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— Reginald Heber Smith

# Youth & Families

Featuring three articles dealing with issues relating to family and juvenile issues

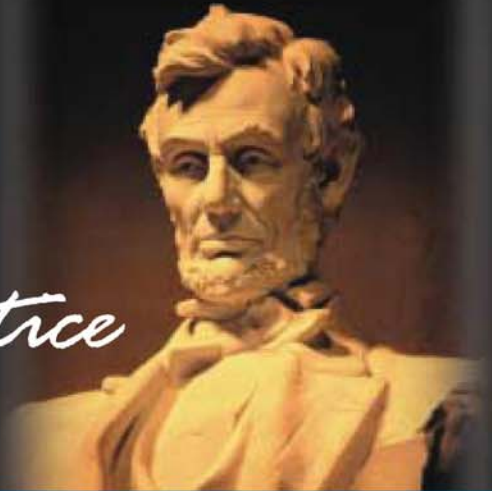
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# Celebrating 2007's Advancements in Equal Justice, Preparing for 2008's Challenges

By Leonard Noisette, chair, NLADA Board of Directors

Welcome to 2008! The advent of a new year is an exciting time to be a member of the equal justice community. Big changes are on the horizon and as I prepare to turn over the reins of chair of the board of directors this year, I want first to thank all of you, the dedicated members of NLADA, whose commitment to the cause of equal justice is loud and clear.

Over the next several months, citizens across the country will converge on polling stations to fill ballot boxes in primary elections to determine which of their parties' candidates will move forward to the general election in November. The choices they make are the first step in determining the leadership of our nation for the next four years. And I, like many of you, eagerly await the outcome of that election.

As we contemplate that change and the work ahead of us, it is also appropriate to reflect on the successes of 2007. Much work was done to give us a foundation in which to move ideas and initiatives forward as well as to introduce new ones.

## 2007 Initiatives, Achievements

NLADA was instrumental in several great advancements in the cause of equal justice in 2007. Below are just a few of those initiatives and achievements:

- The College Cost Reduction and Access Act (H.R.2669), passed by Congress in September, included a Public Service Loan Forgiveness program with an income-based repayment (IBR) option. In addition, due largely to the role played by NLADA and the American Council of Chief Defenders (ACCD), a section of NLADA, we anticipate the passage of the John R. Justice Prosecutors and Defenders Incentive Act of 2007 that would create a student loan repayment program for law school graduates who wish to pursue careers as public defenders or prosecutors. In addition, NLADA continues its advocacy for the Harkin Civil Legal Assistance Loan Repayment Act, which

authorizes up to \$10,000,000 for student loan repayment for "civil legal assistance" attorneys.

- Advocacy in Congress for increased funding for the Legal Services Corporation and the provision of counseling and assistance to numerous individual LSC funded programs that are subject to OIG complaint investigations and audits, OCE investigations and compliance monitoring and visits from the Government Accounting Office as part of its investigation of LSC's compliance monitoring efforts.
- Indigent defense system reform efforts to improve the quality of representation. NLADA's efforts in Louisiana helped to produce an increase in state funding for indigent defense to \$28 million (from the \$7.5 million the state had provided three years earlier). 2007 also saw the release of "Justice Impaired: The Impact of the State of New York's Failure to Effectively Implement the Right to Counsel," the first in a series of reports, research and data collection for an upcoming statewide report on trial-level indigent defense services in Michigan, as well as an evaluation of the Hamilton County, OH (Cincinnati) indigent defense system.
- NLADA's Program Enhancement Committee also continued to work on the development and adoption of a number of tools and resources to help programs improve the quality in their delivery of civil legal assistance.

In addition to these initiatives, NLADA provided ten high quality, cost-effective training and professional development events for the indigent defense and civil legal aid communities.

## Looking to 2008

We must now build upon the successes of 2007 to make our goal of equal justice for all a reality in 2008.

We must keep the pressure on Congress to

**See MESSAGE on page 25**



"Much work was done to give us a foundation in which to move ideas and initiatives forward as well as to introduce new ones."

# Final Federal Budget Brings Minimal LSC Increase, Leaving Much Work for New Year

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

The end of the first session of the 110th Congress came to a deflating conclusion for legal aid supporters. Working all year to ensure another significant boost in funding for the Legal Services Corporation (LSC), allies across the country were disappointed to see only slightly more than a one-half of one percent (.55 percent) increase in the omnibus appropriations bill signed by the president on December 26, 2007.

Expectations of an increase were not unfounded. The House had provided an eight percent increase in funding for FY 2008, while the Senate appropriations committee outdid their counterpart with a 12 percent increase. Unfortunately, an intransigent president insisted on “toeing the line” and appropriators had to shave \$22 billion off their respective bills, eleven of which had not been to conference.

The \$555 billion spending package was pronounced “reasonable and responsible” by the president, although he severely criticized the inclusion of 9,800 earmarks totaling more than \$10 billion. He has instructed his Office of Management and Budget director, Jim Nussle, to see if there is anything the administration might do to reduce the number of earmarks.

Last year’s funding for LSC was \$348,578,000. This year’s will be \$350,490,000 of which \$332,390,000 (an increase of 0.49 percent over last year’s level) will be directed to basic field programs.

Other line items include \$2.1 million for Technology Initiatives, \$500,000 for Loan Repayment Assistance, \$12.5 million for Management and Administration and \$3 million for the Office of the Inspector General.

In releasing the omnibus bill, of which LSC was included in the Commerce, Justice Science and Related Agencies portion, a clearly disappointed House Appropriations

Committee Chair David Obey (D-WI) said, “If America wants new budget priorities, we are going to need a new president who will reflect those priorities and we need more progressive voices [in] the Senate so that we can have a working majority in that body, something which we now lack.”

NLADA looks forward to working with its members and allies to secure an increase in LSC funding for FY 2009. LSC will submit its budget request to Congress in late January. The board has authorized a request of \$471,362,000. The President will release his FY 2009 budget on February 4, 2008.

NLADA has also been involved in efforts to remove the current appropriations restriction that limits the use of state, local and private funds. We have worked to educate members about the negative impact of this restriction in coalition with the Brennan Center for Justice, the United Auto Workers, the National Organization of Legal Services Workers, and the American Civil Liberties Union. While this effort did not bear fruit in 2007, we will work assiduously with our partners in 2008 to remove the restriction.

The prospect of a loan repayment program for civil legal assistance attorneys in early 2008 is promising.

The second session of the 110th Congress convened on January 16, 2008. Among the first orders of business in the House is the reauthorization of the Higher Education Act (HR 4137). Included in it is the “Harkin bill”, named for its sponsor, Senator Tom Harkin (D-IA).

The civil repayment bill authorizes up to \$10,000,000 for aid to “civil legal assistance” attorneys. Participants can receive up to \$6,000 per year up to a total amount of \$40,000 per participant. Under the bill, the Department of Education would be the agency administering the program. The Senate passed its version of the Higher Education bill (S.1642) by a vote of 95-0 in July 2007. ★

“While the year-end news on the fiscal front was disappointing, the prospect of a loan repayment program for civil legal assistance attorneys in early 2008 is promising.”



