

# CORNERSTONE

## JUSTICE ON HOLD:



# KATRINA

**N**ine months after Hurricane Katrina flooded hundreds of thousands of people out of their homes, the criminal justice system is in pieces and civil legal issues are mounting for those least able to deal with them.

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# Justice on Hold: Reawakening to the Challenges of Katrina

By Don Saunders, director of NLADA Civil Legal Services

It has been more than nine months since Hurricane Katrina ravaged the Gulf Coast. The storm explosively mixed the great divide of race and poverty in this country with an incredible lack of capacity, coordination and will among responsible public officials to address the unprecedented problems of loss and displacement faced by so many thousands of poor families across the region.

Given the dimensions of the problem, including the greatest displacement of people in this country since the Civil War, one held out hope that Katrina provided not only equal justice advocates, but all Americans, with an opportunity to reflect on how we come to grips with the stigma of racism and an ever-deepening disparity of wealth in our society.

Yet, in this instant gratification age, the nation seemingly turned its attention to other events with breathtaking speed. The shift of focus away from the Gulf occurred even as hundreds of thousands of evacuees remain without a clue as to what the future holds for them and their families. Many devastated communities stand untouched since September and thousands of people yet today find their lives in utter disarray. While this article focuses on the need for civil legal assistance, Heather Hall's accompanying article well describes an indigent defense system bordering on a state of anarchy.

While large-scale issues of reconstruction and economic revitalization of the region continue at a snail's pace, thousands of low-income families continue to suffer on a daily basis conditions that are inexcusable in a society with the resources we enjoy. While many among us may have become desensitized to the continuing pictures of devastation in the Gulf, we as equal justice advocates cannot afford to be gripped by what some are calling "Katrina fatigue".

Our community responded heroically in Katrina's aftermath. As previously documented in these pages, legal aid advocates and private attorneys in Louisiana, Mississippi and Alabama immediately returned to serving their communities even as their own lives were in total disarray. Laura Tuggle's accompanying article in this issue gives testimony to this personal commitment. Advocates in Texas not only stepped up to serve the huge number of Katrina evacuees in their state, but also soon thereafter had to deal with the ravages of Rita. Many advocates contributed to NLADA's "Helping Hands Fund" to help colleagues who suffered per-

sonal loss. Thousands of individual lawyers and legal aid advocates gave money and volunteered their services in the immediate wake of the storm.

The only problem was that, as is usually the case in major disasters, many of our clients were not thinking about their legal problems during that initial period of intense volunteer commitment. They were understandably focused on getting their personal lives together, finding a place to stay, getting their kids in school. Many who volunteered their time to the relief effort became frustrated when they were not immediately asked to help.

Now, thousands of dispossessed poor people face desperate situations that require legal assistance if they are going to have any chance to lead normal lives. Thousands of people are still living in tents or their automobiles across the Gulf. The infamous FEMA trailer cities are rife with problems and their residents still have no idea about prospects for permanent housing. In Memphis alone, a city with a tremendous number of evacuees, 30,000 people may face problems in transitioning from the FEMA Section 403 emergency housing program to the Section 408 more permanent housing program by the end of May. Providers are seeing enormous family law and domestic violence cases as a result of the upheavals caused by the storm.

Many African-American landowners on the Gulf Coast are experiencing problems qualifying for FEMA and other assistance due to their property title problems. Predatory contractors have descended en masse to prey upon a captive and desperate population. Immigrants being subjected to significant employment abuses are performing much of the recovery work. The need for bankruptcy relief is growing at a rapid rate. The number of insurance claims and challenges are growing as well.

The state of Mississippi sought a waiver of the low income set aside requirements of the Community Development Block Grant for rebuilding in Mississippi and many of the policy initiatives put forward to date seem directed more toward the needs of casino owners than poor people losing their homes or jobs. The Greater New Orleans Fair Housing Action Center challenged the Louisiana Recovery Authority's entire plan for addressing the enormous housing shortages as completely lacking fair housing as a goal and as completely insufficient to meet the needs of the thousands of minority and disabled renters in need of housing assistance.

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**"Now, thousands of dispossessed poor people face desperate situations that require legal assistance if they are going to have any chance to lead normal lives."**

Cover photo courtesy of New Orleans Legal Assistance, Southeast Legal Services

Cover: The devastated ruins of a New Orleans street following Hurricane Katrina.

# President's Budget Proposes Across the Board Cuts, No Increases for Legal Services Corporation

By Julie Clark, NLADA vice president of Strategic Alliances & Government Relations

The President's FY 2007 budget, proposed Monday, February 6, sets the Legal Services Corporation's (LSC) funding at \$310,860,000, which represents a 4.9 percent reduction from the current appropriation of \$326,577,984. Please refer to the chart below for an itemized comparison of the President's FY 2007 LSC budget, LSC's FY 2007 budget request and the FY 2006 LSC appropriation. The LSC cut is in line with the reduction to all non-security discretionary funding in the \$2.7 trillion proposed budget, which simultaneously boosts spending for homeland security, defense and the wars in Iraq and Afghanistan. The budget calls for the elimination or reduction of 141 domestic programs for a savings of nearly \$15 billion and a \$65 billion cut to entitlement programs, including a \$36 billion medicare reduction during the next five years. However, the President's request increases the homeland security budget by 3 percent to \$33.1 billion and raises the defense budget 7 percent to \$439.3 billion – not including the previous \$50 billion request for war spending. The President's budget proposal comes just a week after the House voted 216-214 in favor of a \$39 billion savings package that cuts funding for medicare and other entitlement programs. The bill (S 1932) was the first since 1997 to reduce mandatory spending programs that otherwise run automatically. The close vote count illustrates the difficulty in passing program cuts, especially in an election year.

## VAWA Reauthorization

On January 5, the President signed into law H.R. 3402, the "Violence Against Women and Department of Justice Reauthorization Act of 2005," which reautho-

rizes the Violence Against Women Act for FYs 2007-2011 and authorizes appropriations for the Department of Justice for FYs 2006-2009.

This law contains a provision greatly expanding the reach of the Kennedy Amendment to the LSC appropriations act by allowing LSC recipients to use both LSC and non-LSC funds to provide legal assistance to all victims of domestic violence, sexual assault and trafficking regardless of their immigration status.

Additionally, LSC-funded programs can now offer the same assistance to victims of other criminal activity listed in section 101(a)(15) of the Immigration and Nationality Act.

## Senate Confirms Singleton to LSC

On Monday, March 13, the full Senate confirmed the nomination of Sarah M. Singleton to be a director of the LSC board. Singleton replaces long-time board member Ernestine Watlington, who passed away on April 13 and was the last member of the Clinton-appointed board to be replaced. Singleton is a resident of Santa Fe, New Mexico, where she is a shareholder in the law firm of Montgomery & Andrews, P.A.

## White House Nominates Chiles to LSC

On Monday, March 13, the White House nominated Jonann E. Chiles of Little Rock, Arkansas to be a member of the LSC board. Chiles replaces board member Robert Dieter who became ambassador to Belize. Her term will expire on June 16, 2008. Chiles is a partner in the law firm of Friday Eldridge and Clark and a former Arkansas assistant attorney general and chief legal counsel to the state's department of human services.

## Wallace Chosen for Appeals Court

On Wednesday, February 8, President Bush nominated Jackson, Mississippi attorney Michael B. Wallace to fill a seat on the 5th U.S. Circuit Court of Appeals. Wallace was appointed by President Reagan as director of LSC in 1984 and served as LSC chair from 1989 to 1990. He was a clerk for U.S. Supreme Court Justice William H. Rehnquist from 1977 to 1978, before working as chief counsel to then-Representative Trent Lott (R-Miss.) in the early 1980s. Senator Lott later hired Wallace to help him with the impeachment of former President Bill Clinton.

Wallace's nomination has drawn fire from advocates who view him as hostile to civil rights. Wallace would fill the seat vacated by former Judge Charles Pickering a little more than a year ago. Pickering's nomination was blocked by Senate Democrats, who accused the Mississippi judge of being too conservative. Because Pickering could not get confirmed, Bush gave him a one-year recess appointment to the bench. ★

Line Item	FY 2006 Appropriation	FY 2007 President's Request	FY 2007 LSC Request
Basic Field	\$308,385,346	\$288,585,000	\$386,800,000
Census Adjustment	\$1,785,896	\$1,980,000	\$0
Technology Initiative Grant*	\$1,238,971	\$2,970,000	\$5,000,000
Loan Repayment Assistance Program	\$0	\$0	\$1,000,000
Management and Administration	\$12,661,199	\$14,355,000	\$14,500,000
Disaster Relief Fund	\$0	\$0	\$1,000,000
Office of Inspector General	\$2,506,572	\$2,970,000	\$3,500,000
<b>TOTAL</b>	<b>\$326,577,984</b>	<b>\$310,860,000</b>	<b>\$411,800,000</b>

\*listed in the President's FY 2007 budget request as "client self-help and information technology"

# NLADA Welcomes Richard Goemann, Incoming Director of Defender Legal Services

By Catherine Beane, director of the NLADA National Defender Leadership Institute

NLADA is pleased to welcome Richard Goemann as the new director of Defender Legal Services, effective May 1, 2006. Goemann is a career public defender, most recently serving as a trial attorney for the federal public defender's office in Richmond, Virginia. His extensive public defense experience includes service as the executive director of the Virginia Indigent Defense Commission; the public defender for the city and county of Fairfax, Virginia; an assistant and senior assistant public defender for the city of Alexandria, Virginia; and as a staff attorney for the Criminal Division of the Washington, DC Law Students in the Court Program.

Goemann is already an active part of the NLADA community. He has been a member of the American Council of Chief Defenders and previously served on NLADA's Defender Policy Group. Goemann has also served as a faculty member for National Defender Leadership Institute training events.

Goemann brings a wealth of experience representing clients, administering a defender office, leading a statewide defender agency and fighting for improvements in a public defense delivery system. We hope that all will share the staff's excitement and enthusiasm and join us in welcoming Richard Goemann to NLADA!

## ACCD Gathers in DC

The American Council of Chief Defenders (ACCD) gathered in Washington, DC, April 2 - 5, 2006, to focus on "Expanding Our Strategic Alliances." Highlights of the meeting included strategy sessions on how defenders and the ACCD can develop strategic alliances; meetings with representatives of the American Bar Association Criminal Justice Section, the Bureau of Justice Assistance, the Council of State Governments, the National Association of Attorneys General and the National District Attorneys Association to explore potential defender partnerships; and lobbying senators and representatives on the Prosecutors and Defenders Incentive Act. The newly reconstituted ACCD committees also met to discuss implementation

of the ACCD strategic plan.

The ACCD will meet again August 24 - 26 at the Red Rock Resort in Las Vegas, Nevada. In addition to networking with other chiefs and participating in the business and committee meetings of the ACCD, the summer meeting will provide an opportunity for chief and deputy chief defenders to participate in advanced leadership and management training sessions. The ACCD's summer meeting will overlap with the National Defender Leadership Institute's "New Leadership" conference, creating an opportunity for new and experienced defender leaders to learn from each other and to discuss issues of importance to the defender community. Details about these two exciting conferences are available online at [www.nlada.org](http://www.nlada.org).

## Student Loan Forgiveness

Related versions of the Prosecutors and Defenders Incentive Act were introduced in both the House (HR 198) by Representative David Scott, (D-GA) and Senate (S 2039) by Senator Richard Durbin (D-IL), in 2005. As detailed more fully in previous Washington Watch — Defender columns, these bills create student loan forgiveness incentives for prosecutors and defenders who provide public services in the criminal justice system.

At the time this column is being written, both S 2039 and HR 198 are pending in committee. In March 2006, an effort was made to attach an amendment to the College Access and Opportunity Act of 2006 to make some public defenders eligible for limited loan forgiveness. These amendments varied significantly in terms of restrictions and eligibility: the Porter-Andrews-Renzie Amendment (#79) was more restrictive and less generous than the Scott-Drake-Weiner Amendment (#69), which NLADA endorsed. Ultimately, efforts to attach these amendments were unsuccessful. However, student loan forgiveness for public defenders remains a legislative priority and NLADA continues to work with allies at the American Bar Association, the National District Attorneys Association and in Congress to expand support for HR 198 and S 2039. ★

*"Richard brings a wealth of experience representing clients, administering a defender office, leading a statewide defender agency and fighting for improvements in a public defense delivery system."*

# ABA President Encourages Greater Pro Bono Participation from Attorneys

By Jeff Billington, NLADA deputy director of communications

Attorneys and judges play a vital role in this country and have a responsibility to help their fellow citizens, American Bar Association (ABA) President Michael Greco told attendees at the 2006 Equal Justice Conference in Philadelphia.

One of the greatest tragedies currently facing this country is the disenfranchisement of those most in need of the services attorneys can provide, he said.

"In our struggle to achieve equal justice for all, we face many challenges old and new," Greco said.

The most daunting is the lack of federal funding for legal aid.

"Our abilities are being hamstrung by inadequate funding for the Legal Services Corporation (LSC). We must not only prevent the [proposed LSC budget] cut, we must increase that funding. We all recognize the pressures on the federal budget, but turning away more than half of all low-income Americans who go to LSC-funded programs because of a lack of resources is inexcusable."

The devastation caused by Hurricane Katrina and the disproportionate way it impacted the poor has created even more challenges for the legal aid community, Greco said.

"It is precipitating the greatest legal needs crisis in the history of America," he said, adding the help of law schools and firms and organizations like the National Legal Aid & Defender Association (NLADA), Equal Justice Works, Pro Bono Net, LSC and many others will be needed to work together to help these people.

As people return to the Gulf Coast to rebuild their lives, they are



Photo by Jane Ribadeneyra

ABA President Michael Greco addresses the 2006 Equal Justice Conference.

desperately in need of the services the legal aid community provides, Greco said.

Currently ABA is partnering with organizations like NLADA and LSC to help find a solution for the legal needs of these people. There is also work being done with state governments to allow people who are not normally allowed to practice law in those states to have temporary waivers, he said.

"They are allowing out of state volunteers to provide desperately needed pro bono work," he said.

The ABA is currently working to encourage more pro bono work among attorneys through a couple of different methods, Greco said.

There are hundreds of thousands of lawyers across this country who want to help, but don't know how to be active in pro bono, he said. One of the ways to do this is through ABA's best practices resource guide to pro bono, which will help lawyers free up their time so they can take on pro bono projects. Currently this program has more than 160 firms and organizations participating.

"I hope we get 300 or 400 programs," Greco said.

Another way to improve the access to legal representation for disenfranchised groups is through a civil right to counsel movement, Greco said.

"I'm looking to get the ABA House of Delegates to adopt a resolution on this in August," he said. "Every person in America has the same right to protection of the family unit, a roof over their head and their health. How can we look at ourselves in the mirror knowing there are 50 million Americans who don't have their legal needs met and can't look themselves in the face."

The Sixth Amendment to the Constitution means much more than just the assistance of counsel when someone accused of a crime, Greco said.

"We have not yet come to the realization that imprisonment is not just behind bars but can be in poverty and discrimination," he said. "We cannot at this moment talk about a lawyer at public expense in all legal matters, but in matters where housing, health and family is in danger, we must provide public assistance."

People should not have to face the denial of their rights without qualified counsel, Greco said.

"We have to work to ensure that everyone in our nation, the world's most bountiful nation of hope, has an advocate at his or her side," he said, adding this will not happen on its own.

"The lawyers who have been responsible for the monumental change in America did not assume that someone else would advance justice," Greco said. "America's lawyers must again answer the call to make sure the eloquent promise of equal justice for all in America is finally realized." ★

# Dwindling Funding Remains Key Legal Aid Concern



By Jeff Billington, NLADA deputy director of communications

As the divide between rich and poor continues to grow, expanding the number of people who rely on legal aid for fair legal representation, the funding for these vital programs continues to be slashed.

“LSC [Legal Services Corporation] -funded programs are now turning away one million people a year,” said Helaine Barnett, LSC president.

Out of the two million people who qualify for and seek legal aid services from these programs, half are rejected simply because the funding does not exist to serve them, she said.

The outlook for increased federal government support does not look good, Barnett said.

“For the third year in a row Congress has provided level funding,” she said, adding the budget was then cut by \$5 million.

A new report by LSC, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, may help to impress the urgency of increased funding to Congress, Barnett said.

“The report was based on actual LSC clients that

came to offices and had to be turned away, due to lack of funding,” she said.

The report concludes that at least 80 percent of the civil legal needs of low-income Americans are not being met, including those that are turned away because the funding to help them does not exist. This figure does not count those who don’t even apply for assistance because they don’t know it exists.

Since the report was conducted before hurricanes Katrina and Rita struck, the numbers of those not being served has probably greatly increased, she said.

“We are hopeful that Congress will agree that meeting less than half the need is unacceptable,” Barnett said.

William Whitehurst with the American Bar Association (ABA) Standing Committee on Legal Aid & Indigent Defendants said the report reaffirms studies the ABA has conducted in the past concerning the number of people who are denied legal aid services.

To adequately serve this community approximately \$1.6 billion is needed. And while LSC did not request anywhere near that amount, they are still not getting the money they asked to receive, he said.

