

A Victory for All of Us

Roper v. Simmons

By Elizabeth Gladden Kehoe,
Director, National Juvenile
Defender Center

On the morning of March 1, the U.S. Supreme Court ruled that it was unconstitutional to execute offenders under the age of 18, and the lives of the 72 juvenile offenders on death rows in the United States changed drastically. Arguably, the Court’s reasoning underlying its decision in *Roper v. Simmons* could be used by advocates to generate fundamental change in how our justice system handles juvenile offenders.

In its recognition of the national consensus against executing young offenders, the U.S. Supreme Court explicitly acknowledged that youngsters are different than adults – physiologically and emotionally. In the majority opinion, Justice Kennedy listed three differences between juveniles under 18 and adults, which are fundamental to our classification of juveniles as offenders: “First, as any parent knows and as the scientific and sociological studies respondent and his *amici* cite tend to confirm, ‘[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions...’ The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure... This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment... The third broad difference is that the character of a juvenile is

not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.”

Given these differences and the unique emotional and physical susceptibility of youth to harmful influences as a result of emotional and legal constraints (youth aren’t able to move from their homes or change schools readily, among other limitations), the Court acknowledges the lesser culpability of youth. Justice Kennedy explains, “[t]heir own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”

In recognizing that youngsters are different from and, therefore, less culpable than adults in the context of the death penalty, the Supreme Court has reinvigorated the discussion about how we treat all youth in the justice system. Advocates have already begun making the strong argument that life without the possibility of parole for young offenders, a sentence considered by many to be as severe as death for young offenders, also violates the Eighth Amendment. However, premises underlying the court’s decision potentially raise even broader implications about the transfer of youth to adult court.

If, as the Court has reasoned, a youth is different than an adult in the context of crimes warranting the death penalty, then one could argue that these differences are consistent between adults and youth allegedly committing other crimes. Because these differences between adult and juvenile offenders warrant differing levels of culpability and, according to the Court’s decision in this case and many others, the level of an offender’s culpability is relevant to determining appropriate punishment, then questions are raised as to whether juvenile offenders should ever be punished in the same way as adults.

Indeed, in the past several years, state legislatures have increasingly questioned the efficacy of transferring youth into the adult system. Following legislative initiatives surrounding the now discredited “super-predator” hype of the 1990s, states

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Adding Legal Teeth to Plans to End Homelessness See page 9.

Message to Members

Beyond the Horizon



*By Jo-Ann Wallace,
NLADA President & CEO*

It has been said that visionary leaders not only have an eye on the horizon, they can see just behind it. As I assume the presidency on July 1, I am mindful that I am following in the very large footsteps of a leader whose incredible legacy has impacted every segment of the equal justice community. And I recognize that the privilege of

standing on the shoulders of such giants is what enables me to see past the horizon.

I am proud of NLADA and the work we have done to make justice in our courtrooms and communities a reality for a growing number of people. But there is more to do. My sight is set on the day when everyone in America knows that “NLADA” is synonymous with “equal justice.” When there are well-funded civil legal aid and public defender delivery systems that provide high quality representation to clients and communities in every state and territory of our country. I see a time when every equal justice advocate — be they attorney, paralegal, social worker, or client — is clamoring to stand under our banner because they know we stand for justice — for all. When our cadre of ambassadors for justice is so strong that the question we ask at every annual meeting is not whether we can change our nation’s policies to benefit low-income persons, but which policy we will tackle next.

My vision of equal justice is grounded in serving low-income clients and communities. Understanding the role that public education played in my family’s escape from “the projects” made the educational disparities that I witnessed while working as a children’s advocate at Greater Boston Legal Services profoundly disturbing. In fact, helping the attorneys in a class action lawsuit force compliance with the special education statutes shaped my decision to

become a lawyer. As a public defender, I fought for people who were convicted of crimes not necessarily because they were guilty but because they were poor. I have represented children who were abused and neglected in group homes and shelters by their caregivers. I have navigated the Medicaid system to help a mother die with dignity. Thus, having made the decision to dedicate myself to the pursuit of justice some 25 years ago, I am well aware of the challenges we face in making justice a reality for all.

I know that it has been more than 40 years since the U.S. Supreme Court declared that people have a right to counsel when they face a loss of liberty due to criminal charges. Yet people are convicted everyday in courtrooms in this country without ever talking to a lawyer. And I know that it has been over 30 years since the creation of the Legal Services Corporation evidenced our government’s recognition that an attorney is fundamental to the ability to access civil justice. Yet we know that by any measure, a great majority of individuals who are eligible to receive legal aid do not get it.

While “running the numbers” is alarming, the picture is even more sobering when we remember that every number represents a person with a face, and a name and a life story and a right to expect justice and decency in our democracy.

NLADA is an extraordinary organization facing extraordinary times. The equal justice community that comprises NLADA’s members is a collage of many different communities — civil and defender, attorney, client and community advocates, substantive law specialists and generalists. While bound together through a single mission of promoting equal justice, each group has its own history, values and priorities. In the next several years, the delicate organizational balance that keeps the many stakeholders united under a single banner will be tested by circumstances that pose enormous opportunities for our members, while providing challenges for the Association. The Association will face a number of issues

at a time when we will need to work aggressively with our members and partners so the brunt of the federal deficit and resulting changes in policies and resources is not borne by individuals and communities who are least able to do so.

The diversity of our community is one of our great strengths. We are the largest and strongest cadre of ambassadors for equal justice that exists in this country and we have only begun to tap our total potential. Together, I know that we can create a future that is shaped by what unifies us, not by what divides us; a future that recognizes that justice and fairness and human dignity bridge rich and poor and black and white and red and blue; a future that rests on a new spirit of national unity; a future in which the quality of justice people receive in our courtrooms and their ability to access the arenas of opportunities in our communities such as housing, education and healthcare are not determined by the amount of money they have.

Each of us has a purpose in our journey through this time called life. My purpose, my passion, my peace, is to promote justice. It is a purpose that is grounded upon a deeply held belief in each person’s right to be treated fairly and decently — to live and die with dignity. It is a passion that stays inflamed by images emblazoned in my mind of the travesties that I have seen people face in our courtrooms and in our communities because of their lack of access to resources, the color of their skin, and the language they speak. And it is a peace that comes with knowing at the end of each day’s work I have done what I can to move us closer to a just society.

I am honored to represent our membership and I am thrilled to have the privilege of building upon NLADA’s noble history as we co-labor to co-produce a justice-filled future for all in America.

Washington Watch - Civil

FY 2006 Appropriations Update; 42 General Counsel sign letter to Congress Supporting the LSC Mark

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

On Tuesday, May 24, the House Appropriations Subcommittee on Science, State, Justice, Commerce and Related Agencies held its first markup as a reconfigured entity. It allocated \$330.8 million to the Legal Services Corporation, an amount equivalent to that received last year. The appropriation is \$12 million above the president's recommendation of \$318 million and \$33 million below the Corporation's request of \$363.8 million.

The subcommittee had \$57.45 billion in discretionary spending to disburse among the agencies and programs within its jurisdiction. Competition for funds was fierce, with the administration targeting many grants for consolidation and/or reduction. The Corporation and its national partners, NLADA, ABA and the UAW, lobbied strenuously to maintain at least the current level of funding. Among the activities that produced demonstrable support for the Corporation's FY 2006 request of \$363.8 million were two letters to members of Congress. NLADA asked its Corporate Advisory Committee (CAC), chaired by Cathy Lambole, senior vice president, general counsel and corporate secretary of Shell Oil Company, to spearhead a letter in support of the Corporation to members of the House and Senate appropriations committees, along with other key Congressional players. Lambole enlisted the support of 10 of her colleagues. Armed with those signatures, we then reached out to our political coordinators in each state, asking them to recruit corporate counsel supportive of legal services at the state or local level. Forty-two counsels responded in time to send the letter to House and Senate members. The letter may be found at <http://www.nlada.org/Civil>.

At the same time, the ABA was gathering signatures from House and Senate members on a letter in support of the \$363 million. With the help of their participants in the annual ABA Day in Washington, held April 27- 28, the Association secured 153 House signatures, and 48 Senate signatures. Barbara Samson at the UAW joined forces with ABA grassroots coordinator, Julie Strandlie, on this endeavor. The letter and list of signatories may be found at <http://www.nlada.org/Civil>.

On Friday, June 16, the House adopted HR 2862, the Science, State, Justice, and Commerce 2006 Appropriations bill. The bill was largely the same as that drafted in the subcommittee, including the \$330.8 million appropriation for LSC. During the three days of floor debate on HR 2862, the House voted on a series of new amendments. One amendment introduced by Congressman Cliff Stearns (R-FL) on Tuesday, June 14, was particularly important to the legal aid community. The amendment sought to increase funding for Justice Access Grant (JAG) by reducing the LSC appropriation by \$10 million. NLADA learned of the amendment hours before it was introduced, and mobilized its political action network to contact members of the House and urge them to vote against the amendment. The network's efforts proved to be very successful and the amendment was rejected 316-112 in a recorded vote later that day.

While the House has already adopted its 2006 appropriation for LSC, the Senate will not finalize its version until late July or early August. The most recent Senate action on LSC funding occurred on Thursday, June 23 when the full Senate Appropriations Committee marked up three appropriations bills, including that sent forth by the Subcommittee on Commerce, Justice and Science. The bill funded LSC at \$324.5 million, a \$6.3 million cut from the FY 2005 funding level.

During his opening statement at the full committee mark up, Ranking Member Robert Byrd (D-WV) singled out the cut to LSC as one of most significant disappointments in the three bills under consideration. In decrying the cut of \$6.3 million to LSC, Byrd painted a picture of the cases that grantees handle, stating that, "Seventy-two percent of the clients are women who would otherwise have no legal assistance...we should not be cutting this program. This cut is a blow to the weakest in our society".

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Following the Subcommittee Chairman Richard Shelby's (R-AL) and Subcommittee Ranking Member Barbara Mikulski's (D-MD) obligatory summaries, Senator Tom Harkin (D-IA) told his colleagues "there is one arena of justice that needs to be addressed, having to do with 'access.'" In pointing out the committee's concurrence with the subcommittee action, Harkin explained that the Corporation's funding had been cut over \$9 million in the last two years. "Who is being penalized?" Harkin asked. "Over seventy-two percent of LSC clients are women; family and housing matters comprise sixty-two percent of legal aid cases. We need a minimum of \$363 million just to get LSC back to where it was two years ago, adjusted for inflation. Ten years ago we gave them \$400 million."

Harkin went on to explain that LSC's own statistics show that programs turn away 50 percent of those eligible for their services and report that an additional 20 percent receive less than full representation. He pointed out that to be eligible for legal services; the annual income for a family of four is a meager \$24,000. Turning to the dedication of the LSC grantee employees, Harkin quoted starting attorney salaries at \$36,000, average salaries at \$46,000 and top salaries at \$90,000.

"I am going to lay my cards on the table," Harkin continued. "I started out as a legal services attorney. And I tell any law students I speak to that they should go into legal services when they complete law school. It is the best training you will ever get. "He credited legal services with reducing violence and keeping people out of court. "Without legal services, people will turn to extralegal means."

Harkin ended his remarks by saying he had agreed not to offer an amendment in the full committee to increase LSC funding to \$363 million, but "we have to find some way to get the funding back up on the floor. This is a \$48 billion bill. Surely we can find \$38 million for legal services."

The Harkin amendment will be offered on the floor of the Senate during final debate on the bill, which, as stated above, will likely occur in late July or early August. Senator Harkin's decision to await floor action on the amendment appears to be based upon a determination that a floor vote presents the best chance for a successful outcome.

