

# EXECUTIVE

An Update For and About The AMERICAN COUNCIL of CHIEF DEFENDERS

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## Summary

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### Louisiana Indigent Defense Reform Effort Update

On March 9, NLADA released its most recent evaluation, *In Defense of Public Access to Justice: An Assessment of Trial-Level Indigent Defense Services in Louisiana 40 Years after Gideon*. The report, commissioned by the National Association of Criminal Defense Lawyers (NACDL), concludes: “In direct violation of the state and federal constitutions, Louisiana government (both state and local) has constructed a disparate system that fosters systemic ineffective assistance of counsel due primarily to inadequate funding and a lack of independence from undue political interference. These two main systemic deficiencies produce numerous ancillary problems including a lack of oversight, training and supervision of those entrusted with the defense of the poor. When combined with the crushing caseloads public defenders are forced to carry, these factors prevent the state from securing justice for all, protecting the peace and promoting the general welfare of its people.”

*In Defense of Public Access to Justice* identifies the primary causes for the overwhelming failure of the indigent defense system as inadequate funding and a flawed structure that allows for undue political interference. Louisiana is the only state in the nation to attempt to fund the majority of its Constitutional obligation to provide indigent defense services through fees

assessed on court costs — primarily on traffic tickets. There is a reason why Louisiana stands alone — there is no direct correlation between the ability of a jurisdiction to garner money through traffic tickets and the resources required to provide adequate defense services to those unable to hire an attorney. In fact, our report concludes just the opposite: in Louisiana, the need for indigent defense funding is in many ways inversely correlated with the ability of a Parish to generate revenues.

The dire funding situation is made even worse when one considers the extent to which undue political interference affects the delivery of justice. Under Louisiana law, the District Court judiciary has the power to appoint members of the local indigent defense boards who in turn make the decisions regarding how services will be provided on a day-to-day basis.

*continued on page 4*

### Nancy Forster Appointed New Maryland Public Defender

NLADA is pleased to congratulate and welcome the new Maryland public defender, Nancy Forster, to the American Council of Chief Defenders (ACCD). Forster has been with the Maryland Office of the Public Defender since 1984 and has devoted her professional life to defending the underdog.

As the incoming Maryland Public Defender, here’s what Forster has to say about her job:

*“The Maryland Office of the Public Defender has embarked on a course to reverse the chronic underfunding of our agency and its employees. With the tremendous assistance of NLADA, the Office of the Public Defender has received the unprecedented support of the legislature and the governor in recognizing the integral role public defenders play in Maryland’s criminal justice system. As the public defender for the state of Maryland, my goal is to have caseload-based funding that ensures efficient use of agency resources, improves accountability in budgeting and ultimately, and most importantly, provides the resources our attorneys and staff need to go about the business of providing superior representation to our indigent clients.”*

Please join us in welcoming Nancy Forster as the newest member of the ACCD!



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.

## NLADA Defenders Speak at Ohio Juvenile Defender Leadership Meeting

On July 23, Cait Clarke, NLADA director of the National Defender Leadership Institute and Ross Shepard, NLADA director of Defender Legal Services spoke at the Ohio Juvenile Defender Leadership Meeting in Columbus, Ohio. Joining them were Richard Goemann, executive director of the Virginia Indigent Defense Commission, and Bob Listenbee, chief of the juvenile unit of The Defender Association of Philadelphia. The conference was attended by juvenile practitioners from throughout the state, two chief defenders (Yeura Venters from Columbus and Bob Tobik from Cleveland) and members of the Office of the Ohio Public Defender, including State Public Defender David Bodiker.

Meeting participants discussed the various issues that impact their work and collaborated with one another on best practices to find resolutions. One of the numerous issues discussed were payment issues for indigent defense services. Ohio is a state that relies primarily on each of its 88 counties to provide indigent services with a state reimbursement based on payments made. The state payments have shrunk from the handshake agreement of 50 percent to a new low of 25 percent this year.

Half of the counties rely exclusively upon court appointed counsel that are paid \$40 per hour, and are selected from lists maintained by the local judges that are elected in partisan races. A wide disparity between local practices exists with one defender reporting an annual caseload of 1200 while another stated that the appointing judge kept defender caseloads within the standards of the *American Bar Association's Ten Principles*. According to the recent report by the ABA Juvenile Justice Center and the Children's Law Center,

"Ohio – Justice Cut Short: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings," children face delinquency proceedings routinely without any defense counsel.

The outcome from the meeting's discussions determined that Ohio is a state like many others that is deficient in the day-to-day provision of competent defense attorneys to those facing criminal prosecution without the means to employ legal representation. There is no established means of communication for practitioners across county lines. The hopes and aspirations of good-willed defenders are without voice. Indeed, matters have probably worsened since a 1987 Spangenberg Group report that stated, "the current combined state and/

or county system for providing indigent defense services... does not result in consistently adequate representation throughout the state of Ohio."