# New Year Brings Reflections on Accomplishments Met, Hopes for Continued Equal Justice Successes

*As any of you who have regular contact with NLADA's Defender Legal Services (DLS) knows, I have the privilege of working in DLS with a number of hard-working talented folks. As we move into 2008, we all look forward to serving you, our members, and your clients. The new year will bring a new interactive defender leadership website and our customary high quality trainings, from Life in the Balance, Train the Trainers and Nuts and Bolts of Leadership and Management, all in March, through to our Defending Immigrants Conference in the summer or early fall and NLADA's Annual Conference and Appellate Defender Training in November and December, respectively. The American Council of Chief Defenders will host conferences in May and July that provide chiefs with leadership training and opportunities to search for new and creative ways to improve services for our clients, lower dangerously unmanageable workloads and fight for racial justice. The National Alliance of Sentencing Advocates and Mitigation Specialists will unveil their exciting new e-newsletter and will gather their membership for networking and mutual support at LIB. We will work with our National Indigent Defense Collaboration partners to seek system reform in jurisdictions where our clients' needs are most egregiously in peril. And, of course, we will continue to advocate for student loan relief, building on the success of the College Cost Reduction Act of 2007.*

*But before we launch headlong into the year's busy schedule, I thought that it would be helpful for each of us to reflect a bit upon the year just past. Here at DLS, I asked Resource Coordinator Caitlin Colegrove to share some of her thoughts after her first full year as a member of our community. The resource coordinator must be the calm center that holds together so much of DLS's diverse activities and Caitlin fulfills that role admirably.*

**Richard Goemann, NLADA director of Defender Legal Services**

*By Caitlin Colegrove, NLADA resource coordinator for Defender Legal Services*

**I**n any busy office, focus in a new year naturally turns unrelentingly forward to the next thing. However, in the spirit of reflection and new opportunities ushered in by the new year, I found it rewarding to take a step back and consider some of the exciting work of DLS and the unique ways that we and our members support positive change in the field of indigent defense. From where I sit, our national in-person meetings and trainings were the year's highlights, because they provided opportunities for education, networking, encouragement, generation of new ideas and community development.

The work of those in the indigent defense fields strikes me as noble, rewarding and vital. However, the substance and nature of the work inevitably brings about many bleak, arduous moments. Whether it is the stories of clients sentenced to the death penalty, overwhelming caseloads or funding battles with local legislatures, I have often found myself wondering, "How do people work in this field and sustain themselves through those tough times?" I have no doubt the support and networking I have seen take place among colleagues gathered at national meetings and conferences comprise one piece of the answer to my question. At times, the first day of a conference resembles something of a family reunion. Old friends who have fallen out of touch during the year eagerly reconnect, people swap their latest war stories in the hotel bar and colleagues advise and support peers who are experiencing funding battles and precarious political situations. The merits and experience gained from a substantive training are enormous and invaluable. However, it seems to me that the moments of camaraderie and rejuvenation are crucial parts in sustaining defenders who spend their career in this work.

It has also been exciting to see the public defense commu-

nity speak with a unified voice in an effort to pass a federal loan repayment assistance bill. Having already passed the Senate, consideration of the John R. Justice Prosecutors & Defenders Incentive Act in the House of Representatives was pushed back during the winter 2007 session. We are expecting it to come to the floor when the reauthorization of the Higher Education Act is considered, perhaps as early as February (please keep up efforts to gain support from your representatives). Meanwhile, the College Cost Reduction Act (CCRA) of 2007 was signed by the president in September and benefits a wide variety of public service professionals. There are several good resources available online detailing the CCRA and its benefits. The Equal Justice Works website has an excellent summary of the legislation and its implications for equal justice professionals.

As DLS's resource coordinator, I have the opportunity to touch an enormous variety of projects and interact with a diverse crosssection of individuals within the indigent defense community. In my brief experience, it is the passion and talent of the professionals in the equal justice community that burn in my memory. I continue to be inspired by the individuals I have met and the breadth of work done in the field of indigent defense. Perhaps the single most striking aspect of those equal justice professionals I have encountered has been their commitment to constantly improving their field. Whether it is the decision to attend a capital defense training, chairing a committee in one of NLADA's sections or serving on the Defender Policy Group, the contribution of precious time and energy in your busy lives is selfless, inspiring and a testament to your dedication to our clients. I appreciate having the ongoing privilege of learning about the contributions each of you make to the field and getting to know so many of you on a personal level and wish each of you all the best for a happy and safe 2008. ★

# Fifteen-Year Anniversary for Equal Justice America

By Joel Katz

In 1990, when Dan Ruben was a second year student at Pace University Law School he spotted a small item in the New York Times about a student-run program at NYU Law School. Students were raising money to help their fellow students work during the summer in public interest law. There was no such organization at Pace so Ruben started one, the Public Interest Law Scholarship Organization (PILSO), which continues to thrive at Pace today.

When Ruben began approaching professors for contributions to PILSO, he was pleased and surprised that nearly every single one wrote a check. He realized that the PILSO idea could be built into a national organization, that the issue driving it — the lack of adequate legal representation for so many Americans — was so compelling that such an organization could be successful on a national scale.

What began in 1993 as an organization that sponsored just five law student fellowships in its first year, Equal Justice America (EJA) has awarded more than \$5.25 million in grants and has provided approximately 550,000 hours of free legal services to the poor. In the past year EJA sponsored more than 225 Law Student Fellowships. EJA has grown its annual budget to nearly \$1.2 million by successfully raising mostly modest contributions from attorneys across the country. Students at more than 50 law schools now have the opportunity to participate in Equal Justice America's Fellowship Program.

By putting law students to work under the supervision of experienced attorneys at legal services programs, a growing army of future lawyers receives the training and skills necessary to carry on the crucial work of meeting the legal needs of the poor. More than 1,800 law students have received Equal Justice America fellowships. Many have graduated from law school to continue the work they began in school as EJA Fellows, advocating on behalf of those most in need. In 2008 EJA will celebrate its 15th year of working to protect the rights of children and families in poverty.

"We continue to work hard to make a real difference in people's lives," Ruben said. "Families threatened with eviction and homelessness; women assaulted by violent and abusive husbands and boyfriends; the elderly ripped off by unscrupulous business practices; and the disabled fighting to have needed benefits restored. These are the people we go to bat for every day by supporting legal services programs and legal aid societies throughout the country."

## Legal Aid Programs Across Nation Celebrate EJA's Success

*Christine Todd, vice president of administration at the Legal Aid Society of San Francisco* — "Equal Justice



Photo by Angel Morton Photography

**EJA Executive Director Dan Ruben with EJA Fundraiser Jeff Ridgeway.**

America has quietly and effectively provided important support to the practice of public interest law by funding law students whose talent, commitment and enthusiasm contribute immensely to this work. Equal Justice America's leadership is an invaluable help in ensuring that the next generation of idealistic young lawyers will be able to continue the tradition of public service."

*Martin Needelman, project director at Brooklyn Legal Services Corporation* — "Our ability to avoid the most draconian reductions in services can be largely attributable to the contribution made by a corps of highly motivated and dedicated law student interns. The overwhelming majority of these wonderful and indispensable young law students has been financed by EJA. We need EJA more than ever before and the need is nothing less than urgent."

*Robert Sable, executive director of Greater Boston Legal Services (GBLS)* — "Over the past several years Equal Justice America has provided funding for more student interns at GBLS than any other organization. EJA Fellowship recipients have been a tremendous help to our staff in providing legal assistance to the most vulnerable members of the Boston community."

*Catherine Carr, executive director of Community Legal Services in Philadelphia* — "Through the years EJA has provided tens of thousands of dollars in support of our summer and school year internship programs. Without EJA, our law student internship program would be far smaller. One of the wonderful things about legal services work is the presence of young idealistic spirited, highly skilled law students. By making it possible for students to work with us, EJA has helped keep our advocacy fresh and impassioned."

*Gerald Nordgren, director of legal services at the Chicago Legal Clinic* — "Some of the best and brightest of

**See EJA on page 26**

## Latino Section Makes Plans for Future at Annual Conference



**T**he Latino Advocacy Section of NLADA's Civil Policy Group saw a strong resurgence at the Annual Conference in Tucson in November. What started as a small gathering of about a dozen Latino legal advocates expanded by the time of an impromptu second meeting to around 40 members, representing all aspects of legal aid, including directors, attorneys, staff and clients.

The group discussed topics including increasing the presence of the group within NLADA, presenting an increased number of workshops and sessions at conferences based on various Latino-centric issues and creating a study on Latino issues within the legal aid community.