Washington Watch - Defender

By Ross Shepard, NLADA Director of Defender Services

The Standing Committee on Ethics and Professional Responsibility of the American Bar Association has declined to issue an ethics opinion on the questions submitted by NLADA concerning excessive public defender caseloads. In its letter of declination, the Ethics Committee cited ABA Formal Opinions 347 and 96-399, concerning the difficulties facing civil legal aid offices and lawyers when funding for those services is jeopardized.

NLADA has now partnered with another part of the ABA, the Standing Committee on Legal Aid & Indigent Defendants (SCLAID), in submitting another request for a formal ethics opinion. While emphasizing the importance and value of the services provided by legal aid attorneys, the new request points out the very real and different circumstances of the criminal practitioner, who has been appointed to represent individual clients and must seek leave of the same court that made the appointment for permission to withdraw. Portions of the most recent request follow:

“As you know, legal aid attorneys typically represent clients in civil cases in which there is no constitutional requirement to furnish counsel. Formal Opinions 347 and 96-399 give guidance to legal aid offices and lawyers concerning ethical obligations toward current and future clients with civil legal problems. When a client brings a case to a legal services attorney and resources are insufficient to handle the matter, potential clients may be turned away at the discretion of the office or individual attorney. Similarly, if adequate resources to continue legal representation become unavailable, assuming that the matter is not pending in court, the representation can be discontinued, after ensuring that prejudice to the client is minimized.

“In contrast, public defenders and other attorneys who provide representation in criminal and juvenile matters (hereafter “defenders”) are usually appointed by a court to provide representation to fulfill the guarantee of effective assistance of counsel under the Sixth Amendment as prescribed in decisions of the United States Supreme Court (i.e., *Gideon v. Wainwright*,¹ *In re Gault*,² *Argersinger v. Hamlin*,³ and *Shelton v. Alabama*.⁴) Usually these defenders cannot terminate their representation without leave of court, which typically must be addressed to the judge who signed the order appointing counsel. In addition, laws often require that defender offices provide representation in all of the cases to which they are assigned. When defenders are not court appointed, they are sometimes obligated by contract to accept all eligible cases under their contracts and thus have considerable difficulty escaping from the duty to provide representation.

“As a result of these situations, defenders frequently have excessive caseloads and are thus prevented from representing their clients competently as provided by Rule 1.1 of the Model Rules of Professional Conduct. Overriding caseloads, moreover, mean that defenders are constantly confronted with concurrent conflicts of interest in violation of Model Rule 1.7.

The report, *Gideon's Broken Promise: America's Continuing Quest for Equal Justice*, (hereafter “Report”) issued in February 2005 by ABA SCLAID, demonstrates that many defenders are providing inadequate, less than competent, and therefore unethical representation (see, e.g., Report at 14-20)...

“As a further example, just last month a newspaper in Ft. Wayne, Indiana, reported that during 2004 two defenders in the city’s municipal court had provided representation in more than 2,600 cases in which defendants were charged with misdemeanor offenses. In other words, each of the lawyers had individually undertaken to represent more than 1,300 defendants during the year, which would have required them to receive a minimum of five new cases each weekday of the year. But since this calculation does not include time for vacations or holidays, the actual number of new cases that each defender received on average per day had to be more than five. To put this in perspective, 1,300 new misdemeanor cases during a year is more than three times the recommended number of such cases that a defender should undertake...

“The excessive caseload problem is so difficult because the remedy often depends upon judges being willing to relieve defenders of their assigned cases and/or being willing to forego assigning to them new cases. Moreover, as noted earlier, defenders are sometimes constrained in what they can do about excessive caseloads due to laws or contracts...

“Accordingly, we ask that the Standing Committee on Ethics and Professional Responsibility address the following questions as they relate to indigent criminal and juvenile defender representation:

1. What is the ethical duty of a private defender attorney when, in the exercise of his or her best professional judgment, his or her caseload is so high that competent representation of current and/or future clients is rendered impossible?
2. What is the ethical duty of an attorney when, in the situation described in paragraph one, the attorney is employed in a public defender or other office charged by statute or contract with providing defense representation for the indigent?
3. What is the ethical duty of a chief public defender and/or other defender supervisor whose subordinate attorney(s) have excessive caseloads, which will interfere with providing competent representation, and a court continues to assign new cases to the office or a contract requires that new cases be accepted?

“We cannot stress enough the importance of the Standing Committee expressing its views concerning the duties of lawyers faced with excessive caseloads. Indeed, we believe it is more important now for the Standing Committee to address this issue than ever before because in many areas of the country the caseloads of defenders are larger than they have ever been.”

There is reason to hope that this joint NLADA/SCLAID request for a formal ethics opinion will be addressed and we will keep you up to date as this effort continues.

¹ 372 U.S. 335 (1963) (right to counsel applies to state felony prosecutions).

² 387 U.S. 1 (1967) (right to counsel applies to state juvenile delinquency proceedings).

³ 407 U.S. 25 (1972) (right to counsel applies to persons in state misdemeanor cases deprived of their liberty).

⁴ 535 U.S. 654 (2002) (right to counsel applies to state misdemeanor proceedings in which suspended jail sentence is imposed).

It Happens Every Spring: The ABA/NLADA Equal Justice Conference

By Robert J. Rhudy and Joe Surkiewicz

Every spring, hundreds of people from around the country come together for a few days to work on equal justice issues for low-income Americans. This year was no different. May's Equal Justice Conference, the largest conference in the U.S. that focuses on the civil legal needs of the poor, in Austin, Texas, sponsored by the American Bar Association and the National Legal Aid & Defender Association, was titled, "Celebrating the Pro Bono and Legal Services Partnership." As the conference's Web site made clear, the purpose is for "all components of the legal community to discuss equal justice issues as they relate to the delivery of legal services to the poor and low-income individuals in need of legal assistance." As in years past, "all components" were well represented in Austin, with more than 750 pro bono and legal services staff, judges, bar leaders, corporate counsel, private lawyers, court administrators, paralegals and others.

Conference History

The conference dates back to 1983, when it took shape as the American Bar Association's Annual Pro Bono Conference. It continued for 15 years with a focus on developing approaches for serving the poor through volunteer attorney programs. By 1996 the ABA Standing Committee on Pro Bono and Public Service determined a need for better collaboration with other legal services providers. The committee enlisted NLADA's help to meet their objective and in 1999, joined with NLADA as conference sponsors for all future Equal Justice Conferences. Under joint sponsorship, the conference has continued to give substantial focus to supporting pro bono service by attorneys in private firms, corporate counsel, and government offices, as well as by law students. The National Association of Pro Bono Professionals meets during the conference, with business meetings and awards for national leadership.

"This is the key gathering for enhancing and promoting the role of private attorneys in supporting the work of legal services," said Don Saunders, director of civil legal services at the NLADA in Washington, D.C. "The whole concept of the conference is partnership. What really struck me was the diversity of people there and the quality of attorneys and judges who attended. Additionally, we had chairs of Access to Justice commissions from nearly 40 states, plus chief justices, judges, and bar presidents."

Wide-Ranging Workshops

Central themes this year concerned the collaboration between pro bono and legal services, creating additional supportive partnerships, tapping all available funding and other resources for legal aid, and new issues facing clients.

Nearly 90 workshops covered a wide range of topics — pro bono participation from law students and retired attorneys, court-based self-help programs, "civil Gideon" litigation, fundraising, Web sites, media relations, hotlines, and many others. "It's so important for clients that there's tremendous cooperation between all stakeholders in the justice system," said Debbie Segal, chair of the ABA Standing Committee on Pro Bono. "Initially, there was some resistance, mostly on the pro bono side. They thought the pro bono message was diluted. This year, it seemed like we turned a corner and it clicked," continued Segal, the pro bono partner at the Atlanta firm of Kilpatrick Stockton LLP. "We had more people, a large contingent of law school people interested in opportunities for students, and many more private bar pro bono coordinators attending than ever before."

To expand the range of attorneys contributing pro bono, the conference featured a series of programs for business lawyers. "They ranged from how to start a business to the challenges of private attorneys using their business skills to represent nonprofits," Segal said. "A lot of private attorneys want to apply their skills to nonprofits, but don't feel competent representing clients in court." Segal also noted that thanks to collaborative efforts between legal services, pro bono coordinators and the private bar, private attorneys now find it easier to contribute to their communities.

Private Bar Participation Up

Private bar participation is part of an upward trend at the conference, remarked a long-time participant and attendee of the Equal Justice Conference. "Clearly, collaborations and partnerships make sense because access to justice is one piece of the entire array that comprises the justice system," noted Sharon Goldsmith, executive director of the Pro Bono Resource Center in Baltimore.

One challenge is bridging the divide between staffed legal aid providers and pro bono volunteers. "The idea is that legal services should understand the needs of the private bar and vice versa," explained Goldsmith, who attended the Austin conference. "More and more, we're seeing unique ways for private lawyers to get involved in pro bono work. In an ideal world, legal services has a strong pro bono component."

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March 27 – April 2, 2006 • Philadelphia, PA
Equal Justice Conference

For more information, visit www.nlada.org/training.

The Rapid Expansion of State Access to Justice Commissions

By Robert Echols

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Between April 2004 and May 2005, new Access to Justice commissions were created by state Supreme Court order in Arkansas, Georgia, New Mexico, Oklahoma, the District of Columbia and Massachusetts. As this article was written, proposals to create new commissions are pending before the Supreme Courts of Alabama, Mississippi and West Virginia.

I have been involved in, or at least been in a position to observe, the development of this new group of Access to Justice commissions through my work for the Access to Justice Support Project.¹ The project provides support to the state leaders involved in these efforts in a variety of ways, including the annual National Meeting of State Access to Justice Chairs, now in its fourth year, an annual report, a Web site (www.AJSupport.org, hosted jointly by NLADA and the ABA), and direct technical assistance.

Because it has happened on a state-by-state basis, the rapid expansion of this model has not received much attention at the national level. However, I believe that it represents a significant development in the history of civil legal aid in this country, potentially a turning point.

The Access to Justice Commission Model

These new commissions follow the same basic model:

- They are created by Supreme Court rule or order, in response to a petition or request by the state bar, sometimes with formal support from other key stakeholder entities as well.
- Their members are representative of the courts, the organized bar, civil legal aid providers, law schools, and other key entities, and are either appointed directly by these entities or appointed by the Supreme Court based on nominations by the other entities.
- They are conceived as having a continuing existence, as distinct from a blue-ribbon body created to issue a report and then sunset.
- They have a broad charge to engage in ongoing assessment of the civil legal needs of low-income people in the state and to develop, coordinate, and oversee initiatives to respond to those needs.

Similar commissions have been in existence in a few states for a decade or more: the Washington State Access to Justice Board, the California Access to Justice Commission, and Maine's Justice Action Group. Several others have been created in the past five years, including the Montana Equal Justice Task Force (2000), the Texas Access to Justice Commission (2001), and the Colorado Access to Justice Commission (2002). In addition, new entities created in 2004 in Vermont (Access to Justice Coalition) and New York (Equal Justice Commission) also bring together the courts, the bar, and legal aid providers in somewhat different structures.²

The most important thing about these commissions is that they provide an ongoing structure for the engagement of the very highest levels of the state courts and bar (specifically, the state Supreme Court and the governing body of the bar) in the delivery of civil legal aid. Indeed, the very process of their creation has already increased the awareness of state Supreme Courts, bar boards of governors, and other high-level state institutions of the legal needs of low-income people in the state.

This is what distinguishes these entities from the traditional bar-based legal aid or access to justice committee. Although bar committees have been (and continue to be) extremely effective in a number of states, an entity created by the state's highest court in conjunction with the state bar's governing body has a built-in credibility and visibility that a bar committee typically does not have. (It is largely for this reason that the very active and effective bar committees in Georgia and New Mexico, to name just two examples, decided to move forward with development of a state Access to Justice commission.)

