before a hearing of the House Judiciary Committee on March 11, by Ronald Sullivan, director of the Public Defender Service of the District of Columbia. In the audience were numerous other chief public defenders from around the country, since the hearing happened to take place during the ACCD’s spring meeting in Washington, DC, on a day when chiefs were busy visiting with Members of

Congress to support student loan repayment assistance for public defenders.

But the most controversial part of the bill was added after that hearing, on the floor of the House, with only a few minutes debate and no hearings at all. Though NLADA and a few other organizations wrote to representatives urging against it, the House quickly approved a comprehensive rewrite of federal sentencing law, designed to all but eliminate judges’ discretion to depart below a guideline range.

The so-called “Feeney amendment,” though somewhat narrowed in the subsequent House-Senate conference, seeks to curb an “epidemic of leniency” by:

- Overruling the unanimous Supreme Court ruling in *Koon v. U.S.*, replacing its standard of deference to federal judges’ authority to depart from the sentencing guidelines with a standard of de novo appellate review;
- Prohibiting any downward departure after an appellate court has rejected any other departure;
- Ordering the sentencing commission to amend the guidelines and policy statements “to ensure that the incidence of downward departures are [sic] substantially reduced;”
- Prohibiting departures in child and sex cases based on various mitigating factors, such as diminished capacity, family ties and responsibilities, community ties, aberrant behavior, gambling, drug or alcohol dependence, and strictly limiting departures based on other factors such as age or extraordinary physical impairment;
- Requiring that if a judge does depart for any reason, she must file a report with the attorney general and the congressional judiciary committees; and
- Leaving upward departures untouched.

Senator Edward M. Kennedy (D-MA), the senior Democratic member of the Senate Judiciary Committee, criticized the

“The public may well conclude that we have taken leave of our senses.”

–Rep. William Delahunt (D-MA)



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Nevada Officials Embrace NLADA Blueprint to Fund Improvements in Public Defense Agency

By David Carroll, NLADA
Director of Research & Evaluation

NLADA has conducted a top-to-bottom management evaluation of the largest public defender office in Nevada, and the county manager promptly responded by promising to seek the additional funding to implement the reforms recommended by NLADA.

NLADA's evaluation report on the Clark County Public Defender Office, released on April 1 and covered on the front page of the *Las Vegas Review-Journal* the next day, recommended numerous reforms to achieve the county's goals of performance-based accountability and effective and efficient representation. The report explains that the problems, such as excessive caseloads and lack of any management structure, accrued during the tenure of the office's previous long-time chief public defender, and that new Chief Public Defender Marcus Cooper recognizes the "enormity" of the problems and has the "vision and compassion" to rejuvenate the office.

The number one change recommended: increased funding. County Manager Thom Riley stated that he will work with Cooper to get him the resources he needs to fulfill the recommendations, including: increasing the number and type of staff, redefining the office management structure, creating a specialized training unit, and establishing a separate appellate unit.

The NLADA assessment team determined that the office's attorney caseloads are in serious breach of national workload standards. Its report found that the office has been historically understaffed, causing a serious crisis in adult felony and misdemeanor representation.

Juvenile representation is beyond the crisis point in Clark County, the report found, and requires immediate attention to avert constitutional challenges of ineffective assistance of counsel. Since 1983, the juvenile facility has been staffed with only two attorneys. Cooper added a third in 2002. From 1993 until 2001, the office's juvenile new assignments increased almost four-fold (from 576 to 2,867) without a single new attorney being

added to help with the workload. At the close of 2001, the office's juvenile attorneys were expected to handle more than seven times the number of cases recommended by American Bar Association and NLADA standards. The report recommends an increase of 11 attorneys specifically dedicated to juvenile delinquency representation.

Increasing the juvenile delinquency staff is being supported by the county because of the NLADA report's discussion that at-risk juveniles require special attention from public defenders if there is hope of preventing escalating behavioral problems that increase the later risk of adult criminal behavior. As the report explained, the office's juvenile clients are commonly children who have been neglected by parents and other support structures that normally channel children in constructive directions. When they are brought to Family Court and given a public defender who has no time for them other than to dispose of the case as quickly as possible, the message of neglect and valuelessness continues, and the risk not only of recidivism, but of escalation of misconduct, increases. The county sees the investment in funding the public defender office as a cost savings against future adult cases.

On top of the workload concerns, the NLADA assessment team found that the office has a longstanding institutional culture that places a priority on attorney autonomy over the collective health of the organization. This has fostered organizational isolationism that limits accountability, support and professional development of staff, and inhibits interactions between attorneys in the office, between attorneys and support staff, between the organization and its client base, and between the organization and the national indigent defense community — all of which has hindered the organization's ability to implement effective change. Rather than a unified law firm committed to providing effective and efficient services in a cooperative environment, the Clark County Public Defender Office has evolved over its 36-year history into 70 separate, individual law practices housed under a single roof. The report concludes that consistent quality performance is not achievable in the office without first creat-

ing a supervisory staff structure, and recommends the creation of 11 attorney supervisor positions as a first step in changing the culture of the office.

The report also generated very positive coverage and editorials in the *Las Vegas Weekly* and the *Las Vegas Sun*. The Sun editorial expressed concern that failure to implement NLADA's recommendations

The number one change recommended: increased funding. County Manager Thom Riley stated that he will work with Cooper to get him the resources he needs to fulfill the recommendations

could result in reversed convictions and class action lawsuits, which could cost the county "a boatload of money."

"The County Commission should start phasing more attorneys and paralegals into the public defender's office to ensure that justice isn't denied," urged the *Sun's* editorial.

The Clark County report is the first publicly released report from NLADA's revamped research and evaluation division. NLADA put together a site assessment team consisting of NLADA staff representatives and members of NLADA's American Council of Chief Defenders that included: Bob Boruchowitz (The Defender Association, King County, Washington), Susan Hendricks (The Legal Aid Society, New York), Lenny Noisette (Neighborhood Defender Services, New York) and David Meyer (formerly of the Los Angeles County Public Defender Office), and NLADA staff Jo-Ann Wallace, Cait Clarke and David Carroll. ACCD members for the Clark County study were chosen from jurisdictions with similar county-based indigent defense structures, and/or possessing special expertise in areas of concerns raised by the Clark County office's management.

For more information on evaluation services, please me at (202) 452-0620, ext. 233 or via e-mail at d.carroll@nlada.org. The executive summary and full report are available on the NLADA Web site at www.nlada.org ♦

FY 2003. The recommendation is a cut from the amount the Congress appropriated for FY 2003. The president's budget request was submitted before final action by the House and Senate.

The president's budget would significantly increase military and homeland defense spending, and cut taxes both in the short and long terms. As an article from *CQ Today* points out, "The organization's budget would erode with inflation for another year, but it could be worse for the agency: Seen as a bastion of liberal

President Bush's proposed FY 2004 budget of \$2.23 trillion includes the same level of funding for the Legal Services Corporation (LSC) that he proposed for FY 2003. The recommendation is a cut from the amount the Congress appropriated for FY 2003. The president's budget request was submitted before final action by the House and Senate.

lawyers, many conservatives have fought to choke off LSC funding, but Bush has chosen not to join the fight."