Forty-one years ago the landmark U.S. Supreme Court ruling in *Gideon v. Wainwright* declared, "The right of one charged with a crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours." Ohio is just one jurisdiction where a fundamental and essential constitutional right is not enforced. One should not think that a comprehensive solution to this unacceptable situation is in the near future, but NLADA, through training, evaluations, and advocacy, will continue to strive to make real the promise of justice for all.

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## Expectations for the ACCD & LaPDA Meeting on August 14

The Louisiana Public Defender Association (LaPDA) is a membership organization made up of the chief public defenders in each of Louisiana's judicial districts. For years, the LaPDA has been on the front lines of criticism regarding the delivery of indigent defense services. Instead of focusing attention on the state's abdication of its responsibilities under *Gideon*, critics have blamed the public defenders for the failures documented in NLADA's report and others. This has caused the LaPDA to be skeptical of all reform efforts.

NLADA hopes to work in tandem with the LaPDA to help them find their own voice and role in indigent defense

reform efforts. To accomplish this, the ACCD co-chairs and NLADA staff participated in discussions with LaPDA representatives to set a series of discussion topics for the Saturday meeting. Each roundtable discussion will be co-chaired by one ACCD representative and one LaPDA representative. Topics will include: managing through litigation; indigent defense funding; workload; and, indigent defense structure.

At lunch, Senator Lydia Jackson, chair of the Louisiana Indigent Defense Task Force, will address the meeting and take questions on the progress of the reform effort.

## Blakely Watch

To better understand effects on the criminal justice system of the U.S. Supreme Court's most recent watershed decision, members of NLADA's Defender Legal Services attended The Constitution Project's "Meeting of Groups and Individuals Interested in the Effect of *Blakely v. Washington* on State and Federal Sentencing Systems." The meeting was held Wednesday, July 28, at the law firm of Piper Rudnick and involved influential individuals from a wide range of criminal arenas, including Department of Justice officials, federal district court judges, the Open Society Institute, NACDL, counsel to Senators Hatch, Leahy and Feingold and representatives from Kansas, Pennsylvania

and Minnesota, and the National Association for State Courts.

After discussing the pre-*Blakely* legal landscape informed by *Apprendi*, the participants discussed the potential effects of the decision on state systems and the Federal Sentencing Guidelines. Although there was no consensus on whether *Blakely* will implicate the federal guidelines, Kansas was discussed as a model for states revising guideline-driven sentencing schemes. Judicial attempts to comply with *Blakely* have varied widely, as evidenced by the immediate split in the federal circuit. According to several attendees, judges have been involved in a haphazard weighing of the need to submit aggravating factors to the jury against

issues of undue prejudice. Prosecutors, while arguing against *Blakely*'s applicability, appear poised to oppose a system of bifurcated trials if the federal guidelines are found unconstitutional.

Acting "expeditiously," the U.S. Supreme Court has granted *certiorari* over two cases that should, as requested by the U.S. Congress in Joint Resolution 130, "resolve the confusion and inconsistency in the federal criminal justice system caused by its decision in *Blakely v. Washington*." NLADA will continue to keep the defender community abreast of changes in the law and encourages defenders to participate in ongoing revisions to criminal justice schemes in their states.

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## Virginia Makes Major Strides in Indigent Defense Reform

Reform efforts of Virginia's indigent defense system during the first and second half of 2004 were highly successful. The highpoint of the effort occurred on July 1, with the launch of the Virginia Indigent Defense Commission – the first major step forward in reforming the quality of legal representation for the low-income in the state – was initiated through landmark legislation passed during the 2004 session of the Virginia General Assembly.

Parallel to the legislative efforts in the Commonwealth were positive actions by the Virginia State Bar. Earlier this year, on February 21, the Virginia State Bar adopted the ABA's *Ten Principles of a Public Defense Delivery System* and set up a Blue Ribbon Task Force to develop strategies for bringing Virginia into compliance. The strategies will include proposals that will be presented to the new Commission and will identify areas where further legislative action is required. ACCD members Richard Goemann and Jim Hingeley

serve on the Task Force. In addition, the Virginia Bar Association has set up a working group that is looking at the next steps in legislative reform.

In conjunction with the activity of the Blue Ribbon Task Force of the Virginia Bar Association, an ethics opinion regarding excessive caseloads was published from within the state bar. Authored by the Ethics Counsel for the Virginia Bar Association's Ethics Committee, the opinion cites ACCD Ethics Opinion 03-01 on caseload limitations and the ABA *Ten Principles*, and concludes that "lawyers who accept more cases when they know or reasonably should know that they have insufficient time or resources to provide competent and diligent representation assume the risk that they may be held accountable in a disciplinary proceeding." While this is not an official opinion of state bar, it is recognized as an important argument for caseload limitations as an important facet of quality indigent defense.