The ABA will be pressing Congress to increase funding for LSC during its annual lobby day, he said.

“For years the number one priority in Congress for ABA has been funding for the Legal Services Corporation,” Whitehurst said. “Two-hundred-fifty bar leaders will descend on Washington and urge them to support legal services.”

With all of the cuts that LSC has faced, this is an urgent year to lobby congress for funding increases, he said.

One major hurdle in getting increased funding will come from membership changes in the U.S. House of Representatives’ subcommittee, said Julie Clark, vice president of Strategic Alliances & Government Relations at the National Legal Aid & Defender Association.

“We have some serious competition for the money in the subcommittee,” she said, explaining that some of the members may have pet projects they would rather funnel it to.

The groundwork for the fight is already being laid, Clark said.

“We’ve met on the hill with the principle staff persons who will be working with the subcommittee,” she said. ★

“For years the number one priority in Congress for ABA has been funding for the Legal Services Corporation. Two-hundred-fifty bar leaders will descend on Washington and urge them to support legal services.”

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# Sanchez-Llamas v. Oregon & Georgia v. Randolph

By Marshall J. Hartman and Laurence A. Benner

Reflecting the increased relevance of international law to criminal defense, the Supreme Court in *Sanchez-Llamas v. Oregon* will determine whether a violation of treaty obligations under the Vienna Convention should result in the exclusion of a confession in a state prosecution. In a companion case, *Bustillo v. Johnson* will decide whether state courts, contrary to the International Court of Justice's interpretation of the Vienna Convention, may refuse to recognize treaty violations based upon a procedural default barring review under state law.

In a rare, although limited, victory for the Fourth Amendment, *Georgia v. Randolph* marks the first defeat for Chief Justice Roberts. In *Randolph* a bickering and fragmented Supreme Court held (five to three) that a consent search of a home, based upon the permission of one spouse, was an unreasonable search as to the other spouse who was physically present and objecting. Unfortunately, Justice Breyer's tragically confused concurring opinion, coupled with the Chief Justice's dissent, reveals not only the theoretical bankruptcy of the third-party consent doctrine, but also signals *Randolph* will not be applied as a bright-line rule. As a side show, Justices Stevens and Scalia traded salvos in separate opinions concerning the utility of "originalism." These and the rest of this term's decisions will be discussed in detail in our annual Supreme Court Review at the NLADA Annual Conference in Charlotte, NC, November 8-11.

## Sanchez-Llamas v. Oregon (Vienna Convention)

On December 18, 1999, Moises Sanchez-Llamas, a Mexican national, shot and wounded an Oregon policeman. He was arrested, questioned and made incriminating statements to the police. The State of Oregon sought to introduce his incriminating statements at trial, and he moved to suppress them on the grounds he was never notified he could call the Mexican consulate for assistance pursuant to the provisions of Article 36 of the 1963 Vienna Convention on Consular Relations. That treaty, which was signed and ratified by the United States and 167 other nations, requires the authorities in a receiving state to notify a defendant charged with a crime that they will inform his consulate of his detention at his request and insure his communication with the consulate.

The trial judge denied the motion to suppress and the Oregon Supreme Court affirmed, holding that a violation of the Vienna Convention did not require suppression of the confession. The Oregon Supreme Court's decision was not surprising in light of *Breard v. Greene*, 523 U.S. 371(1998). In that case, the U.S. Supreme Court declined to intervene in the case of a Paraguayan citizen who was scheduled for execution

by the State of Virginia, even though he had never been informed of his rights under the Vienna Convention.

In a similar case, the U.S. Supreme Court declined to intervene on behalf of two German nationals, Walter and Karl LaGrand, who were sentenced to death in Arizona even though Arizona authorities did not notify the German consulate of their detention and convictions for murder. Significantly, the Supreme Court declined to intervene even though Germany had brought the matter to the International Court of Justice (ICJ) and obtained an order requesting that the United States not carry out the death sentence until the ICJ reviewed the case and issued a decision on the merits. The ICJ order was ignored by the Governor of Arizona, who promptly ordered the execution.

However, there have been further developments in this area since the *Breard* and *LaGrand* cases. In 2003, the Mexican Government petitioned the ICJ to block the execution of 51 Mexican nationals on death row in the United States and grant them new trials because these defendants had not been informed of their rights under the Vienna Convention. The Court found that the United States had breached its obligations to these defendants and violated Article 36 of the Vienna Convention. (*Avena and other Mexican Nationals*, ICJ, 31 March 2004). Thereafter, on February 28, 2005, President Bush sent a memo to the Attorney General of the United

States in which he stated:

I have determined, pursuant to the authority vested in me as President by the Constitution and laws of the United States of America, that the United States will discharge its international obligations under the decision of the International Court of Justice in the Case Concerning *Avena and Other Mexican Nationals* ... by having State courts give effect to the decision in accordance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision.

President Bush subsequently ordered the United States withdraw from a separate protocol which allowed foreign countries to sue the United States in the International Court of Justice for violations of the Vienna Convention. It is unclear how the Bush memo will be applied by state courts and whether it has influence with respect to future cases.

In *Sanchez-Llamas v. Oregon*, the question before the Supreme Court involves whether the Vienna Convention creates judicially enforceable rights and the nature of appropriate remedies for continued treaty violations. The Court could decide that the exclusionary rule will apply and hold that confessions taken in violation of Article 36 of the Vienna Convention must be barred from evidence at trial. But the Court could offer a less drastic remedy or no remedy at all. Even in the latter event, these cases have demonstrated that many countries are willing to assist in the defense of their citizens. Thus public defenders representing foreign nationals may discover a potentially valuable resource by contacting

See **SUPREME COURT** on page 28



Marshall J. Hartman



Laurence A. Benner

# Reflections on a Client Lost

Wesley's Day — December 5, 2005

By Lori James-Monroe

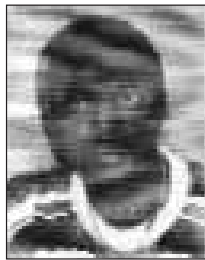
December 5th, I woke up with a knot in my stomach. The weather forecasters predicted snow and the rest of Baltimore woke up with a sense of panic. It seemed I had a million things to do and my mind was racing.

At 10 a.m. the phone rang. When I answered, a deep voice responded, "Good morning."

"Good morning Wesley," I said with a smile.

"You always have a smile on your face," he said. I laughed, realizing this man I referred to as "my client" knows me just as well as I know him. No surprise, since I had hundreds of hours of conversations with him since we had met in 1992. It was hard to believe this might be the last day I would hear his voice.

We spoke a while about our visit the night before. We had exchanged our final letters to one another. Wesley reiterated what he wrote in his letter. That one of his biggest fears was leaving me behind. He worried about me fighting this fight without him. He felt that I had invested so much in his life since our initial meeting in 1992 and wanted to make sure that



Wesley Baker

I felt no guilt about what had or had not been done in his original case. In my letter I apologized for all who had hurt him in the past and for those who had not stepped in to protect him as he went through his traumatizing childhood.

He bragged about his surprise visit from one of our local delegates. It was a wish come true for Wesley.

Salima Siler Marriott, a Maryland state delegate from Baltimore City, is a death penalty opponent and has campaigned to abolish the practice in our state. She had fought for Wesley and his comrades on the row for years even though she had never met Wesley. She was a living legend for him, someone he always wanted to meet.

"What was so special about the visit," I asked.

"It was because of you," he responded. "She is like royalty, I couldn't stop staring – thank you for being my angel once again."

A tear rolled down my cheek.

"You're so silly," I responded. That's what I would say when "my client" labeled the role I served in life. I saw myself as his advocate, a member of his defense team and over time, a friend, but he saw me as his angel.

Suddenly and without, warning the conversation took a turn.

"Today may be the day," he said.

My stomach dropped.

"I know," I responded. I asked if he had anyone he needed to talk to today? Anyone he needed to reach out to?

He responded, "No, everyone knows how I feel. I've said all I had to say."

Deep down inside I wasn't sure that was true. We wondered out loud if his mother had gone to work that day. I called her on her cell phone on a three-way.

"Good morning," he said, just as he greeted me. "Lori and

I are on the phone; just wonder where you are?"

"I am at work," she responded.

"Are you coming down here?"

"Later on," she said.

My heart stopped. Had she forgotten his final visits would conclude at 6 p.m.?

I interrupted, "Don't forget you may have to leave by 6 p.m. tonight."

There was silence.

"I'll be there soon Eugene," she replied before hanging up the phone.

I wondered silently, how many times would I feel like the grim reaper today, reminding this man's family this could be the last day they would see or talk to him. His execution was scheduled for that night. We were supposed to keep the state's dirty little secret.

No one expected intervention, but I hoped for a miracle.

After all, through the years I had witnessed a complete transformation in Wesley. His eyes, which were once as cold as ice, were now so warm. They warmed your soul. Even the Cardinal of Maryland felt compelled to visit this condemned man. Finally, I broke out of my protective trance-like shell and told Wesley I would see him in a couple of hours.

When I arrived at the Baltimore Penitentiary again, just like the night before, my heart raced and I could barely walk onto the elevator that led to the deathwatch area where Wesley waited. Through several stations of security I was led to Wesley. He sat about 15 feet away from me in a cell. A wide red line on the floor reminded visitors, "Do Not Cross."

An officer sat five feet away, listening to our every word. There would be no more contact, handshakes or hugs given to the man the state wanted dead.

I looked directly into Wesley's eyes. I saw fear, but also calmness and acceptance. He realized the end was coming, he was afraid, but he knew he had no control. "How are you," he asked.

"Alright," I lied. What was I supposed to say?

I asked what he ate for lunch. Nothing was the answer. They had served him peanut butter and jelly on hard bread. He refused to eat it. So much for his grand and final meal!

Pain and hopelessness swung in the air like a pendulum. My soul ached. Wesley's strength was stronger than I could bear.

I wanted to scream, don't you know he's changed? Don't you know he's sorry? Don't you know he's a father, a grandfather and a son? He deserves another chance at life!

What if people would have fought for him when he was sexually abused, living on the streets at the age of eight, after growing tired of watching his mother brutally beaten by her newly, prison-released husband. Where were his defense teams when he was placed in the country's most violent juvenile facility at nine and when an adult female prostitute injected heroin into his veins when he was twelve and made him have sex with her for years? Where were his advocates? It

See **WESLEY** on page 32

“Jones’ tenure as president of NLADA was during one of the most tumultuous times ever experienced by legal services, with the Reagan administration, special interest groups and conservative critics all rallying against it.”

## Civil Legal Services Loses Two Great Leaders

### C. Lyonel Jones

C. Lyonel Jones, who served as NLADA president from 1979-1982, passed away on March 7, 2006 at the age of 72. A true trailblazer for equal justice, he achieved a 40-year career of working to ensure that low-income families were able to receive high-quality, free legal assistance. From 1966 to January 2006, he worked at the Legal Aid Society of Cleveland, serving as its executive director starting in 1968.



C. Lyonel Jones

Jones’ tenure as president of NLADA was during one of the most tumultuous times ever experienced by legal services, with the Reagan administration, special interest groups and conservative critics all rallying against it. Because of his and other NLADA leadership, civil legal services survived with only a reduction in funding. He articulated a strategy of no compromising in the face of these attacks and NLADA stood fast to the principles of full representation of maximum quality to low-income individuals.

Jones will long be remembered as a champion for those in need and unjustly cut off from their right to equal justice. Throughout his career he dealt with cases involving racial discrimination in site selection for public housing and promotion of police and firefighters, termination of SSI and Social Security disability benefits without proper evidence, establishing the right to counsel in commitment proceedings and misdemeanor cases and obtaining benefits for victims of industrial air pollution.

Jones’ influence will continue for many years to come as people who would not otherwise be able to, will secure legal representation and preserve their rights and dignity. Sen. Hilary Rodham Clinton praised Jones’ service and dedication, citing his tenure as an example for the national legal community. She said, “I first met him when I served on the board of the Legal Services Corporation ... and Lyonel and other active directors and lawyers from legal aid programs around the country would come to our meetings and urge us and encourage us and demand from us that we do more to create greater fiscal support for legal aid in America – and he was successful.”

### Tanya Neiman

Long-time champion of equal justice Tanya Neiman passed away Monday, February 27, after a long battle with ovarian cancer. Neiman, a well-known figure in the San Francisco and national legal community for many years, was director of San Francisco’s Volunteer Legal Services Program (VLSP) for almost 25 years. She pioneered the fields of pro bono, holistic legal services and community lawyering.



Tanya Neiman

Neiman graduated from the University of California (UC) Hastings College of Law in San Francisco in 1974. At the age of 29, Tanya became director of the Volunteer Legal Services Program (VLSP), then a two-employee organization. She transformed VLSP into one of the largest and most innovative legal services programs in the country. She pioneered the development of unique models of delivering services, including holistic advocacy, which forges a multidisciplinary approach to helping clients change their lives. VLSP is now the largest comprehensive provider of civil legal services in San Francisco with volunteers donating over \$10 million worth of legal services in 2005.

Under Neiman’s direction, VLSP has been honored twice with the Harrison Tweed Award (1985 and 1997), which is presented by NLADA and the American Bar Association for outstanding pro bono projects in the United States. Neiman was awarded NLADA’s prestigious Kutak-Dodds prize in 1996 and the State Bar of California’s Loren Miller Legal Services Award in 1998. In 2005, the ACLU of Northern California awarded Neiman with its On the Frontline Award, established to honor an individual who has done significant and sustained work to protect the rights of lesbians, gay men and bisexuals, transgender people, and people with HIV and AIDS. On February 10, 2006, she was recognized by the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area with its Robert G. Sproul Award.

Neiman is survived by her partner of 24 years, Brett Mangels, her brother Harry Neiman of Canyon Country, CA and her niece Morgan Neiman of San Francisco. ★

# Incorporate Economic Development in Legal Aid Programs Through Tax Assistance

By Jeanette Valencia

Legal Aid programs across the U.S. have seized the opportunity to participate in a collaboration that promotes economic development in their local communities through the Earned Income Tax Credit (EITC). The collaboration assists taxpayers in filing for the EITC by utilizing a resource called I-CAN!™ EIC. This tool is a Web-based program that enables taxpayers to easily file their taxes and claim the EITC at no cost. The I-CAN!™ EIC collaboration returned more than \$6 million to low-income workers in the 2005 tax year. I-CAN!™ EIC was created to provide an alternative to costly tax preparation fees and to create awareness about the EITC as 15 to 25 percent of this \$36 billion federal anti-poverty program is unclaimed each year.

The core of the I-CAN!™ EIC collaboration consists of the following Legal Aid programs: Montana Legal Services, Central California Legal Services, Cal Indian Legal Services, Michigan Poverty Law Program and the Legal Aid Society of Orange County. These organizations have successfully integrated I-CAN!™ EIC into their programs to expand the services offered to their clients, as many are eligible for the EITC. Each program has created and implemented strategies to assist and promote the EITC within their local communities depending on the geographical areas they serve. The most powerful strategy is building a coalition of community organizations within a regional area because it creates power and synergy. Resources are used more effectively and efficiently when coalitions are formed, which enables greater outreach and support. The core organizations of the I-CAN!™ EIC collaboration have created a foundation for other legal aid programs to build upon.

The legal aid programs that have implemented I-CAN!™ EIC are often viewed as heroes in their local communities. Legal Aid Society of Orange County Executive Director Bob Cohen said, “we had clients crying by their computers and dancing in the halls after seeing how much money they would be receiving.” Each of the organizations that have participated in the EITC collaboration have similar stories and can attest to the need for such a program in their communities. Even those who have used the program from their home leave comments of gratitude and satisfaction. Many officials and organizations throughout the United States have also recognized the need to promote the EITC and have joined the collaboration to help promote economic development in their local communities through I-CAN!™ EIC. A few of the organizations that contributed to the success in Southern



Courtesy of the Legal Aid Society of Orange County  
California First Lady Maria Shriver meets with clients at a spring I-CAN!™ EIC event.

California included: the United Way, the City of Santa Ana and financial institutions. Recently, Central California Legal Services and the Legal Aid Society of Orange County hosted two separate, successful Community Tax Days and resource fairs with the First Lady of California, Maria Shriver, to help create awareness about the EITC in the state of California.

In Montana, local residents promoted I-CAN!™ EIC in front of an income tax preparation business that promoted Refund Anticipation Loans (RALs). Alison Paul from Montana Legal Services noticed this grass roots effect and captured it in this photo. Montana Legal Services has one of the highest per capita usage rates of I-CAN!™ EIC and has contributed its success to recruitment of AmeriCorps-Vista volunteers.

Credit Unions in Michigan joined the EITC collaboration when the Michigan Poverty Law Program presented the opportunity to further promote economic development through I-CAN!™ EIC. Michigan had more than 100 credit unions participating as partners this year and it was key to dramatically improving their efforts.

In the 2005 tax year, Michigan had 707 I-CAN!™ EIC users with more than \$1.4 million returned to low-income workers. Steve Gray from the Michigan Poverty Law Program said, “the driving force behind the success with Michigan credit unions was the Michigan Credit Union League (MCUL). The MCUL organized trainings and outreach efforts, produced and placed PSAs and funded the development of the Michigan module for I-CAN!™ EIC.”