NLADA recommended a FY 2004 budget mark for LSC of \$506.4 million, which would have brought the Corporation's funding back to the 1995 level, adjusted for inflation. The American Bar Association's recommendation was arrived at by a formula similar to NLADA's.

LSC had submitted a FY 2004 budget request of \$415 million, the same amount appropriated for LSC in FY 1995. After negotiations with the Office of Management and Budget (OMB), LSC revised its request to bring it into line with the Bush Administration's.

As the following explains, LSC revised its request a third time to reflect the FY 2003 increase in its appropriation.

LSC Submits Revised FY 2004 Budget Request to Congress

The Legal Services Corporation sub-

mitted a revised FY 2004 budget request to Congress. The request for \$352.4 million designates \$335.9 million for Delivery of Legal Assistance with \$328 million devoted to basic field programs, \$4.5 million to census adjustment and \$3.4 million to information technology. The request for Management and Administration is \$13.9 million and that for the Office of Inspector General is \$2.6 million. The budget in its entirety may be viewed at www.lsc.gov

The budget responds in part to comments to the Corporation by NLADA in March. To read the comments, visit www.nlada.org/Civil

LSC Responds to Rep. Sensenbrenner

On the eve of the January 30 board meeting, LSC received a letter from Rep. James Sensenbrenner (R-WI), chair of the House Judiciary Committee, urging the Corporation to refrain from action on two draft final regulations, Parts 1611 (Financial Eligibility) and Part 1604 (Outside Practice of Law) until the new board is in place, and raising questions about the legality of the proposals. The full text of that letter was reprinted in the January 31, 2003 issue of *NLADA Update*. On February 26, LSC's President John Erlenborn sent a response to Sensenbrenner, indicating that some of the congressman's concerns were based on outdated information and stating that, with regard to the others, LSC disagreed with the analysis and conclusions that were expressed in his letter.

On February 27, LSC received a second letter from Sensenbrenner, also signed by Senator Judd Gregg (R-NH), who chairs the Senate Health, Education, Labor and Pensions Committee and the Commerce, Justice, State and Judiciary Appropriations Subcommittee. The second letter, which was obviously written before Sensenbrenner had reviewed the LSC response, reiterated the request that LSC postpone further consideration of the new regulations and urging LSC to explain its rationale for proposing the revisions to the rules.

In a letter from then LSC Board Chair Doug Eakeley to Senate Majority Leader Bill Frist, the Legal Services Corporation announced that the LSC Board would not take any action on three pending regula-

tions at its scheduled board meeting on April 24 and 25, 2003.

The affected regulations are 45 C.F.R. parts 1604 (outside practice of law), 1611 (financial eligibility) and 1626 (aliens).

LSC Board

At midnight on Friday, April 11, before leaving town for a two-week spring recess, the U.S. Senate confirmed six new members of the Legal Services Corporation Board of Directors. They are:

Robert Dieter, Republican, to replace F. William McCalpin;

Herbert Garten, Democrat, to replace Douglas Eakeley;

Michael McKay, Republican, to replace Nancy Hardin Rogers;

Thomas Meites, Democrat, to replace LaVeeda Morgan Battle;

Frank Strickland, Republican, to replace John Erlenborn; and

Florentino Subia, Republican, to replace Edna Fairbanks-Williams.

Also on that day, David Hall, Democrat, of Massachusetts, was nominated to serve on the LSC Board in the seat now held by John Broderick.

Two other nominees (Lillian BeVier and Thomas Fuentes) received recess appointments during the week of April 21. Nominations for the seats currently held by Maria Luisa Mercado and Ernestine Watlington are still pending.

Herbert (Herb) S. Garten is a partner in the Baltimore law firm of Fedder and Garten. Since 1994 Garten has served as chairman of the Maryland Legal Services Corporation and was past chair of the ABA Commission on Lawyer's Trust Accounts. A former president of the Maryland State Bar Association, he was the founding director of the People's Pro Bono Action Center and a director of the Homeless Persons Representation Project.

Thomas (Tom) R. Meites is a partner in the Chicago law firm of Meites, Mulder, Burger and Mollica. Meites is currently a member of the board of directors of the Legal Assistance Foundation of Chicago and served on its board in the 1970s. He is a lecturer at Northwestern University's School of Education and Social Policy, a member

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Chief Defenders are ethically required to refuse to accept more cases than their agency can competently handle, declares ACCD Ethics Opinion

By Scott Wallace, NLADA Director of Defender Legal Services

Upon a comprehensive review of nationwide professional ethical requirements and court rulings, the American Council of Chief Defenders has issued an ethics opinion declaring that:

- A chief public defender is ethically prohibited from accepting a number of cases which exceeds the capacity of the agency's attorneys to provide competent, quality representation in every case; and
- When confronted with a prospective overloading of cases or reductions in funding or staffing which will cause the agency's attorneys to exceed such capacity, the chief executive of a public

defense agency is ethically required to refuse appointment to any and all such excess cases

The ACCD's ethics opinion, numbered 03-01 and dated April 2003, is being distributed to state and local legislators and funding officials.

Budget deficits in most states have prompted budget cutbacks to state and local agencies including indigent defense. However, because indigent defense is a constitutional mandate, under the U.S. Supreme Court's ruling 40 years ago in *Gideon v. Wainwright*, reductions in budget or staffing cannot eliminate the imperative to provide the services.

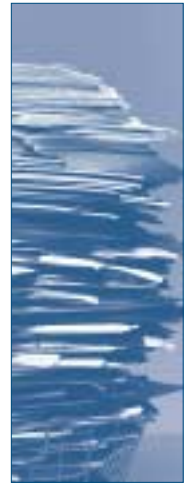
Under the ACCD's ethics opinion, the only option available to a chief public defender facing budget and staffing cuts is to refuse to accept cases which would cause the caseloads of individual attorneys in the office to exceed established

In Oregon, indigent defense cuts have simply halted the processing of some 28,000 criminal cases.

national standards. In Oregon, indigent defense cuts have simply halted the processing of some 28,000 criminal cases, and provoked lawsuits filed jointly by district attorneys and public defenders.

"As accountable public officials, we realize that taxpayer dollars are stretched to the limit these days," said ACCD Co-chair Gary Windom, "but we simply don't have the constitutional and ethical authority to balance the budget on the backs of low-income people."

Hofstra Law Professor Monroe Freedman, one of the leading national experts on legal ethics, called the ACCD's opinion "superb" and urged the widest possible dissemination. To read the opinion visit www.nlada.org/Defender. ♦



WASHINGTON WATCH-DEFENDER continued from page 4

Feeney amendment as an effort to "transform the entire federal guideline system into a system of mandatory minimum sentences."

In an increasingly acerbic exchange, Hatch accused opponents of "obstructionism" and of "willingness to sacrifice the protection of our own children for political advantages."

Kennedy shot back that the amendment "has nothing to do with the protecting of children and everything to do with handcuffing judges, and eliminating fairness in the federal sentencing system."