"The two major priorities of Virginia's criminal justice system are first, to protect the innocent and second, to

convict the guilty," said Senator Kenneth W. Stolle, a legislative member of the newly formed Commission. "Without quality indigent defense we can't be confident that our system is accomplishing either."

NLADA applauds the Commonwealth of Virginia for recognizing the need for reform, and for taking these first steps toward developing a quality indigent defense system. As Richard Goemann, executive director of the Virginia Indigent Defense Commission agrees, "the creation of this new Commission is a giant step forward. But we must not be satisfied with this first step; we must continue the hard work that is necessary so that our criminal justice system protects all who come before it. A criminal justice system based on fairness and truth is nothing more than what the Constitution requires and nothing less than what all Virginians deserve."

For more information on the reform efforts in Virginia, please contact Richard Goemann at (804) 225-3297, ext. 18.

## Indigent Defense Reform

continued from page 1

The release of *In Defense of Public Access to Justice* coincided with the formation of the Louisiana Indigent Defense Task Force (Task Force), a broad-based commission that includes the chief justice of the Louisiana Supreme Court, the governor's executive counsel, the president of the Senate, the deans of all four Louisiana law schools, business representatives, members of civil rights groups, appointees from interfaith organizations, public defenders, the attorney general, state bar personnel and others. The Task Force is charged with making recommendations to improve the delivery of the right to counsel statewide prior to the 2005 legislative session.

The first substantive Task Force meeting is being held in the State Capitol on August 12. Senator Lydia Jackson has asked David Carroll to present NLADA's findings on the current state of indigent defense in Louisiana and present alternative delivery models for the Task Force to consider. In keeping with the belief that there is no single "cookie-cutter" delivery model that works in every jurisdiction, NLADA has consistently promoted that the Task Force should be initially more concerned about creating a model that is adequately funded and meets national standards for the delivery of indigent defense services, including the ABA's *Ten Principles*, rather than trying to decide whether to create a statewide staffed public defender, contract or assigned counsel model. To highlight this, ACCD members from three statewide programs will testify on how their system was created and what advantages and disadvantages their model presents. Scheduled to testify are: John Stuart (Minnesota – statewide staffed public defender); William Leahy (Massachusetts – statewide assigned counsel program); and, Ross Shepard (Oregon – statewide contract system).

## NLADA Defender Division Welcomes Shepard & James

**N**LADA is committed to building a high-performance team to meet the needs of our members. As many of you know, Scott Wallace's resignation last year as director of Defender legal services to become president of the Wallace Global Fund, left a vacancy within the division. In addition, one new position was added. NLADA is pleased to introduce the two newest members of the NLADA Defender team:

**Ross Shepard** takes the place of former NLADA Director of Defender Legal Services Scott Wallace. Shepard joined the team in early June. In this capacity, Shepard is responsible for overseeing the division and working closely with the NLADA president and CEO, the Board of Directors and the Policy Groups to ensure that the association's mission is carried out.

Shepard previously served as the director of the Public Defender Services of Lane County, Inc., in Eugene, Oregon, where he represented clients and oversaw a staff of public defenders. In addition, he worked as a legislative advocate for the Oregon Criminal

Defense Lawyers Association on substantive and fiscal issues. Shepard is an active member of the NLADA American Council of Chief Defenders, the American Bar Association and the Oregon State Bar. He also has chaired numerous Lane County Bar Committees.

**Maureen James** fills a newly created position as associate attorney for Defender Legal Services. Prior to joining NLADA, she clerked for senior Judge James Wynn, Jr., of the North Carolina Court of Appeals. In addition, James worked as an associate attorney at Hogan and Hartson, L.L.P., in Washington, D.C., practicing in the community services and other departments. She represented pro bono clients on a broad spectrum of issues, including landlord/tenant litigation, domestic abuse cases, immigration and other civil matters. James is a graduate of Duke University School of Law, and is licensed to practice in the District of Columbia and North Carolina.

Please join us in welcoming them to the team!

Finally, it is important for the Task Force to realize that some of the most innovative indigent defense services are being delivered in a Southern state to help them think differently about the role public defenders can play in making the criminal justice system more effective and efficient. Mark Stephens, Knox County Public Defender (Tennessee), will make a presentation on holistic and community defense issues.

While the legislative reform effort proceeds, other national and local organizations are proceeding with

systemic litigation. A number of *Peart* motions have been filed that allege systemic ineffective assistance of counsel due to crushing caseloads. Additionally, the law firms of Baker-Botts and Sutherland, Asbill and Brennan are about to launch a major lawsuit in Calcasieu Parish (Lake Charles).

ACCD members that are interested in reading *In Defense of Public Access to Justice* prior to the summer meeting can access it at [www.nlada.org](http://www.nlada.org). For a hard copy, please contact Jon Mosher at [j.mosher@nlada.org](mailto:j.mosher@nlada.org).

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