Any organization is welcome to join the I-CAN!™ EIC collaboration. Participation ranges from limited to extensive capacities. Participation includes, but is not limited to: creating promotional materials, directing clients to the website, advertising on websites, providing a workstation for clients to use or hosting a Community Tax Day. For more information or to become a partner, please contact Iris Ma at 714-571-5218 or by email at [irisma@legal-aid.com](mailto:irisma@legal-aid.com). You can also visit our partner website at [www.eicpartner.com](http://www.eicpartner.com) and our I-CAN!™ EIC website at [www.icanefile.org](http://www.icanefile.org). ★

Jeanette Valencia is outreach coordinator at Legal Aid Society of Orange County.



Photo by Alison Paul

Montana residents promote I-CAN!™ EIC in front of an income tax preparation business that promoted Refund Anticipation Loans (RALs).

# Eyewitness Identification Reform:

## Litigation is Critical, Yet All Avenues Must be Pursued

By Stephen Saloom

Successful litigation is required to reform eyewitness ID procedures. But as we've seen from post-*Gideon* battles, actual acceptance of the reform will be necessary to turn litigation victories into the improved eyewitness identification procedures that will decrease wrongful prosecutions and convictions. Building on the D.C. example provided in the last issue of *Cornerstone* by Timothy O'Toole, this article will further detail the multiple and varied efforts proven necessary to spur the effective improvement of eyewitness identification procedures. In short, spurring implementation of improved eyewitness identification procedures requires arming yourself with the scientific and practitioner data, litigating the issue, educating the public, cultivating police and prosecutor internalization, engendering legislative support, pursuing executive rule and policymaking ... and continued litigation. These need happen in no particular order; indeed, it's best to keep them all going all the time.

### Gathering the Information

For the best legal and policy arguments to be made, the best information is required. The National Legal Aid & Defender Association (NLADA), National Association of Criminal Defense Lawyers (NACDL), The Innocence Project and the DC Public Defender Service have established a base of support for all working on eyewitness identification reform. Our efforts include creating a listserv for those seeking to litigate the issue<sup>1</sup>, providing eyewitness identification litigation and public education resources through the Web<sup>2</sup>, identifying and organizing "eyewitness identification litigation point people" in as many states as possible<sup>3</sup> and presenting eyewitness identification litigation conferences<sup>4</sup>. These organizers welcome your participation in these efforts – or simple use of the resources available to spur reform in your jurisdiction.

### Public Education

Policymaking is driven by elected officials' perception of their constituents' perception of the issues<sup>5</sup>. It is not the merits of an argument (although your arguments themselves must win on the merits), nor politicians' understanding alone (for they often "get it," yet are unwilling to be the messenger) that dictate policymaking. Because no potential political candidate wants to get tagged as "soft on

crime," it must be clear to politicians that a significant number of constituents will understand the value of any move that might otherwise be attacked as "soft on crime."<sup>6</sup>

This means that it is not enough to explain something to policymakers. While personal persuasion is fundamentally important, as important is creating policymaker perception that public perception of the issue is on your side.

How can you do that? Develop relationships with those who cover criminal justice issues in your major newspapers, as well as those in charge of editorials. Share with that person the troves of information about the effectiveness of eyewitness ID reforms. Inform them of any contemporary exonerations, regardless of whether local, where a mistaken eyewitness identification contributed to the underlying wrongful conviction<sup>7</sup>. Submit an op-ed on the issue. Another effective way to reach the public is to speak before key local constituencies. When I ran a criminal justice policy group in Boston and found a complete lack of legislative willingness to act despite acknowledgment of a meritorious argument, I sought the opportunity to speak before legislators' mainstream civic opinion leaders — the Rotary and Lions clubs. They were happy to have an interested speaker for their regular meeting and open to my suggestion that they invite their local legislators, other policymakers and local press<sup>8</sup> to the event. And even if the legislators couldn't make the event (as they often couldn't), I'd send them a letter afterward saying how many people were there, what I'd discussed and how very interested they were in the information I'd shared. If elected officials think their constituents are concerned about mistaken eyewitness identifications and might start asking them questions, they'll be a lot more receptive to your information on the issue when it's put before them. Conversely, if elected officials think people don't know about the problems with eyewitness ID, your litigation victories will not carry as far. This isn't to say that the same person should carry all of the weight in different advocacy arenas, but it is to say that litigation efforts coordinated with public education better ensures actual implementation of eyewitness identification reform.

### Law Enforcement and Prosecutor Education

A critical factor in any effective effort to reform eyewitness ID procedures is buy-in from high-level and/or

high-profile law enforcement or prosecutors. Your attorney general can be a tremendous help. Your police training leadership is another place that can be extremely influential.

The trick, of course, is getting them to pay attention. Well, of course it helps to keep litigating. If they see that their officers are getting crucified on the stand and that judges are beginning to express their wonder as to why “best practices” aren’t being followed, they might be willing to listen.

Another way to get their attention is to simply talk with them in non-adversarial contexts.<sup>9</sup> Bar association meetings, task forces, anywhere that you don’t have to do battle is a good place to start a conversation. You know who the more reasonable folks are; don’t waste your time with your most extreme opponents. When you talk to them, focus on what might resonate with them (even if your concerns are different). Talk about how interesting and solid the science is, how clearly it demonstrates the room for improvement and how in the end it only helps law enforcement to focus on the right person at the earliest point in the investigation possible. Their witnesses are less likely to be burned by incorrect picks, their officers won’t have as hard a time on the stand and the identifications they have will be much more solid in general.

If, either directly or through reasonable folks lower on the totem pole, you can ultimately reach such high-level or high-profile police or prosecutors interested in learning more, you’ll have laid important groundwork for the adoption of reform. In states around the nation, eyewitness ID presentations by police, prosecutors and experts for police and prosecutors are laying the groundwork for the adoption of reforms.

In Wisconsin such buy-in resulted from the criminal justice reform commission that brought Wisconsin Innocence Project lawyers together with the Attorney General’s (AG) office. The AG’s representative on the commission, a former detective, was completely skeptical about the idea, yet read the information provided to him. He then sought more information and soon came to see that the reforms would improve accuracy — and that it was in law enforcement’s best interests to adopt the reforms. But the AG was concerned that mandating the reforms wouldn’t work. Instead the AG’s approach was to provide law enforcement with the tools to adopt the reforms. This included creating an advisory committee of investigators from around the state, gathering feedback, issuing best practice guidelines for administering eyewitness identifications<sup>10</sup> and presenting regional eyewitness identification trainings to law enforcement throughout the state (which included testimony from the victims’ community). The result was the voluntary adoption of more accurate eyewitness ID procedures in jurisdictions large and small, throughout the state.

It took personal communication across the adversarial system, solid information, leadership from a prosecuting agency,<sup>11</sup> openness to law enforcement feedback, local adaptability, law enforcement acceptance of the possibility — and consequences — of eyewitness ID error and follow through to do this in Wisconsin. And while every state is different, similar efforts in your state would likely foster similar progress in improving the accuracy of eyewitness identification procedures.

## Legislation

I’ve heard many legislators attempt to explain away eye-

witness ID legislation with “we don’t want to legislate social science.” This sentiment (or excuse for buck passing) has presented an obstacle to many otherwise fundamentally sound legislative eyewitness ID reform efforts, which include mandating instructions, blind administrators, sequential line-ups, presenting expert testimony and more.

But don’t let that stop you. Number one, in the right environment that argument can be overcome. And number two, there are many ways that legislatures, despite not mandating the perfect reforms, can play an important role in advancing eyewitness ID reform.

## Public Hearings

If you can get eyewitness ID legislation filed and a bill heard, you’ve got great potential for progress. This is because the public hearing can be a public education event (even if the legislators are not all present, are unlikely to pass a bill, and/or are otherwise distracted). A legislative public hearing provides a platform to educate both the public and policymakers in one fell swoop. By marshalling your facts and arguments and honing them into a few simple yet persuasive points — ideally with a sympathetic real person<sup>12</sup> for them to attach it all to — you can deliver a message that makes people feel like change is needed. By informing the state house press beforehand of the scheduled eyewitness ID hearing testimony and providing them with written copies thereof, you may well get media coverage of the same. Such coverage can help the issue become one on which legislators feel they need to provide justifiable answers. The hearing provides a hook for placement of an op-ed on the issue, which provides further public recognition and support. If you get to such a place, you’ve accomplished a good amount in the overall effort for reform.

## Requiring Written Procedures

Eyewitness ID legislation needn’t mandate specific procedures to be helpful. The simple requirement that all law enforcement agencies administering eyewitness ID reforms have a written policy for their administration is a simple start that would provide the structure necessary for implementation of improvements.

Historically, eyewitness ID procedures are conducted as they are because ... Well, because that’s the way they’ve always been done. And *Manson v. Braithwaite*<sup>13</sup> did not prove to require much more. In the intervening years a large body of peer-reviewed scientific research into the effectiveness of various eyewitness ID procedures has developed and continues to grow. This information points the way to improving the accuracy of eyewitness identifications, yet for years virtually no government entity took notice of the emerging facts. The opening came when the National Institute of Justice (NIJ) issued its 1999 Eyewitness Identification Guide for Law Enforcement<sup>14</sup>. The report came from a working group of criminal practitioners and scientists, and identified many of the essential elements of reform (despite falling short of actually recommending most of them).

While the report may not have been a home run, it provided a baseline of information about how to most accurately

## EYEWITNESS - Continued from page 11

administer lineups. In the relatively short time since that report's release, New Jersey, cities such as Boston, Winston-Salem and Minneapolis-St. Paul and smaller towns such as Northampton, MA – as well as many other jurisdictions – have adopted the reforms introduced in the NIJ study, and thus provided “real world” examples of their ready adoptability and effectiveness. Properly conducted and evaluated studies<sup>15</sup> of these “real world” experiences are providing the concrete support for the reforms that was already well supported by voluminous research. Which brings me back to written procedures. If your local police department has to have written procedures for administering eyewitness identifications, then you will at least have a concrete record of how the procedure was administered – and if it was not administered according to what science and experience have demonstrated as “best practices,” you can raise that question time and again in the courts. In defense against this possibility, or as a result of losses in the courtroom, your local police departments' written policies may soon end up being consistent with those best practices. And if that's the case, your legislation requiring the adoption of “any” written procedures will have accomplished its purpose – or helped get you there – through evolution, as opposed to mandate.

### Pilot Projects

Maybe your legislature isn't ready to legislate eyewitness ID reform, but isn't opposed to the idea, either. Particularly if you have a willing jurisdiction, see if you can, through the appropriations process, have a pilot program funded and evaluated in that one jurisdiction. You might want to identify researchers from your state university system<sup>16</sup>, for the evaluation aspect<sup>17</sup> and thus demonstrate – in your own state – how improving eyewitness identification procedures can work well for all involved. If you are to go this route, however, be sure to follow the process all the way through. The legislators sponsoring the line item should also be on board with the details of the rigor of the evaluation, the training necessary for eyewitness identification administrators, timelines, etc. Failure to tend to these details could result in conclusions less than what you should expect from a properly run eyewitness ID reform pilot program.

### Study Commission

This may not strike you as reform itself, but if you can simply force key – yet willing and genuinely interested – players from throughout the system to sit down, look at the facts and come up with recommendations, you will have made an important step toward reform. A study report can provide a strong foundation for future legislative or other action<sup>18</sup>. Therefore, even if having a study ordered is not all you might have hoped for, take stock in the faith that it is at least official recognition, the basis for examination and potential for further progress.

### Conclusion

There is no one route to eyewitness identification

reform. But the progress in states across the country is undeniable, growing rapidly and typically a result of all of the factors addressed above: (the threat of) litigation, public education, police and prosecutor education and legislation. Combined with continued litigation of the issue whenever necessary, such reform can and will happen in your jurisdiction. Short of all of the above, it will be hard to get to the promised land of improved accuracy from eyewitness identification procedures. ★

*Stephen Saloom is policy director for The Innocence Project.*

- <sup>1</sup> To get on the listserv, you must go to the NLADA list serve website, confirm your registration and get a password. The site is <http://nladalistserv.org/>. Once you are signed up, you will receive all eyewitness ID listserv emails, and you can send emails by addressing them to [eyewitness@nladalistserv.org](mailto:eyewitness@nladalistserv.org).
- <sup>2</sup> <http://www.nlada.org/Defender/forensics/>. For more on the joint NLADA/NACDL forensics effort, see the article by Richard Schmechel, William C. Thompson and Richard Ungvarsky, August 2005 in *The Champion* magazine, “Defending with (and against) Forensic Science: A Call for Shared Resources,” which you can access by searching *The Champion* on the NACDL website at [www.nacdl.org](http://www.nacdl.org).
- <sup>3</sup> For more information about the eyewitness litigation network, please contact Catherine Beane at NLADA ([c.beane@nlada.org](mailto:c.beane@nlada.org)), Scott Ehlers at NACDL ([ScottE@nacdl.org](mailto:ScottE@nacdl.org)) or Stephen Saloom at the Innocence Project ([ssaloom@innocenceproject.org](mailto:ssaloom@innocenceproject.org)).
- <sup>4</sup> Go to [www.pdsdc.org/SpecialLitigation](http://www.pdsdc.org/SpecialLitigation) for information about the kickoff Eyewitness ID Litigation Conference that will be held in D.C. on June 16-17.
- <sup>5</sup> This is the inescapable conclusion I've reached after years of hard experience as a policy advocate for criminal justice policies that are not reflexively “tough on crime,” but that in fact improve the efficacy and fairness of our criminal justice systems.
- <sup>6</sup> This doesn't mean that every one of their constituents must also “get it,” but it does mean that there must be recognition in other key places – the media, among police/prosecutors/judges/other politicians, and from key constituencies – that the policy urged is meritorious.
- <sup>7</sup> 75 percent of the nation's 175 wrongful convictions proven by DNA involved at least one mistaken eyewitness identification.
- <sup>8</sup> In this case, small can be beautiful. Reporters at small community papers, local access TV and local radio are always looking for a news hook, and I found that I got great coverage in my rounds of the civic groups in Massachusetts (albeit on a different criminal justice issue).
- <sup>9</sup> I'm an attorney dedicated to policy advocacy, so unlike many of my litigating brothers and sisters I've developed a tolerance for such communication, perhaps even a skill at overcoming the conflicts in my immediate policy interests, in an effort to develop the unlikely alliances necessary to achieve policy change. Doing so can be a real challenge, but it's absolutely essential. And when it helps your cause, either in the long- or short-run, it can often compensate for the cognitive dissonance you've endured.
- <sup>10</sup> <http://www.doj.state.wi.us/dles/tns/EyewitnessPublic.pdf>
- <sup>11</sup> The Wisconsin Innocence Project, as well as the criminal defense community, adopted a low profile once the AG began her effort, enabling it to be seen as a law enforcement effort. This willingness to hand leadership of the policy advocacy effort off to law enforcement can be a critical element in the policies' adoption.
- <sup>12</sup> Meaningful references to, or appearances by, those who have been wrongfully convicted based on bad eyewitness identifications have proven to be effective in these situations. The more local these examples, the better. What's more, the support of anyone “not expected” (ex. police, prosecutor, victim) who will speak to the value of improving the accuracy of eyewitness IDs can be very helpful in getting the message across.
- <sup>13</sup> *Manson v. Braithwaite*, 425 U.S. 957, 96 S.Ct. 1737, 48 L.Ed.2d 202 (1976).
- <sup>14</sup> You can access this guide at <http://www.ncjrs.gov/pdffiles1/nij/178240.pdf>.
- <sup>15</sup> Note the importance of scientific method when conducting these “real world” studies. Without proper training, evaluation and controls, reports on outcomes are not “scientific,” and thus unreliable for guidance. The recent Illinois eyewitness ID pilot project has rightly been criticized for “confounding” its scientific approach, and thus failing to provide a meaningful measure of the value of the changes meant to be assessed.
- <sup>16</sup> This may be useful in that such a pilot would benefit not just the issue and the jurisdiction, but also the university. Whenever a benefit can reach multiple constituencies, legislatures are more receptive.
- <sup>17</sup> Even if the folks at your university aren't the nation's experts on the issue, the experts on this issue have proven helpful and generous, and could surely provide guidance for its proper evaluation.
- <sup>18</sup> As anyone familiar with study commissions knows, the composition of the commission, the active participation of those truly interested in reform are critical to its result, and a little good fortune, are typically key to a positive report. It may be up to you and your colleagues to ensure that the results of this report reflect the reforms' potential.

# Despite Loss of Offices, Homes and Colleagues, Legal Aid Staff Press on to Help Their Clients Prevail



Photo courtesy of New Orleans Legal Assistance, Southeast Legal Services

Taken only days after Hurricane Katrina struck New Orleans, the destroyed Chalmette Legal Services office of Southeast Legal Services was in the center front building.