In the House, senior Judiciary Committee Democrat John Conyers noted the strong opposition of public defenders to the amendment, and introduced one of NLADA's letters opposing the amendment into the Congressional Record.

S. 151 cleared both Houses of Congress on April 10 and is awaiting signature by the president. ♦

NLADA Cornerstone

Volume 25, Number 1 • Spring 2003

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A Hard-Fought Budget Victory in Lean Times

Maryland State Public Defense Agency Receives Budget Increase for Hundreds of New Positions, with NLADA's Help

By David Carroll, NLADA
Director of Research & Evaluation

In a year in which most public defender offices would consider flat funding to be a major victory, Maryland State Public Defender Stephen Harris succeeded in obtaining 59 new positions, including 35 attorneys, to alleviate caseload pressures. New Republican Governor Robert L. Ehrlich, Jr. included the necessary \$2.8 million in his proposed budget, and the state legislature left it entirely intact, handing Harris' agency an 8.4 percent increase over fiscal year 2003.

The increase represents the first year of a three-year implementation plan that is scheduled to add a total of 212 positions, including 119 attorneys, plus social workers and investigators to support them, to bring the office into compliance with national caseload standards. NLADA's technical assistance arm, according to chief defender Harris, was a "critical partner" in the successful effort.

The Office of the Public Defender is a statewide, state-funded organization, which, as in six other states (Connecticut, Massachusetts, New Mexico, Vermont, Wisconsin and West Virginia), oversees both the primary representation system and the conflict system. Primary trial-level services are provided through 12 district public defender offices, while conflict cases are handled by an assigned counsel system that pays attorneys \$35/hour for in-court time and \$30/hour for out-of-court time. The agency also has statewide divisions for direct appeals, collateral review, capital cases, post-conviction review, extradition, parole revocations, involuntary institutionalization, and child-in-need-of-services (CHINS) cases.

In the spring of 2002, the agency contacted NLADA requesting assistance in remedying a growing caseload crisis. Chief Defender Harris instructed the Baltimore City District Public Defender to stop accepting new felony assignments until the agency was given new attorneys

and support staff to help with its overwhelming caseloads. After conducting roundtable discussions with agency administration, and studying reported caseloads, NLADA's division of research and evaluation found that the entire public defender system was in the midst of a caseload crisis, not merely Baltimore City. Between 1994 and 2002, the agency's caseload increased 38 percent (from 128,513 to 177,358) without adding a single new attorney or support staff position (other than ones added for new courtrooms or new programs, such as Baltimore City bail review court, or drug court).

NLADA recommended that the agency evaluate and reconsider how it has traditionally approached requests for increased staffing. For instance, when a state audit concluded that the agency was understaffed, the auditors recommended that the agency devise a statistical method – beyond anecdotal information – of linking funding to staffing requests to objectively verify need. NLADA suggested that the agency setup a meeting with the audit department to discuss the only proven way of empirically documenting staffing needs: a case-weighting study to create localized workload standards.

At the same time, meetings were set up with both Senate and House of Delegates staffers to discuss the caseload crisis prior to budget hearings. NLADA also set up a mentoring relationship between the agency and its Connecticut counterpart – the Connecticut Office of the State Public Defender – chosen because of its similar structure and similar long-time struggles with excessive caseloads.

This multi-pronged approach was contingent on the Maryland agency's ability to focus its presentations differently to different audiences. Since state auditor staff were extremely interested in the statistical principles underlying case-weighting studies, NLADA worked with the public defense agency to create a presentation focusing on the minute details of a case-

weighting study. For House and Senate staffs, the PowerPoint presentations were changed to focus on the cost savings of investing in indigent defense and how excessive caseloads undermine public confidence in the justice system while making the state vulnerable to lawsuits.

These preliminary meetings allowed legislative staffers and state auditor personnel to be familiar with the issues and talk to their superiors before the public defense agency's House and Senate hearings. The agency and NLADA were able to present a strong case for the need for new staffing, the cost-efficiencies throughout the criminal justice system resulting from an investment in indigent defense, and the risk of litigation if the positions were not funded.

NLADA's role in the formal budget hearings was to analyze the Maryland situation from a national perspective. NLADA reported that although Maryland is the fifth most populous state of the six comparison states, it has the second highest violent crime, property and murder rates, and one of the largest public defense caseloads. Yet despite the relatively high demands on Maryland's public defense agency, NLADA found that the state spends the least per capita for public defense services of any state. No other state spends less than \$10 per capita on indigent defense, and the state that spends the next lowest amount per capita (Connecticut) was the subject of a successful class action by the ACLU over constitutionally inadequate indigent defense funding.

For more information on NLADA's technical assistance services, contact David Carroll at d.carroll@nlada.org or (202) 452-0620, ext. 233. ♦

The increase represents the first year of a three-year implementation plan that is scheduled to add a total of 212 positions, including 119 attorneys, plus social workers and investigators.

Partnership, Leadership & Diversity Frame NLADA/ABA Equal Justice Conference

By Don Saunders, NLADA Director of Civil Legal Services & Cynthia Works, NLADA Director of Training & Education

Over 650 equal justice advocates gathered in Portland, Oregon, from April 9–12 for the fifth annual Equal Justice Conference, sponsored jointly by NLADA and the American Bar Association (ABA) Standing Committee on Pro Bono and Public Service. This attendance, in the midst of troubled national times, reflected the continuing importance of the role the Equal Justice Conference plays in bringing together many diverse elements within the broad civil justice community.

The conference participation consisted of 40 judges and court administrative personnel; 27 law school professors, clinicians and deans; 217 legal services directors, staff and program board members; 154 pro bono managers and other professionals; 14 Access to Justice coordinators; 50 social services providers; and more than 100 private attorneys and bar leaders. Thirty-four Equal Justice Works fellows and Americorps staff also participated in the conference and brought great energy, commitment and a fresh outlook to many issues. As a result of this mix of attendees, the conference theme, The Power of Partnerships, was realized throughout the many sessions in which participants shared their diverse perspectives.

Oregon First Lady, Mary Oberst welcomed attendees to the conference and to the state. Professor David Hall of Northeastern University Law School followed with a stirring keynote speech urging participants to continue to work collaboratively in partnership with both legal and social service organizations to serve the holistic needs of clients. (See story at right.) Serendipitously, while Hall was attending the conference President Bush nominated him to serve

on the Legal Services Corporation board.

ABA President A.P. Carlton, Jr. delivered the keynote address at the annual awards luncheon. In his speech, he focused on the pro bono work he and his firm have engaged in for legal aid in North Carolina in support of community economic development initiatives aimed at low-income minority communities across the state.

Carlton presented the Pro Bono Professional of the Year award to Michele Mirto, program director of the Volunteer Lawyers Program in Tuscon, Arizona. The William Reece Smith, Jr. Special Services to Pro Bono award was



Stella Kinue Manabe, of the Oregon State Bar Affirmative Action Program, listens as David Hall, professor at Northeastern University School of Law, speaks at the AAPDA program on Leadership and Diversity.

presented to Tom Maligno, from Touro Law School in Huntington, New York.