In addition, this new group of state commissions, like the existing group on which they were modeled, is characterized by a level of buy-in and a sense of ownership on the part of the bar and the courts that distinguishes them from the typical "state planning body" created in the 1990s under LSC's state planning initiative. It is true that, with only one or two exceptions, the states with new or pending Access to Justice commissions are "post-reconfiguration" in that they either reconfigured their LSC-funded programs as a result of LSC's state planning initiative or at least had a significant process that considered reconfiguration. However, the recent impetus to create permanent commissions in these states came not from LSC but from leadership within the state bar and/or the state courts. In the majority of the states with new or pending commissions, the process that led to their creation was independent from the earlier reconfiguration process. Typically, the example of Access to Justice commissions in other states inspired one or more prominent bar or judicial leaders to take leadership in creating one in their state. In a few of the states, the impetus to create a commission did develop from the LSC-initiated process, after the reconfiguration phase was ended, but this phase of the process had (and required) bar and court leadership that was stronger and broader than in the reconfiguration phase.³

The Potential

I see the most significant impact of these developments in the increased engagement of state Supreme Courts. As a result of the processes leading to the creation of the new commissions, there is a growing cadre of state Supreme Court justices, including chief justices, who have developed a real understanding of the civil legal assistance delivery system and a personal stake in supporting it. This has the potential to pay off in a variety of ways. The chief justice and Supreme Court command a high level of visibility that can help raise awareness in the legal community, the legislature, and the public about civil legal needs and the legal aid delivery system. A number of chief justices have identified support for legal aid as a top priority in the round of "state of the judiciary" addresses that took place in early 2005. In September 2004, the Texas Supreme Court held a day-long hearing on access to justice that yielded widespread press coverage and statements of editorial support. In a couple of states, new funding for legal aid has been included in the chief justice's budget submission; in others, the chief justice has testified in support of new funding before the legislature.

In addition, high court involvement has a potentially significant role in addressing one of the biggest challenges facing the legal aid community, the development and expansion of state-level systemic advocacy and the capacity to represent people who cannot be represented with LSC funds. In this area, my experience is that high court judges are more likely to "get it" than legislators and even bar leaders. Those who do get it are well positioned to make the case for meeting this need.

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Other obvious areas where Supreme Court leadership can have a major impact include pro bono rules and recruitment and making the courts more responsive to the needs of low-income people, including self-represented litigants. Whatever particular efforts high court judges may undertake, the bottom line is that their involvement increases their personal and institutional stake in supporting legal aid.

By emphasizing the importance of increased high court involvement, I do not mean to downplay the importance of bar support. Access to Justice commissions increase the level of bar involvement by exposing more bar leaders to these issues, giving the issues a higher profile, increasing support and positive reinforcement for bar leaders who are involved, and creating a context in which new leadership can emerge. In several states, the process of creating an Access to Justice commission has led to the involvement of individual bar leaders who were not previously active but are now extremely effective and influential advocates for legal aid in the state. This group is also increasing the pool of effective, politically well-connected advocates for LSC funding in the Congress.

Finally, Access to Justice commissions also bring in other key institutional players — legislators, representatives of the state executive branch, and others. The potential benefit of building these relationships is clear.

Maine: One State's Example

I offer one example of what these entities can do. The Justice Action Group ("JAG") in my home state of Maine is our equivalent of an Access to Justice commission. For several years, I have been working as a volunteer with the group, having chaired a task force on resource development and following up on the implementation of its recommendations. Consequently, I know the JAG's work first-hand, from the perspective of a volunteer, not just as someone working on a national project.

The JAG is chaired by a U.S. Court of Appeals judge; the vice-chair is a state Supreme Court justice.⁴ Maine's chief justice is an active member and attends each meeting. Other members include the leadership of the bar association, bar foundation, and association of trial lawyers, the dean of the law school, board members of the state's legal aid programs (including one that provides systemic advocacy and one that provides representation for immigrants), legislators, and representatives of the administrative branch, including the governor's office. The executive directors of the legal programs and the bar foundation attend and participate.

The group includes strong, well-informed, committed leaders who have been unequivocal in articulating the responsibility of the bar and the courts for supporting civil legal aid, the importance of treating systemic advocacy and representation of unpopular clients as essential parts of the delivery system, and above all the need for increased state funding.

A resource development retreat convened by the JAG in 2003 resulted in the creation and spin-off of a combined private bar fundraising campaign that in its first year more than quadrupled the previous year's combined contributions to the programs involved, yielded one of the highest per-lawyer contribution levels in the country, and substantially increased legal aid's visibility among the bar. This spring, the second, legislative phase of the resource development campaign was launched, with the introduction of a bill to increase the current court fine surcharge benefiting legal aid, as well as a new appropriation. A legislative hearing on the bill, accompanied by a press conference, featured the chief justice, the bar and bar foundation presidents, the state's attorney general, the leaders of the Justice Action Group, and other prominent supporters from the bar and the community.

Other recent JAG initiatives have included development of a set of recommendations on improving access to the courts for people with limited English proficiency, creation of a pilot program for providing civil legal aid to prisoners, changes in ethical and procedural rules to permit the "unbundling" of legal services, and design of a training session on due process and access to justice for state administrative agency hearing officers.

Fulfilling the Potential

There are undoubtedly particular factors that have enabled Maine to move further and faster than many (though not all) other states. However, I have seen the emergence of a similarly committed group of leaders (again, including the state Supreme Court and bar leadership) in a couple of the most conservative and poorest states in the country.

I would estimate that, not counting the states with brand new or pending Access to Justice commissions, there are around ten states in the country that have a level of court and bar engagement that is equal to or approaching what I have described in Maine. These include states with existing Access to Justice commissions and some in which the courts and the bar are engaged through multiple structures or informal partnerships. In a couple of these states, the chief justice personally is the principal organizing and motivating force. Several other states are not yet there but have made significant progress in building Supreme Court and bar involvement over the last few years. There are a number of other states where achieving this level of court and bar engagement is eminently possible. (In some of these states, it has been mobilized in the past in response to a crisis, but there has been no effort to maintain it.)

With the addition of nine states with new Access to Justice commissions, we are past the tipping point, I believe. The energy associated with the creation of these new commissions is providing a boost to efforts in other states, whether for the creation of new structures or by activating potential leadership in the context of what currently exists. Through the National Meeting of State Access to Justice Chairs and other networking opportunities, state bar and judicial leaders are providing role models and motivating one another. (One hundred and eight people from 38 states and the District of Columbia attended the 2005 meeting in Austin.) The growing group of engaged chief justices is not only providing mutual support for one another's efforts, but is also having an impact on their peers. The role of the chief justice and the state Supreme Court in supporting funding for legal services and expanding pro bono is being discussed at the meetings of the Conference of Chief Justices.

The challenge now is to maintain momentum. The new crop of Access to Justice commissions is just getting going. It is important that they achieve their full potential, not just because it will improve and expand access to justice in the particular states involved, but because it will have an impact on other states and at the national level.

Achieving this potential will require active support from many of the readers of this article. The experience of the states that have high levels of court and bar engagement is that these relationships require ongoing maintenance on the part of the state's legal aid providers. In addition, to be effective, commissions must be staffed effectively. Ideally, the staffing should be provided by creation of a new (possibly part-time) position rather than adding a new responsibility to someone who is already in place. Particularly in a small state, funding a new position can be a challenge. Moreover, these are tough jobs to fill — they require credibility with a wide variety of partners, political skills, and an understanding of legal aid delivery. Nevertheless, there are some outstanding role models in the states with existing Access to Justice

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LSC Pilot Program Set to Relieve Student Loan Debt for Legal Aid Attorneys

Kelly Carmody, Carmody and Associates

Law students now graduate with an average of \$80,000 in educational debt. Combined with the low salaries paid to legal services attorneys, the situation is a crisis for scores of newer lawyers.

“Student Loan Deadline Nears.” This was a recent headline in the Arizona Republic. The story was about the interest rate hike new graduates will see on July 1 unless they consolidate their federal educational loans before then. Unfortunately, for those who have been out of school — including legal services attorneys — July 1 will mean an increase in their student commercial and possibly federal loan interest rates and their monthly payments.

The headline, “Student Loan Deadline Nears,” could just as well be about the crisis looming in legal services. Law students now graduate with an average of \$80,000 in educational debt. Combined with the low salaries paid to legal services attorneys, the situation is a crisis for scores of newer lawyers. Many legal services programs, law schools, states and funders have worked together over the last decade, along with NLADA and the ABA, to put together a patchwork of Loan Repayment Assistance Programs (LRAPs) that are helping many attorneys with large educational debt burdens be able to work in legal services programs. The patchwork, however, has holes in it. Not every law school, legal services employer, funder or state has an LRAP, and given the educational debt

burden, it takes all four types of programs to put together the resources needed to make a difference.

There is good news, however, in another recent headline, “Pilot LRAP to Address Debt Problem” (www.lsc.gov). The Legal Services Corporation (LSC), the largest funder of civil legal aid in the United States, is piloting an LRAP for attorneys who work for LSC-funded legal services organizations. The purpose of the pilot is to obtain data that can be used to evaluate the extent to which an LRAP assists LSC-funded organizations to recruit and retain attorneys with high educational debt burden.

The three-year pilot is funded with \$1 million in carryover funds from the LSC Office of the Inspector General. Earlier this year, Congress approved the reprogramming of this funding for the pilot LRAP.

LSC-funded programs will apply to participate in the pilot and LSC will select a small number of programs — the total of which will depend on the number of eligible attorneys in each participating organization. The LSC grantees will also be selected to ensure a variety of factors can be evaluated, including geographic variety, organization size, regional/statewide, rural/urban, and possibly, representation of migrant or Native American populations.

After the organizations are chosen, LSC will choose the law graduates and attorneys

who will participate in the pilot from employment applicants and the attorneys with the programs who have less than three years of experience with LSC-funded organizations.

The participants must have an annual debt service on law school loans of at least \$2,400, and commit to remain with the participating LSC-funded organization, or another LSC-funded organization. A participant will remain in the pilot for three years, even if his or her situation changes, i.e., their salary is above the eligibility limit of \$45,000 or they have more than three years experience.

The pilot, which begins October 1, will give participants a forgivable loan of up to \$5,000 per year for a total of three years. The loan will then be used by the participant to pay their law school loans. The loan from the pilot will be forgiven at the end of each 12 months of participation.

Members of LSC’s LRAP Advisory Task Force look forward to the pilot’s evaluative data that can be used to support the efforts of LSC and others around the country to work on the critical issue of recruiting and retaining legal services attorneys.

For more information about the LSC pilot, see www.lsc.gov or send an e-mail to LRAPquestions@lsc.gov.

2005 NLADA Officers

NLADA announces the selection of the following officers to its board of directors:

- Harrison McIver, chairperson, is the executive director of Memphis Area Legal Services, Inc. in Memphis, Tennessee.
- Leonard Noisette, vice chairperson, is the executive director of Neighborhood Defender Service in New York.
- Rosita Stanley, vice chairperson and chair of NLADA’s Client Policy Group, is from Macon, Georgia.
- Andy Steinberg, treasurer, is the executive director of Western Massachusetts Legal Services in Springfield, Massachusetts.

* *The term of each of these positions is one year.*

A VICTORY FOR ALL OF US ROPER V. SIMMONS continued from page 1

are realizing that the unfettered transfer of kids into the criminal justice system is simply not working. Not only are practitioners armed with anecdotal evidence, but researchers have found statistical evidence that kids who are transferred into the adult system are significantly more likely to recidivate at a faster rate and with more violent crimes than similarly situated youth who remain in the juvenile justice system. As a result, there has been and continues to be movement in the states to roll back transfer provisions and keep more youth in the juvenile justice system where they have access to education and social services and a significantly better chance at rehabilitation.

The court’s decision in *Roper v. Simmons* is a victory for kids and, if you believe Nelson Mandela that “there can be no keener revelation of a society’s soul than the way in which it treats its children,” then it is also a victory for America’s society. It is now the responsibility of advocates to keep pushing open this door so that all kids have the opportunity to grow and become contributing members of society.