At the meeting, several committees, listed to the right, were also formed to help carry out the various projects the attendees discussed. ★



### **Invitations/ Recruitment Committee**

*Dorothy Ann Holguin  
Jesus Garcia  
Jennifer Ramos  
Luis Rivera-Santana*

### **Workshop/Training Committee**

*Silvia Argueta  
John Aguilar  
Deborah Escobedo  
Eloisa Raya Hernandez  
Charles Hey-Maestre  
Claudia Johnson  
Judith Martinez*

### **Survey Committee**

*Luis Jaramillo  
Felipe Chavana  
Irene Morales  
Jose Padilla  
Mario Salgado  
Cesar Torres*

### **Communications Committee**

*Jose Vasquez-  
Balasquide  
Ben Obregon  
Tony Vidal*

Thanks to the design efforts of Jeff Billington, NLADA deputy director of Communications, the Latino Advocates Section now has a logo of its own.

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# Brendlin v. California: A Trojan Horse?

By Laurence A. Benner and Marshall J. Hartman

A unanimous opinion upholding the Fourth Amendment rights of passengers in a car should be a cause for celebration. While *Brendlin v. California*<sup>1</sup> is indeed good news where there has been a bad stop, closer examination of the reasoning underlying this apparently favorable decision reveals that more may have been lost than gained.

At 1:40 a.m., a deputy sheriff observed a car with expired registration tags properly displaying a temporary operating permit. Although the deputy confirmed that an application for renewal of registration was being processed, he decided to stop the car to see if the permit matched the vehicle. After the stop he recognized Bruce Brendlin, a passenger in the car, as a possible parole violator and upon confirming there was an outstanding warrant, he placed him under arrest. A search incident to the arrest found incriminating evidence on Brendlin's person and in the car. Following an unsuccessful suppression motion, Brendlin was convicted of possession and manufacture of methamphetamine and was sentenced to four years imprisonment.<sup>2</sup>

Conceding that the officer lacked reasonable suspicion to stop the car, the state nevertheless argued that the Fourth Amendment did not apply because Brendlin was not seized. The state's argument was based upon three premises: 1) that the officer only intended to seize the driver not the passenger, 2) that a passenger in a car driven by another does not submit to the officer's show of authority – a requirement for seizure under *California v. Hodari*<sup>3</sup>, and 3) that a contrary rule would result in having to find that a “seizure” occurred whenever a motorist was forced to stop or pull off the road as a consequence of police action taken to stop a fleeing vehicle.<sup>4</sup> Relying on *Brower v. County of Inyo*<sup>5</sup>, the California Supreme Court agreed with the state, holding that unless the passenger was the intended target of the officer's display of authority, the passenger was not seized “through means intentionally applied.”<sup>6</sup>

In an opinion by Justice Souter the Supreme Court



Laurence A. Benner



Marshall J. Hartman

unanimously rejected this reasoning. Noting that *Whren v. United States*<sup>7</sup> held that the subjective motivations of police officers are irrelevant to Fourth Amendment seizure analysis,<sup>8</sup> Justice Souter limited *Brower*, explaining that this decision only required that the means employed to effect the seizure must be intentionally applied.<sup>9</sup> All justices agreed that because there is a societal expectation that police routinely “exercise unquestioned command of the situation” during a traffic stop, no passenger would feel free to “terminate the encounter” by departing without police permission.<sup>10</sup>

*Brendlin* therefore appears to create a categorical bright line rule. All passengers are seized during a traffic stop, at least where the stop involves a private vehicle as opposed to a common carrier such as bus or taxi.<sup>11</sup> *Brendlin* thus marks a departure from the Rehnquist Court's preference for avoiding bright line rules in Fourth Amendment cases.

The Court's decisions addressing when police conduct constitutes a “seizure” for Fourth Amendment purposes have been admittedly less than coherent. This is largely because the Rehnquist Court employed the blurry-edged “totality of the circumstances” approach which asks how a “reasonable person” would view the situation given all of the surrounding circumstances.

The test for determining when an officer's conduct is sufficiently coercive to constitute a seizure has gone through several evolutions depending upon the context in which the issue has been raised. For confrontations at an airport, for example, the test was whether the officer's show of authority, when viewed in light of all the surrounding circumstances, would cause a reasonable person to feel they were not free to leave.<sup>12</sup>

Later, the Court found this test inappropriate when applied to police-citizen encounters involving seated passengers on a bus. In *Florida v. Bostick*,<sup>13</sup> the Court ruled that the “free to leave” test did not provide “an accurate measure of the coercive effect of [a bus] encounter”<sup>14</sup> because, in the Court's view, the fact the passengers may have felt trapped in the bus was due to factors independent of police conduct.<sup>15</sup> In this context, the Bostick Court stated, “the appropriate inquiry is whether a reasonable person would feel free to decline the officer's requests or otherwise terminate the encounter.”<sup>16</sup>

*California v. Hodari*,<sup>17</sup> decided the same year as *Bostick*, dealt with the seizure issue in the context of a police chase. In an expansive opinion by Justice Scalia, the Court added an additional refinement. Where there is



only a display of authority (without physical contact) no seizure occurs until there has been actual submission by the defendant to the officer's authority.<sup>18</sup> Thus the *Hodari* Court ruled that where defendant was pursued by police and tossed drugs away just before being physically tackled, the discovery was not the fruit of a seizure.<sup>19</sup>

In *United States v. Drayton*,<sup>20</sup> officers also boarded a bus and asked for consent to search passengers and their luggage. The Court found that the defendant was not seized at the time he consented to the search of his person because there "was nothing coercive [or] confrontational" about the encounter."<sup>21</sup> *Drayton* thus made clear that the touchstone for determining when a person is "seized" depends upon the Court's assessment of the coercive effect police conduct would have upon the mythical reasonable person. As Justice Breyer candidly observed in oral argument in *Drayton*, however, it is "fictional in reality" to suggest that people who are approached by police officers do not feel coerced to remain and respond to their requests.<sup>22</sup> Nevertheless, Breyer maintained, the law had to draw a line somewhere and the question for him was simply one of policy: Where should the line be drawn?<sup>23</sup>

The good news from *Brendlin* is that a unanimous Supreme Court agrees that the line cannot be drawn so as to completely gut the Fourth Amendment. The California Supreme Court was fearful that finding *Brendlin* was seized would mean all passengers, even those in a taxi or bus, would also be seized whenever the driver was stopped for a traffic infraction, thus exposing an officer to a busload of litigation if the stop was invalid.<sup>24</sup> Justice Souter countered, however, that "the consequence to worry about" was the "powerful incentive" a "no seizure" rule would give police to make illegal stops anytime a car carried a passenger. This follows because any evidence found in the car would be admissible against the passenger.<sup>25</sup>

In *Rakas v. Illinois* the Court held that a passenger ordinarily has no reasonable expectation of privacy in another person's car.<sup>26</sup> A passenger thus cannot challenge an illegal search of another's car because the intrusion is not a search as to the passenger.<sup>27</sup> However, if the passenger is seized as a result of a bad

traffic stop, then it can be argued that any evidence discovered during a search of the car is, like evidence found on the passenger's person, the direct fruit of that illegal seizure. Where the stop of a car is not justified, *Brendlin* thus opens an avenue for suppression of evidence found in the car which *Rakas* had foreclosed.

*Brendlin* creates a bright line rule only for passengers in private cars, however, because Justice Souter carefully distinguishes *Bostick* and *Drayton* in an attempt to preserve their holdings. He observes in a cryptic footnote that "the relationship between driver and passenger is not the same in a common carrier as it is in a private vehicle and the expectations of police officers and passengers differ accordingly."<sup>28</sup> Why that is so is not explained. It may be true that a passenger in a private car might feel they are subject to suspicion (and thus are not free to leave) because of a presumed association with the driver, especially if the stop does not appear to be based on bad driving. It would also seem true, however, that passengers in a bus could also feel they are subject to suspicion, especially where the police, as in *Drayton*, board the bus, declare they are engaged in "drug interdiction" and ask for consent to search the passenger's luggage. The grounds for distinguishing the common carrier cases thus seem weak and rather arbitrary.