By Laura Tuggle

On Friday, August 26, 2005, when I left my job as a staff attorney with New Orleans Legal Assistance, I had no idea that I would not see my office for another four and a half months. I had no idea then that my beloved city, my life and the lives of my clients would be forever changed. It was late August, prime time for hurricanes in the Gulf Coast region. That possibility is always in the back of your mind when you live in New Orleans. But the morning news that Friday showed Hurricane Katrina headed towards Florida. So when I went home that day, I didn't clear the files off my desk, I didn't wrap up my computer in plastic, I didn't close my blinds and I didn't follow any other "hurricane procedures." I just left with a few files to work on that weekend and went to pick up my children, just a normal Friday.

When I got home, my husband, being the super vigilant guy that he is (thank God for great husbands), was watching the evening news. He told me a monster hurricane was now headed our way. I still was not that worried. I mean really, isn't there always some hurricane or other headed towards New Orleans in August or September? But the hurricane always misses us. It always turns and veers off in some other direction. But when we heard the 10 p.m. news, we knew we would probably have to leave town, though, probably still another false alarm. How tiresome! And this time, we would not even have time to try to protect the house because this Katrina storm had snuck up on us. Well, maybe things will look better in the morning. Just in case, I gave my mom a

call to let her know that she might get an unexpected, short visit from her grandchildren that weekend.

Guess what? When we woke up on Saturday morning, things looked dire! The 7 a.m. weather guy had a great, big bull's-eye on New Orleans. Hurricane Katrina was a massive and incredibly strong storm. I had court scheduled for the next Monday, so I prepared a motion for continuance, went to the office, gathered some important stuff there and faxed off my motion. Boy, I hope the court gets this motion and I don't get hassled for not appearing in court, I thought. In retrospect, that was the very least of my worries, since the Governor ultimately suspended court proceedings for two months. So just like most of the population, we got out of town leaving with a few changes of casual clothes, a few pairs of clean underwear, some important papers, our pet and our children. We braced ourselves for a long drive to our evacuation destination since we knew the roads would be jammed.

It was a pleasant weekend at my mom's after we arrived there, 10 hours after leaving New Orleans. Not bad time, all things considered, even though it usually only takes about five and a half hours to make the trip. We watched the news knowing this could be the big one. It was very tense until the night of August 29, 2005. By then it seemed New Orleans had once again dodged the bullet. We had some wind damage, but no flooding. Katrina passed us over and unfortunately hit the Mississippi Gulf Coast hard. But on Tuesday, August 30, 2005, our world was irre-

*"It was late August, prime time for hurricanes in the Gulf Coast region. That possibility is always in the back of your mind when you live in New Orleans."*

See **RECOVERY** on page 18

# Plan Now to Have Legal Community Poised for Disaster Relief

## Lessons Learned from the 2005 Hurricane Season

By Jeff Billington, NLADA deputy director of communications

When a community or communities are devastated by a major disaster, two of the most important tools to have ready are collaboration and networking, said Peter Carson with Bingham McCutchen LLP of San Francisco.

This was a lesson learned following the hurricanes that devastated the Gulf Coast this last summer, he said.

“How can we be better prepared in the legal community for the next major disaster,” Carson asked.

Anthony Barash with the American Bar Association Center (ABA) for Pro Bono said the immediate reaction after Hurricane Katrina hit was to forge a partnership between the National Legal Aid & Defender Association, the Legal Services Corporation and ABA and try to help, but the complications in doing this became obvious quickly.

“The national legal aid community was not prepared for a large scale disaster,” he said, adding the first legal response was pulling together available resources across the country, which included using the Internet and television to solicit help, money and ideas. Then it was obvious that attorneys had to be sent to the impact zone to help deal with the legal questions facing the people in the disaster areas.

“The role of the lawyers at the locations had to be very specific,” he said. “It was a limited triage. They weren’t supposed to be all things to all people and they turned out to be heroes.”

Amanda Jones with Bradley Arant Rose & White LLP in Jackson, Miss. was among the first in the legal community to respond to the ravaged Gulf Coast area.

One of the biggest obstacles was the loss of basic services and infrastructure, she said.

“We lost cities, cities that were just wiped off the map,” Jones said. “No cell phone towers, no land lines, communication was impossible. It was a tense time.”

The first priority was to figure out what was needed by the people affected by the hurricane, Jones said. “I knew my job was to provide pro bono disaster relief assistance, that’s what we were legally equipped to do. So we were looking at both basic needs and what the young lawyer association was supposed to provide.”

The next step was to get the lawyers down to the people who needed them.

“We provided volunteer lawyers, we provided face to

face help,” she said, adding that these lawyers helped fill out FEMA and insurance forms and provided basic answers, like whether they still needed to pay rent or their mortgage.

Not all of these questions were easy to answer, even by trained attorneys, because the situation is so different from what they normally handle, she said.

“Sometimes the law doesn’t really fit when there’s a national disaster,” Jones said.

One saving grace were the calls from the legal aid staff from that area. They were able to give answers and served as a tremendous resource even though their own homes and offices had been destroyed, she said.

Immediately following the hurricane lawyers from across the country wanted to help, but this was not necessarily a good prospect. But it is in the months since and now when that reaction could be most helpful, Barash said.

“The enthusiasm level of the non-affected world for helping has drifted a bit as the volume of need has accelerated,” he said, adding there are now foreclosure and bankruptcy issues coming as a residual of the hurricane that need the attention of pro bono attorneys.

### For Future Disasters

There are several questions that have emerged on how to be better situated the next time a disaster like this happens, Barash said.

“How do we take advantage of what we have, to gear up, so we can deliver,” he asked. “How do we gather the information in a way it’s accessible? How do we train them in the short term to use the information?”

Plans need to be started now that will answer these questions so these roadblocks are not hit again, Barash said.

“We saw there was a need to have some kind of centralized facility online to which we could bring all of these resources or access to these resources,” he said, adding a better job needs to be done with managing monetary donation and there needs to be improved coordination between the different involved groups so they are not overlapping the services they are providing and can get support from each other.

These plans need to be made at both the national and local levels and they need to be set up to utilize volunteers, including out of state and inactive attorneys, Barash said. ☆

# Hurricane Brings Attention to Long Broken Public Defense System

By Heather Hall

Indigent defense reform advocates have weathered many hurricane seasons, but none has threatened to undermine their efforts like the 2005 season. However, such devastation also catalyzes conversations about ‘starting over’ with a ‘clean slate.’ Social change is always challenged because both advocates and their opposition are entrenched in the status quo. Hurricane Katrina has obliterated the status quo and provided a new social and financial reality that creates the opportunity to finally realize the system of indigent defense that all Louisianans – taxpayers, community members and criminal defendants – deserve.

Hurricane Katrina brought a new level of national attention to Louisiana’s indigent defense crisis. Injustice, inefficiency, waste, funny numbers and questionable representation are the shameful hallmarks of a system that incarcerates more people per capita than any other state in the country,<sup>1</sup> or any other country in the world.<sup>2</sup> Worse, this system simultaneously leads the nation in the frequency of wrongful convictions.<sup>3</sup> This is the reality of a system in shambles. It is a reality born from the neglect of policy makers and the absence of public outrage.

Despite the federal guarantee to an attorney and Louisiana’s own constitutional mandate that, “the Legislature shall provide for a uniform system of securing and compensating qualified counsel for indigents,”<sup>4</sup> Louisiana is far from realizing that ideal. The indigent defense crisis preceded Hurricane Katrina but has been brought to a new level as a consequence of the storm. Hundreds of men and women from Orleans and the surrounding parishes are now in precisely the same position that Gideon was in so many years ago – incarcerated, unrepresented and lacking any tool beyond a handwritten plea for help.

## Pre-Katrina

There has been some effort to paint the problems in the indigent defense system as an Orleans-specific, post-Katrina crisis. This characterization misrepresents the scope of Louisiana’s problems and the many years that reform advocates have been struggling to make progress in this arena.

In 1993, in *State v. Peart*,<sup>5</sup> the Louisiana Supreme Court found there was a “general pattern . . . of chronic underfunding of indigent defense services in most areas of the state.” The Supreme Court called upon the Legislature to enact indigent defense programs or the Court, “may find it necessary to employ the more intrusive and specific measures it has thus far

avoided to ensure that indigent defendants receive reasonably effective assistance of counsel.”

In April 2005, the Supreme Court again addressed the deficiencies of Louisiana’s indigent defense programs in *State v. Citizen*, reprimanding the Legislature for its failure to act. In its unanimous decision, it found: “the Legislature has enacted statutes which require the State to provide funds for indigent defense through the Louisiana Indigent Defense Assistance Board and statewide indigent defender boards in each judicial district but at the same time has failed to provide adequate appropriation to support these services.” In order to provide some remedy for the clients in question, the ruling in *State v. Citizen* gave trial judges the authority, upon motion of the defendant, to halt a prosecution if adequate funding is not available.<sup>6</sup>

In May of 2005, Supreme Court Chief Justice Pascal F. Calogero made an impassioned plea to the Legislature during his annual State of Judiciary: “I admonish you, simply, to do the right thing.”<sup>7</sup> Systemic, reform-minded litigation has become what many see as the unfortunate consequence of the Legislature’s failure to “do the right thing.” Despite the Court’s attempt to necessitate the Legislature’s attention to remedying this issue, it is not clear what the next course of action is after a prosecution is halted. Three years remain before a defendant’s right to a speedy trial is violated, creating an unconscionable delay in the deliverance of justice.

Beginning in 2004, legislative activity had begun to gain momentum. A legislatively-created Indigent Defense Task Force<sup>8</sup> (IDTF) was charged with studying the indigent defense crisis and making recommendations for its remedy. Working through the course of a year, the IDTF made three legislative recommendations which became law in the 2005 Legislative Session: 1) created uniform definitions of ‘case’ and ‘indigency’; 2) required uniform caseload reporting from all judicial districts to lay a foundation for comprehensive reform and 3) increased the authority, independence and membership of the state indigent defender board. The legislature did not, however, address the “chronic underfunding” or the unreliable funding structure. Louisiana remains the only state in the nation to attempt to fund the majority of its Constitutional obligation to provide indigent defense services through court costs, primarily through fees collected from traffic tickets.<sup>9</sup>

Media outlets had begun to pay attention to the indigent defense crisis as well. In the two years before Hurricane Katrina, at least 28 editorials were printed in Louisiana papers, unanimously calling for immediate and substantive indigent defense reform.<sup>10</sup> In the months immediately following Hurricane Katrina, advocates feared that the momentum of the reform movement would be thwarted by competing needs and



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a budget shortfall. However, indigent defense reform has again resurfaced as a major issue affecting public safety, fairness and fiscal responsibility.

### Post-Katrina

While the political and fiscal challenges to successfully reform Louisiana's indigent defense system have clearly increased in the aftermath of the hurricanes, there is also great opportunity in the post-Katrina context. For an extended moment, the entire nation watched a lethargic and seemingly uncompassionate response to the plight of Louisiana's poor and was appalled. In that moment, the poor were empowered, with an audience they seldom have, to share their stories. The exposure that Hurricane Katrina brought to issues of race and class created an ability to talk about them more directly than before.

With minimal assistance from the state indigent defense board, local judicial districts are responsible for generating their own revenue to maintain services. In Orleans Parish, local revenue accounted for 75 percent of the public defender office budget.<sup>11</sup> Obviously, Hurricane Katrina completely disrupted this funding stream. Traffic tickets simply aren't being written, further draining the already paltry funds available for indigent defense.

Because of this budget shortfall, the Orleans Parish Public Defender Office was forced to make dramatic cutbacks. Understaffed before Hurricane Katrina with 42 lawyers, for several months it functioned with only six attorneys. All support staff, investigators and other staff have been laid off with the exception of a single secretary.

In early February, several judges held hearings to decide how to proceed with criminal trials. These hearings revealed a completely nonfunctional system of public defense in Orleans Parish. The six lawyers who were on staff at that hearing were responsible for approximately 4,000 cases in 12 sections of court. Numbers were not available for cases in traffic/municipal court. An Orleans Parish attorney who used to work for the Indigent Defender Board estimated that caseload is approximately 1,800 cases per attorney, a number no lawyer can ethically manage.<sup>12</sup> The funds for 2006 were reported to have dropped to less than 20 percent of the projected \$2.2 million budget.

At this hearing, the Orleans Parish Indigent Defender Board revealed that they had recently decided to adopt the state board's recommended caseload standards.<sup>13</sup> This move came after funds donated by state bar associations in Ohio and Michigan were dedicated to hiring more staff attorneys, but required that those staff attorneys comply with the ABA caseload limits.

Judge Hunter halted the prosecution of defendants in Orleans Parish Section K criminal court and Judge Calvin Johnson ruled similarly for Section L. As a result of the local board's newly imposed caseload limits, attorneys unenrolled from all but their 200 oldest felony cases. The



Photo courtesy of Heather Hall

Some inmates in the New Orleans criminal justice system have gone more than nine months without seeing a lawyer.

remainder of Orleans Parish criminal defendants are unrepresented.

Compounding this chaos is the complete collapse of the local Indigent Defender Board. Judges in each judicial district select a local board, usually of three to six members, upon the recommendation of the Bar Association. There are no assurances that local board members are qualified or uncompromised by their other positions. In Avoyelles Parish, for example, the local board recently existed of a vice principle, a real estate developer/nightclub owner and an embalmer.<sup>14</sup> In Red River Parish, until a couple of months ago, the local board existed of the district attorney's secretary, the judge's secretary and the clerk of court.<sup>15</sup>

The Orleans Parish Board had six members, several of whom were not nominated through appropriate procedures. One member has not been heard from since Hurricane Katrina and another is bedridden with an illness. The remaining four had only been able to come together once to make quorum before mid-March, when three of them resigned. The only member left standing is Frank DeSalvo, who doubles as attorney for the Police Association of New Orleans. James Gill, an opinions columnist for the *Times-Picayune*, quipped, "who says you can't play cops and robbers all by yourself?"<sup>16</sup>

DeSalvo's position representing indigent defendants and their arresting officers is obviously conflicted. Further, DeSalvo's son and law partner is running for Orleans Parish criminal sheriff and he has admitted to "moonlighting" his private partners as contract attorneys with the public defender office he supervises to supplement their salary. Those who didn't want to believe that Louisiana public defenders run their private practice on the backs of poor people have been made cynics.

Orleans Parish Clerk of Criminal Court Kimberly Williamson Butler is no help, as she was on the lam, and then behind bars, while much of this was going down. Many clients who were once housed in Orleans Parish prison facilities were evacuated to prisons in central and northern Louisiana and remain scattered throughout the state, making it virtually impossible for them to have any

meeting with their public defender.

A number of volunteer attorneys operating out of Alexandria, LA<sup>17</sup> conducted interviews of every evacuated prisoner and filed petitions for habeas relief in more than 2,000 cases for defendants who were either arrested for technical violations, pre-trial detainees or those who were being held beyond their release date. More than 50 percent of their clients were released from confinement as a result of their efforts. However, these interviews reveal a grim reality. The survey of more than 2,000 storm-evacuated indigent prisoners revealed more than 30 percent who reported they did not have a lawyer, 32 percent who reported that they were unsure if they had a lawyer and 14 percent who knew they were presented by a public defender but did not know their lawyer's name. Less than 10 percent – only 196 prisoners – knew the name of their public defender.<sup>18</sup>

This data is supported by a study released by the Safe Streets Coalition in cooperation with the Southern Center for Human Rights. After interviewing 102 Orleans Parish prisoners, they found that the average defendant had not heard from their attorney in more than a year. The average number of days that the men and women they interviewed had been detained pre-trial was 385 days, with the longest wait being 1289 days and the shortest being 179. During that time, the average time they had spoken to their attorney was zero.<sup>19</sup>

### Reform Efforts Throughout the State

The impact of Hurricane Katrina has placed an enormous burden on storm-affected parishes, but given the absence of a strong, stabilizing state system, local jurisdictions throughout the state are suffering as well. Other public defender offices, such as Baton Rouge, are overwhelmed with an influx of cases due to the forced and continued evacuation of people out of the New Orleans area. (Meanwhile, these offices are plagued by pre-Katrina challenges. In Baton Rouge, for example, the public defenders finally resolved their eviction dispute in mid-March, agreeing to pay local government \$300,000 in back rent.) Further, the costs of incarcerating thousands of people in prisons throughout the state is creating tensions concerning who will reimburse for these costs.

However, increased attention to the unfathomable workloads of public defenders – and the increased liability – has created a movement for local boards to adopt their own standards. Baton Rouge was the first to do so early this year, Orleans has followed suit and numerous others are currently considering it.

The State Indigent Defense Board held its first meeting after the storm, composed of several new members created by the 2005 legislation, as well as a new chairwoman. In that meeting, they voted to tie all District Assistance Funds – which were previously unmonitored funds identified by a formula and sent to local districts – to caseload limits. This is an encouraging move as advocates hope that the state board will have a strong, independent and regulatory authority over the state indigent defense system.

The Louisiana State Bar Association has formed a new committee to address the indigent defense crisis. The Right to Counsel Committee is committed exclusively to indigent

defense and has held several meetings.

Bar associations across the country have donated money to hurricane recovery and the Louisiana Bar has met several times to ensure that money is spent ethically and efficiently.