Join Us for the NLADA Annual Conference Joint Track — Who Speaks for the Homeless?

Adding Legal Teeth to Plans to End Homelessness

I. Introduction

Homelessness continues to grow across the country. Between 2.5 and 3.5 million men, women, and children experience homelessness over the course of a year.¹ On any given night, more than 800,000 Americans are homeless.² According to a 2004 report, requests for emergency shelter in the 25 cities studied rose by an average of 6 percent over 2004.³ On average, 23 percent of requests for emergency shelter went unmet during the same period.⁴ Forty-six percent of the cities surveyed said that the length of time people were homeless increased in the last year.⁵

The Bush Administration has set a goal of ending “chronic” homelessness in ten years. The U.S. Interagency Council on Homelessness, created by statute to lead the federal effort to address homelessness, has focused much effort on persuading cities and states to adopt ten-year plans to end homelessness, and many such plans are being developed. While some have ambitious and comprehensive objectives, others are more limited and vague. Legal advocates can play an important role in shaping and strengthening them.

The federal government must take responsibility in any serious effort to end homelessness, and the National Law Center on Homelessness & Poverty (NLCHP) is advocating for a federal plan to end homelessness. But state and local governments also have a crucial role to play. NLCHP has developed recommendations for state and city plans that focus on legal advocacy and reform to end and prevent homelessness. They include recommendations for implementing and enforcing current laws and programs and for developing new policies. They are not exhaustive. But they are targeted, specific reforms that can be incorporated into the plans — making them more concrete and specific tools for change.

The recommendations emphasize increasing access to and availability of housing, essential to preventing homelessness and re-housing those currently homeless. Also included are specific recommendations to prevent homelessness for persons exiting correctional institu-

tions as well as persons fleeing domestic violence. Access to mainstream programs is also essential, both to prevent and end homelessness. These recommendations thus focus on access to income, food assistance, and education. Finally, preventing homeless persons living in public places from being punished for their status protects their basic rights and also can serve as a catalyst for positive local responses to homelessness as an alternative to criminalization.

II. Increase Access to Housing

A. The Human Right to Housing

International law recognizes housing as a human right. For example, under the Universal Declaration of Human Rights, which the United States adopted in 1947, everyone has the right to an adequate standard of living, including the right to adequate housing. Human rights laws can be used as an advocacy tool, a model for legislation, a community-organizing tool and, in some cases, as a supplement to domestic legal arguments in litigation. Placing homelessness in a human rights framework can help reframe the issue as one of basic social justice.⁶

Recommendations

State and local governments should recognize housing as a basic human right and their obligation to protect that right.

Models

1. In response to local advocates’ efforts, the Pennsylvania state legislature adopted resolutions in 2002 and 2003 to investigate incorporating international human rights principles into state law. The resolutions recognized that “all citizens of this Commonwealth have the right to freely determine their political status and freely pursue their economic, social and cultural rights.” A special legislative committee held hearings and, in 2004, generated a report that recommended that the state establish task forces to evaluate basic economic rights in the state, including housing.

2. In 2004, the Cook County Board passed a resolution recognizing the right to adequate housing to show support for rental subsidy legislation in the Illinois legislature.

B. Develop Anti-NIMBY Initiatives

Homeless service providers and affordable housing developers often confront community opposition. This “not-in-my-backyard” opposition can take the form of zoning laws, building codes, or permit requirements that may exclude certain types of buildings from particular areas, limit their numbers or concentration, or make it too costly to function. Such efforts may result in homeless people being unable to access jobs and other services. Cities and states must recognize that efforts to zone out poor and homeless people do not address the causes of homelessness, and make it more difficult for them to become housed on a stable basis.

Recommendations

1. Cities and states should adopt inclusionary zoning policies to ensure that shelters and transitional and affordable housing are sited in areas in which they are needed, and should not tolerate discrimination against low-income and homeless individuals.
2. Community leaders and homeless service providers must work together from the initial stages of a project so that the community can understand the needs of the homeless population, and the service providers can understand the city’s concerns.

Models

1. In 1987, Neighborhood Housing Services in Boise, Idaho, started the Homeward Bound program for homeless and at-risk families that provided comprehensive support services and scattered 31 units throughout various Boise neighborhoods. By scattering the homes throughout residential neighborhoods, residents of the program can build roots in the community and maintain school stability for their children.

- California has 107 jurisdictions with varying types of inclusionary zoning policies. About a third of the reported programs have produced 34,000 units of affordable housing.⁷

C. Encourage the Use of Surplus Property

The increased need for services and shelter for homeless Americans, along with the cuts in budgets for housing programs, make vacant federal property an important resource. In 1987, Congress enacted the surplus federal property program known as Title V of the McKinney-Vento Homeless Assistance Act.⁸ Under Title V, federal agencies are required to make vacant/surplus federal property available to serve homeless Americans.

In 1994, Congress enacted the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Act)⁹ to govern the process for redeveloping property that becomes available as a result of the base realignment and closure process (BRAC). The Department of Defense has just proposed closing 180 military installations in the 2005 round of BRAC.¹⁰ Under the Act, the state or local agency in charge of redeveloping former military base property must develop a plan that accounts for the needs of the homeless community. Local government agencies, as well as nonprofit providers, are eligible to apply for the property.

Recommendations

- State and local governments should contact the Interagency Council on Homelessness and ask to be notified if any federal property becomes available in their jurisdictions for homeless use. They should check NLCHP's Web site (www.NLCHP.org) for updates on the base closure process and Title V.
- State and local governments should enact surplus property laws to allow their surplus property to be used for homeless purposes. Cities and states also should exercise the right of eminent domain to acquire abandoned property that could be renovated and used for housing.

Models

- In 1993, the Department of Health and Human Services approved the Title V application of the City of Bangor, Maine, to use former military base housing to create a transitional community for 150 homeless individuals and families. Residents receive on-site case management services, housing subsidies, education/training, child care, transportation and counseling.
- Redmond, Washington acquired property through the Title V program and leased the housing units to local agencies to provide transitional housing, manage the properties and provide case management services. The city purchased the rest of the site to provide mixed income permanent housing.

D. Support the Development and Preservation of Affordable Housing

The National Low Income Housing Coalition has reported that there is no jurisdiction in the country in which a fulltime minimum wage worker can afford fair market rent. On average, families across the country must earn \$15.21 an hour — more than

twice the minimum wage — to afford a two-bedroom apartment at fair market rent.¹¹ The lack of affordable rental housing is a major cause of homelessness, and has prompted national housing advocates to support National Housing Trust Fund legislation. A housing trust fund approach ensures a dedicated source of funds for housing production. Under the current proposal, 75 to 85 percent of funds would be used to produce and preserve 1.5 million units of housing for extremely low-income families over the next ten years.¹² Housing trust funds are common at other levels of government across the country. More than 280 state and local housing trust funds have produced hundreds of thousands of housing units across the country.

Recommendations

Cities and states should support the National Housing Trust Fund legislation, as well as state and local legislation to increase the supply of affordable housing.

Model

Under its housing trust fund law, Ohio's housing trust fund in 2004 distributed more than \$40 million in assistance that led to the construction of 2,071 rental units and 154 homeownership units, the repair or rehabilitation of 1,760 other housing units, and homelessness prevention for 12,490 households.¹³

E. Housing for Ex-Offenders

Each year, more than 630,000 men and women return to society from federal and state prisons,¹⁴ and 7 million more re-enter from local jails.¹⁵ Estimates are that 15 to 27 percent of prisoners expect to go to homeless shelters upon release from prison.¹⁶ Tenant background checks often screen out the ex-offender. Federal law allows housing authorities to refuse to rent to ex-offenders. Individuals who leave prison without stable housing are at high risk of homelessness and recidivism. In contrast, state prison and city jail use drops significantly when people with mental illness and past criminal records are provided supportive housing.¹⁸

More programs are needed to ensure housing for ex-offenders. In addition, efforts are needed to ensure provision of the resources that are available under current law. For example, federal law allows incarcerated individuals to establish eligibility for Supplemental Security Income (SSI) benefits prior to release.¹⁹ Relatively few institutions have established pre-release eligibility procedures, which would provide people leaving prisons and jails a source of income to be used for housing and other necessities.

Recommendations

- Establish pre-release programs in state prisons and local jails that ensure that he or she has: established eligibility for public benefits, including housing, SSI and food stamps and secured identity documentation.
- Provide structured post-release housing and transitional housing, including halfway houses and group homes for recovering substance abusers, through which offenders are provided supervision and services immediately following re-entry into the community.

- Require public housing authorities to review applications for housing on an individual basis rather than exclude anyone with a criminal record. The public housing authority should consider the crime committed (whether it is sufficiently related to the safety of other tenants), the time since the offense (the authority should not consider misdemeanors more than five years old or felonies more than ten years old), and the extent to which the individual has undergone rehabilitation. An arrest, standing by itself, should not be the basis for rejecting a public housing application. Housing authorities also should consider accepting the ex-offenders on a probationary basis.

Models

- The Texas Council on Offenders with Mental Impairments and the Texas Department of Criminal Justice entered into an interagency Memorandum of Understanding with the regional office of SSA for a pre-release project. This allows Texas Council staff to submit federal benefit applications for SSI, SSDI and/or food stamps to the local Social Security Administration (SSA) office 90 days prior to a likely-eligible inmate's release from custody. Inmates typically receive their disability checks very quickly upon release.
- Ohio's pilot programs determined that an annual cost savings of \$2 million could be realized by providing 100 halfway house beds for re-entry prerelease/transitional control or for parole violators in lieu of returning to prison.¹⁹

F. Housing for Domestic Violence Survivors

Along with the affordable housing crisis and other economic factors, domestic violence is consistently named as a major cause of homelessness in many regions of the U.S.²⁰ A disproportionate number of women who seek emergency shelter do so because they are fleeing domestic violence.²¹ In addition to fleeing the abuse itself, many domestic violence survivors may become homeless after being evicted from their housing as a result of the domestic violence.²²

Recommendations

- Communities should include domestic violence shelters, service providers, advocates, and survivors in their Continuum of Care planning process.
- States should adopt fair housing law provisions that protect domestic violence survivors and ensure that they are not deprived of housing as a result of the domestic violence against them.
- Review community "one-strike" or crime-free housing policies to determine whether they contribute to homelessness, and advocate for reform if they do. Public housing owners and managers, landlords and policymakers must be educated about domestic violence to ensure that housing policies do not result in eviction of domestic violence survivors because of the domestic violence.
- Provide in-service training and ongoing updates to legal and social services providers on legal issues such as landlord-

tenant law and housing rights, domestic violence laws, consumer rights, child custody and support, bankruptcy, public benefits and employment rights.

Model

Women's rights advocates in Washington State collaborated with housing advocates to craft innovative housing legislation to expand the housing rights of domestic violence survivors. Signed into law and made effective in 2004, E.H.B. 1645 (58th Leg. Wash. 2003), prohibits discrimination in rental housing against an individual because of domestic or sexual violence committed against the individual; permits a battered tenant to terminate his or her lease early in certain circumstances to flee the violence; permits a battered tenant to raise domestic or sexual violence as a defense to an eviction proceeding in landlord-tenant court, where the violence is the reason for the eviction; and permits a battered tenant with a court protective order to request a lock change from the landlord.

III. Increase Access to Supplemental Security Income

Supplemental Security Income (SSI) benefits are a critical part of the social safety net for low-income disabled people without a significant work history. SSI can allow homeless persons to obtain housing and Medicaid health care coverage. Although almost 40 percent of the homeless population may be eligible for SSI, a 1999 study by the Interagency Council on the Homeless reported that only 11 percent of homeless persons actually receive benefits.