The opinion also pays lip service to *Hodari's* submission requirement. The California Supreme Court found that because *Brendlin* was unable to submit to the officer's show of authority, he could not have been seized.<sup>29</sup> Justice Souter, however, found the fact that *Brendlin* had no effective way to indicate his submission while the car was still moving was irrelevant, noting that he apparently did submit to the officer's show of authority by remaining inside the car after the stop.<sup>30</sup> Souter concluded that *Brendlin* was seized "from the moment [the] car came to a halt on the side of the road."<sup>31</sup>

All this should be cause for applause. The dark side of *Brendlin* arises, however, from the obvious question left unanswered: If a passenger is seized "from the moment the car comes to a halt" during a traffic stop, how long can the police detain a passenger, absent

**See SUPREME COURT on page 28**

## NLADA Movers & Shakers

### Departure

**Rita McLennon** has left the Sargent Shriver National Center on Poverty Law, where she worked for 26 years, serving as its executive director from 1993 to 2006 and later as vice president of external affairs. She is now director of development for the New York Legal Assistance Group (NYLAG).

### Honor

**William R. Klaus** (1926-2005) a champion of equal justice and former NLADA president was inducted into the Philadelphia Bar Association's "Legends of the Bar" hall of fame. He was one of the lawyers who formed Philadelphia's Community Legal Services, an organization to provide free legal services to indigent persons.

### Honor

The HBO produced documentary *The Trials of Darryl Hunt*, based on NLADA Board Member **Darryl Hunt's** struggle to overturn his false conviction of rape and murder, has been honored with an Alfred I. duPont-Columbia University 2008 News Award. The award was presented to HBO and filmmakers Ricki Stern and Annie Sundberg on January 16, 2008.

### Honor

The Illinois Association of Criminal Defense Lawyers presented NLADA Board Member **Marshall Hartman** with its Lifetime Achievement Award on November 2, 2007. The award honors Hartman's four decades of involvement in the public defender movement, where he has represented clients in juvenile court, misdemeanor cases, felony cases, death penalty cases.

# Access to Justice: A Mother's Day in Court

By Beverly McLeod Iseghohi

The Civil Pro Bono Family Law Project (CPB-FLP) is an Atlanta-based non-profit organization that provides incarcerated mothers with education on parental rights, referrals to attorney volunteers and a self-help tool titled "Mothering While Separated: A Resource Guide." The program fills a need for women in prison who otherwise, without financial resources, would have no representation. Equally important, the CPB-FLP encourages dialogue with policymakers on the unique challenges facing incarcerated mothers, such as the unintended consequences of the 1997 Adoption and Safe Families Act (ASFA) which spurs "fast track adoptions" setting short, strict time limits for parents to comply with court orders. The CPB-FLP team of volunteers and supporters advocate for new legal strategies to protect the rights of these individuals, because they are unable to afford legal representation.

According to the Fostering Court Improvement Project, a program out of the School of Social Work at the University of Illinois at Urbana Champaign, in 2005, the Georgia Division of Family and Children Services (DFCS) removed 773 minor children from their homes due to a parent's incarceration. And from 2005 to 2006, 5,861 children removed from their homes for a variety of reasons, including parental incarceration, were placed in permanent homes within 12 months of their removal. In cases where Termination of Parental Rights (TPR) petitions were filed, there are no statistics available that specify how many of the parental terminations involve incarcerated mothers. Based on the number of incarcerated mothers who contact the CPB-FLP after receiving notice of a petition to terminate their parental rights, the CPB-FLP has seen a steady increase in the frequency and number of parental termination hearings.

Additionally, incarcerated mothers inform the CPB-FLP staff and attorney volunteers — during the CPB-FLP's regularly scheduled seminars at women's prison facilities — of parental termination petitions initiated by their children's temporary caretaker or DFCS. Some incarcerated mothers receive notices for court proceedings either shortly before the proceeding, or, after the proceeding has taken place. They tell the CPB-FLP attorney volunteers of their requests for transport to the court hearings. Most often, prison officials do not provide transport. In several cases, the mothers were given no notice of the proceedings leading up to the final ruling; they attended no hearing; submitted no affidavit;



Vida Gude

and they were unaware of their right to have appointed counsel (in cases where the children were in DFCS custody). While the lack of tracking data makes it difficult to tell whether this is a pervasive problem, the CPB-FLP recognizes the need to empower incarcerated mothers to protect their parental rights.

If there are an increasing number of parental termination proceedings where the only representative attending the proceeding is DFCS, the child welfare agency, there is a defect in the system which needs to be addressed. Incarcerated mothers' lack of effective access to court is symptomatic of an ongoing problem in other regions of the country. Few groups have been less visible — and more endangered — than incarcerated mothers and their children.

The problem attracts no media attention. Incarcerated mothers lack the publicity-allure of a Britney Spears challenging court orders which prevent her from spending time with her children. These mothers are usually indigent, poorly educated and disenfranchised from family support systems. There is a need for journalists to explore the issues, and to expose the consequences of the child welfare agencies and the judicial systems' failure to reunify incarcerated mothers — convicted on nonviolent offenses — with their children. Studies conducted by child development experts suggest the failure to address the problem can feed intergenerational incarceration.

"More and more, mothers lament that since their incarcerations their children have gotten involved with criminal activity or that no one is really looking out for them," says Vida Gude, veteran CPB-FLP attorney volunteer and current chair of the board of directors.

The impact parents' incarceration has on their children may be argued amongst experts; however, it is indisputable that the majority of women in Georgia's prisons are mothers.

According to the Georgia Department of Corrections, as of December 2006, of the more than 3,500 women in Georgia's state prisons, greater than 77 percent of the women are parents. It is likely that the number of incarcerated mothers is greater. Often women do not inform corrections authorities that they have children for fear that their parental rights will be terminated.

While both men and women in prison are parents, the children of incarcerated mothers are much more likely to be displaced, according to the Child Welfare League. When men go to prison the family unit stays very close around the male; when women go to prison, the family unit falls away. The incarcerated mothers are usually at distant prisons, making visits impossible or rare. The situation for sentenced mothers is further complicated by the ASFA, which requires that parental rights be severed if a parent is absent for 15 months in a 22 month period,



even when no permanent foster care placement is in sight. Prior to ASFA there wasn't a timeline set to fast track parental terminations.

In the early 1990s, policymakers adopted a "tough on crime" stance. And in 1997, the federal government passed the ASFA, which Georgia and many other states adopted. The Act strongly impacted the termination of parental rights of incarcerated mothers, because ASFA resulted in incarcerated mothers being at greater risk for having their parental rights terminated based on the length of their prison sentence. The United States Department of Justice, Bureau of Statistics, show that many incarcerated women are serving prison terms longer than a year. Exceptions allow caseworkers to examine individual cases for compelling reasons not to file termination proceedings. The exceptions for when a state may choose not to file include when a relative is caring for the child, when the foster care agency has not provided appropriate services or when the agency documents that termination would not be in the child's best interests.

Parental terminations have an immediate and permanent impact on the family. "Legally no further contact is permitted between the birth mother and child," says Marva Simpson, the CPB-FLP legal director. "Rarely are the decisions to terminate parental rights appealed."

Since incarcerated mothers are not exempted from the provisions of the ASFA, and since those with children in foster care generally will be unable to meet family court requirements within 12 months, it is more likely that their parental rights will be terminated. While the mother's presence at the parental termination hearing is important, it is critical that she demonstrate an interest in her children's welfare long before the child welfare agency files a petition to terminate parental rights.

"TPRs have outlived their usefulness," says Ellen Barry, a 30-year advocate for incarcerated mothers and founder of Legal Services for Prisoners with Children. "Children don't understand it."

That is why legal representation of incarcerated mothers is important. The lack of legal counseling for them has contributed to the inclination of courts to approve parental terminations. Since many mothers do not have appointed counsel – unless their children are in the care of a child welfare agency – the mother finds herself unrepresented in court because she is unable to afford counsel. This is unjust.