A full agenda of workshop sessions and specialized affinity group meetings covered a wide panoply of topics related

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Thirty-four Equal Justice Works fellows and Americorps staff also participated in the conference and brought great energy, commitment and a fresh outlook to many issues.

Hall Challenges Advocates to See Partnering for Justice as Spiritual Endeavor

By Bonnie Allen, NLADA Director of Outreach & Community Support

David Hall, professor at Northeastern University's School of Law, delivered a powerful keynote address as the Equal Justice Conference in Portland, Oregon, on April 10. Expanding on the conference theme of "Partnering for Justice," Hall argued: "The only way we are ever going to secure justice for our clients is to create dynamic and compelling partnerships that can transform the way in which we see and practice law. The justice our clients and their communities need is covered over by centuries of inequality, hatred and indifference which have produced physical, psychological, political, educational and economic barriers and burdens. If we think law alone can destroy these mountains of inequity and resistance, then we are deluding ourselves.

"We all must become holistic practitioners so that we can address the whole needs of our clients. We must see our clients as individuals who have multiple needs that are so intertwined that it is impossible to tease them apart, and often meaningless to address only one part. If we are to be client-focused, then we must focus on the whole client, and the whole situation they confront."

Hall also argued for a holistic approach to lawyers themselves. He challenged conference attendees to reconnect with their deeper selves to meaningfully engage their work. While not prescribing any particular path of faith, Hall reminded the audience: "Lawyers, like their clients, are whole people who have material, emotional and spiritual needs that must be addressed. The spiritual power dwells within us all, whether we intellectually agree with this concept or not. If we ignore this aspect of reality, then we are choosing to engage in a struggle for social justice and equality with one of our hands tied behind our backs."

Hall is currently writing a book that focuses on lawyers as healers. He proposes that law is inherently a spiritual endeavor, and that lawyers need to form a partnership with the spiritual power that dwells within them and the spiritual power of this universe. In his closing remark, Hall summoned attendees to think of "partnering for equal justice not just as an organizational, political or economic strategy. It is also a spiritual command." While not calling for lawyers to abandon legal expertise, Hall observed: "There is a limitation to law, yet there is no limitation to the power of divinely inspired beings to change hearts, social structures and reality."

To read Hall's speech, visit the Leadership Forum at www.nlada.org. ♦

Life in the Balance Attracts over 400 to Texas

Mark Olive Honored

By Cynthia Works, NLADA Director of Training & Education, and Ira Mickenberg



Mark Olive (L) displays his award with a colleague.

“In recognition of his commitment to helping lawyers, mitigation specialists and investigators provide high quality representation to capital clients throughout the nation. Through his generosity of spirit, tireless efforts to educate, and extraordinary willingness to help every lawyer in need of assistance in a capital case, Mark has raised the quality of capital defense practice across America, and provided a model for cooperative, team defense that has saved countless lives.”

— From the text of the *Life in the Balance Achievement Award* given to
Mark Olive

While defenders around the country honored the 40th anniversary of the landmark U. S. Supreme Court Case *Gideon v. Wainwright*, the case that finally granted low-income people the constitutional right to counsel in criminal cases, more than 400 lawyers, mitigation specialists, investigators, scientists and paralegals gathered in Austin for NLADA’s Life in the Balance 2003.

The breadth and depth of the faculty was consistent with the high quality that capital defenders have come to expect from Life in the Balance: George Kendall of NAACP Legal Defense & Education Fund, Inc. in New York delivered the keynote address; Dr. Elizabeth Loftus of the University of California discussed the latest developments in the field of memory and eyewitness identification; Dr. Daniel Spitz of the Hillsborough County Medical Examiner Department in Tampa, Florida, reviewed the scientific bases for medical examiner testimony; George Castelle of the West Virginia Public Defender explained how to deal with prosecution “experts,” sloppy science and lab fraud; Russ Stetler of the Capital Defender Office in New York told non-attorney members of capital defense teams how to communicate with and stand up to lawyers; Dr. Lee Norton of Lee Norton & Associates in Florida and Marie Campbell of the Loyola Death Penalty Resource Center in Louisiana gave tips on interviewing techniques; Dr. Nancy Cowardin of Educational Diagnostics in California delivered several excellent workshops on recognizing and dealing with mentally impaired clients; Denny LeBoeuf of Capital Post-Conviction Project of Louisiana shared his expertise in obtaining and using *Brady/Kyles* material; John Holdridge of the Connecticut Public Defender office addressed the difficult issue of making timely objections and preserving the record for appeal; and John Blume of the Habeas Assistance and Training Counsel in South Carolina reviewed the decisions of the last U.S. Supreme Court term, which produced such major opinions as *Atkins v. Virginia* and *Ring v. Arizona*. These are just a few of the many workshops and training sessions presented by top experts and capital defense practitioners from across the country. Also, the ABA’s Robin Mahr directed a session for private law firms interested in doing pro bono work on capital cases.

In typical Texas style, capital defenders from the state played a big role. Phil Wischkaemper of the Texas Criminal Defense Lawyers Association (TCDLA) organized a track on topics of particular relevance to Texas cases. TCDLA also provided scholarships to the conference for over 50 Texas lawyers. The ABA Death Penalty Representation Project provided financial support as well.

Life in the Balance Award

Annually, NLADA presents the Life in the Balance Achievement Award to an individual whose career has exemplified the dedication, skill and generosity of spirit that characterizes the capital defense community. This year’s recipient was Mark Olive, of Tallahassee, Florida, a private practice criminal lawyer specializing in capital defense. During the presentation of the award, the audience was treated to tributes from colleagues and friends, including a song written specially for Olive, a humorous videotape presentation and poetry by the Harlem Renaissance poets. ♦



NLADA Substantive Law Conference Returns to California

Reaching for the Stars: Designing Advocacy Strategies in Uncertain Times

For more than 20 years, legal aid programs across the country have looked to NLADA's "Sublaw" conference to provide outstanding substantive law training to young advocates.

Every year NLADA convenes its Substantive Law Conference to educate attendees on the latest legal developments and strategies to effectively represent their clients. Returning to California, this year's Sublaw Conference is scheduled for July 22-26 at The University of California at Los Angeles (UCLA) campus in Los Angeles. As in years past, trainers from national support centers, allied organizations and substantive experts from field programs will instruct this year's cutting edge sessions.

Attendees can expect to learn the latest trends in 10 substantive areas of the law and acquire skills that will enable them to creatively and effectively meet the needs of their low-income clients. In addition, attendees will have networking opportunities to exchange ideas with colleagues from across the country, while filling continuing legal education requirements.

In an effort to better serve the needs of legal aid attorneys in attendance, NLADA is presenting two preconference training opportunities:

1) **Trial Advocacy for Legal Aid Attorneys** — This program is designed specifically to provide legal aid attorneys skills, knowledge and tools to become outstanding trial lawyers. The program offers two full days of trial advocacy training, blending lecture, theory and on-your-feet application of the knowledge presented; and

2) **Indian Legal Aid New Lawyer Training** — Geared to those who have not had extensive Indian law training or who need a refresher in the basics, this session examines the basic precepts of Indian law from the tribal perspective, as well as the perspective of individuals and nontribal entities that live or exist with Indian country.