Allowing "presumptive eligibility" allows homeless persons to begin receiving SSI and Medicaid immediately upon application — they do not have to wait for the lengthy SSI disability determination process to be completed. SSA permits presumptive eligibility when it appears highly likely that a SSI applicant will eventually be found disabled, such as when a person suffers from a particular type of disability. This means that if presumptive eligibility is found, the claimant begins receiving SSI immediately upon application. SSA has six months to review the application and decide whether the claimant is disabled. If SSA finds the claimant disabled, the claimant continues to receive SSI. If SSA finds the claimant is not disabled, then benefits stop and the claimant is entitled to appeal that decision, but the claimant does not have to repay benefits.

Recommendations

States and localities should encourage presumptive eligibility agreements with the Social Security Administration.

Model

The SSI Outreach Project in Baltimore, Maryland, helps homeless persons with mental illness apply for SSI. In the early 1990s, the Project was funded by an SSA outreach demonstration grant under which it was authorized to make presumptive eligibility determinations. Since then, the Project has been funded by foundation and HUD funds.

The Project is unique because, before a 1994 round of grants for demonstration outreach projects for homeless people (SSA HOPE grants), it was the only instance in which an outside organization had authority to determine that clients were presumptively

eligible for SSI benefits. The Project's success rate (in properly determining eligibility) has been over 99 percent.

IV. Increase Access to Proper Nutrition

Access to proper nutrition is an important ingredient in alleviating and ending homelessness. Approximately 58 percent of homeless persons report having one or more food problems in the last 30 days.²³ Additionally, people who are homeless suffer from ill health at higher rates than people who are housed, due in part to poor nutrition.²⁴ State and local policy makers should help homeless people gain access to the food they need rather than punish them for begging for food.

Recommendations for City Approaches

1. State and local human services offices should work with local restaurants and the USDA to encourage more restaurants to accept food stamps. This approach has been tried in limited locations around the country. By offering food stamps at restaurants, meals will be more accessible to homeless persons who lack cooking facilities.
2. Human services offices should send caseworkers to homeless shelters, food pantries, domestic violence shelters, and other service sites to enroll homeless persons on public benefits.
3. Cities should implement the federal child nutrition law, which makes homeless children and youth automatically eligible for free school meals. For many students, this program is their main source of nutrition. Through effective communication between school and district nutrition personnel and homeless liaisons and shelter workers, students will receive nutritious school lunches.

Model

1. The San Francisco Department of Human Services worked with homeless advocates to get over 13 Subway restaurants to accept food stamps from homeless individuals.

V. Increase Educational Access

During a typical year, between 900,000 and 1.4 million children are homeless in the United States.²⁵ Although the McKinney-Vento Homeless Assistance Act requires school districts to ensure that homeless children attend school by, among other things, providing transportation to and from school, approximately one out of four homeless students does not attend school regularly.²⁶ Only 15 percent of homeless children have access to preschool services.²⁷ Finally, 50 percent of states report that homeless children have trouble accessing special education services.²⁸

The McKinney Act also requires state homeless education coordinators and school district homeless liaisons to collaborate with social services agencies. The legislation specifically mentions housing agencies and suggests that such partnerships should minimize educational disruption for children and youths who become homeless. An appropriate education also will reduce homelessness in the long run. Currently, homeless children and youth who graduate from high school prepared for employment and/or higher education will have a much greater chance of avoiding adult homelessness.

Recommendations

1. Cities and states should engage in extensive outreach to homeless families to ensure that homeless children are enrolled and attend school, including preschools.
2. City schools and other pre-school providers must relax wait-list requirements that have a negative impact on highly mobile students. Policies should recognize that homeless families rarely make it to the top of one waitlist before they have to move to another area and once again start at the bottom of a new waitlist. Because of their great needs and mobility rates, homeless children should be prioritized for Head Start and other preschool programs.
3. City schools should create special education policies that fit the needs of highly mobile students. For instance, they should conduct expedited evaluations of a student's need for special education services. Every effort should be made to complete such evaluations before a child moves to a new location. School districts also should provide appropriate services immediately after students begin attending a new school.
4. Cities should develop collaborations between school district homeless liaisons, housing agencies, social services agencies, shelter providers, and community advocates to provide comprehensive services for homeless children and youth.
5. Cities should develop effective school transportation plans for homeless children, exploring ways to alter bus routes more efficiently or provide shuttle, van, or taxi service. They also can work with public transit agencies to arrange for passes for homeless students and their parents.
6. Cities should provide emergency rental assistance to families with school-age children to prevent evictions. Such programs should reduce residential and school mobility, factors that reduce academic achievement.

Models

1. The Fresno Unified School District has partnered with the local housing authority to provide housing vouchers to homeless families. The housing authority provides rental vouchers, while the school district provides intensive case management and other supportive services that would not otherwise be available to families. Families who would not have been able to access supportive housing can find safe, affordable housing while keeping their children in one school.
2. The Cleveland Municipal School District has a program for homeless children and youth called Project Act. The program has a 24-hour Homeless Helpline. Project Act secures school enrollment, assignment, and transportation so that the student can attend school within 24 hours.
3. For detailed model school district policies on homeless children and youth, please contact NLCHP at Jmoses@nlchp.org.

VI. Eliminate Measures that Criminalize Homelessness

Because of inadequate shelter space in most cities, homeless persons are frequently forced to live on the streets. Cities struggle

with how to address the growing number of people living in public spaces, and often are concerned only with moving them out of certain areas. Some localities resort to measures that criminalize the public performance of life-sustaining activities, such as sleeping, sitting, or lying down.

These criminalization measures do not solve homelessness, and often exacerbate it. Restrictions on public spaces in downtown areas of cities drive homeless persons away from the areas where needed services and jobs are located. Further, when homeless persons develop criminal records after violating these laws, they face additional barriers to employment and housing.

Recommendations

1. Cities should not allow the arrest of homeless persons for performing life-sustaining activities in public if appropriate shelter beds or other housing options are unavailable. Cities should focus instead on outreach, connecting homeless people with appropriate services, and providing permanent housing.
2. Cities should develop places for homeless persons to go during the day when shelters close. For example, day centers give homeless persons a place where they can access showers, laundry facilities and food. Day centers also can connect to local service providers so that people can obtain legal, medical, job training, employment and mental healthcare services onsite.
3. Cities should work with service providers and law enforcement to develop training and protocols to govern interactions between police officers and homeless persons. Police protocols, including outreach efforts and dealing with people with mental disabilities, should ensure that police actions do not violate the civil rights of homeless persons.

Models

1. Philadelphia has worked with advocates to develop a strategy to address homelessness, which includes outreach, increased funding for housing and services, additional shelter beds, and a police protocol governing interactions with homeless people. When a person is blocking a sidewalk, the protocol requires an officer to give oral and then written warnings to relocate, followed by a call to an outreach team, if the warnings are unsuccessful. The protocol prohibits police from arresting a homeless person if no shelter space is available.

Philadelphia's approach has significantly decreased the number of homeless people on the streets of downtown. At the time this approach was proposed, approximately 800 people were living on the downtown streets, compared to 200 after the protocols were implemented.

2. Madison, Wisconsin has responded to concerns around panhandling without banning it. After gathering information from community-based organizations, businesses, and the police department, the city contracted with two social service agencies to create a downtown outreach program. The program educates community members on issues surrounding homelessness, conducts outreach to connect homeless and mental-

ly ill people to services, and reduces the disruptive behavior of some street people.

Instead of arresting or citing those asking for money on the streets, the police work with the outreach team to connect people with appropriate services. In the first three months of the program, outreach workers worked intensively with 33 individuals, with almost half of them moving into housing as a result.

3. The Downtown Washington, D.C. Business Improvement District (BID) has created a day center that can serve up to 260 people per day, with indoor seating, laundry, showers and a morning meal. The center has partnerships with local service providers who come on site to provide medical, psychiatric, legal, and employment services, as well as housing counseling, substance abuse treatment, and case management. Business owners in D.C. fund the center through a one cent tax for each square foot of property they own.

The authors include NLCHP's law and policy staff (Laurel Weir, Tulin Ozdeger, Naomi Stern, and Joy Moses), Legal Director Rebecca Troth, and Executive Director Maria Foscarinis.

¹ Martha Burt et al., *Helping America's Homeless: Emergency Shelter or Affordable Housing?* 49-50 (2001).

² *Id.*

³ U.S. Conference of Mayors, *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey* 4 (Dec. 2004).

⁴ *Id.*

⁵ *Id.*

⁶ See Maria Foscarinis, Brad Paul, Bruce Porter and Andrew Scherer, *The Human Right to Housing: Making the Case in U.S. Advocacy*, 38 *Clearinghouse Rev.* 97 (2004)

⁷ Policylink, *Expanding Housing Opportunity in Washington, D.C.* 14 (Fall 2003).

⁸ Pub. L. No. 100-77, 101 Stat. 509 (codified at 42 U.S.C. 11411).

⁹ Pub. L. No. 103-421, 108 Stat. 4346 (amending the Defense Base Closure and Realignment Act of 1990) (codified at 10 U.S.C. 2687 note).

¹⁰ See <http://www.dod.mil/brac/>.

¹¹ See the housing trust fund Web site: <http://www.nhtf.org/>

¹² N. Bernstine, I. Saraf, 12 *New Rental Production and the National Housing Trust Fund Campaign*; *Journal of Affordable Housing* 389, 393 (Summer 2003).

¹³ The 2004 Housing Trust Fund Status Report is found at: http://www.odod.state.ob.us/obfa/obtf/HTF_FY04.pdf.

¹⁴ See Department of Justice, Office of Justice Program's Web site: <http://www.ojp.usdoj.gov/reentry/learn.html>.

¹⁵ Report of the Reentry Policy Council: *Charting the Safe and Successful Return of Prisoners to the Community* (January 2005) at 4 n.2 (citing paper by Theodore Hammett).

¹⁶ Linda Ostreicher. "When Prisoners Come Home," *Gotham Gazette* (January 1, 2003) <http://www.gothamgazette.com/article/socialservices/20030117/15/187>.

¹⁷ Dennis P. Culhane, Stephen Metraux, and Trevor Hadley. *The New York, New York Agreement Cost Study: The Impact of Supportive Housing on Services Use for Homeless Mentally Ill Individuals* 4 (Corporation for Supportive Housing, May 2001).