As the CPB-FLP encourages clearly defined advocacy goals, the CPB-FLP staff and attorney volunteers' direct contact with incarcerated mothers and their observation of court proceedings and child welfare agency protocol and procedures, serve an important function. They enable the CPB-FLP team to probe the causes of the problem and to identify possible solutions. At this preliminary stage, there appears to be several needs:

- at least one state agency should be accountable for tracking incarcerated mothers' involvement in their children's juvenile court proceedings;
- court ordered transport of incarcerated mothers to juvenile court proceedings should be required; and,
- bar associations should support the creation of more pro

bono programs that provide legal representation of incarcerated mothers.



The long term goal should be to exempt incarcerated mothers from the ASFA time limits. Alternatively, the time limit should be extended for incarcerated mothers. In the interim, the CPB-FLP has found that working with incarcerated mothers long before the parental termination is initiated is necessary. There are several steps an attorney can take to help an incarcerated mother protect her parental rights.

## Collaboration

If possible, both criminal defense and civil attorneys should work together to protect the mother's rights before a petition to terminate parental rights is filed.

## Mother and Child Reconnection

Attorneys can help facilitate visitation and frequent contact between the mother and child, both by working with the child welfare agency to ensure visitation and by connecting the mother to programs that facilitate visitation and communication and enhance parenting skills.

## Parent-child Relationship

Attorneys and the incarcerated mothers should work to maintain and build on the parent-child relationship. This includes identifying a suitable relative who can care for the child while the mother is incarcerated.

## Services and Support

Ultimately, attorneys should work with the mother and the child welfare agency to ensure that the mother receives the services and support needed to solve the problems that contributed to incarceration. This includes working with the courts, the corrections department, community providers, and others to ensure that the mother receives as many needed services in prison as possible to begin preparing the mother to re-enter the community and resume her parental responsibility.

In Georgia, while it is possible that many of the children of incarcerated mothers would fair better in foster care, with adoptive parents or with a relative who could provide the child with a safe and loving home, it is questionable whether more than 50 percent of incarcerated mothers are not capable of fostering a parental relationship. The question becomes whether it is in the best interest of every child to have his relationship with his mother severed because of his mother's status. This is a difficult question, but it can be better answered if the mother is given an opportunity to be heard regarding the placement and care of her children. The best way to ensure the child of an incarcerated mother is protected is to zealously protect the mother's right to have her day in court. ★

*Beverly McLeod Iseghohi is the executive director of the Civil Pro Bono Family Law Project.*

# Zah Inspires Conference Attendees With Story of Native American Perseverance

“At that point we didn’t have schools on the reservation. We had boarding schools away from the reservation. The idea was to assimilate us.”

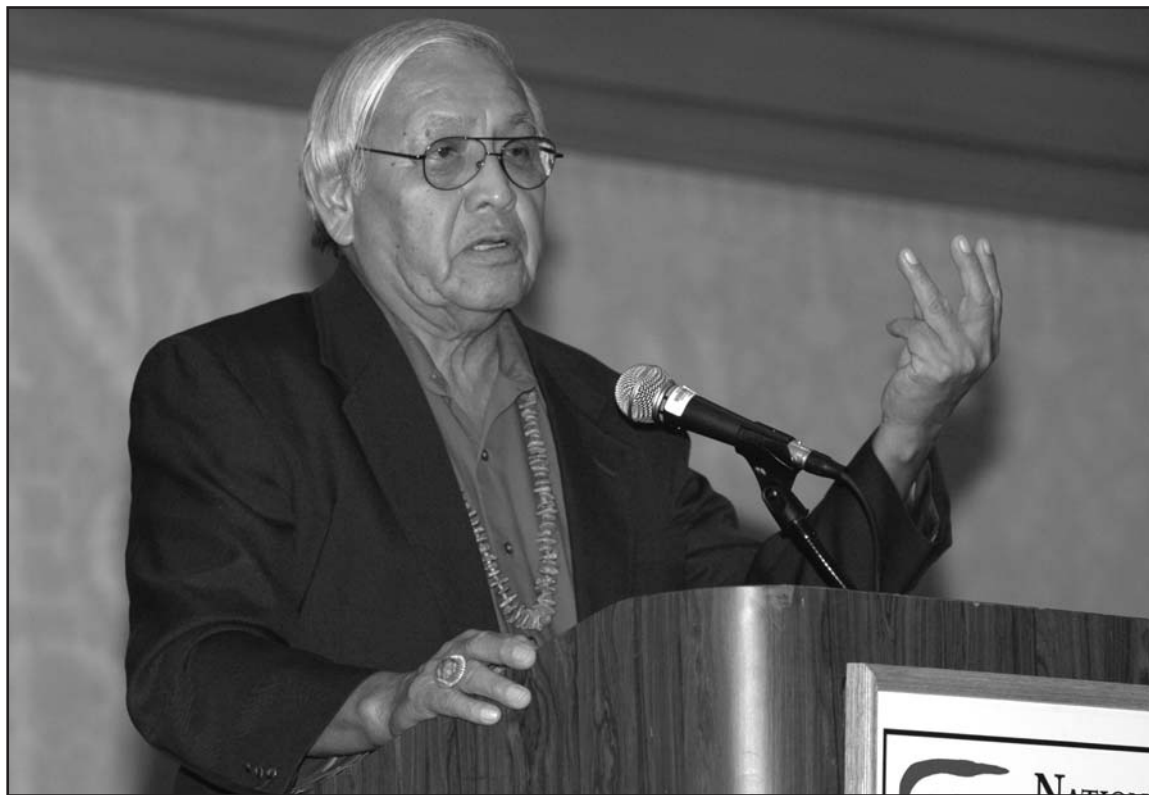


Photo by Jane Ribadeneyera

**Dr. Peterson Zah speaks to 2007 NLADA Annual Conference attendees during the opening ceremony.**

*By Jeff Billington, deputy director of Communications*

In his tale of triumph over nearly insurmountable odds, Dr. Peterson Zah started off the 2007 NLADA Annual Conference with an uplifting story of how his Native American Nation worked to overcome adversity to the benefit of their long-suffering brethren.

Zah, from the Navajo Nation and advisor to the president on American Indian Affairs at Arizona State University, delivered the NLADA opening ceremony’s keynote address.

The Navajo tribe in Arizona is probably the largest concentration of any one tribe in a single state, Zah said, adding that its members and the members of the many other smaller tribes in the state continue to follow a lot of their ancient customs and traditions.

“Many of the tribal groups out there today still speak their language,” he said. “Still live their culture.”

Though each tribe’s cultures are different,

they are universal in their struggle to create better lives for themselves, their friends, their families and generations yet to be born. This struggle is centuries old.

“In 1879 a great chief from the state of Washington went to Congress,” he said, sharing the story of Chief Joseph of the Nez Perce tribe.

In Washington, he told government officials about the experience his people had with the explorers Meriwether Lewis and William Clark. He also told Congress about the people that came later to get the gold and how they not only took the gold, but the tribe’s cattle, going so far as to brand the small cattle to claim them as their own, Zah explained.

Chief Joseph told Congress that these are the tragedies that have happened to the native person and that they were without a friend or advocate in Washington.

“It wasn’t until about 100 years later that the United States formed a war on poverty,” Zah said. “What Chief Joseph wanted, what all of



these tribal leaders wanted was just for their cases to be heard.”

As a boy, Zah saw firsthand how the native cultures were marginalized and almost driven to extinction.

“At that point, we didn’t have schools on the reservation,” he explained. “We had boarding schools away from the reservation. The idea was to assimilate us.”

They tried to assimilate the Native Americans into white culture partially in an effort to keep them off the reservations, Zah said. So he was sent to the Phoenix Indian School.

“Back then it didn’t dawn on me why they wanted us off the reservations,” he said. “We have the Grand Canyon; we have the painted valley; we have all these other nice, beautiful places in the Navajo nation.”