(Please note that the preconference will take place July 22 - 23.)

In addition, NLADA will present a new training track dedicated to civil rights issues. Tracks will also be offered in consumer law, federal housing, social security, welfare, Native American law, women & family law, employment law, health law and community economic development.

This is surely a not-to-be-missed training opportunity!

For more information, visit: www.nlada.org/Training.

2003 NLADA Annual Conference

United in the Promise of Justice!

This year's theme, *United in the Promise of Justice!*, commemorates the 40th Anniversary of *Gideon v. Wainwright*, the landmark U.S. Supreme Court case that guarantees the assistance of counsel to persons facing imprisonment. Even though the right to counsel is a constitutional right in criminal cases, a recognized need exists within the equal justice community for comparable protection for citizens involved in civil matters. Please join us as we bridge the gap between civil and defender communities.

When: November 12-15

Where: The Westin Seattle

1900 Fifth Avenue

Seattle, Washington

Keynote Speaker: The Honorable Gerry L. Alexander, Chief Justice for the Washington State Supreme Court

Alexander was first elected to a seat on the Washington Supreme Court in 1994. He joined the state's highest bench with over two decades of trial and appellate court experience behind him. As a key supporter of "Civil" *Gideon*, Alexander will address the importance of the civil and defender communities forging together "*United in the Promise of Justice!*"



NLADA PRESENTS

The
**Substantive
Law
Conference**

UCLA
Los Angeles, CA
July 22-26, 2003



For more
information
visit
www.nlada.org
or call
(202) 452-0620

to the delivery of legal services to the poor, including broad coverage of: 1) pro bono, 2) technology and delivery innovation, 3) fundraising, 4) ethics, 5) rural delivery, 6) evaluation, 7) substantive law, and 8) management-related issues.

Preconference meetings included the Power of Attorney business law pro bono network, several specialized sessions for pro bono managers, law school pro bono, a community-oriented problem-solving program (see story on page 14) and the Management Information Exchange's executive director and financial trainings.

AAPDA Diversity & Leadership Panel Draws Standing-Room-Only Crowd

Hundreds of conference participants packed a panel discussion on diversity and leadership presented by the African American Project Directors' Association (AAPDA). AAPDA members Lillian Moy, Deirdre Weir, and Lillian Johnson convened and designed the panel with support from Cynthia Works of NLADA. Johnson, executive director of Community Legal Services in Phoenix, Arizona, moderated the panel, which was designed to provide viewpoints from all areas of the law – legal aid, the judiciary, the academe and the bar.

The focus of the discussion was the recent U.S. Supreme Court argument in the case of *Grutter v. Bollinger*, which challenged the use of affirmative action in the admissions process at the University of Michigan School of Law. The panelists each shared their personal experiences with discrimination and prejudice, as well as provided the audience with insight into the benefits of diversity in the legal profession.

Panelists included:

Stella K. Manabe, administrator of the Oregon State Bar Affirmative Action Program, who has a decade of experience working with the affirmative action programs at Lewis & Clark Law School and the bar. Manabe developed programs that gained the attention of the Oregon Minority Lawyers Association

and the American Bar Association and, as a result, was a recipient of the ABA "2003 Spirit of Excellence Award."

The Honorable **Sidney A. Galton**, a Multnomah County Circuit Judge since 1998, who previously served as an administrative law judge for 16 years and practiced law for nine years. A recipient of the Oregon Women Lawyers' Betty Roberts Award and the Award of Merit from the Oregon Gay & Lesbian Law Association, he presently serves as vice president of the International Association of Lesbian & Gay Judges and as secretary of the Oregon State Bar's Diversity Section.

Clarence Belnavis, who is a partner at the law firm of Stoel Rives, LLP in the Labor & Employment section. He received his Bachelor of Arts from Florida Atlantic University and his Juris Doctor from Howard University School of Law.

Godfrey Joseph Dillard, a private practitioner in Detroit, Michigan, who served as the lead counsel for the defendant interveners *Grutter v. Bollinger*. He is a founding member of Citizens for Affirmative Action's Preservation (CAAP) a grass roots organization dedicated to preserving race-conscious admission policies in higher education. In 1999, the Michigan Lawyers Weekly named him Lawyer of the Year.

David Hall, a professor at the Northeastern School of Law, has served as dean from 1993-1998. From 1998 until 2002 he served as provost and senior vice president for academic affairs of Northeastern University. He is presently writing a book on the intersection of law and spirituality, entitled "Rivers and Stones: A Call for the Spiritual Revitalization of the Legal Profession." In 1997, the National Association of Public Interest Law named him Outstanding Dean of the Year. ♦

of the board of directors of the Lawyers Committee for Civil Rights Under Law and the Appleseed Foundation and chair of the Appleseed Fund for Justice in Chicago.

Nominee David Hall returned to the faculty at Northeastern School of Law after serving as the University's provost and senior vice president for academic affairs from 1998 to 2002. Prior to being provost, Hall served as the dean of Northeastern School of Law beginning in 1993. He serves as a member of the boards of directors for numerous organizations and conducts workshops on diversity and the legal profession for law firms, governmental organizations and legal collectives like the Boston Lawyers Group. He is presently writing a book on the intersection of law and spirituality, entitled "Rivers and Stones: A Call for the Spiritual Revitalization of the Legal Profession."

Biographical sketches of the Republican members, both confirmed and recess-appointed, have appeared in the *NLADA Update*. ♦



THROW YOUR
HAT IN THE
RING!

**Have you considered running for
NLADA office?
If so, now's the time to act!**

NLADA is preparing for its annual elections mailing to nominate and elect the 2003 board and policy groups' members. Be on the lookout for the "Official Notice to Members."

Important Election Deadlines:

Nominations due **July 15**
Ballots to be mailed **August 7**
Votes due **September 15**

For more information, visit www.nlada.org.

Community-Oriented Problem Solving – Moving Beyond Access

By Camille Holmes,
Senior Counsel, Project for the
Future of Equal Justice and Center
for Law and Social Policy

What is community lawyering? More and more equal justice advocates are considering that question.

Community lawyering is not a new concept. The approach has been called First-Half Lawyering, Community Justice Lawyering, Holistic Advocacy, Visionary Law, and Restorative Justice and more.

One excerpt from a working definition being developed by the New England Training Consortium provides some insight:

“Community lawyering refers to a wide range of community building and advocacy-related activities through which legal aid advocates contribute their legal knowledge and skills to support community-identified change initiatives which return power to the community and support lasting changes that bring about social justice.”

There is no one definition. But from the many practitioners, trainers and advocates pursuing and developing this approach, several principles emerge.

Community lawyers:

- Are committed to community participation and engage in activities that build community assets and strengths to address their overall social and economic conditions;
- Flexibly employ a wide variety of strategies – media, policy, outreach, transactional approaches and litigation – to advance community goals and build the capacity of communities to negotiate on their own terms with the powers that be;
- Work with communities and organized community groups to encourage input and guidance, and promote self-determination;
- Focus on root causes – including structural inequality and the roles of race and ethnicity;
- Build coalitions across diverse cultur-

al groups, community groups and advocacy organizations;

- Work as partners and co-leaders (or followers) with community groups, listening and learning from community expertise; and
- Think “outside of the box.”