- ¹⁸ See 42 U.S.C. 1383(m).
- ¹⁹ Anne Power, *Halfway House Utilization: The Key to Reentry, A Cost Savings Report 10* (Cincinnati, OH: Power & Associates, Feb. 25, 2003), <http://www.occaonline.org/pdf/obiocostsavings.pdf>.
- ²⁰ U.S. Conference of Mayors, *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey 72* (December 2003); *Blueprint to End Homelessness: An Initiative of the Indianapolis Housing Task Force 9*, 31 (2002).
- ²¹ Wilder Research Center, *Homeless in Minnesota 2003: Key Facts from the Survey of Minnesotans without Permanent Housing* (February 2004); Rebekah Levin et al., Center for Impact Research, *Pathways to and from Homelessness: Women and Children in Chicago Shelters* (January 2004).
- ²² U.S. Dep't of Hous. & Urban Dev. v. Rucker, Nos. 00-1771 & 00-1871 (U.S. filed 2001) (brief of *amici curiae* National Network to End Domestic Violence, *et al.*); United States *ex rel.* Alvera v. C.B.M. Group, Inc., No. CV 01-857-PA (D. Or. 2001) (consent decree); Warren v. Ypsilanti Housing Commission (E.D. Mich. filed 2002, settled 2003), at <http://www.aclumich.org/pdf/briefs/Comp8feb02.pdf>; Raney v. Crawford/Katica, Inc. (W.D. Wash. filed 2004), complaint available from Northwest Women's Law Center, <http://www.nwwlc.org>; Winsor v. Regency Property Management, Inc. (Wis. Cir. Ct. 7, 1995) (memorandum opinion, Case No. 94 CV 2349).
- ²³ Martha R. Burt et al., The Urban Institute, *Homelessness: Programs and the People they Serve: Technical Report 7-1* (Interagency Council on the Homeless, September 1999).
- ²⁴ Marsha McMurray-Avila et al., *Balancing Act: Clinical Practices that Respond to the Needs of Homeless People*, in Practical Lessons: 1998 National Symposium on Homelessness Research 8-1, 8-5 (Linda B. Fosburg & Deborah L. Dennis eds., August 1999).
- ²⁵ Burt, Martha, *What Will It Take To End Homelessness?* (The Urban Institute, 2001).
- ²⁶ U.S. Department of Education, *Education for Homeless Children and Youth Program, Report to Congress* (2000).
- ²⁷ *Id.*
- ²⁸ *Id.*

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Creating Communities of Hope and Justice

A Leadership Vision for the Public Defense Community



By Ernie Lewis, Kentucky Public Advocate

From January 31 to February 2, the Kentucky Department of Public Advocacy conducted its 2005 Defender Management Institute. Trainers from NLADA's National Defender Leadership Institute and defender leaders from NLADA's American Council of Chief Defenders joined with experienced leaders from Kentucky's public defender system as faculty members for the program. To kick off this exceptional leadership and management program, Kentucky Public Advocate Ernie Lewis outlined his vision for the future of the Kentucky Department of Public Advocacy. The following are excerpts from his remarks:

public defender system as faculty members for the program. To kick off this exceptional leadership and management program, Kentucky Public Advocate Ernie Lewis outlined his vision for the future of the Kentucky Department of Public Advocacy. The following are excerpts from his remarks:

Our Theme is Building Communities of Hope and Justice

One of the primary visions held up in the Kentucky Department of Public Advocacy (DPA) has been building an organization of professionalism and excellence where every office is a community of hope and justice. I understand that is a somewhat amorphous vision. I believe strongly in it, however, and want to take this opportunity to talk a little bit about it in order to add some meaning to this phrase.

DPA is building communities, both externally and internally. We want to represent the whole client. We want to build communities throughout the Commonwealth of Kentucky that poor people know about. We want poor people to find refuge in our offices. We want advocates of poor people to know that DPA offices are places that stand for hope and justice. We want our offices to collaborate with organizations that advocate for poor people as well as client organizations. This is the external piece to building communities. I urge you to reach out to your community-at-large and work to build coalitions with the client community.

There is also an internal component to the building of communities. Public defender work is incredibly hard work, as all of you know. Public defender offices are exposed to a lot of sadness, to a lot of heartbreak, to a lot of injustice. Our defenders get beat up in court and come back to the offices bearing many times the weight of that sadness, of long prison terms or sometimes the weight of a death sentence. We need to build communities that nurture our staff amidst this sadness. Compassion fatigue is real, and our office communities need to be places where these stories are told, where the sadness is talked about, where healing can occur. I urge you to build an office where this kind of nurturing environment is created and provides a haven for staff.

Hope

One way of looking at our times is through the lens of hopelessness. We can view our times as one of an immense widening of the gulf between rich and poor, as a time of backing off of the "great society," and as a time of the unraveling of the New Deal. Indeed, we live in a time when one in 138 of our citizens is in jail or prison, when the sum total of our criminal justice policy amounts to warehousing a huge number of our citizens.

This could breed hopelessness among us. Many of our clients are hopeless. Many of the families of our clients are hopeless. Their communities are often rundown and depressed. But amidst that hopelessness there are some signs of hope. There are clients who want to turn their lives around. Many of our clients have families who support them and are working to help their loved one build a life. There are community leaders who want to improve their communities.

It is in this context of hope that I see our public defender offices. I want those offices to be a part of the wider community of hope. I want them to be a beacon of hope in the middle of the hopelessness. I urge you to build offices where hope replaces hopelessness, where our clients and their families can come to find hope.

Justice

The criminal justice system grinds our clients down. It is a system with processes that feature efficiency over humanity. It is a system that often overcharges. It is a system with horrendously long prison sentences, where entire prisons have begun to see the need for geriatric units. It is a system that can be described as a prison-industrial complex.

I want our offices to stand for justice. I want our offices to attack those processes that feature efficiency over humanity. I want our offices to challenge unreasonable charging practices. I want our offices to represent justice in the middle of a system that often does not work. I want our entire Kentucky public defender system to stand against a tired, cynical criminal justice system.

Professionalism

For the last eight years as public advocate, I have stressed the need for heightened professionalism among all of our defender staff. I want all of our staff to be professional, both attorney and support. I want professionalism exhibited in how we dress, how the office appears and how staff treats our clients. I want our attorneys to be respected at the bar.

Here's the reason why professionalism is so important. I fundamentally believe our clients have a right to an attorney who is professional, who looks and acts like an attorney. I believe that poor clients and their families deserve to walk into an office that appears to be a professional lawyer's office. I have long wanted to end forever the misperception that many hold that a public defender is something other than a lawyer. I hate the old canard, "I don't want a public defender, I want a real lawyer." What is within our control is that we can look and behave professionally. That will go a long way toward ending that misperception.

Excellence

Equally important to professionalism is the ideal of excellence. Public defenders are often viewed as something less than real lawyers. I have found that in many instances, public defenders know more about criminal law, about appellate and trial practice, than any other lawyers at the bar. But we need to continue to hold up excellence as our benchmark. We need to hire for excellence. We need to expect excellence from our lawyers and our support staff.

Leadership and management are about clients

I want to stress that what we are about during the Defender Management Institute is not unrelated to why you became a public defender. I believe that leadership and management are about clients. The better leader you are, the

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better the clients will be represented by you and your lawyers. This is about how we treat clients, how we treat their families, how we treat the poor people in our communities. It is also about the results we get in court. You can make a real difference in the quality of services being rendered in your courtrooms by enhancing your skill as a defender leader.

I encourage you to bury the untruth that leadership and management are something less than lawyering. I urge you to reject the untruth that leadership and management do not have anything to do with quality representation. Your good leadership will have an impact on the clients your office represents. So will bad leadership.

“Justice Jeopardized”

The focus for the past 6 months has been on our excessive caseloads. This campaign, called “Justice Jeopardized” has resulted in a lot of attention in the media to the high caseloads of our public defenders. We experienced a 12 percent increase in caseloads in FY04. Our defenders open 489 cases apiece at the trial level, which is 185 percent of national standards. We could throw up our hands in despair. Or, we can learn how to be better defender leaders despite these caseloads while at the same time

work to improve our funding situation. We need leadership now more than ever. Bad leadership wastes scarce resources. And good leadership can make this campaign a successful one.

As defender leaders, we all get ground down from time to time. We get ground down by the criminal justice system, by too many cases, by too few resources. I encourage us as defender leaders to be kind to each other, to be civil to each other, as we work on our management challenges over the next few days. We are our greatest resource that we should treasure.

We are not alone

Misery loves company. One thing I want you to know is that we are not alone with our underfunded defender system, nor are we alone with our caseload problems. In many ways, we are a shining light in the South. There are huge problems in Louisiana at present. Georgia and North Carolina have just started their public defender systems. Minnesota has huge caseloads and budget reductions. Virginia also has huge caseloads as indicated by their recent assessment. Montana, Mississippi and Texas are continuing to reform their problem systems. We need to understand that we are part of a national problem, as indicated by the recent ABA Report entitled *Gideon's Broken Promise*. We all need to be sharing ways to solve these common problems.

In many ways, we are building a national community of hope and justice, led by NLADA and the American Council of Chief Defenders. We are not alone.

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The National Defender Leadership Institute is an initiative of the National Legal Aid & Defender Association

NLADA Honors Jeffrey Kindler of Pfizer with the 2005 Exemplar Award

Justice for All: Shaping the Future” was the theme of this year’s NLADA Exemplar Awards Dinner, held on Tuesday, June 7, at the Capitol Hilton in Washington, DC. Each year NLADA honors a member of the private bar and corporate community who has demonstrated outstanding leadership in promoting and supporting equal justice for all with the Exemplar Award.

Jeffrey Kindler, vice chairman and general counsel of Pfizer Inc, was awarded the 2005 Exemplar Award for his dedication in upholding the principle of Justice for All through his distinguished service to the equal justice community and his commitment to pro bono work.

“Mr. Kindler has been an integral part in shaping the future of corporate counsel’s role in the equal justice community,” said Clint Lyons, NLADA president and CEO. “Leading the Pfizer Legal Division, Kindler was the first to establish a corporate law office with a full-time pro bono staff attorney position, setting the bar nationally for the rest of corporate America. I’m delighted to honor Mr. Kindler with this prestigious award.”

Along with the chairman and CEO and fellow vice chairmen, Kindler serves on Pfizer’s four-person Executive Committee, which is the governing management team of the company. In his capacity as vice chairman, Kindler leads his colleagues in legal affairs, corporate communications, government relations, philanthropy, policy development and analysis, corporate citizenship and information resources.

He serves on the boards of the Atlantic Legal Foundation, the Brennan Center for Justice, Corporate ProBono.Org, the U.S. Chamber of Commerce Institute for Legal Reform, the Legal Aid Society, the Manhattan Theatre Club, the New York Philharmonic, Partnership for New York City and Transparency International. Kindler is also a member of the Association of General Counsel, the Civil Justice Reform Group, the Corporate Executive Board General Counsel Roundtable, the Lex Mundi Client Advisory Council, the Mentor Group, the General Counsel Committee of the National Center for State Courts and the RAND ICJ Board of Overseers.

At Pfizer, Kindler has been a strong supporter of the company’s pro bono and diversity initiatives. In March 2005, Kindler accepted two awards from The Legal Aid Society: the *Pro Bono Publico* and Public Service Corporate Award, recognizing Pfizer for creating the prototype for corporate pro bono, and the first General Counsel Leadership Award in recognition of his leadership and commitment to the provision of pro bono representation for low income New Yorkers. In November 2004, Kindler accepted the Northeast Region Employer of Choice award from the Minority Corporate Counsel Association (MCCA) in recognition of the Pfizer Legal Division’s strong commitment to diversity and to creating an inclusive workplace. In August 2003, he accepted the American Bar Association’s Pro Bono Publico Award in recognition of Pfizer’s innovative in-house pro bono program.

Kindler joined Pfizer in January 2002 from McDonald’s Corporation in Chicago, where he was president of Partner Brands. He also served as executive vice president, corporate relations, and general counsel of McDonald’s. As general counsel of McDonald’s, he established a legal pro bono program that received the Chicago Public Interest Law Initiative Trailblazer Award, the American Bar Association Litigation Section Pro Bono Award, and the Corporate Legal Times/Lexis-Nexis Distinguished Legal Services Award.

Prior to McDonald’s, Kindler served as vice president and senior counsel for litigation and legal policy for the General Electric Company. A former partner at one of Washington, DC’s, leading law firms, Williams & Connolly,



Thomas Gottschalk (L) and Jeffrey Kindler (R)

Kindler also served as a law clerk to U.S. Supreme Court Justice William J. Brennan, Jr. and to Judge David L. Bazelon of the U.S. Court of Appeals for the DC Circuit.

Jeffrey Kindler was welcomed to the stage after an inspiring introduction by Thomas Gottschalk, executive vice president, law and public policies, General Motors Corporation.

Remarks (abbreviated) by Jeffrey Kindler

“The times we live in have proven, if nothing else, the capacity of the law for change. They have also proven the power that can be unleashed when the American people step forward and say: ‘No. This is not justice. The system needs to change.’

“Tonight, as you honor Pfizer with this award, I submit that we must each continue to contribute to that tradition – using our legal training to help shape the world to be a better place not just for the privileged few, but for all Americans.