“That’s what you look at on the surface of the Navajo nation,” Zah continued. “But do you know what we had underneath; coal, oil and uranium. And we knew that if the white man knew that, he would never send us back.”

Once he felt he had learned everything the boarding school had to teach him, Zah decided he wanted to continue his learning.

“I wanted to be a little better and I wanted to go on to college,” he said.

He went to all of his Phoenix Indian School teachers to see if they would recommend him to go to college. None would recommend him, instead they told him to find a laboring job and not to embarrass them.

“I guess when somebody tells you that, I guess a lot of people can believe that,” he said. “But not this person, I went on.”

Zah went to Phoenix College on a basketball scholarship and then to Arizona State University (ASU), where he earned a bachelor’s degree in education in 1963.

While he was at ASU a friend came and saw him and asked him to come back to the reservation. Since Zah spoke Navajo and talked and worked well with people, he was seen as an ideal choice to start a new program on the reservation. Eventually, he relented and returned to the reservation, only to discover there was no office. So his first job was to build one.

He used his training as a carpenter from Phoenix Indian School and went to the Navajo nation saw mill for materials and labor.

“We were building the foundation of the legal services program,” Zah said.

The Navajos built five legal services offices, then the Hopi tribe came to Zah and asked for help in building a Hopi legal services program. So he helped build their offices as well and later did the same for the Apache tribe.

“When we finished building all these offices, we

said ‘now we’re going to hire lawyers,’” he said. “So we decided we should go to law schools and recruit.”

Zah went to law schools across the country to recruit third year law students. When he was done, he had almost 100 young attorneys running around the reservations.

“With all these young people converging onto the Navajo nation, it was my job to control them and to control their energy,” he said. “DNA [DNA-People’s Legal Services] legal services program became a very viable legal services program. We could go after the federal government for all the wrongs they had done to the people here in the southwest.”

It was a struggle to keep DNA-People’s Legal Services open. Influential Arizona Senator Barry Goldwater would talk to presidents about ways of eliminating the program, including getting rid of Zah, since he was not an attorney.

Even some members of the Navajo Nation were fighting the program. At one point, DNA sued the nation over representation, after which the Navajo Nation council stopped supporting the program. That led to Zah becoming the tribal chair, by running against one of DNA’s opponents on the council.

At that time Arizona was still refusing to build public schools on the reservations, which DNA fought.

“As a result the Navajo nation now has 178 schools,” he said. “That was the result of DNA.”

The next step in the program was to recruit from within the reservation.

“In 1968, when the program began on the Navajo Nation, we had zero Navajo lawyers,” Zah said. “We talked about how we should motivate our own children on the Navajo reservation. So we started going into the schools motivating those students.”

They started by finding and developing scholarships and recruiting the brightest students to go on to law school.

“Today, 40 years later we have 130 Navajo lawyers,” he said. “It’s the work of those young people that make the program even stronger. At this stage we are advocating for ourselves. We are doing it ourselves.”

In 1995, Zah was recruited by ASU to help address the education concerns of the growing Native American student population and their respective communities. During his tenure at ASU, the university’s Native American student population has more than doubled from 672 to more than 1,400. He is recognized for his efforts in increasing retention rates from 43 percent to 78 percent, among the highest of any major college or university in the country. His guidance and support has also allowed for creating one of the largest and most profound groups of American Indian faculty members in the country, totaling 26. ★

# Enough is Enough!

## Defenders Act on Excessive Caseloads

By Robert C. Boruchowitz

Ask a group of public defenders whether they have too many cases, and the odds are that nearly all of them will say yes. Ask defenders what is their biggest challenge, and most of them will say they have too many cases.

This is not news. What is new is that around the country, in significant numbers, and with considerable success, defenders are standing up and saying, in one way or another, “enough is enough!”

Defenders are moving to withdraw from cases, citing ethical concerns, primarily the rule requiring competent representation. They are participating in bar association and other efforts to call attention to and to provide solutions for the problems of over-worked and under-funded defender programs. And bar associations and courts are paying more attention to the quality of defender practice.

In the last few years, there have been a host of ethical provisions and position statements as well as appellate cases that support defenders declining representation or moving to withdraw if their workload is too high.

Defenders are now well-positioned to resist pressure from funding authorities to do more work for less money. In recognition of the ethical and practical problems facing appointed counsel, both the American Bar Association and NLADA’s American Council of Chief Defenders (ACCD) recently have issued ethical opinions addressing excessive caseloads. In addition, the ACCD issued a statement on workload and caseload. Defenders can rely on these opinions both to advocate for greater resources and to obtain more time to represent their clients.

The problems are severe. The Las Vegas defender is considering declaring “unavailability” because his felony lawyers each handle about 400 cases a year. A commission in Nevada has recommended a standard of 192. Washoe County, Nevada Public Defender Jeremy Bosler told the state Supreme Court in December that his attorneys have an average of only about two hours to spend on each case they get. The Nevada Supreme Court has just issued a dramatic order that among other things orders the defenders in Clark and Washoe Counties to advise the county commissioners “when they are unavailable to accept further appointments based on ethical considerations relating to their ability

to comply” with performance standards and to represent their clients in accordance with the rules of professional conduct.

In Knox County, Tennessee, seven felony defender attorneys have 290 trials set within the next six months. The chief defender plans to ask that his office receive no more misdemeanor appointments, and he then would reassign six attorneys to other areas of the practice.

In Cook County, Illinois, felony attorneys in 2005 disposed of about 229 cases each, far above the national standard of 150. In a lawsuit filed by the defender seeking to stop intervention by the local county board president, the defender reported that the felony lawyers’ caseloads are 60 percent in excess of national standards and the misdemeanor lawyers’ caseloads are 400 percent in excess of standards.

In Mohave County, Arizona, the felony caseload increased 53 percent from 2003 to 2006, but the defender staff did not increase proportionally. The defender successfully moved to withdraw from cases. Among other things, he filed an affidavit from Professor Norm Lefstein who pointed out that the attorneys were carrying a weighted caseload equivalent of 267 felony cases per attorney.

The ACCD last summer published a statement on caseloads and workloads, in which it wrote: “excessive public defender caseloads and workloads threaten the ability of even the most dedicated lawyers to provide effective representation to their clients. This can mean that innocent people are wrongfully convicted, or that persons who are not dangerous and who need treatment, languish in prison at great cost to society.”

The ACCD adhered to the National Advisory Commission caseload standards, including 150 felonies per attorney per year, but noted that “these caseload limits reflect the maximum caseloads for full-time defense attorneys, practicing with adequate support staff, who are providing representation in cases of average complexity in each case type specified.” The ACCD added, “the increased complexity of practice in many areas will require lower caseload ceilings.”

The ACCD Ethics Opinion 03-01 stated:

A chief executive of an agency providing public defense services is ethically prohibited from accepting a number of cases which exceeds the



capacity of the agency's attorneys to provide competent, quality representation in every case. The elements of such representation encompass those prescribed in national performance standards including the NLADA Performance Guidelines for Criminal Defense Representation and the ABA Defense Function Standards.

When confronted with a prospective overloading of cases or reductions in funding or staffing which will cause the agency's attorneys to exceed such capacity, the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases.

The ABA issued an ethics opinion in 2006 stating:

If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients ... lawyer supervisors must, working closely with the lawyers they supervise, monitor the workload of the supervised lawyers to ensure that the workloads do not exceed a level that may be competently handled by the individual lawyers.

Formal Opinion 06-441 May 13, 2006, Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation, can be found at

[http://www.abanet.org/cpr/06\\_441.pdf](http://www.abanet.org/cpr/06_441.pdf)

Among the appellate opinions recognizing that there are limits to what a defender can handle are *Mt. Vernon v. Weston*, 68 Wn. App. 411, 844 P. 2d 438 (1992), review denied as to respondent Norris, 121 Wn. 2d 1024 (trial court denials of the motions to withdraw and to substitute counsel constituted abuses of discretion, the court of appeals noting that the defender caseloads were in excess of those recommended by state bar and ABA standards) and *State v. Citizen*, 898 So. 2d 325, 338-339 (La. 2005) (In two murder cases, the court ruled that on motion of the defense, if the trial judge determines that adequate funding is not available, "the judge may thereafter prohibit the state from going forward with the prosecution until he or she determines that appropriate funding is likely to be available.")