In House Bill 1 – Louisiana's state budget – Governor Blanco has proposed an additional appropriation of \$10 million to assist the indigent defense crisis. While advocates say that an additional \$20-\$30 million is needed, this appropriation reflects her acknowledgement of the severity and immediacy of the indigent defense crisis.

### Conclusion

Hurricane Katrina caused much speculation about the rebuilding of New Orleans and federal reinvestment in the state of Louisiana. To counter those concerns, and in an effort to provide Louisianans with the quality of life they deserve, policy makers across the board are promising “a better Louisiana.” Community welfare, a sense of safety and confidence in our public officials are all at stake. Louisiana needs proactive leadership and creative problem solvers to create a criminal justice system that serves the poor, protects the innocent, keeps us safe and spends money wisely. The time is now. ★

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<sup>1</sup> <http://www.ojp.gov/bjs/pub/pdf/pjim99.pdf>

<sup>2</sup> “Deep Impact: Quantifying the Effect of Prison Expansion in the South”, Jason Ziedenberg, Justice Policy Institute, released 4/04/03, also available at <http://www.justicepolicy.org/article.php?id=124>

<sup>3</sup> “Exonerations in the United States 1989 Through 2003”, Samuel R. Gross et. al., The Journal of Criminal Law and Criminology, Vol. 95, No. 2, 2005

<sup>4</sup> Louisiana State Constitution (revised 1974), Article 1, Section 13 § 621 So.2d 780, La. 1993

<sup>5</sup> The complete decision for State v. Citizen can be found at: <http://www.lasc.org/opinions/2005/04ka1841.opn.pdf>

<sup>7</sup> 2005 State of the Judiciary address to a Joint Session of the State Legislature. 5/03/05. The full text may be found at:

<http://www.lajusticecoalition.org/reports+resources/2005+state+of+judiciary/>

<sup>8</sup> The Task Force includes representatives from all three branches of government, public defenders, private attorneys, law enforcement, prosecutors, the faith community, client constituents, juvenile advocates, labor organizers, good government groups and minority organizations.

<sup>9</sup> Research conducted in Louisiana over the last 30 years have consistently indicated that such a funding structure threatens the integrity of the state's system of justice. See In Defense of Equal Access of Justice, pg 2.

<sup>10</sup> The majority of these editorials can be found at [www.lajusticecoalition.org](http://www.lajusticecoalition.org)

<sup>11</sup> Testimony of Orleans Parish Chief Public Defender Tilden Greenbaum, February 8, 2006. Section K Criminal Court, before Judge Arthur Hunter.

<sup>12</sup> This number was the estimate of former Orleans Parish Public Defender Rick Teissier, made on January 27, 2006.

<sup>13</sup> These standards may be found at [www.lidab.com](http://www.lidab.com) (150-200 non-capital felonies)

<sup>14</sup> In Defense of Public Access to Justice, NLADA Publication, March 2004, pg 29.

<sup>15</sup> Reported at the Louisiana Association of Criminal Defense Lawyers meeting, 2/4/06

<sup>16</sup> “The Case of the Disappearing Lawyers”, Opinions Columnist James Gill, Times-Picayune, 3/24/06

<sup>17</sup> This pro bono effort was coordinated by attorneys Phyllis Mann of Alexandria, LA and Julie Kilbom of Baton Rouge, LA, from September 2005 through February 2006

<sup>18</sup> These are rough numbers from the work of Ms. Mann and Ms. Kilbom. Exact numbers will be available shortly.

<sup>19</sup> Safe Streets/Strong Communities. “Who Pays the Price for Orleans Parish’ Broken Indigent Defense System? A Summary of Investigative Findings” Released March 2006, pg 4

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versibly changed when the levees broke. The darkest of days for ourselves, personally and professionally, and hell on earth for our legal services clients, many of whom lacked the means to evacuate. The main thoughts racing through my head again and again were how bad will it be, what will become of us and how will we help our people now?

The main issue I knew by Wednesday, August 30, 2005, was that I had to do something to help my people or else I would go cuckoo. My family and I had been glued to the television seeing total chaos and human suffering. I had already recognized five or six of my clients in front of the now infamous convention center and the Superdome. It was ripping my heart out. I was sick of crying. So, I called the legal services office in Shreveport, LA to see if there was a way to help. It did my poor, broken and bleeding heart good when I was told that one of our co-directors, Brian Lenard, was actually at the Shreveport office at that very moment working on payroll. Needless to say, I was delighted to hear that and even more excited to learn that Brian and Mark Moreau, our other co-director and the head of our New Orleans office, had some great ideas about providing immediate disaster legal services to our clients. With the generosity of Alma Jones, the director of the Shreveport Legal Services office, five of our New Orleans attorneys who landed there during the evacuation, were working out of temporary offices within a week after Katrina passed.

Just what would we all do though? Would we be sitting around twiddling our thumbs bemoaning the wreck of life as we know it? Our leaders reassured us that we would be so busy we wouldn't know what to do with ourselves. We were skeptical, but wanted to believe there was still a city to fight for and clients to serve. So we chose to believe it. But how would we serve our clients in this new post-Katrina world? What was the impact on our staff, our community and our clients?

One hundred percent of our New Orleans area staff was homeless for at least six weeks or more and 60 percent of them lost their homes to Katrina. Some staff's spouses lost their jobs. A third of our attorneys resigned in the first four months of the disaster and we lost half of our managing attorneys. Only a few of our support staff were able to return to work and there was no temporary labor available to help with disaster recovery.

Our computer server was down for at least six weeks, cell phones would not work, there was basically no mail service in the New Orleans area, no Internet service was available, no e-mail available and we lost all of our techies. Our attorneys were spread across Louisiana and America at temporary offices. We had no access to our New Orleans office or our files for at least six weeks. Our Chalmette, LA office was totally destroyed. Our clients were spread out all across the country with Katrina causing the greatest diaspora in American history.



*Photo courtesy of New Orleans Legal Assistance, Southeast Legal Services*

Ruins of a home in New Orleans' Ninth Ward following Hurricane Katrina.

Our funding situation was both dire and uncertain. Katrina put most of our local funders out of business for an indefinite period. Would we even have money to pay staff's salaries so that they could help their fellow Katrina victims recover and survive?

But in our darkest hour, there were bright spots. The world felt our pain and wanted to help our clients and our program.

Legal aid programs in Houston, Dallas, Austin, Tulsa, Shreveport, Baton Rouge, Lafayette and Washington, D.C. provided our staff with temporary offices. Neighborhood Legal Services of Los Angeles County and Texas Rio Grande Legal Aid staff donated their disaster law expertise. Legal aid programs from Western New York, Atlanta, East Tennessee and South Michigan sent or had their tech gurus help us fix our technology systems. The Student Hurricane Network recruited hundreds of law students from everywhere to volunteer in the Gulf Coast. The generous donations by NLADA members and legal aid staff for disaster relief funds for staff meant so much to our staff. You were there for us and we will never forget your generosity.

Debevoise & Plimpton and the Legal Services Corporation quickly recognized our need for immediate cash. Without their quick action, we may have had to lay-off staff at a time we needed every employee (and more) to meet the Katrina crisis. Other firms, bar associations, foundations and individuals also came to our rescue with donations. LSC's top leaders, Helaine Barnett and Karen Sarjeant, personally visited our Hammond office shortly after Katrina, to provide us with their support. Reagan Simpson of King & Spalding argued and won a landmark Section 8 housing case for us in the 5th U.S. Circuit Court of Appeals. Legal aid housing law experts from around the nation also helped with our appeal.

Overnight, almost every greater New Orleans resident, the pre-Katrina poor and the legions of the “new poor” had several new legal problems: homelessness, FEMA assistance, unemployment benefits, evictions, lease disputes, insurance hassles and interstate custody (“Katrina Kidnapping”). Traumatized and bewildered, everyone had huge needs for advice on their bleak options.

Disasters bring out the best and worst in people. With 80 percent of New Orleans buildings flooded, many landlords lost their minds. They locked people out, threw their stuff away, moved new tenants in, or gouged people on rent. One of my female disabled client’s male landlord entered her bedroom around midnight and screamed at her to get the hell out.

Housing is still the number one problem in New Orleans. Without affordable housing, workers can’t get jobs and businesses can’t get employees and customers. Most public and Section 8 housing is still boarded up or lies in ruins. Many homeowners face foreclosure. As bad as things have been, we sense that things will get much worse for our clients soon, as temporary housing from FEMA or relatives ends.

Our clients are returning to New Orleans. But many are doubled up with others, living in their cars or in destroyed, mold-infested houses. We even have an elderly client who lived in a tent several weeks after open-heart surgery, because FEMA denied him a trailer or rental assistance. We have seen a domestic violence victim made homeless because her abus-

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Reports everywhere on the Coast document a huge eviction problem where landlords looking for higher rents in a market facing significant housing shortages are displacing poor people.

In effect, one-third of the city of New Orleans current lives tenuously in Houston, a staggering 150,000 people. A recent *New York Times* article reported that the city of Houston was without further resources to assist these families. That crisis is exacerbated considerably by the double whammy provided by Rita. This litany of problems is not news to anyone who has followed this story in any depth. One could go on and on about the scope of the legal need coming to the fore as a result of this tragedy. The experience with the legal need generated by 9-11 indicates that the response must be a long-term one.

The legal community, and equal justice advocates in particular, cannot afford to be passive bystanders to these events. We need to regenerate our enthusiasm to the challenges that lie ahead in the difficult months to come as people begin to lose their temporary housing assistance and as government officials pursue policies blind to the needs of

er fraudulently claimed FEMA assistance for her home, even though he didn’t live there. Every week, we see new cases that are more extreme than your average pre-Katrina legal aid case.

Eight months after Katrina, our New Orleans office has made substantial progress. We have hired new attorneys to replace most of the attorneys who had to leave. We lost our litigation director to Katrina and are looking for a new one. So, if you want to join us as our litigation director in the social justice adventure of a lifetime, please call us now. We are still not near our pre-Katrina strength and are over extended in many of our practice areas. But, we have four new dynamic, experienced attorneys who work in disaster related law — thanks to donations from the American Bar Association and the Equal Justice Works Foundation. Our client waiting room has been full every day this week, just like in the old days, and we also see upwards of 30 new clients almost every day at outlying Disaster Recovery Centers. Somehow, with all that has happened and with the help of many others, we have managed to serve more clients since Katrina, than we did before Katrina. We know these Katrina problems will last for many years and we have to find a way to sustain our work. With America’s help, we hope to help our clients back to a better life. ★

*Laura Tuggle is a staff attorney with New Orleans Legal Assistance, Southeast Legal Services.*

poor and minority families in the region.

### What Can Be Done?

In addition to the efforts ongoing by advocates in the most affected states, several national organizations have responded with great resolve to the crisis. NLADA has worked with our colleagues at the American Bar Association, law firms from across the country, the Legal Services Corporation (LSC), the Lawyers Committee for Civil Rights, the NAACP Legal Defense Fund, ProBono Net, the Shriver Center and Appleseed, along with a vast array of national substantive law centers on various parts of the problem. These groups must continue their focus on the issue while pursuing much better coordination and communication.

In terms of the specific needs for the civil advocacy effort, the following represent some essential elements:

**1. Federal Dollars for Legal Assistance.** The failure of the Administration, FEMA and Congress to include money for legal assistance in the billions of dollars appropriated to date for hurricane relief is nothing short of a travesty. Despite the best efforts of

LSC, Congress continues to neglect the need for legal assistance in its latest supplemental measures. We must redouble our efforts to ensure that federal resources are made available to provide attorneys on the ground in the areas of greatest need.

**2. Outreach and Identification of Client Need.** For a variety of reasons, not the least of which is the scope of the disaster, legal aid programs in the most affected states have been able to connect with only the tip of the iceberg when it comes to the huge number of eligible clients who need legal assistance. A number of initiatives are underway in the region to improve the intake and identification systems. Advocates in every state that has a considerable population affected by Katrina are striving to establish effective means to connect with these potential client communities.

Experience has shown that providers should be in regular contact with a wide array of community service agencies and governmental entities in their state that regularly interact with potential clients. Chief among these in many

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states is the state disaster agency. Many of these operations are very sophisticated and experienced, and they possess a wealth of information regarding affected populations. Community centers and organizing groups, churches, United Way and the Salvation Army are other examples of agencies that might have a good handle on legal need in a community. Regular communication and interaction with organizations of this type is critical to connecting with potential clients.

**3. Volunteer Assistance.** Conversations with legal aid advocates in the region regarding their needs (beyond additional money for lawyers) indicate the following:

- **Private Attorneys.** The ABA as an institution, led by President Greco and the Pro Bono Center, has organized a comprehensive effort to make resources available on the Gulf Coast. Eighteen hundred volunteer attorneys have been recruited and are available to assist clients in need. Many of these volunteers jumped at the chance to help immediately after the disaster, but for a number of logistical reasons - particularly the lag time before peak client demand and the lack of an infrastructure and court rules to facilitate these volunteers - many became frustrated at a lack of opportunity to become involved. We must now make sure that these resources are reinvigorated and put to use. Katrina devastated states in the Gulf that have extraordinarily scarce resources available to provide legal assistance and promote pro bono placements. That fact has contributed to many of the delays in connecting client need with requests for volunteer assistance. The affected states are working hard to address these problems, but until resources are significantly increased, the capacity to connect the thousands of clients with volunteers will remain a work in progress. Some of the earlier barriers to volunteer involvement have been addressed. With money provided by ABA Business Law Section, a pro bono co-coordinator, Karen Lash, has been hired at the Mississippi Center for Justice. She, and her counterpart, Monique Drake, at the Louisiana Pro Bono Center, are helping connect volunteers with clients. Mississippi, Louisiana and Texas have adopted Supreme Court rules that permit out-of-state lawyers to provide services to clients in need by working through either legal aid providers or organized pro bono programs. Many sections of the ABA and law firms have worked to produce disaster manuals and serve as expert consultants to advocates needing advice on particular types of cases.

- **Large Law Firms.** The Lawyers Committee for Civil Rights and the NAACP Legal Defense Fund have provided thousands of hours in addressing systemic issues arising from Katrina. Yet, the need to marshal the considerable resources of large law firms in confronting additional systemic challenges is significant. The Litigation Assistance Partnership Project of the ABA's Section on Litigation is actively seeking referrals of such matters and stands ready to place appropriate cases with firms across the country.

- **The Legal Aid Community.** Mirroring the private attorney experience, the immediate response of legal aid advocates

across the nation was overwhelming. Many providers and advocates jumped in with offers of help. In particular, Abigail Turner and the Minnesota Bar Association provided stalwart assistance on the ground in the affected areas immediately after the storm. Yet, for many of the reasons mentioned above, much of that enthusiasm was not channeled into immediate opportunities to be of assistance. While a number of providers continue to serve communities of evacuees within their service area, we as a community can do much more to focus attention on the looming deluge of cases in the most affected states that will stress the system to its limit.

**Discussions with providers in the areas of greatest need indicate several ways in which interested advocates and legal aid programs can be of assistance, including:**

- 1. Boots on the Ground.** The most direct way to help is to spend some time in one of the affected states advising and representing clients. Providers appreciate short-term visits, but benefit in a much deeper way from volunteer commitments of several months duration. While temporary housing can be a challenge in some areas, most programs appear able to accommodate the needs of volunteers and put them to immediate, effective use.

- 2. Mentoring/Back-up.** Local advocates would benefit tremendously in many cases by having access to expertise and counseling regarding matters that they are handling in areas beyond their previous expertise. As an example, the ABA, through its Tax Section and other entities, has developed several different lawyer-to-lawyer mentoring models tailored to meet specific needs. While essential, many of the disaster manuals that have been developed are daunting and volunteer advocates find themselves unsure about the law or most effective strategies to pursue. Having the opportunity to discuss a particular matter by phone or through e-mail exchange with an experienced colleague in the relevant substantive area would significantly advance the effort. Advocates with experience handling FEMA appeals are particularly valuable.

- 3. Remote, Direct Assistance.** A great deal of the ongoing representation and advice in the affected states is being provided by telephonic communication. A number of providers believe that, in certain matters, such assistance could be provided by advocates at remote settings. While a system to coordinate such referrals needs to be considered and developed, it would provide a means for the entire legal aid community to participate without wholesale disruption in their own service. The effective marshaling of the resources of the legal aid community to the relief effort requires a great deal of coordination with the local providers and their national partners. NLADA is committed to working with these groups over the next several months to improve the infrastructure that coordinates volunteer support with client need.

The energies and commitment of the entire equal justice community will be required to help address the great human need created by this disaster. Without our help, a great deal of unnecessary suffering and injustice will go unheeded by a society turned sadly indifferent. Our community must do its best to meet these enormous challenges. ★

# VAWA 2005 Immigration Provisions



## Final as Signed by President Bush on January 5, 2006

By Joanne Lin and Leslye Orloff

In 1994 and 2000, Congress included in the Violence Against Women Act (VAWA) immigration provisions designed to remove obstacles inadvertently interposed by immigration laws that prevent immigrant victims from safely fleeing domestic violence and prosecuting their abusers. VAWA 2000 extended immigration relief to immigrant victims of sexual assault, human trafficking and other violent crimes who agree to cooperate in criminal investigations or prosecutions. A key goal of VAWA's immigration protections is to cut off the ability of abusers, traffickers and perpetrators of sexual assault to blackmail their victims with threats of deportation and thereby avoid prosecution. VAWA allows immigrant victims to obtain immigration relief without their abusers' cooperation or knowledge. Congress understood that in order to stop domestic violence, all victims need protection and assistance without regard to their immigration status.