Elena Popp of the Legal Aid Foundation of Los Angeles offered the following evaluative tool to determine if an activity is “community lawyering.” She asked, “Does the activity of the lawyer promote self-determination – vision, leadership and direction from the community? Does the activity increase economic resources – money, housing, jobs, services? Does the activity increase community power? Is the activity a true collaboration?”

Community-Oriented Problem Solving was a Focus of the Equal Justice Conference

Legal aid attorneys, pro bono coordinators, civil rights advocates, paralegals and others came together at the Equal Justice Conference in Portland, Oregon, for two intensive sessions to consider and learn about community-oriented problem solving.

The two sessions: “A Community-Oriented Problem Solving Pre-Conference” and “Moving Beyond Access: How Community-Based Problem Solving Can Help Achieve Significant Outcomes for Our Clients” – were organized by Tanya Neiman, Volunteer Legal Services Program of the San Francisco Bar Association; Camille Holmes, NLADA/CLASP Project for the Future of Equal Justice; M. Aurora Vasquez, The Advancement Project; and Zenobia Lai, Greater Boston Legal Services and a member of the Community Lawyering Design Team of the New England Training Consortium.

Panelists and participants discussed the concept of community lawyering including specific examples of how com-

munity oriented problem solving approaches advance social justice for community members and community groups. Some examples:

- Ross Dolloff reported that his staff at Neighborhood Legal Services (NLS) in Lynn, Massachusetts, began working with a group of community members concerned about losing one of two local hospitals. NLS served as their “general counsel” as the community group developed into a sophisticated community health organization with deep knowledge of the health needs of the surrounding area. The group became the decisive voice at the table when the remaining hospital was slated for merger, weighed in heavily during the selection process for a merger partner and the structuring of health services for the area. The organization received millions of dollars to support its continued role in preserving community health. The “general counsel” role emphasized the success of the organization and ranged from administrative support to strategy development to traditional corporate representation over a period of several years.

- Anita Santos-Singh, executive director of Philadelphia Legal Assistance Center, discussed how their newly implemented Pennsylvania Farmworker Project (PFP) partnered with the local pro bono program, Philadelphia Volunteers for the Indigent Program, to create a Low Income Tax Clinic. When mushroom workers in the targeted service area asked PFP attorneys for assistance with tax controversies rather than the expected employment and housing issues, the program developed an innovative partnership to meet the need. Responding immediately to the community’s priority needs built trust in a community unfamiliar with the PFP. The agency became a trusted

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One of the challenges and opportunities faced by lawyers serving communities is building trust among community members and working with both organizers and organiza-



community partner and now provides a wide range of services to the community.

- M. Aurora Vasquez described the Advancement Project's work with a Latino community organization in Memphis, Tennessee. With Advancement Project's help, the group has developed a sophisticated message describing their concerns and proposed solutions and a professionally produced statement for distribution. The community is now constructively engaging the city to obtain Spanish-speaking 911 operators and police

effort rebounded to successfully save the funding.

An interactive agenda in "Moving Beyond Access" explored the benefits and how-to's of community problem solving. The executive directors emphasized the importance of supporting advocates who are creating innovative solutions to community problems. Community involvement is highly encouraged and supported in their programs (and sometimes required).

Doloff discussed the importance of helping communities understand relational power – power based on personal relationships and experiences or "people power." A broad circle of people who know each other well and share

to both teach and learn. With that approach, trust can be developed, community expertise can be discovered and supported and information is more likely to be shared. It is often critical to learn what kinds of complicated historical relationships inform community concerns and existing partnerships and may affect potential solutions.

Centro Shalom, a faith based social services organization, supports people in crisis in the Long Beach California community. Executive Director Amelia Nieto praised the Legal Aid Foundation of Los Angeles, her local legal services program, for providing training and support that allowed Centro Shalom to handle straightforward paperwork relating to evictions and other emergencies and to



A broad circle of people who know each other well and share common goals provides a solid base for identifying problems in the community and building relational power that can be sustained in a community organization.

service for the emerging Latino population in that city.

- Elena Popp recounted a significant policy effort led by tenant groups. She noted that one of the most important roles of the lawyers initially was to keep silent during community meetings so that the lawyers would not dominate the conversation. By working as technical advisors following the instructions of their knowledgeable community clients, tenants created a truly community led effort and a community-driven decision making process supported by legal expertise as one of the many important elements. The process resulted in the adoption of national legislation to preserve federally assisted housing. When the housing preservation funding was threatened, the community

common goals provides a solid base for identifying problems in the community and building relational power that can be sustained in a community organization. Doloff helps his community clients translate problems into issues. By helping a community group identify the parts of the problem that are solvable and reduce those parts to actionable issues, the community lawyer provides strategic and legal advice that allows communities to achieve social justice and build community institutions.

One of the challenges and opportunities faced by lawyers serving communities is building trust among community members and working with both organizers and organizations. Zenobia Lai, of Greater Boston Legal Services, encouraged advocates to approach potential community partners with humility, cultural competency, patience and a willingness

spot issues that required the advice of a lawyer, maximizing the range of legal services available to the client community. Centro Shalom, which accepts no federal dollars, has become a strong voice supporting legal aid, especially when funding cuts are threatened. When advocates asked how to determine who to work with in a community, Nieto suggested that advocates ask their clients what organizations and leaders they trust.

Resources

Are you interested in community lawyering? There are resources available to you. Several organizations are developing resources, expertise and training materials to support advocates efforts to work more effectively and authentically

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Houston Has A Problem: Bad DNA Evidence Sent the Wrong Man to Prison at Least Once. How Many More are There and What Can be Done About it?

by William C. Thompson



Josiah Sutton's nightmare began on October 30, 1998 when a woman mistakenly identified him as one of two men who had raped her. The 16-year-old Houston resident demanded to have a DNA test — confident that it would prove his innocence — but the Houston Police Department Crime Laboratory reported finding his DNA profile in semen samples from the crime. After a short trial, Sutton was convicted and sentenced to 25 years in prison for a crime he did not commit. He was

[T]he work of the HPD lab was some of the worst I had ever seen. The laboratory routinely failed to follow proper scientific procedures. It interpreted DNA test results and computed statistical estimates in a manner biased against the accused. Most importantly, I found several instances in which there was outright misrepresentation of scientific findings — where the lab analysts would say that two samples had the same DNA profile when the actual test results showed they did not.

released last month after a new DNA test proved conclusively that he was not one of the rapists.

The Sutton case has added fuel to a growing controversy about the criminal justice system in Harris County, Texas — which has sent more people to death row than any other county in the nation. The problems in the Harris County Police Department (HPD) Crime Laboratory were first brought to light last fall in a series of investigative reports by television station KHOU. I was one of several experts asked by KHOU to review laboratory records and transcripts from cases processed by the DNA/Serology unit of the HPD laboratory. I was shocked by what I saw.