Often, local culture and political pressure have kept pressure on defenders to accept excessive caseloads far beyond what any privately retained lawyer would consider reasonable. This year will mark the 45th anniversary of *Gideon v. Wainwright*. It is the perfect time for defenders to stand together across the nation to insist that their caseloads are reasonable and that they have the investigators, social workers, and forensic experts that they need. An increased recognition of the ethical principles that all lawyers must follow will be a solid basis for motions to withdraw and for requests for more funding. ★

*Robert C. Boruchowitz is visiting clinical professor of law at Seattle University.*

## Nominations Sought for 2008 Harrison Tweed Award

The ABA Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid & Defender Association invite nominations for the 2008 Harrison Tweed Award. Named for an outstanding leader in the promotion of free legal services to the poor, this award was created in 1956 to recognize the extraordinary achievements of state and local bar associations that develop or significantly expand projects or programs to increase access to civil legal services to poor persons or criminal defense services to indigents.

The Harrison Tweed Award will be pre-

sented in August at the 2008 ABA Annual Meeting in New York in recognition of work accomplished during the year beginning April 1, 2007. Projects that began prior to that date will be considered if substantial services have been provided between April 1, 2007 and March 31, 2008. Nominations must be received by **April 1, 2008**.

A full description of the award, past recipients and nominating procedures are available at <http://www.abanet.org/legalservices/sclaid/harrisontweedinfo.html> or by contacting Jessica Watson at [watsonj@staff.abanet.org](mailto:watsonj@staff.abanet.org) or (312) 988-5756. ★

## NLADA Training Events

### Life in the Balance

Atlanta, GA

March 8 - 11, 2008

Brings together mitigation specialists, defense investigators and capital defense attorneys from around the nation to improve skills and techniques in all aspects of death penalty defense.

### Train the Trainer

Lexington, KY

March 24 - 26, 2008

Train the Trainer is a learning event that will model the use of adult learning principles, providing an interactive experience for public defender trainers, supervisors and others.

### Nuts & Bolts of Leadership and Management

Lexington, KY

March 26 - 28, 2008

This seminar will help you learn to identify and develop your own skills, and use them to fashion a theory of management or supervision that will solve problems and identify opportunities.

### Equal Justice Conference

Minneapolis, MN

May 7 - 9, 2008

Brings together all components of the legal community to discuss equal justice issues as they relate to the delivery of legal services to the poor and low-income individuals.

# Keeping Families Together: Legal Aid Programs Create New Approach in Sustaining Family in Face of Domestic Violence



*By Kathi Schear*

Victims of domestic violence often have myriad legal needs, which, if gone unmet, leave them at risk of further victimization. The Legal Aid Society of Columbus (LASC) recently developed an innovative program, known as the Partnership for Child and Family Safety, as a joint initiative with Franklin County Children's Services (FCCS).

What does an abused parent do? Many don't leave for a variety of reasons — fear, safety, lack of money and resources, threats to take her children by the abuser or promises not to hurt her anymore. So, what can she do if her spouse continues to hurt her or her children? Does she call the police? Or Children's Services? If the abused parent leaves, she may worry that the abuser will take her children; if he doesn't, she may worry the government will take her children since the perception may be that she is failing to protect them. It has been established that the safety, the well-being and stability for the family and children is tantamount and children should be in the care of the non-offending parent. However, without the necessary support systems in place to help victims achieve this goal, victims are doomed to failure. What should be done? The three guiding principles in this regard are: courts and child protective agencies must intervene to create safety, enhance well-being and provide stability for children and their families; to ensure stability and permanency for children, every effort should be made to keep children in the care of their non-offending parent; and responsibility for family violence must be placed where it belongs — on the abuser. When the battered parent is protected from abuse and is physically and financially separated from her abuser, she is then better able to protect her children from abuse.

In order to create the Partnership for Child and Family Safety (the Project), it was essential to form a

community collaboration. The LASC has a long history of working with victims of domestic violence in this area and approached FCCS with a model of a project designed to provide assistance to families with FCCS cases that involve domestic violence. Statistics indicate that the rate of abuse of women with children under 12 years old is twice that of women without children and that women in the poorest households experience seven times the abuse rate of the highest-income households. Therefore it comes as no surprise that FCCS handles nearly 1,200 cases a year that involve domestic violence. FCCS recognized that victims of domestic violence often need civil legal assistance in order to extricate themselves from the dangerous situation. Many domestic violence victims dealing with FCCS need to obtain civil protection orders or divorces. In addition to those readily apparent legal needs, they often need aid with employment, public benefits and housing law. If any of these needs are not met, the victim may be forced into a situation where she or he is forced back into the abusive situation.

FCCS caseworkers are equipped to deal with much of the social service demands required by these types of cases, but FCCS recognized the need for treating the case holistically, by addressing the social service needs as well as the civil legal needs. If either need is not addressed, it leaves the victim at risk. In order to provide the necessary legal services to its clients, FCCS was excited by this joint venture and readily agreed to create the Partnership for Child and Family Safety. Both organizations jointly applied for Temporary Aid to Needy Families (TANF) funds to initiate this model project and were successful in obtaining a 13-month grant of

**See FAMILIES on page 27**

# Bureau of Justice Statistics Conducting Nationwide Survey of Public Defender Offices

By Thomas Cohen, David Herda and Lynn Langton

The U.S. Department of Justice's (DOJ) Bureau of Justice Statistics (BJS) is conducting the 2007 Census of Public Defender Offices (CPDO), a data collection effort focused on all state and local, publicly-funded public defender offices in the United States.

Although it has been more than 40 years since the landmark *Gideon v. Wainwright* ruling, there is little documentation of the characteristics of state indigent defense systems and services. The last nationwide survey of public defense agencies was conducted by BJS almost nine years ago. Since that time, there have been a number of significant developments within the indigent defense community. Multiple states, including Georgia, Louisiana, Michigan, Nevada, New York, Pennsylvania, Texas and Virginia, have appointed committees or enacted legislation to initiate the process of indigent defense reform. In 2000, DOJ sponsored the National Symposium on Indigent Defense. In 2002, the American Bar Association (ABA) adopted the Ten Principles of a Public Defense Delivery System, and in 2003, the Standing Committee on Legal Aid and Indigent Defendants (SCLAID) held a series of public hearings on the Right to Counsel in Criminal Proceedings. The discussions and changes stemming from these recent events, in addition to the general, critical function that public defenders play in the criminal justice system, suggest a need for an updated nationwide data collection effort on indigent defense. During the past several months, researchers from BJS and the National Opinion Research Center (NORC), the agency responsible for project data collection, have been working with the National Legal Aid & Defender Association (NLADA) and public defenders from around the country to design and develop the 2007 Census of Public Defender Offices (CPDO). The 1999 BJS survey on indigent defense systems, which was only able to profile state-funded systems and those in the 100 most populous counties, revealed that public defenders handle the largest portion of indigent defense cases in the country. Thus, it was determined that the 2007 CPDO should focus specifically on public defender offices. By including all state and local, publicly-funded public defender offices in operation nationwide, BJS is able to ensure that public defenders from jurisdictions of all sizes, geographic regions and organizational structures are represented. Since a data collection effort like this has never been undertaken, the CPDO will provide new information on the full range of staffing, workload and resources of public defender offices across the country.

In September of 2007, BJS and NORC held an indigent defense expert panel meeting in Washington, D.C. to work on devising a CPDO survey instrument that would meet the information needs of the public defense community. The panel was

composed of researchers and chief or assistant public defenders from California, Kentucky, New York, Texas and Washington, as well as NLADA staff members David Carroll, director of research and evaluation for Defender Legal Services, and Richard Goemann, director of Defender Legal Services. Panel members spent an entire day reviewing a draft of the survey instrument in great depth, providing invaluable comments, suggestions and additions.