While VAWA 1994 and 2000 made significant progress in reducing violence against immigrant women, there are still many women and children whose lives are in danger today. Many VAWA-eligible victims of domestic violence, sexual assault, child abuse or trafficking are still being deported. Others remain economically trapped by abusers or traffickers in life-threatening situations. Some needy victims of family violence, including incest survivors and elder abuse victims, are totally cut off from VAWA's immigration protections. Finally, many trafficking victims are too afraid to cooperate with law enforcement for fear that traffickers will retaliate against their family members. VAWA 2005 eliminates some of the major obstacles immigrant crime survivors face in achieving safety and legal immigration status.

### **A. Implements VAWA's original intent by stopping deportation of immigrant victims of domestic violence, sexual assault or trafficking:**

- **Gives VAWA-eligible applicants the opportunity to file one VAWA motion to reopen to pursue VAWA relief.** Exempts VAWA cancellation of removal or suspension of deportation applicants from the motion to reopen filing deadlines and numerical limits, provided they are physically present in the U.S. at the time of filing. Also provides the filing of such motion shall stay their removal pending final disposition of the motion including exhaustion of all appeals, if the motion establishes a prima facie case for the relief sought [Section 825].
- **Adds battery or extreme cruelty to the list of exceptional circumstances in removal proceedings for motions to reopen in absentia orders** [Section 813(a)].
- **Exempts victims of domestic abuse, sexual assault, or trafficking from sanctions for failing to voluntarily depart.** VAWA petitioners, VAWA cancellation of removal applicants

and VAWA suspension of deportation applicants are not subject to the penalties for failing to depart after agreeing to voluntary departure if the extreme cruelty or battery was at least one central reason for the overstay of voluntary departure [Section 812].

- **Encourages the use of the I-212 process** that allows DHS to waive prior entry and removal problems for immigrant victims of domestic violence, sexual assault or trafficking so immigrant victims who qualify for VAWA, T, or U relief can overcome reinstatement of removal problems [Section 813(b)].
- **Improves VAWA cancellation of removal through technical amendment so judges can grant VAWA 2000 domestic violence victim waivers** [Section 813(c)].
- **Fixes the filing deadline problem for VAWA NACARA 202 applicants** by allowing abused spouses and children eligible for legal immigration status as a Nicaraguan or Cuban under the Nicaraguan Adjustment and Central American Relief Act of 1998 to apply even if the abuser did not apply for status and even though the filing deadline has passed [Section 815].
- **Improves access to VAWA HRIFA.** Provides that if an alien abuser was eligible for status under the Haitian Refugee Immigration Fairness Act of 1998, but did not apply for status, the alien's abused spouse or children at the time may now apply for immigration status on their own [Section 824].
- **Grants Cuban Adjustment to the spouse of a Cuban eligible for adjustment** under the Cuban Adjustment Act for two years after the date on which the Cuban spouse died, or for two years after the date of termination of the marriage if the abused spouse demonstrates a connection between the termination of the marriage and being battered or subject to extreme cruelty by the Cuban. [Section 823].
- **Improves protection for children of U visa recipients.** Enhances protection for crime victims by providing that certain family members accompanying or following to join can receive U visas without having to show that the visas are necessary to avoid extreme hardship or without having to obtain a government certification attesting that a criminal investigation or prosecution would be harmed without the assistance of those family members [Section 801(b)].
- **Allows trafficking victims** whose physical or psychological trauma impedes their ability to cooperate with law enforcement to seek a waiver of this requirement [Section 801(a)(3)].
- **Amends good moral character definition** (INA 101(f)(3)) to clarify that a prior removal order [INA 212(a)(9)(A)] does not constitute a bar to establishing good moral character. Note: this amendment fixes a prior legislative drafting error and applies to all aliens, not just VAWA, T or U-eligible aliens.

# Advocating for Clients:

## Defenders and Collaboration in the Criminal and Juvenile Justice Systems

By Judith Berman, Ph.D.

When it comes to providing services to the poor, the word “collaboration” comes up frequently. It is perhaps because the numbers of poor are so large, their needs so great and the resources provided to serve them are so limited, that legal services professionals and public defenders are forced to create partnerships that will help them address their clients’ problems. Legal services has frequently needed to partner with social service providers, advocates for the homeless, domestic violence advocates and others to reach their target population with necessary services. Defenders who take a “holistic advocacy” perspective routinely work with social workers and other community service providers to try to address the root causes of criminal behavior for their clients and identify alternative dispositions that will both keep clients out of jail or prison and serve their long-term interests.<sup>1</sup> Defenders, though, traditionally seem to have fewer “natural” allies in their work within the justice system. As Catherine Beane has pointed out, even assigned counsel and private attorneys don’t always see their way to collaborating on policy issues with their public defender colleagues.<sup>2</sup> And, as Cynthia Works has argued, the lack of collaboration between civil and criminal legal services providers threatens to exacerbate the myriad problems facing ex-offenders upon their reentry to the community following incarceration.<sup>3</sup>

The case has been made by Cait Clarke, Beane, Works and others that collaboration is a vital part of the work of defenders, both in case management and policy making

arenas. Yet, collaboration is challenging and time consuming and often fails to meet the high hopes participants bring to it. What is it that makes collaboration so difficult? And what can defenders do to help increase the likelihood of success in their collaborative endeavors? This article will briefly outline some of the keys to collaboration success and provide resources for those interested in furthering the effectiveness of collaborative teams in their jurisdictions.

### What is Collaboration?

Collaboration has become something of a buzzword in the last several years. Federal grant programs often require evidence of a multidisciplinary project team as a condition of funding and projects in both the public and private sectors are touted as collaboratives, as if this signifies either particular creativity, efficiency or both. Collaboration has been recognized as an appropriate and effective strategy for addressing some of the country’s most complicated and multidimensional problems, as well as for maximizing efficient use of available resources. But this does not mean that everyone who uses the term collaboration is actually doing it.

In some jurisdictions, holding interdisciplinary meetings to share information passes for collaboration. In others, signing a memorandum of understanding supporting another agency’s project is considered collaboration. But these activities fall short of the commitment, investment and vision necessary for true collaboration. Collaboration, according to David Chrislip and Carl Larson, two prominent experts in the field, “is a mutually beneficial relationship between two or more parties to

achieve common goals by sharing responsibility, authority and accountability for achieving results. It is more than sharing knowledge and information (communication) and more than a relationship that helps each party achieve its own goals (cooperation and coordination). The purpose of collaboration is to create a shared vision and joint strategies to address concerns that go beyond the purview of any particular party.”<sup>4</sup>

In the context of the criminal and juvenile justice systems, there are many concerns that affect each organization or agency that “go beyond the purview of any particular party.” Collaboration makes change possible within the criminal and juvenile justice systems that would be otherwise impossible.

While definitions of collaboration can vary according to the particular context to which they are applied, all researchers in this field identify the need for a shared vision or common purpose to both motivate and structure the collaborative endeavor. Chris Huxham, for example, notes that when we collaborate, we exchange information, alter our activities, share resources and “enhance the capacity of another for the mutual benefit of all and to achieve a common purpose.”<sup>5</sup> Collaborations may be built around values that are common to those working in a particular field. Many working in the justice system, for example, share a commitment to promoting “justice.” But as those working in the field of indigent defense know, justice means different things to different people. The shared vision or common purpose must be defined and articulated by those stakeholders that comprise the collaborative team to ensure buy-in and agreement. Each member must see the team’s purpose as larger than their individual interests, whatever those may be (reputation, revenue, publicity, personal satisfaction, etc.). Members need to believe that any member of the team can be trusted to advance that larger purpose.

Indeed, when Carl Larson and Frank LaFasto studied the work of teams from a diverse set of fields including business, sports, community development and public health in order to determine what makes teams succeed, the presence of a “clear and elevating goal” was the first and most important characteristic they identified.<sup>6</sup> This goal provides motivation as well as direction and guidance. Interestingly, in order to be sufficiently inspiring, it needs to be something that is just out of reach, an ideal. It needs to elevate the work of the collaborative team above the mundane and the everyday and direct it toward the future. “A shared vision can provide a revolutionary reconception of future possibilities,” writes David Chrislip in *Collaborative Leadership* (2002).

“By providing a broader context for action, a shared vision allows people to break out of historic mind-sets. It shifts emphasis from the present to the future by redirecting energy toward positive, desirable outcomes rather than avoidance of negative, undesirable consequences.”

Note that, according to Larson and LaFasto, the goal must be both elevating and clear. In order to unite the purpose of the team, the vision must be fully and unambiguously understood by each team member.

Vision is therefore absolutely necessary to a successful team. But it is not sufficient. Other characteristics Larson and LaFasto discovered among the variety of successful teams included:

- A results-driven structure, a structure that best suits the

results the team is trying to achieve, whatever those may be

- Competent team members, individuals who possess both the substantive or technical skills and knowledge required to accomplish the tasks, as well as the personal attributes that make them good at working with others

- Unified commitment, an enthusiastic sense of loyalty and dedication to the team, fostered by active involvement

- A collaborative climate, one where honesty, openness, consistency and respect are prominent and trust is established and maintained

- Standards of excellence that create pressure on each team member to perform

- External support and recognition such that the team has sufficient resources to accomplish its goals

- Principled leadership establishes the vision, makes it compelling, creates change and unleashes the energy and talent of team members without over-involvement of the leader’s ego<sup>7</sup>

As Larson and LaFasto identify in their description of a “collaborative climate,” the presence of trust among team members is one of the hallmarks of a collaborative endeavor. We must trust that our teammates will respect our positions and our limits. We must trust that our discussions will be kept confidential; that conflict, whether of opinion or style, will be managed such that the team is better rather than worse off for having opened the conflict to scrutiny; and that team members will support each other publicly in the face of either success or failure along the project’s path. The level of trust required takes both time and effort to develop, but it is an essential prerequisite to any collaborative accomplishment.

Leadership is essential to the development of trust. A skilled collaborative leader will model the kind of interaction that should occur between all members. The leader of a collaborative needs to understand group dynamics and help create the kind of working atmosphere where defenses can be let down and honest exchange take place. Judge John West, Hamilton County, Ohio, describes the work of a policy team for which he served as co-chair as, in part, the creation and institutionalization of “a forum for the key players to listen, learn, discuss and resolve the most difficult and sensitive issues.”<sup>8</sup> If any team member violates the group’s trust, or is acting in a way that will undermine trust if allowed to continue, the leader has the responsibility to address that behavior either in private or with the group, whichever the leader deems will be most effective. Ultimately, team members need to trust the leader will enforce standards of behavior as well as standards of performance. From there, team members can begin to hold each other accountable to the group’s standards, knowing the leader will support any team member’s legitimate efforts to do so.

Contributing to a climate of trust is easy, as is intentionally or unintentionally engaging in behaviors that will undermine trust. Part of the challenge for all criminal and juvenile justice professionals is simply workload and limited time, but in order for team members to build trust, they must make a

## NASAMS Announces 2006 Institute, Conference

The National Alliance of Sentencing Advocates & Mitigation Specialists (NASAMS) will be holding its 2006 Death Penalty Mitigation Institute & Conference August 1-4 in Baltimore, Maryland.

Premiering in 2006, the Advanced Death Penalty Mitigation Institute will offer an indepth examination of mental illness and the death penalty — looking ahead at using mental illness as an exemption from execution as articulated by a 2006 report by Amnesty International and an American Bar Association resolution. Mitigation specialists have significant contributions to make as we join the national movement to eliminate the death penalty for those with mental illness — the next frontier in death penalty advocacy.

### NASAMS Conference – Spotlight on Team Defense

The NASAMS Conference is a three-day training event that brings together sentencing advocates, mitigation specialists, defense attorneys, paralegals, investigators, forensic experts and criminal justice professionals from around the country to improve their knowledge and skills in all areas of defense-based sentencing and

mitigation practice.

The emphasis of the 2006 conference is “Spotlight on Team Defense” and it focuses on promoting the use of the multi-disciplinary criminal defense teams and strengthening the role of the sentencing advocate or mitigation specialist on the team. Through plenary sessions, workshops and discussion groups, the conference provides a wide variety of training opportunities on creative practice skills and techniques, human behavior and factors affecting it and recent legal and policy developments in sentencing and mitigation practice. Beyond an excellent learning environment, the conference gives participants an opportunity to meet and exchange ideas with colleagues from around the country.

(NASAMS is a section of NLADA that is dedicated to the promotion of fair, humane and equitable sentencing and confinement decisions for all people in America. The Alliance is designed to advance the field of sentencing advocacy by fostering the professional development of its members and upholding the ethical standards of practice. ☆

## LSC Mourns Passing of Current, Former Board Members

### Florentino “Lico” Subia

Florentino “Lico” Subia, a member of the Board of Directors of the Legal Services Corporation (LSC) since 2003, died Sunday, March 5, 2006 in El Paso, Texas, where he made his home. After suffering a heart attack earlier in the week, Subia, a Korean War veteran, passed away on his 75th birthday.

Appointed to the LSC board by President George W. Bush, Subia was known for his dedication to motorcycles and good deeds. In 1978, he combined the two by founding the Iron Horses Motorcycle Club. It raised money for local charities such as the Reach for the Stars Foundation, which helps individuals with cystic fibrosis and their families.



Florentino “Lico” Subia

LSC President Helaine M. Barnett said, “Lico was a diligent member of the Board and was dedicated to our mission. His heart was as big as the open roads he loved to travel on his motorcycles. He had an abundance of common sense as well. I know that I speak for the entire legal services community when I say he will be missed.”

Subia is survived by his wife, Mickie, and four children, as well as many grandchildren and great-grandchildren.

### Ernestine P. Watlington

Ernestine P. Watlington, former member of LSC's Board of Directors, passed away in Pottsville, Pennsylvania on April 13. She was 70 years old.

Watlington was appointed to LSC's board by President Clinton in 1993 and served until April 5, 2006, earning the record for longest consecutive service by a Board member in LSC's history. While her service on LSC's Board afforded her an opportunity to advocate for low-income people on a national level, she never stopped working to improve the lives of the less fortunate in her own community.

She founded the Edgemont Community Action Center and later became Director of Harrisburg Community and Economic Affairs. She was a founding board member of the Law Coordination Center and Dauphin County Legal Services, and an active member of the South Central Pennsylvania Foundation and the Pennsylvania Low-Income Housing Coalition. ☆

# Congressman Applauds Legal Aid, Pro Bono Partnerships

By Jeff Billington, NLADA deputy director of communications

**T**he stalemate that legal aid funding often faces in Congress is no surprise to Rep. Chaka Fattah, D-PA.

For more than a decade he has seen causes for those that need it most derailed, he said at the 2006 Equal Justice Conference in Philadelphia.

“Legal services and our nation, as you know, have been under a significant challenge for the last 12 years or so,” Fattah said. “We keep promoting around the world that we are a nation of laws and we have millions and millions of people in this nation of laws that have no access to responsible legal representation.”

Across the nation, these people do not have the resources to give them the same rights as other people, he said.

“This is at a time when the Congress has been less than sympathetic to the needs of legal services,” Fattah said, adding the legal aid community must find new strength to fight for the rights of all people to enjoy equal justice. The volunteer work of some attorneys and law firms has been a big help in filling this void.

“It is to be celebrated that there is such a commitment to pro bono work,” he said. “What is important about the practice of law is that everyone trained in the law has a responsibility, to litigate and help others.”

The legal aid community plays a wide role in society, including making sure the housing, jobs and public services offered are fair to everyone, not just those with money, Fattah said.

“It’s in the question of whether or not our children are going to have a comparable education to those in wealthier neighborhoods,” he said. “It’s in the right to gain fair wages for one’s work, to fair federal benefits, to affordable housing.”

Where there are poor children you are most likely to find teachers, who while they are good teachers, teaching subjects they are not qualified to teach, Fattah said.

“This is a problem all across the land,” he said.



Photo by Jane Ribadeneyra

Rep. Chaka Fattah speaks to attendees at the 2006 Equal Justice Conference in Philadelphia.

The work the legal aid community has done already has had a major impact, but more will have to be done, Fattah said.

“There is obviously power in the profession you are members of, through using your abilities and skills,” he said. “We should not concede one inch. You need to become even more aggressive; they need you more than they have ever needed you. You have a mandate to move forward.”

He asked that more private attorneys get active in the legal aid pro bono movement.

“Be willing to give your time and your talent to the cause,” Fattah said. “You can also help by advocating in your public policy for the government to make changes to how it treats the legal aid.”

Even though Congress has been dragging its feet regarding issues, there is still the ability to change, he said.

“I think the capacity for change exists here in this country more than in any country in the history of the earth,” Fattah said. “You represent a true capacity to improve the life chances for millions upon millions of people who may never know your name.” ☆

“We keep promoting around the world that we are a nation of laws and we have millions and millions of people in this nation that have no access to responsible legal representation.”