In televised interviews I said the work

of the HPD lab was some of the worst I had ever seen. The laboratory routinely failed to follow proper scientific procedures. It interpreted DNA test results and computed statistical estimates in a manner biased against the accused. Most importantly, I found several instances in which there was outright misrepresentation of scientific findings — where the lab analysts would say that two samples had the same DNA profile when the actual test results showed they did not.

After the television exposé, the Harris County district attorney asked a state agency, the Texas Department of Public Safety, to conduct an audit of the Harris County Police Department's DNA/Serology Laboratory. The audit report, released in January, confirmed many of the problems identified in the KHOU reports, along with some others, such as a roof in the evidence room that leaked so badly that 34 DNA evidence samples were destroyed in a single stormy night, and poorly trained DNA analysts who could not verify their academic credentials.

The scathing audit report led the district attorney to shut down the DNA/Serology laboratory pending review by an outside agency. The district attorney also agreed to allow retesting of evidence in some of the cases I had identified as problematic in the television news reports.

One of these cases was Josiah Sutton's. During Sutton's trial, a DNA analyst from the HPD lab testified that Sutton's unique DNA profile was found mixed with DNA of the victim and another man in vaginal samples from the rape victim and in a semen stain collected from the back seat of the victim's automobile, where two men had raped her. According to the lab report, the probability Sutton would match by chance was 1 in 694,000.

This statistic grossly overstated the power of the DNA evidence. Although Sutton's profile was consistent with the mixture of DNA characteristics found in the vaginal samples, these samples contained so many characteristics that thou-

sands of people would also be "consistent." By my calculations, the probability of a coincidental match in the case was actually greater than 1 in 8. But that was not the worst of it.

Examination of the DNA test results showed that the semen stain from the back seat of the car did not match Sutton, as the laboratory report had stated — it appeared to be from an unknown man. Based on his DNA profile, this unknown man could have been one of the two rapists whose semen was found in the vaginal samples. But if he was one of the two rapists, Josiah Sutton could not have been the other. Sutton's DNA, when combined with that of the back seat semen donor, could not account for the mixture of genetic characteristics found in the vaginal samples. So if one makes the reasonable assumption that the semen donor was one rapist, Sutton was ruled out as the other.

The jury that convicted Sutton never heard about this problem. It was led to believe that the DNA evidence uniquely identified Sutton as one of the rapists, when it actually provided strong evidence of his innocence. The case is a striking example of what can happen when defense lawyers accept laboratory reports and expert testimony at face value without examining the underlying scientific data.

In early March, a new test of semen from the vaginal swab, in a private laboratory, revealed the DNA profiles of two men — and conclusively ruled out Sutton as a possible contributor. Because the victim had made it clear that the two rapists were the only possible sources of the semen, the new test firmly establishes his innocence. He was released on bail March 12, 2003 pending a petition to the state governor for a full pardon.

In light of Sutton's exoneration, the question is no longer whether innocent people have been sent to prison by bad lab work in Houston, but how many, whether any have been executed, and what it will take to find them. The district

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attorney is currently reviewing his files to identify cases as far back as 1992 in which DNA evidence produced the HPD laboratory figured in a conviction. So far prosecutors have ordered retesting in the cases of 68 prisoners, 17 of whom are on death row.

Many more retests may be needed. In some of the most problematic cases retesting may be impossible, however, because the HPD inappropriately consumed all of the evidence in the first round of DNA testing.

The Texas state legislature has held a series of hearings to find out what went wrong with the Houston lab, and what might be done about it. One obvious factor is the dysfunctional nature of the criminal justice system in Houston, where court appointed defense attorneys have found it difficult even to obtain copies of laboratory reports before trial, and rarely are able to have independent experts review the underlying laboratory work.

According to a recent New York Times story, Timothy Fallon, director of the Bexar County crime laboratory in San Antonio, told a committee of the Texas Legislature this month that there was only one way to assure the integrity of DNA testing by laboratories. "Resources must be made available to criminal defense attorneys," he said. "If you want the best crime lab, you need to have the best criminal defense attorneys to challenge us."

It remains to be seen whether the Texas legislators will take this advice to heart.

For more information on the Houston laboratory problems, see the NLADA Forensics Library at www.nlada.org/Defender. ♦

William C. Thompson is a professor in the Department of Criminology, Law & Society at the University of California, Irvine. A lawyer and an expert on scientific evidence, he is the recipient of a grant from the Gideon Project of the Open Society Institute (a branch of the Soros Foundation) to study ways to help criminal defense lawyers deal more effectively with scientific evidence. He is the creator and manager of the Forensics Library for public defenders, available on the NLADA Web site. ♦

with community people and groups. Many of those resources are referenced, in this article.

The Community Justice Resource Center at the Advancement Project provides information on funding sources, civil rights data, reference publications and much more. For more information, contact cjrc@advancementproject.org or go to their Web site at www.advancementproject.org.

The New England Training Consortium is developing training materials that break down the elements of the community lawyering to teachable segments emphasizing specific community lawyering skills. For more information, contact Ellen Hemley at ehemley@mlri.org.

The OSI Community Oriented Problem Solving Working Group spans all segments of the justice system including courts, prosecutors, defenders, legal aid advocates, law schools and others. This group, including some of the session organizers and participants, is working to build an

Community lawyers flexibly employ a wide variety of strategies – media, policy, outreach, transactional approaches and litigation – to advance community goals and build the capacity of communities to negotiate on their own terms with the powers that be.

infrastructure that can support and advance a community oriented problem solving approach to working on social justice issues. For more information, contact Tanya Neiman through her assistant Cari Napoles at cnapoles@sfbar.org.

The Project for the Future of Equal Justice is working closely with all of these entities to coordinate and promote the development of infrastructure that will advance lawyering for social justice. For more information, contact Camille Holmes at cholmes@clasp.org. ♦

U.S. Supreme Court Rules In Favor of IOLTA

"More than \$160 Million Protected"

In a major victory for Interest on Lawyers' Trust Account (IOLTA) programs across the country, the U.S. Supreme Court ruled on March 25, that the Washington State IOLTA program does not violate the Fifth Amendment, upholding the 9th Circuit's 2001 en banc ruling. This ruling in *Brown v. Legal Foundation of Washington* (originally *Washington Legal Foundation v. Legal Foundation of Washington*) protects approximately \$160 million currently held in IOLTA accounts nationally. Within the legal aid community, every state uses IOLTA accounts to fund legal assistance for low-income people. An amicus brief in support of the Legal Foundation of Washington was filed jointly by the NLADA, AARP, Legal Counsel for the Elderly, Inc., and The Brennan Center For Justice.

IOLTA accounts are comprised of short-term interest earned on escrow accounts established by lawyers to hold their clients' real estate transactions and other matters. Client funds that are too small in amount or held for too short of a time to earn interest for the client, net of bank charges or administrative fees, are placed in a pooled, interest-bearing trust account. In so doing, the interest earned is used to provide legal aid for low-income people.

For more information on the IOLTA ruling, visit the NLADA Web site, www.nlada.org/Civil. ♦

How is East Tennessee Similar to Eastern Serbia?