“For myself, I was taught that everyone has an obligation to give back to the community and to reach out to those less fortunate. Like everyone else who grew up in the sixties, I was profoundly affected by the civil rights movement. It opened our eyes to the critical importance, in a free society, of ‘Justice for All.’

“As Martin Luther King wrote from the Birmingham jail in 1963: ‘Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.’

“Whether in government, public interest law, private practice or a corporation, the skills, experience and, most of all, judgment that are essential qualities of a good lawyer give us a unique opportunity to provide a broad range of advice and counsel to the many leaders on whom, and the institutions on which, our society depends.

“It is up to each of us to take the lead – and we should consider it a personal privilege, not just a professional obligation.

“By broadening our sense of possibilities ... staying true to our ideals ... and recognizing our special obligation to reach out to those unable to afford legal assistance ... we can each help shape the future and insure a world where all people are valued and “Justice for All” is a reality.”

William Grimm and Brownlow Speer Recognized with 2005 Kutak-Dodds Prizes at NLADA Exemplar Awards Dinner

William Grimm and Brownlow Speer joined Jeffrey Kindler, the 2005 NLADA Exemplar Award winner, as the winners of the 2005 Kutak-Dodds Prizes at NLADA's Exemplar Awards Dinner, held on Tuesday, June 7, at the Capital Hilton in Washington, DC. "Justice for All: Shaping the Future" was the theme of this year's dinner. NLADA joins with the Robert J. Kutak Foundation to recognize the accomplishments of a civil legal aid attorney and a public defender who through the practice of law, are contributing in a significant way to the enhancement of human dignity and quality of life of those persons unable to afford legal representation.

"It is a great privilege to recognize Bill Grimm and Brownlow Speer for their outstanding dedication to the pursuit of justice for America's low-income communities," said Clint Lyons, NLADA president and CEO. "Both Grimm and Speer exemplify the very best of advocates in the equal justice community, as evidenced by Grimm's decades of commitment to improving the lives of children in states across the country and by Speer's tireless efforts on behalf of low-income clients."

William Grimm has dedicated his entire 30-year legal career to advocating for children. Since joining the National Center for Youth Law (NCYL) in 1988, Grimm has focused exclusively on improving the lives of foster children in states across the country. As a litigator, Grimm has won landmark victories on behalf of foster children in Maryland, Arkansas, Utah and Washington, and has provided invaluable support and advice to countless advocates who also work on behalf of children. In August 2004, Grimm garnered a victory on behalf of abused and neglected children in the state of Washington. He became involved in the *Braam v. DSHS* case while helping a private attorney who was representing 13 foster children harmed by repeated moves from one foster home to another. The case went to the Washington Supreme Court, which upheld a lower court decision that the state's practice of repeatedly moving foster children from place to place, causing these children severe emotional harm, was unconstitutional. As a result of Grimm's efforts and others at NCYL, as well as those of his co-counsel, the state is now required to provide foster children with stable, safe and appropriate placements; mental health screening and treatment; and placement or visitation with siblings.

Grimm actively works with child advocates in Nevada to improve conditions for foster children and has helped draft pending legislation in California aimed at improving the leadership and accountability of the state's child welfare system. His advocacy efforts and investigation of policies and practices of many child welfare systems has resulted in three major class action lawsuits in Arkansas (*Angela R. v. Clinton*), Utah (*David C. v. Leavitt*), and Washington (*Braam v. DSHS*). All three of these lawsuits resulted in sweeping reforms in their respective states.

Jo-Ann Wallace, incoming president and CEO of NLADA, thanked the Robert J. Kutak Foundation for their partnership and the opportunity to spotlight some of our community's success stories. Wallace introduced Grimm to the attendees by highlighting a success story for which Grimm was responsible.



Jo-Ann Wallace (L) and William Grimm (R)

Grimm was welcomed to the stage and had these words to say:

Remarks (abbreviated) by William Grimm

"There are almost half a million children in foster care in the United States today. Many of them leave the system ill-prepared to cope with life's challenges. More than half of foster care alumni suffer from at least one mental health problem. While a substantial number complete high school, almost a third obtain a GED and do not receive a diploma through the more traditional route of high school graduation that so many youth are celebrating this month. More than one in five experience homelessness. Within two years of leaving care, about one-fourth have contact with the criminal justice system and spend some time detained or incarcerated. These children and youth continue to need our advocacy skills while in care and as they make the transition from care.

"Twenty years ago, Congress called upon states to provide every child who was the subject of a child abuse/neglect proceeding with their own representative. It became part of the Child Abuse Prevention and Treatment Act. Yet states continue to take the federal funds while failing to fulfill the promise. Just a few months ago, a Federal District Court judge in Georgia ruled that foster children are not only entitled to counsel but that their counsel must be competent – caseloads of 300 – 500 deny children competent counsel. But the problem identified in Georgia exists in many states throughout the country today.

"While we have made progress, protected some children, many more need our help, much remains to be done . . . I ask that when you go back to work tomorrow, if each firm, each lawyer would agree to represent one child in the year to come, the [Moes and Katies] will have a better chance at life. Together, legal services and the private bar make a formidable team. Let us agree to form such a team tonight for these children."

Brownlow M. Speer has inspired generations of new lawyers to follow their hearts and their principles into defense for the indigent through his own tireless efforts as a champion of equal justice under the law.

In affirmation of Speer's remarkable career in the defense of the indigent, William J. Leahy, chief counsel of the Committee for Public Counsel Services (CPCS), notes that "in the 25 years of [Brownlow's] leadership of our vaunted statewide appellate defender unit, no incarcerated client has ever gone unvisited; no case has ever been submitted on briefs, without vigorous oral argument to the appellate tribunal; no client has ever been left to his or her pro se devices by an attorney's resort to an Anders-type brief; and no affirmative conviction by our intermediate appellate court has ever gone unchallenged by a strong application for Further Appellate Review to the Supreme Judicial Court, unless the client, after consultation, had explicitly waived his or her right to seek such relief from conviction." Additionally, Speer is credited with providing great guidance and inspiration to the construction of litigation in the *Lavallee v. Justices of the Hampden Superior Court* (July 28, 2004), whereby the challenge of inadequate hourly rates of assigned criminal defense counsel resulted in the historic decision by a unanimous court declaring that those rates violated the constitutional right of indigent defendants to the effective assistance of counsel. The decision led directly to an interim hourly increase and the creation of a Counsel Commission that is on the cusp of recommending further increases.

Following Grimm's remarks, Wallace then introduced Speer to the attendees and described the tenacity and commitment with which Speer represents his clients.



Jo-Ann Wallace (L) and Brownlow Speer (R)

Remarks (abbreviated) by Brownlow Speer

"I and my colleagues in the Appeals Unit of the Massachusetts Committee for Public Counsel Services handle the appeals from conviction of persons represented at trial by attorneys of the Committee's Public Defender Division. Virtually all of our clients are incarcerated — many for very long terms — and some for life. And we represent their absolutely last chance for freedom.

"So in many of the cases which we undertake, the stakes can be very high, and the job can be stressful. But we enjoy it, first because it is work that is intellectually very challenging, and more importantly, because it gives us an almost unique opportunity to accomplish something significant and by that I mean, to achieve the freedom of an innocent person.

"Over the last ten or fifteen years, the use of DNA analysis to identify wrongly convicted persons had made everyone aware of a sad fact ... namely that the population of convicted and imprisoned criminal defendants includes a significant number of persons who are wrongly convicted and who are innocent.

"So, the appellate public defender knows that a certain number of the clients are wrongly convicted ... but he or she doesn't know who they are. So, the only way to be assured that one is doing everything that can be done to liberate the innocent is to try one's utmost to achieve the reversal of every client's conviction. And that is the only way to do this job with integrity."

The evening concluded with the introduction of Jeffrey Kindler by Thomas Gottschalk. Kindler was recognized for his integral part in shaping the future of corporate counsel's role in the equal justice community and for setting the bar nationally for the rest of corporate America.

Since 1991, NLADA has gathered with its members and friends at this annual dinner to pay tribute to the 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. For more information about NLADA Annual Dinner, please visit our Web site at http://www.nlada.org/About/About_Annual_Dinner.

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Calculating Displacement Costs in Sentencing: A Deal Maker

Susan Wardell, MSW, JD,
Alternative Sentencing & Mitigation Institute

Last year, a case was referred to me because two other attorneys had thrown up their hands in frustration. Russell, the 31-year-old defendant, was facing a mandatory minimum of 20 years in prison as a recidivist. Although he had a non-violent criminal history, Russell had 24 prior arrests, four felony convictions and one very tough judge.

I defended Russell in two violent felony cases. The first case involved charges of kidnapping, attempted rape and assault on a police officer. The second case involved an alleged attempted hijacking of a car during which a gun was fired, hitting the driver in the shoe. In both cases, Russell was naked when arrested, a detail omitted from the hijacking case.

In interviews, Russell appeared “normal” and explained that the rape charges were made after he refused to pay a former girlfriend for sex. He said he attacked the officer when he realized the woman was claiming to have been raped. We had some good legal defenses, but the victims were sticking to their stories and denied that Russell had behaved strangely. The district attorney was adamant about prison time.

Russell and his family had recently moved to Atlanta from Ohio, hoping they would have better luck with their career performing gospel music as a family. In interviews, the family members were dignified and reserved. As Russell’s social history unfolded, I sensed mental health mitigation was available but both Russell and his mother denied any history of mental illness. Russell refused to let us order any records.

Over time, I was able to gain his trust which was predicated upon first gaining his mother’s trust. I spoke mother-to-mother about the situation until finally, in a three-way telephone call, Russell gave her permission to tell us about his three emergency psychiatric hospitalizations beginning around the time of his first arrest. Each hospitalization was preceded by an incident when Russell had been found naked, running in the street and clawing at himself.

The hospital consistently diagnosed him as a crack addict suffering from substance induced psychosis and quickly released him. Finally, during the third admission, one brave social worker made a notation that there were no withdrawal symptoms and Russell had denied using crack. The more I spoke with Russell, the more I became convinced that his behavior was driven by a fixed delusion that was triggered by sexual situations, but he still wouldn’t talk about it.

I persisted until Russell reluctantly admitted that he had incidents when he believed that rats were eating his genitals from the inside out and that rats were crawling on him. This led him to rip off his clothing, claw at his body, and run to the first person he found, yelling: “get them off me!” The hijacking case arose when Russell ran outside naked and sought help from a passing motorist. The driver believed Russell was trying to carjack him and pulled a gun. A struggle ensued and the driver was shot in his shoe. Unfortunately, there was no mention of this bizarre behavior in the police report.

Russell was deeply ashamed of the delusions and his subsequent behavior. “Imagine how it is for a respectable black man to be running naked down the street... I’d rather have the hospital think I was on drugs than crazy, so I didn’t tell them about the rats.” Russell would not speak with the jail medical staff or consider taking medication.

I got funds from the court for a psychiatric evaluation, but Russell refused to talk to the psychiatrist because “he didn’t look like a real doctor” and

With education from another social worker and myself, Russell was convinced to take medications at the jail, and became more rational.

He agreed to comply with treatment.



lacked a nametag. When he eventually agreed to see another psychiatrist, Russell was diagnosed with paranoid schizophrenia, depression, auditory hallucinations and anxiety — but he absolutely denied the delusions of rats eating his genitals.

The district attorney thought Russell was malingering and would not come off the 20-year offer. I met with Russell’s family again. This time his mortified mother admitted that several years earlier her grown son had asked her to look at his genitals to see if they were being gnawed by rats. Russell was frantic and had ripped of his clothing, but his mother was so embarrassed that she asked Russell’s stepfather to intervene. The stepfather confirmed the incident, but said: “we never spoke of it again, not even when he was hospitalized.”

With education from another social worker and myself, Russell was convinced to take medications at the jail, and became more rational. He agreed to comply with treatment.