## VAWA - Continued from page 21

### B. Extends immigration relief to larger group of family violence victims

- **Protects child abuse and incest victims by allowing them to self-petition up to age 25** so long as the child abuse was at least one central reason for the filing delay [Section 805(c)].
- **Expands VAWA self-petitioning to elder abuse victims who have been battered or subjected to extreme cruelty by their adult U.S. citizen son or daughter** [Section 816].

• **Removes 2-year custody and residency requirement for abused adopted children** by allowing adopted children to obtain permanent residency even if they have not been in the legal custody of, and have not resided with, the adoptive parent for at least two years if the child has been battered or subject to extreme cruelty by the adoptive parent or by a family member of the adoptive parent [Section 805(d)].

• **Protects abused immigrant children and children of battered immigrants from being cut off from VAWA immigration protection because they turn 21.** Assures child VAWA self-petitioners and derivative children have access to VAWA's aging out protections and can additionally access any Child Status Protection Act relief for which they qualify [Section 805(a) &(b)]

• **No petitioning for abusers as family members.** An alien who was a VAWA petitioner, or granted a T or U visa may not file an application on behalf of the person who committed the battery, extreme cruelty or trafficking against the individual, which established the individual's eligibility as a VAWA petitioner, or for T or U status [Section 814(e)].

### C. Provides economic stability and security for trafficking victims

• **Protects trafficking victims' family members living abroad and reunites family members** by allowing them to receive T visas without having to show extreme hardship [Section 801(a)(2)].

• **Improves access to permanent residency for trafficking victims** by providing them an exception to the penalties for being unlawfully present where the trafficking was at least one central reason for the unlawful presence [Section 802]

• **Allows change of status to T or U for aliens who entered the U.S. on C (transit), D (crewmen), K (fiancée, non-immigrant spouse, child), S (criminal informant), or J (exchange visitor) visas;** as visitors under the visa waiver program; or as visitors from Guam [Senate 821(c)].

• **Extends duration of U and T visas** for up to four years, with the option to extend year by year if law enforcement certifies that such extension is necessary to assist in the criminal investigation or prosecution [Section 821(a) and (b)].

• **Allows some trafficking victims earlier access to permanent residency** by allowing continued presence to count towards the three-year residence requirement and allowing DHS discretion to reduce three year wait upon receipt of certification that law enforcement officials do not object [Section

803(a)].

• **For purposes of T visa certifications** clarifies that victims of trafficking are participating in investigations and prosecutions when they respond to and cooperate with requests for evidence and information [Section 804(b)]

### D. Protects safety of victims of domestic abuse, stalking, sexual assault and trafficking

• **Strengthens VAWA Confidentiality Enforcement.** In 1996 Congress created special protections for victims of domestic violence against disclosure of information and the use of such abuser-provided information in removal proceedings. In 2000 and in this Act, Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief. These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include abusers using DHS to obtain information about their victims including the existence of a VAWA self-petition, interfering with or undermining their victims' immigration cases and encouraging immigration enforcement officers to pursue removal actions against their victims. This section makes the following improvements to VAWA confidentiality [Section 817]:

- Extends VAWA confidentiality to trafficking victims
- In addition to the Department of Justice, the Department of Homeland Security and the Department of State shall be covered by VAWA confidentiality rules
- Provides for congressional oversight by permitting disclosure, in a manner that protects victim confidentiality and safety, to the chairs and ranking members of the House and Senate Judiciary Committees, including the Immigration Subcommittees
- Gives the specially trained VAWA unit discretion to refer victims to non-governmental organizations with expertise in victim and legal services
- Establishes a system to verify that removal proceedings are not based on information prohibited by section 384 of IIRIRA. When removal proceedings are initiated based on immigration enforcement actions taken at a domestic violence shelter, a rape crisis center or a courthouse (where the alien is appearing in connection with a protection order or child custody case), DHS must disclose these facts in the Notice to Appear issued against the alien. DHS must certify it did not violate the requirements of Section 384 of IIRIRA [Section 825(c)]
- The Department of Homeland Security and the Department of Justice provide guidance to their officers and employees who have access to information protected by Section 384 of IIRIRA including the purposes to protect victims of domestic violence, sexual assault, trafficking and other crimes from the harm that could result from inappropriate disclosure of information
- **Protects driver's license information for limited group of crime victims whose confidential address is critical for**

**their safety.** With respect to rules governing identification cards and drivers' licenses (as enacted by REAL ID), DHS and the Social Security Administration shall give special consideration to victims of domestic abuse, sexual assault, stalking or trafficking, who are entitled to enroll in state address confidentiality programs, whose addresses are entitled to be suppressed under State or Federal law, VAWA confidentiality or suppressed by a court order [Section 827].

- **Special immigrant juveniles shall not be compelled to contact the abusive family member** at any stage of the SIJS application process. [Section 826].

#### **E. Guarantees economic security for immigrant victims and their children**

- **Guarantees Access to Legal Services for Immigrant Victims** by authorizing any Legal Services Corporation-funded program to use any source of funding, including LSC funding, to represent any victim of domestic violence, sexual assault, trafficking or other crime, regardless of the victim's immigration status [Section 104].

- **Employment authorization for abused spouses of certain non-immigrant professionals.** Derivative spouses admitted to the U.S. under the A, E(iii), G, or H non-immigrant visa programs who are accompanying or following to join the principal shall be granted work authorization if the derivative spouse demonstrates that during the marriage he or she (or a child) has been battered or subjected to extreme cruelty perpetrated by the principal [Section 814(c)].

- **Employment Authorization for victims with approved VAWA petitions and T visas** [Section 814(b)].

#### **F. Improvements in processing VAWA cases and technical amendments**

- **Creates uniform definition of "VAWA petitioner," which covers all forms of VAWA self-petitions created in VAWA 2000 including all VAWA-self petitioners, VAWA Cuban adjustment, VAWA HRIFA, VAWA NACARA (202 & 203) applicants and battered spouse waivers.** Includes both petitioners and their derivative children [Section 811].

- **Mandates promulgation of regulations implementing VAWA 2000 and VAWA 2005 within 180 days after enactment of VAWA 2005** [Section 828].

#### **G. International Marriage Broker Regulation**

- **Requires U.S. citizen filing K petitions to disclose criminal background information.** Mandates that U.S. citizens filing K visa petitions disclose criminal background information to international marriage brokers and to DHS/CIS. Relevant crimes include domestic abuse crimes, other violent crimes and multiple convictions for substance and/or alcohol abuse. DHS will be required to transmit this criminal history information, along with results of any database search, to the foreign fiancé or spouse [Section 832(a)].

- **Prevents abusive U.S. citizens from sponsoring multiple foreign fiancées and/or spouses.** DOS cannot issue a K visa (unless DHS grants a waiver or the domestic violence victim exception applies) if the U.S. citizen has previously filed two K visa petitions and less than two years have passed since the date of filing of the most recent K visa petition. DHS can waive this bar, but not when the U.S. citizen has a history of

committing domestic abuse or other violent crimes [Section 832].

- **Government tracking of serial K**

**visas.** Creates government database to track serial K petitions filed by same U.S. citizen petitioner and to notify foreign fiancé or spouse of prior K petitions. Notification requirement triggered after petitioner has filed three K petitions within the past 10 years [Section 832].

- **Domestic abuse pamphlet to be distributed to all foreign fiancées and spouses.** DOS, DHS and DOJ shall create pamphlet on domestic abuse laws and resources for immigrant victims in the U.S. The pamphlet must be sent to all foreign fiancés and spouses. DHS shall also send results from any criminal background checks conducted in the course of adjudicating the K visa petition, along with the petitioner's disclosure of any criminal history. U.S. consular officers shall orally inform foreign fiancées/spouses of the petitioner's criminal history. DOS and DHS cannot disclose locational or personal information about prior victims of the U.S. citizen petitioner.

- **International Marriage Broker (IMB) Duties.** IMBs are prohibited from sharing any information on minors with any person or entity. IMBs cannot give U.S. clients information on a foreign national until the IMBs have searched sex offender registries, collected criminal and family background information, provided background information to the foreign national, given the domestic abuse pamphlet and received written consent from the foreign national to share her contact information. Violation of these requirements can result in civil penalty up to \$25,000.

**Note: the King Amendment** was excluded from final VAWA due in part to strong opposition by the National Task Force to End Domestic Violence and Sexual Violence, National Network to End Violence Against Immigrant Women, privacy groups and immigration advocacy groups. The King Amendment would have barred U.S. citizens and permanent residents with certain domestic abuse convictions from sponsoring any family immigrants for permanent residency.

For technical assistance and questions on VAWA Immigration 2005, please contact Joanne Lin, senior staff attorney, Legal Momentum at [jlin@legalmomentum.org](mailto:jlin@legalmomentum.org) or (202) 326-0040.

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*Joanne Lin is a senior staff attorney with the Immigrant Women Program (IWP) of Legal Momentum (formerly the NOW Legal Defense and Education Fund).*

*Leslye Orloff is IWP director and associate vice president of Legal Momentum.*

## NLADA Training Events

### Defending Immigrants Partnership

Washington, DC  
July 12 – 14, 2006

This conference engages immigration law experts to train defense attorneys to better represent non-citizen clients. In addition to top-quality instruction, participants receive a stipend and help create a state-specific chart summarizing the most common criminal law triggers for immigration consequences such as deportation.

### NASAMS Death Penalty Mitigation Institute & Conference

Baltimore, MD  
August 1-4, 2006

This conference provides an opportunity to learn the practical implications of recent changes in sentencing policy, sharpen advocacy skills and learn cutting-edge developments in mitigation and sentencing practice.

### New Leadership Las Vegas, NV

August 23 - 25, 2006

This seminar provides defender leaders with a set of skills they can deploy in their day-to-day work inside and outside the defender program.

### Annual Conference 2006

Charlotte, NC

November 8-11, 2006

NLADA's annual national gathering of advocates from the civil legal aid and indigent defense communities offers advocates the latest knowledge and professional skills to enable them to creatively and effectively meet the legal needs of low-income people.

## SUPREME COURT WATCH - Continued from page 6

their client's consulate.

### Georgia v. Randolph (Third-Party Consent, decided March 22, 2006)

In a narrow fact-bound ruling, the Court held police can't rely upon third-party consent to search of a home solely for evidence if a co-occupant is present and objects. The Chief Justice, Scalia and Thomas dissented. Justice Alito did not participate.

Scott and Janet Randolph lived in a rented home in Americus, Georgia. Following marital discord, Janet left, taking the couple's young son with her to her parents in Canada. Several weeks later, around the July 4th holiday, she and the child returned to the marital home. The record was unclear whether she returned to reconcile or to simply collect her remaining belongings. On the morning of July 6th, Scott, apparently fearing his wife would again leave the county with his son, took the child out of the home and left him with a neighbor. Janet called the police.

When police arrived they were faced with "dueling allegations" hurled by each spouse at the other. Janet accused Scott of being a heavy cocaine abuser and Scott accused Janet of being an alcoholic who was about to flee the country with his son. Although in one officer's words "there was a lot of animosity going on," there was never a suggestion that this domestic dispute was touched by any possible threat of violence.

The police first accompanied Janet to the neighbors to retrieve the child. Upon their return, Sergeant Murray then sought to investigate Janet's claim about Scott's drug use. He asked Scott for consent to search the home, but Scott, a lawyer, unequivocally refused, relying upon his Fourth Amendment right to a warrant. The sergeant then turned to Janet who readily consented and, over Scott's objection, voluntarily led the officers upstairs to what she asserted was Scott's bedroom. There the officers saw in plain view on a dresser a cut drinking straw with traces of powder cocaine. Although Janet later attempted to revoke her consent, the officer collected the straw and cocaine residue and took both Janet and Scott to the police station. Scott was subsequently charged with drug possession and his motion to suppress was denied.

On interlocutory appeal, Judge Ruffin's eloquent majority opinion for the Georgia Court of Appeals (590 S.E. 2d 834) held that Scott's exercise of his Fourth Amendment right to the protection of a warrant should have been honored. Using a waiver paradigm the court stated:

[T]he issue is not Mrs. Randolph's right to consent to a search, but whether she may waive her husband's right to consent to the search. Given Mr. Randolph's unequivocal assertion of that right, it seems disingenuous to conclude that he waived it."

Id. at 838.

This waiver approach to third party consent was once the position of a unanimous Supreme Court in *Stoner v. California*, 376 U.S. 483 (1964), which held a hotel clerk could not give valid consent to search a guest's room. Justice Stewart noted what was at stake was not the right of the clerk or the hotel, but a right "which only petitioner could waive by word or deed, either directly or through an agent." Randolph presents an easy case under a waiver paradigm. Even if a wife may be deemed to act as the agent of her husband in his absence, that agency relationship cannot be relied upon when the husband is present and objecting to the search. However, in the words of Justice Black, "the course of true law pertaining [to consent searches] has not—to put it mildly—run smooth." *Chapman v. United States*, 365 U.S. 610, 618 (1961) (Black, J. dissenting). This is because the Court rejected the waiver paradigm for consent searches in *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973). There the Court relegated the Fourth Amendment to an inferior status deserving less protection than other provisions of the Bill of Rights designed to ensure a fair trial. Thus instead of requiring an "intentional relinquishment of a known right," the Court held the only test for "consent" is voluntariness. *Bustamonte* undercut the waiver/agency approach to deciding third-party consent cases and the Court in subsequent cases failed to develop any coherent alternative theory.

In *United States v. Matlock*, 415 U.S. 164 (1974), the defendant's girlfriend met police at the door with a baby on her hip and consented to a search of the couple's bedroom where evidence from an armed robbery was found hidden in a diaper bag. In remanding the case without a decision on the merits, the Court observed that the validity of third-party consent rests not upon the "legal refinements" of property interests, but on: mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their cohabitants might submit to a search. Id. at 171 n.7. This footnote comment was picked up by Professor LaFave and transformed into a two pronged test requiring both "common authority" and an "assumption of risk." See LaFave, 4 Search and Seizure § 8.3 (4th).

In *Illinois v. Rodriguez*, 497 U.S. 177 (1990), however, the Court appeared to collapse the analysis into a singular focus on "reasonableness." In that case, the defendant's girlfriend had moved out of his apartment after a breakup, but had taken a key without his knowledge and used it to allow police to enter, discovering cocaine in plain view.

In upholding the search, the Court, per Justice Scalia, ruled that the issue was not whether there had been a waiver (requiring a factual predicate of actual common authority) but rather, whether the consent search was “unreasonable.” This transformed the issue into whether the police “reasonably believed” the girlfriend had common authority over the premises even though it was conceded she did not. The test, after *Rodriguez*, has therefore simply been whether police reliance upon the consent of a third party is reasonable. In *Randolph*, Justice Souter paid homage to both *Matlock* and *Rodriguez*, but explained that “reasonableness” in third-party consent cases depends upon “widely shared social expectations ... about the authority that co-inhabitants may exercise [regarding] each other’s interests.” Acknowledging that “shared tenancy is understood to include an ‘assumption of risk’ that privacy could be lost by the action of one tenant, Justice Souter nevertheless found “no common understanding that one co-tenant generally has a right or authority to prevail over the express wishes of another.” The majority concluded that the search was unreasonable because the police could not claim reasonable reliance upon a “disputed invitation” to enter the Randolph residence.

Justice Souter then arbitrarily distinguished *Matlock* and *Rodriguez* by expressly limiting *Randolph*’s holding to the facts of that case. Therefore a co-tenant’s consent will be sufficient unless the defendant is “in fact at the door and objects.” *Rodriguez* can be distinguished because he was asleep in another room when the door was opened. The Court strained harder to distinguish *Matlock*. Although Justice Souter acknowledged police could not physically remove a “potentially objecting tenant from the entrance for the sake of avoiding a possible objection,” this appears to be precisely what happened in *Matlock*. There the defendant was arrested in the front yard of the premises and detained in handcuffs in a squad car at the time consent was obtained from his girlfriend. Admitting the majority was “drawing a fine line” by requiring actual presence at the door, Justice Souter nevertheless justified such “formalism” by the pragmatic need for a clear rule.

The promise of clarity is illusory, however, because *Randolph* does not create a bright-line rule based merely on the presence or absence of an objecting occupant at the door. Justice Breyer, who was a necessary fifth vote, joined Souter’s opinion with the express understanding a bright-line rule was not appropriate. Instead, Justice Breyer stressed each disputed consent case should be decided “by examining the totality of the circumstances.” Critical to the outcome in *Randolph* in Justice Breyer’s view were the following factors: (1) the

search was “solely for evidence,” (2) there was no claim by police they feared “possible evidence destruction” and (3) there was no suggestion Mrs. Randolph was a “possible abuse victim.” Justice Breyer indicated that where third-party consent was given in the context of a possible exigency that would create a “critical difference” making reliance upon the consent of one tenant “reasonable” even in the face of a present and objecting co-tenant.