These two regions have more in common than you might think. Eastern Tennessee has historically experienced its own economic crises. Natural resources such as coal and timber in the East Tennessee area of Southern Appalachia often have been controlled by outside

Legal Aid of East Tennessee devotes a full-time staff person to work with community organizations to tackle the root causes of problems brought in by individual clients.

interests, with economic decisions made in remote board rooms, and subject to radical fluctuations. Unemployment is high, especially in more isolated rural counties, and the economy has suffered with the closing of scores of clothing and textile mills, furniture manufacturers and others due to international competition and the economic downturn. It is in this context that Legal Aid of East Tennessee has sought and helped to create models of successful nonprofits and community based economic development organizations.

The CED program of Legal Aid proved to be a fertile learning environment for Milutinovic. Following are some of the projects to which he was exposed:

- **Inner City Job Training Program:** Legal Aid has assisted an organization in an African American community with organizational development and location of funding sources for their programs. A recent grant written by Legal Aid interns secured \$37,000 for the project.
- **Reentry Program:** The same organization has received assistance in their effort to establish a transitional program for recent prison releasees. A survey sponsored by Legal Aid showed that 90 percent of community members either had personally been involved with the criminal justice system or had had an immediate family

What We Learned from Dragan Milutinovic

Having the perspective from someone doing similar work in another context was like shining a light on our own situation, illuminating things that in some ways have become invisible due to their familiarity.

For example, we may take for granted important support systems for community-based economic development that do not exist elsewhere. In Serbia there is a weak history of nonprofit organizations that are undertaking economic development projects, while in the United States many of the innovative programs in low-income communities are sponsored by nonprofits. Dragan Milutinovic's visit pointed to the importance of supporting those organizations.

He also pointed out the important role of banks and government in supporting nonprofits and other programs in low-income communities here. Of course, they have no Community Reinvestment Act in Serbia that compels lenders to respond to issues in low-income communities. They must proceed without support from banks, which are important institutions here in community economic development.

We also learned from Milutinovic of the advantage he has in working in an environment in which the large mega-corporations have not yet dominated almost every aspect of the economy, as they do here, so that local, community-controlled models of constructing an economy are, at least for the short term, more possible. Here, we have to look for niches that don't interest the mega-corporations (day care, catering, crafts, housing construction, etc.), while in Serbia the possibilities are wide open.

Finally, working together we saw the almost international need for micro-business development programs that "seed" the vision of local people in local communities, encouraging the development of locally controlled small businesses.

- member involved. Legal Aid is helping the organization gain capacity to reach its goal of "rebuilding the community from the inside out."
- **Micro Loan Program for Small and Home-Based Businesses:** In meetings with a home childcare association, members identified obtaining small loans as one of their greatest needs. Legal Aid took the leadership role in researching alternatives and pulling together a partnership of organizational representatives that resulted in the formation of a micro loan program. Originally making loans in the \$500 to \$10,000 range, more recent support from the Small Business Administration and a federal Empowerment Zone program now allows loans up to \$50,000. The Empowerment Zone board recently approved an expansion of its loan pool to \$2.5 million. Legal Aid has continued to play a key technical assistance role with the micro loan organization.
- **Community Economic Development Network of East Tennessee (CEDnet):** With financial support from the Catholic Campaign for Human Development, Legal Aid has created a network of CED organizations throughout East Tennessee. CEDnet functions as a meeting place for nonprofits in the region to share information about what works, and what doesn't, about financial and technical resources, and to serve as a support system to overcome isolation of those working diligently in the area's low-income communities.
- **Latino Banking Program:** Latinos participating in CEDnet discussions identified several problems with financial services, especially for those who have not yet received a social security number. With Legal Aid assistance, the Latino Economic Task Force was formed and meetings with bank representatives began. Model programs were proposed in which someone

continued on page 19

could open an account with identification other than a social security number, where money could be transferred internationally at radically reduced costs, and where Latino employees would be hired to bridge the cultural gap. One bank, SunTrust, eagerly jumped at the opportunity. A program was developed in the East Tennessee area that has served as a regional and national model.

- **Community Reinvestment Act Challenges to Banks:** Several years ago, Legal Aid assisted client community organizations in challenging lending institutions for what is sometimes called “redlining,” or refusal to make loans in low-income neighborhoods. Those challenges first led to negotiation, then to collaboration as community organizations, banks and local government created local partnerships to channel investment into housing, organizing and economic development programs in low-income communities. This has resulted in millions in new investment dollars.

Legal Aid of East Tennessee devotes a full-time staff person to work with community organizations to tackle the root causes of problems brought in by individual clients. It is this CED program that interested the visitor from Serbia — building the capacity of nonprofits, supporting strong organizations in the ethnic minority communities, assisting released prisoners, growing small and micro businesses- in general, strengthening the civil society and economic development in low-income communities.

“The Timok region sees its future in assembling open-minded people in finding its own way for development, in involving a great number of citizens, especially youth, in the decision-making processes, in establishing an open democratic society and in opening towards the world,” said Milutinovic.

In that the Timok Club and Legal Aid of East Tennessee have become long-distance partners.

For more information, contact Bill Murrah at (865)637-0484, bmurrah@laet.org. ♦

2000 and has been an ardent advocate for the critical role corporate counsel must play in enhancing our nation’s quest for equal justice.

Frank S. Moseley has led a successful pro bono case that is making a significant difference to the indigent defense system in New York. On behalf of the New York County Lawyers’ Association, Moseley brought a suit against the state and city of New York over the statutory rates of compensation paid to assigned private counsel. Prior to the challenge, the assigned counsel fees in New York were the lowest set by statute anywhere in the country, and, as a consequence, there was a critical shortage of lawyers who were willing to represent low-income people in family and criminal court proceedings. Due to Moseley’s innovative maneuver, a permanent injunction was entered this February to



Frank S. Moseley



José M. de Lasa

raise the fees, citing that a failure to do so constitutes a violation of the client’s fundamental right to meaningful and effective assistance of counsel.

Since 1991, NLADA has gathered with its members and friends at this annual dinner to pay tribute to all lawyers who labor tirelessly to represent people who are unable to pay for legal assistance and to salute outstanding individuals who set an example of extraordinary dedication, achievement, leadership and vision. ♦

Kutak-Dodds Prize Winners Announced

The Robert J. Kutak Foundation and NLADA are pleased to announce the 2003 Kutak-Dodds Prize winners. They are: Lois Wood, managing attorney of the Land of Lincoln Legal Assistance Foundation, and Stephen Richards, deputy defender of the Death Penalty Trial Assistance Division in the Office of the Illinois State Appellate Defender.

The prestigious Kutak-Dodds Prizes annually honor the accomplishments of civil legal aid attorneys, public defenders or public interest advocates who, through the practice of law, contribute in a significant way to the enhancement of human dignity and quality of life of people unable to afford legal representation. The winners will be honored at NLADA’s 2003 Exemplar Awards Dinner on June 12 in Washington, DC. ♦



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Printed on recycled paper

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Volume 25, Number 1

Spring 2003

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