Even with the psychiatric evidence, the district attorney and the judge were not budging from the twenty-year sentence. Still, we proceeded with plans for an alternative sentence and, out of sheer desperation, we decided to construct a “displacement study.” The process evolved from discussions of how tax dollars would be wasted on imprisoning Russell now that he accepted his mental illness. The displacement study projected the costs of imprisonment compared with the costs of community-based mental health treatment for the next eighteen years (two already served in jail). We factored in part-time work at minimum wage, payment of probation fees, living with his mother and supporting his child.

At our final case conference, with the likelihood of a non-negotiated plea imminent, we presented the judge with the displacement figures. Even though community mental health treatment is more expensive than prison, the net cost of prison over community treatment resulted in a savings of \$411,000 in tax dollars! The judge was highly skeptical but eventually relented. The district attorney was enraged when Russell was given 18 years probation.

I saw that judge at a party recently, almost a year after the non-negotiated plea. I was able to report that Russell is 100 percent compliant with the treatment plan, has had no further incidents and is working at his former job laying tiles and singing with the family gospel group. The judge was astounded and stared off into the distance for a moment before saying: “you know my reputation as a tough sentencer... you talked me into taking a chance on that guy... it was completely against my better judgment.”

But I could see that he was pleased with himself too.

structures, and the effectiveness of these staff people demonstrates that these positions are worth the investment.⁵

More support at the national level is needed. National entities should explore ways to get more resources to the states involved to assist them in fulfilling their potential. However, at the same time, national entities need to recognize that their role is limited to support. The potential strength of these state entities lies in the fact that they are homegrown, “owned” by the state leaders who brought them into existence.

Supporting these leaders and their efforts should be a top national priority. The best immediate hope for expanding civil legal assistance lies in building resources at the state level, while maintaining the current level of federal funding. By increasing court and bar engagement, Access to Justice commissions build support for legal aid and develop committed allies who can make this case for increased resources effectively at both the state and federal levels. The development of this new group of commissions, and the impact that it will have in the states involved, other states, and Congress, may represent the best hope for preserving and growing the civil legal assistance for the foreseeable future.

Robert Echols is a consultant to the legal services community and has staffed the Access to Justice Support Project (formerly SPAN) since 2001. He has been a staff attorney and managing attorney at the New Haven Legal Assistance Association, senior legislative assistant to U.S. Rep. Bruce A. Morrison, and special assistant to LSC President Alexander D. Forger.

¹ The Access to Justice Support Project is a joint project of the ABA’s Standing Committee on Legal Aid and Indigent Defendants (SCLAID) and the National Legal Aid and Defender Association (NLADA). It is the successor to SPAN, the State Planning Assistance Network.

² Several other states bring together the same group of partners in court-created entities focusing on a particular issue, notably the Indiana Pro Bono Commission. Much of what I will say about Access to Justice commissions also applies to them. Information about each state’s structure is available in the project’s report, “Access to Justice Partnerships, State by State,” (May 2005 edition), available online at www.AJSupport.org.

³ Reconfiguration is history, and I see no point to discussing the degree to which it helped or hindered the states discussed here in getting to where they are now. For a good overview of LSC’s “state planning” initiative and related initiatives over the last decade, see Don Saunders, “Building State Justice Communities: Where Do We Go From Here?,” NLADA Cornerstone, Winter 2004, also posted at www.AJSupport.org.

⁴ The Justice Action Group is unique in having members of the judiciary as both chair and vice-chair. Typically the chair is a bar leader or the group is co-chaired by a bar leader and a member of the judiciary.

⁵ The majority of people who support Access to Justice commissions and similar entities work in the state bar. In several states, legal aid programs make a contribution to the position. Other sources of funding include IOLTA and foundation grants.

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Comments, suggestions and inquiries are welcome.

Be a Voice in Your Association's Leadership

NLADA is currently preparing for its annual elections to the Board and Policy Groups for 2005.

IMPORTANT ELECTION DEADLINES

**Distribution of Ballots:
August 7**

**Votes:
September 16**

**For more information about NLADA, visit
www.nlada.org.**



NLADA Annual Conference 2005

Defining the Future: The Fundamental Value of Justice for All

Join us November 16 – 19 in Orlando, Florida

NLADA's Annual Conference is the leading national training event of the year for the civil legal aid, indigent defense and public interest law communities. The conference offers advocates the latest knowledge and professional skills to enable them to creatively and effectively meet the legal needs of low-income people, and provides opportunities to meet and exchange ideas with colleagues from across the country while fulfilling continuing legal education requirements. This year's conference theme is:

Defining the Future: The Fundamental Value of Justice for All

Justice for all is a fundamental value and cornerstone of a vital democracy. America's promise of equal justice regardless of race, gender, nationality or income serves as a beacon that inspires people at home and abroad. Access to legal representation is essential to justice in our courtrooms and in our communities. However, diminishing resources, shifting priorities and a shrinking domestic budget too often mean that America's low-income population is increasingly marginalized.

Access to justice is squeezed in ways that threaten the fundamental value of justice for all. As a result, those living in poverty, including 13 million children and the 45 million Americans without health insurance, are slipping further behind in the struggle to survive. Homelessness is on the rise as affordable housing disappears. Additionally, those who are committed to representing people without the means to hire a lawyer face excessive case-loads and a lack of resources.

Your participation is vital in developing the will and capacity in America to make sure that justice for all remains a fundamental value and cornerstone of democracy.

Civil Track - Ensuring Social Justice: The Role of State Justice Communities

States across the nation are striving to develop state-based systems of justice designed to meet the challenges of delivering legal services in today's volatile environment. This effort endeavors to both define a new vision of a delivery system and enlist the support of a broad array of stakeholders, supporters and community organizations. In many states, the shift to a state-based focus has evolved from a process primarily driven by the Legal Services Corporation that channeled much of the energy in many states into reconfigurations and mergers of existing grantees.

Civil legal aid advocates are significant players in many communities. Locally we work with school boards, welfare offices, local government officials, private attorneys and community organizations. At the state level, we partner in state justice communities with courts and the private bar. Regionally, we work together with other advocates to train new leaders and build increased capacity to serve our clients. Nationally, we interact with a wide range of issue advocacy organizations, private and government funders, political representatives, business leaders and academics on issues of concern to poor and marginalized people in this country.

How will we define ourselves and our role in the next half of this decade? What are our priorities and the next steps that will get us there?

The Civil Track at this year's Annual Conference will explore how the civil legal aid community can take the next steps toward fulfilling a broader role for state-based justice communities in the larger social justice context. The following are proposed topics:

- Strengthening connections with the client community
- Engaging broad stakeholder support and involvement
- Maximizing resources
- Developing standards and enhancing quality outcomes for clients
- Fashioning a national infrastructure to support state-based systems
- Inspiring, communicating and advancing the vision
- Examining statewide models for improving outcomes

- Funding and delivering the widest possible range of legal representation and advocacy
- Identifying, educating and supporting the next generation of leaders
- Identifying substantive issues and strategies that best address client needs

Defender Track – Systemic Defense Issues: Strategies for Change

Participants will explore the various systemic issues which plague indigent defense systems across the country, and which affect the quality of representation defenders are able to provide to their clients. Participants will explore creative new ideas for addressing systemic issues, share information regarding local and community initiatives and help shape NLADA's action agenda as we seek to identify effective strategies for change to address these issues. The following are proposed topics:

- Excessive caseloads of fulltime and part-time defenders
- Video courts and attorney-client videoconferencing
- Jail overcrowding
- *Shelton v. Alabama* and no counsel courts
- Holistic defender advocacy
- Immigration advocacy
- Policy: hiring, discipline and diversity

Joint Track – Who Speaks for the Homeless?

The civil legal aid and indigent defense communities will join together to explore issues related to homelessness in an effort to bridge the work of legal advocates, community activists, scholars and policy analysts to understand and address the intersections of law and homelessness in America. The following are proposed topics:

- Mental health and homelessness
- Sentencing alternatives & diversion courts for homeless clients
- City ordinances & legislative policies that criminalize homelessness
- Temporary and permanent housing for the homeless
- Educating homeless juveniles
- Successful models for addressing homelessness as part of legal advocacy
- Historic perspectives on homelessness

Board Track – Boards That Deliver and Make a Difference

Some measure a board's effectiveness by their processes and structures. Others note the significance of the process and structures, but measure good governance by the value the board adds to

the organization. Ram Charan, author of *Boards that Deliver*, believes it is crucial for boards to become "progressive." He defines a progressive board as one that complies with the letter of the law and embraces its spirit, has a constructive and collaborative relationship with the executive director, confronts hard issues and takes self-evaluation seriously. Boards that Deliver and Make a Difference use their governance role to add long-term value to the organization.

This track is an opportunity for board members to learn and share best practices to help build effective and strong programs. The following are proposed topics:

- Building positive board (group) dynamics
- The relationship between the board and the executive director
- Executive director selection and succession planning
- The board's role in the development of a diversity plan
- Supporting and monitoring the financial health of the organization

Client Track – Community Based Justice: Partnerships, Collaborations & Leadership

Client centered, community based advocacy is critical to the effective delivery of indigent defense services and civil legal assistance. Program priorities, operations and service delivery should be based on meeting clients' needs — as defined by the individual client and client community. The leadership development of clients, client board members and community activists is an essential component of community-based justice. Meaningful collaborations and partnerships are essential to the development of legal service and defender services grounded in the communities served. These partnerships require program aid, advocates, boards of directors and clients to view the client community as full and equal partners in achieving equal justice for all. The following are proposed topics:

- Effective collaborations: How to create and manage collaboration
- How to balance power relationships in collaborations
- Identifying, educating and supporting client leaders
- Client and community centered faith based initiatives
- Mental health and defender services/legal assistance
- The educational impact of re-segregation on low-income communities

For more information on the NLADA 2005 Annual Conference, please visit www.nlada.org/training.



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NOMINATE YOUR HEROES FOR AN NLADA ANNUAL CONFERENCE AWARD

Each year the National Legal Aid & Defender Association (NLADA) brings together civil legal aid, public defense, public interest leaders, clients and advocates from across the country to honor their own. The NLADA Annual Conference Awards honor distinguished men and women for outstanding contributions to the delivery of civil legal aid and public defense representation. We invite you to nominate your exceptional colleagues for an Annual Conference Award.

Reginald Heber Smith Award recognizes the dedicated services and outstanding achievements of a civil legal aid attorney or an indigent defense attorney while employed by an organization supporting such services. The “Reggie” is named for a former counsel at the Boston Legal Aid Society and the author of “Justice and the Poor,” published by the Carnegie Foundation in 1919.

Charles Dorsey Award recognizes an individual who has provided extraordinary and dedicated service to the equal justice community and to organizations that promote expanding and improving access to justice for low-income people. The award celebrates the accomplishments of the longtime executive director of the Legal Aid Bureau of Maryland, whose many national leadership roles included service as chair of the Project Advisory Group and as a member of the ABA Standing Committee on Legal Aid and Indigent Defendants.

Clara Shortridge Foltz Award commends a public defender program or public defense delivery system for outstanding achievement in the provision of services to indigent defendants. The award, co-sponsored by NLADA and the American Bar Association’s Standing Committee on Legal Aid & Indigent Defendants, is named for the founder of the nation’s public defender system.

Mary Ellen Hamilton Award honors a legal services client or low-income community leader who, on a compensated or volunteer basis, has provided extraordinary service or support to the delivery of legal assistance to low-income people. The award commemorates one of the founders of the National Clients Council and the Alliance for Legal Rights, who served on NLADA’s board of directors and remained an active Alliance member until her death in 1985.

The deadline for submitting nominations is July 29. Please mail submissions to:

NLADA Annual Conference, Award Nominations • 1140 Connecticut Avenue, NW, Suite 900 • Washington, DC 20036

For more information, visit the NLADA Web site at www.nlada.org/training.