Justice Breyer was responding here to Chief Justice Roberts’ dissent, which accused the majority of handcuffing the police by forbidding them from entering to protect the safety of a victim of domestic abuse if the abuser objected. This argument was labeled a “red herring” by Justice Souter because there is “[n]o question ... the police [can] enter a dwelling to protect a resident from domestic violence; so long as they have good reason to believe such a threat exists”(emphasis added). Certainly, this is correct. If the police have probable cause to believe an emergency exists then entry related to that emergency is reasonable without regard to consent. See *LaFave 3 Search & Seizure* §6.6 (4th ed.) Justice Breyer, however, refers to “possible” exigencies, which suggests he is using only reasonable suspicion as the standard. Perhaps Justice Breyer’s choice of language in the brief one page concurrence was just careless. Perhaps he confused the standard for exigent circumstances with the standard used for determining exigency in knock notice cases (which is reasonable suspicion), forgetting that in those cases the police already possess a warrant based on probable cause. See *Richards v. Wisconsin*, 520 U.S. 385 (1997). Or perhaps Justice Breyer believes it is reasonable in a disputed consent case to enter a home with only reasonable suspicion that there is an emergency. We will discuss this unresolved issue and suggest some alternative approaches for analyzing third-party consent cases during our Supreme Court Review at the NLADA Annual Conference in Charlotte, NC, November 8-11. ★

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*We look forward to hearing from you.*

## COLLABORATIONS - Continued from page 23

genuine commitment. For a collaboration to work, team members need to commit to these basic practices:

- Showing up on time and giving their full attention
- Showing up consistently. When members make an effort to be present, others understand that as a demonstration of commitment, and are more willing to make the commitment themselves
  - Adhering to whatever ground rules or standards are established by the group and, if none are articulated, setting their own high standards
- Being prepared, participating and being willing to be held accountable. If there is a group assignment (such as reading a report) or if someone agrees to perform a specific task for the group, they should do it
  - Being aware of body language, not allowing posture or facial expressions to communicate a lack of interest or lack of respect for another team member's contributions. Listen actively and make an effort to understand what others are trying to say before responding

These basic practices are fundamental to all kinds of group work, but are especially important when working in collaboration with others. Successful collaboration requires trust and these practices help to build a climate of trust so that effective collaborative work can take place.

### Challenges and Benefits of Collaboration

For many in the defense community, the challenge of collaboration is simply being invited to the table. Not everyone recognizes the importance of having all stakeholders represented in policy discussions, even or especially those who are likely to disagree with the majority view. Often, the role of the public defender in criminal justice policy making can feel like damage control, preventing bad policy from being implemented. But as former Maricopa County (Arizona) Public Defender Dean Trebesch points out, "If we weren't there to discuss it, it wouldn't get discussed."<sup>9</sup> Clients need the voice of the defender community to inform criminal justice policy, as do the other criminal justice policymakers. Effective collaborations recognize that dissent is essential to the policy making process, and that diversity serves everyone's interests. Research demonstrates, writes James Surowiecki in *The Wisdom of Crowds*, "that the simple fact of making a group diverse makes it better at problem solving . . . a large group of diverse individuals will . . . make more intelligent decisions than even the most skilled 'decision maker.'<sup>10</sup>

For others in the defender community, though, the challenge is in being at the table. They find it difficult to reach consensus with those whose jobs seem to involve streamlining the process of convicting and sentencing their clients. They dislike being perceived as obstructionist rather than being recognized for their role in preserving the integrity of the Constitution. They also fear talking too much to prosecutors or judges, believing, perhaps, to do so is to let down their guard and not serve clients as well. But as Trebesch has also argued, "we're all part of the process and if we stay on the sidelines, that's not going to necessarily serve our clients' best interests."

Whether challenging proposals that do not sufficiently safeguard client interests, or making proposals that would ensure better representation or the likelihood of better long-term outcomes for clients and defenders can and should play a significant role in efforts to change policies and practices.

### Working Together

Once a group has decided to come together across agencies and disciplines to try to solve problems facing the criminal and/or juvenile justice system, the difficult work begins. When teams come together, the work they do consists of both task functions and process functions. Task functions include those that directly address the substantive topic at hand, such as collecting data on the number and types of offenders coming through the system, or discussing the use of a particular type of intermediate sanction and under what circumstances it might be applied. Process functions include those that address how the team is going to do its work together. Process functions include setting a schedule of meetings, articulating a confidentiality policy for the group, as well as setting up ground rules for team meetings, and articulating the vision and mission that will guide the team's work. Both task and process functions are necessary for teams to be successful, but most teams are both more familiar and more comfortable with task functions. Indeed, process functions can make some team members very uncomfortable since many criminal justice professionals are "doers," who have achieved success in their fields because they are confident, decisive and action-oriented.

What many "doers" miss is that actions are most effective when the goals are clear. If a team does not dedicate time to establishing a shared vision and mission, then an action (which a particular individual might consider effective) may not get the team any closer to its goals, since each team member may have a different idea of what those goals should be. Larson and LaFasto, whose book *TeamWork: What Must Go Right, What Can Go Wrong* (1989) documents the factors that contribute to successful teams, point out that "whenever an ineffectively functioning team was identified and described, the explanation for the team's ineffectiveness involved, in one sense or another, the goal."<sup>11</sup> Similarly, if time is not dedicated to articulating roles and responsibilities of team members, accountability will be impossible and low standards will dominate. Getting a team ready to collaborate on substance does not require that all task functions be set aside. In fact, incremental progress on task is essential to building team momentum and securing commitment. But it does mean that time is also dedicated to the process of effective collaboration.

One way for teams to improve their likelihood of success, then, is to commit to at least a limited set of process activities. These include:

- Setting ground rules for meetings and member participation, reviewing them regularly and using them to hold each other accountable
- Creating vision and mission statements and using them to ensure that activities of the group stay on track
- Discussing roles and responsibilities of each team member so that each person knows what is expected of him or her,

and what he or she can expect of others

- Setting concrete, measurable goals with timelines and assignments
- This limited set of activities will help to ensure some of what tends to remain unspoken when groups work together is instead articulated and used to further the purpose of the group

## Collaborative Justice

In recognition of the need for support in jurisdictions across the country where collaborations are being developed by necessity or by funding requirements (or both), the State Justice Institute (SJI) and the Center for Effective Public Policy (the Center) developed a website, [www.collaborative-justice.org](http://www.collaborative-justice.org), to contain several products dedicated to supporting collaboration in the criminal and juvenile justice systems. Products on the Web site include a training curriculum for a multi-day workshop to enhance the effectiveness of criminal justice teams (Collaboration: A Training Curriculum to Enhance the Effectiveness of Criminal Justice Teams). The curriculum includes nine modules addressing such issues as values, vision, problem identification and mission, group dynamics, and roles and responsibilities of team members. It also includes an experiential learning exercise that gives teams a new and vital perspective on themselves and their work together. The curriculum has been piloted successfully with hundreds of teams from around the country, including reentry policy projects, sex offender management teams, drug courts, juvenile justice enhancement teams, domestic violence coordinating councils and others. Attendees, including judges, prosecutors, defenders and corrections professionals have called the workshops “inspirational” and “extremely effective.”<sup>12</sup>

Monographs on the Collaborative Justice Web site cover a number of topics of importance to teams. These include effective facilitation (The Role of Facilitators and Staff in Supporting Collaborative Teams), leadership (The Importance of Collaborative Leadership in Achieving Effective Criminal Justice Outcomes) and information-based system planning (The Use of Data and Information to Guide Collaborative Decisionmaking). Other products include several in-depth case studies from jurisdictions that sought assistance from SJI and the Center in improving and sustaining their collaborative efforts and an article addressing the growth of collaboration in criminal justice contexts (The Emergence of Collaboration as the Preferred Approach in Criminal Justice). These resources are unique insofar as they address the particular benefits and challenges specifically for criminal justice professionals who are attempting to use collaborative approaches to problem-solving in their jurisdictions.

## Choosing to Collaborate

In 1999, the U.S. Department of Justice held a National Symposium on Indigent Defense, which focused on the importance of collaboration. The symposium report identified unifying themes of the meeting, among which was “the challenge of reconciling adversarial defense skills with the imperative of collaboration in a complex, increasingly interconnected system.”<sup>13</sup> The benefits of meeting this challenge are both immediate and long lasting. Edwin Burnette, public defender for Cook County (Chicago), Illinois, explains that, by participating in a collaborative system change effort to increase options

for women offenders, “we have established friends in other agencies that still believe in our effort and take every opportunity to support each other when that issue (and others) arises. The after effects may be of more long term good for the system than the changes that were institutionalized.”<sup>14</sup> In addition to substantive knowledge about rights, criminal procedure, and the law, a good defender brings to the table a commitment to the process of collaboration and the knowledge of how to assist collaborative efforts to succeed. While some defenders will always feel that working in partnership with prosecutors, judges, administrators, law enforcement officers and others from within the system represents a compromise of values, others will recognize that participating in criminal and juvenile justice system collaborations represents an opportunity to bring the voice of the accused to the policymaking table.

## Resources

In addition to the resources found on [www.collaborative-justice.org](http://www.collaborative-justice.org), the following resources are available to assist criminal and juvenile justice teams with their collaborative work:

- David Chrislip and Carl Larson (1994). *Collaborative Leadership: How Citizens and Civic Leaders Can Make a Difference*. San Francisco: JosseyBass.
- Frank LaFasto and Carl Larson (2001). *When Teams Work Best: 6,000 Team Members and Leaders Tell What It Takes to Succeed*. Thousand Oaks, CA: Sage Publications.
- Frank LaFasto and Carl Larson (1989). *TeamWork: What Must Go Right, What Can Go Wrong*. Thousand Oaks, CA: Sage Publications.
- David Straus (2002). *How to Make Collaboration Work: Powerful Ways to Build Consensus, Solve Problems, and Make Decisions*

## Postscript

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*Judith Berman is senior manager at the Center for Effective Public Policy.*

<sup>1</sup> Clarke, Community Defenders in the 21st Century: Building on a Tradition of Problem-Solving for Clients, Families and Needy Communities, UNITED STATES ATTORNEYS' BULLETIN, January 2001, 20-29.

<sup>2</sup> Beane, Strengthening Alliances Between Public Defenders and the Private Bar: The Practical Value of Collaboration, CORNERSTONE 26 (4) 2004-2005, pp 1 seq.

<sup>3</sup> Works, Reentry – The Tie that Binds Civil Legal Aid Attorneys and Public Defenders, CLEARINGHOUSE REVIEW JOURNAL OF POVERTY LAW AND POLICY, Sept-Oct. 2003, 328-338.

<sup>4</sup> Chrislip and Larson, COLLABORATIVE LEADERSHIP 5, (1994): 42.

<sup>5</sup> Huxham, CREATING COLLABORATIVE ADVANTAGE 28 (London: SAGE Publications, 1996).

<sup>6</sup> Larson and LaFasto, TEAMWORK, (California: SAGE Publications, 1989).

<sup>7</sup> Ibid.

<sup>8</sup> Cited in Judy Berman (2005). Systemic Criminal Justice Planning: Improving Responses to Women Offenders in Hamilton County, Ohio. National Institute of Corrections Gender Responsive Strategies for Women Offenders Bulletin Series, December 2005. Washington, DC: National Institute of Corrections. NIC Accession Number 020872.

<sup>9</sup> Center for Effective Public Policy, A VIDEO SEMINAR FOR JUDGES: IMPLEMENTING EFFECTIVE SENTENCING STRATEGIES FOR SEX OFFENDERS (2000).

<sup>10</sup> James Surowiecki, THE WISDOM OF CROWDS (New York: Anchor Books, 2004) pp 30, 32.

<sup>11</sup> TEAMWORK, 27, original emphasis.

<sup>12</sup> Evaluations, First Annual Collaboration Institute, Washington, DC, December 2005.

<sup>13</sup> Improving Criminal Justice Systems Through Expanded Strategies and Innovative Collaborations: Report of the National Symposium on Indigent Defense, February 1999. Washington, DC: US Department of Justice, xi.

<sup>14</sup> Edwin Burnette, Personal Communication, December 27, 2005.

## WESLEY - Continued from page 7

took him years to place some of the blame for the outcome of his life on anyone other than himself.

What was ironic was that the Governor who would ultimately hold Wesley's life in his hands officially shut down the juvenile facility where Wesley spent most of his formative years. The Governor cited that the facility was inhumane, unsafe, abusive and was staffed by incompetent caretakers.

Again, just like earlier, my trance-like protection was broken when I realized I had to get Wesley's family back to jail. It was after 3 p.m. and their visits would end at 6 p.m. Before I left, I asked Wesley if anyone had made funeral arrangements.

"No," he replied. "I only talked to you and Father Chuck [the prison priest]."

After a deep swallow, I responded, "Has anyone made arrangements to pick up your body?"

"No my mother doesn't wasn't to talk about it ... can you do it."

"Yes I will," I managed to mumble.

As I was leaving I looked back and he was looking into my soul. He smiled. I smiled. In the hallway, I couldn't fight the tears. I stood on the wall with the officer by my side. I shed tears for my friend, my client. My soul ached.

I hurried to the attorney's office. They too had become very fond of Wesley. I informed them that the family didn't understand that this might be the night.

We called Wesley's mom and explained the situation again. This time there was no protection from the words. This time it hit her like a wrecking ball upon a small frail-weak building and she crumbled. She hung up, unable to help make Wesley's final arrangements. So, I made the call to the funeral home. Again, my soul ached. When I returned to the jail, Wesley's family had arrived. My soul smiled ... a little.

There was a lot of talking and Wesley managed to make his mother, sister, brother and nieces smile. The time went so fast and without warning, the commissioner came in and said we had to leave. Like deer caught in headlights, we all froze.

Someone made the first move to say what would be the final goodbye. I was last. As I crossed the Do Not Cross line,

it seemed like I would never get to the bars. My soul ached ... my heart broke.

"Don't worry about me," I said, adding, "I will take care of your mom."

He smiled and so did I. Wesley put his arms through the bars for his final makeshift hug.

As we left, there was silence. The priest said a prayer with us on the elevator. As we exited the elevator to be let out of the jail, I realized the atmosphere on the main level had changed. It was sickening.

There were people (officials) entering the building with smiles on their faces. They greeted one another with cheer and jubilee. They didn't even hide the joy they felt from taking part in this inhumane event. They had no shame. I thought about the feeling in the air when a funeral procession passes on the street and how we stop out of respect for the stranger in the car. However, there was no respect shown to a killer's family, a killer no one really knew or cared to know. The dignitaries were swept away to a room that included drinks, food and closed circuit for those who wanted to watch from afar.

We walked outside to join the protesters. It was still snowing. Soon we learned that the Supreme Court ruled ... no relief. Then the Governor ... no clemency. Amongst the death penalty protesters, I stood with a candle. With one arm I held my snow-covered sign that centered a picture of Wesley. With the other arm I embraced Wesley's mother, protecting her from the press. Tears rolled down my cheeks while in the background the crowd sang Amazing Grace. My soul ached and a chill entered my body. At 9:18 p.m. we got the word, Wesley was gone. The hearse that I had arranged for earlier rolled through the gates. I stood there until the copper color vehicle exited with the body of my friend, my client. Wesley. My soul ached from the chill.

I watched the car ride down the snow-covered street. The snowfall seemed to come down faster, paving a way for the funeral car. I looked up in the sky and a peaceful particle of the soft white ice warmed my soul. And with that I smiled, "OK, Wesley," I said. "Rest in peace my friend." ☆

*Lori James-Monroe is the chair of the National Alliance of Sentencing & Mitigation Specialists.*

## Substantive Law Conference in San Jose, CA on July 19-22

The 2006 NLADA Substantive Law Conference (Sub Law) has been substantially redesigned to meet the needs articulated by civil legal aid advocates, from executive directors to line attorneys to support center experts. Throughout the last year, NLADA has analyzed surveys of program directors and past participants, met with substantive law experts who have trained at Sub Law through the years and examined the purpose, audience and content of Sub Law. NLADA is pleased to offer the Substantive Law Conference for advocates across the country seeking training on the substantive law fundamentals essential to quality representation of low-income people and communities. The overall goal of this national gathering is to offer relatively inexperienced advocates:

- The latest knowledge in substantive areas, such as housing, consumer, SSI/Social Security and health
- The professional skills to enable them to meet the legal needs of low-income people and communities
- The opportunity to uncover and develop their leadership potential
- A forum to meet and exchange ideas with colleagues from across the country
- A forum to connect with the history of the equal justice community
- Earning Continuing Legal Education (CLE) credits

For more information about Sub Law, visit [www.nlada.org/training](http://www.nlada.org/training). ☆

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## 2006 Exemplar Awardees

### William B. Lytton

As executive vice president and the chief legal officer of Tyco International Ltd., William Lytton has been active in promoting the cause of equal justice. He was chairman of the board of directors of the American Corporate Counsel Association in 2002. He is a member of the Association of General Counsel and is on the boards of both the Pro Bono Partnership and the American Arbitration Association.



**William B. Lytton**

### Mark J. MacDougall

Mark MacDougall serves as a champion of equal justice through the considerable time he dedicates to the pro bono trial representation of indigent defendants facing the death penalty. He also currently serves, by court-appointment, on the Committee on Admissions for the District of Columbia Court of Appeals.



**Mark J. MacDougall**

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