The final version of the 2007 CPDO, built on the insights of the expert panel members, is designed to obtain much needed information on the operations, staffing, caseloads, training, support services and funding of public defender offices nationwide. The data will increase understanding of workload strain, the level of resources devoted to indigent defense and the expanding responsibilities of public defenders. Better, more comprehensive knowledge of these and other aspects of indigent defense will allow lawmakers, government officials and public defenders to make well-informed decisions about the operation and functioning of public defender offices.

Data from the 2007 CPDO will also supply public defenders with a benchmark for comparative analysis with similarly situated indigent defense and other criminal justice service providers. The survey is being conducted in unison with the BJS 2007 Census of Prosecutor Offices, which collects similar information. Findings from both surveys will be available on the BJS website ([www.ojp.usdoj.gov/bjs/](http://www.ojp.usdoj.gov/bjs/)) and the data will be available for use at the University of Michigan Interuniversity Consortium for Political and Social Research ([www.icpsr.umich.edu/](http://www.icpsr.umich.edu/)).

While, the 2007 CPDO is voluntary, the data is only as good as the responses that are received. The survey is user-friendly, takes only about an hour to finish, and has multiple options available for completion. Offices should soon be receiving survey packets via the U.S. Postal Service. These packets will contain both a paper version of the survey that can be completed and returned in an enclosed postage-paid envelope, as well as an option to complete the survey on the Web via a password protected and secure online instrument. Assistance is available through NORC at 1-866-331-6052 or 2007CPDO@norc.org should respondents have any questions or concerns regarding a particular question or the survey instrument in general. For all other questions regarding the project, please feel free to contact Lynn Langton, the BJS project manager at 202-307-0765 or [lynn.langton@usdoj.gov](mailto:lynn.langton@usdoj.gov).

BJS, NORC and NLADA thank you in advance for your participation in this important project! ★

*Lynn Langton and Thomas Cohen are statisticians for the Bureau of Justice Statistics, U.S. Department of Justice.*

*David Herda is senior survey director for the National Opinion Research Center at the University of Chicago.*



# Tapping into the Law School Market:



## Building Partnerships, Leveraging Resources

By *Melanie Kushnir*

**L**aw schools and law students are an important but often underused resource to increase access to justice for low-income individuals. Recent developments in legal education make it easier to integrate law students into the delivery of legal services. This article discusses these trends and highlights the benefits of partnerships between legal service providers and law schools and provides guidance on how to build an effective law school partnership.

### Current Trends in Legal Education

The face of legal education is changing. Current developments are calling for both more experiential-based learning opportunities and an increased commitment to pro bono and public service opportunities. A report released this year by the Carnegie Foundation for the Advancement of Teaching, "Educating Lawyers,"<sup>1</sup> calls for fundamental changes in both the structure and content of legal education in the United States to integrate realistic and real-life lawyering experiences throughout the curriculum. Another report issued by the Clinical Legal Education Association, "Best Practices for Legal Education,"<sup>2</sup> issues a similar challenge.

Further exemplifying this trend, in February 2005, the

### In-house Clinics

- The Rutgers Law School Urban Legal and Child Advocacy Clinics, together with the Northeast Regional Juvenile Defender Center, and the NJ Office of the Public Defender (OPD) have partnered to build a cadre of well-trained and enthusiastic lawyers for children in NJ. Under faculty supervision, law students attend partnership meetings, perform research projects at request of the OPD administration and assist in the development of trainings focused on improving collaborative efforts among lawyers representing the same children in different forums.
- The Child Health Advocacy Program is a collaborative effort among the University of Virginia (UVA) Law School, the University of Virginia Children's Hospital and the Legal Aid Justice Center. Under the supervision of Legal Aid Justice Center's attorneys, law students address non-medical needs such as landlord/tenant, benefit and child support issues, as well as others identified during the course of medical care.
- The University of Texas (UT) School of Law in partnership with Texas Community Building With Attorney Resources (Texas C-Bar), a statewide transactional pro bono project of Texas Rio Grande Legal Aid established a Community Development Clinic to enable students to represent nonprofit organizations and individuals involved in community development.

ABA amended the language of its Pro Bono Accreditation Standard from an aspirational to a mandatory standard. As it now reads, all ABA-approved law schools “shall offer substantial opportunities for student participation in pro bono activities.”

In August 2007, the ABA provided further clarification of this standard by adopting a formal interpretation which states that “pro bono opportunities should at a minimum involve the rendering of meaningful law-related service to persons of limited means or to organizations that serve such persons; however, volunteer programs that involve meaningful services that are not law-related also may be included within the law school’s overall program.”<sup>3</sup>

Nearly all law schools regularly offer in-house live clinical opportunities, externships and simulation courses. Most of these staffed courses and the externships are focused exclusively on serving low-income clients. In addition, there has been explosive growth in the number of law school pro bono programs with a significant majority having a formal mandatory or voluntary pro bono and/or public service program.<sup>4</sup>

## The Case for Involving Law Students

The primary benefit for legal service providers are in the additional resources students provide in meeting the critical need for legal services to the indigent. Law students can provide assistance in a number of ways including, handling intake; conducting client interviews; performing research; drafting Know Your Rights brochures and conducting presentations; oral and written interpretation services; staffing help lines; creating pro se materials and conducting pro se clinics. In addition, students who are certified under applicable student practice rules can provide direct representation under attorney supervision.

On those cases where attorneys retain a direct supervisory role, the time savings may be less, but are usually counterbalanced by the quality work product contributed by the law student. In some cases, the collaboration between the supervisor and the student affords attorneys alternative perspectives on various approaches to litigation. In addition, programs often report that their law student volunteers become their future staff and those who go into private firms often remain connected with the organization either as volunteers or as donors.

For law schools, these partnerships prove beneficial in several respects apart from their educational function. Most importantly, collaborations with legal service providers enhance the law school’s ties, relationship, reputation and stature within the community. They also offer opportunities to

strengthen relationships with alumni who are often members of the local community and can serve as sources, sponsors and supervisors for student projects.

Individual faculty can profit as well from community contacts and from opportunities to enrich their research and teaching. Many pro bono initiatives such as Innocence Projects and Street Law projects have played significant roles in public edu-



## Courses with Public Service Components

- Texas Tech University Law School partners with Legal Aid of NorthWest Texas on a Wills Project for students enrolled in the Wills and Trust Course. Through wills clinics, student enrolled in the Wills and Trust course are able to interview, draft and assist with the execution of wills for low-income clients in the community.
- Northeastern Law School has a unique required first-year course, Legal Skills in Social Context (LSSC), which provides students with the opportunity to develop team lawyering skills while assisting community organizations that are attempting to affect social change. Students are assigned to a “law office” and participate in a closely supervised clinical experience representing and assisting a non-profit community based organization in solving a societal problem involving issues of diversity and law. Participating organizations, primarily located in the greater Boston area, compete for an opportunity to participate in the LSSC Program.

cation and public policy.

For students, participation in public service initiatives helps them connect the legal theory they learn in their classes with the practical legal issues faced by low-income individuals. They are provided with valuable experience and legal skills that will enhance their marketability for future employment and a commitment to public interest work regardless of their ultimate career choices.

## Building Effective Partnerships

The first step in building a successful collaboration with a law school is to recognize that law schools and law students have differing objectives from legal service providers. Law schools are primarily concerned with the education of their students while legal service providers are primarily concerned with client service. Law students themselves often have a different set of objectives, including completing the academic

**See *LAW SCHOOLS* on page 30**

## Independent Research and Scholarship

- The Legal Aid Society (LAS) of Louisville, Kentucky expanded its volunteer assistance when the Brandeis School of Law, University of Louisville, committed to providing a faculty member to LAS for the summer to help on skills training of staff and to offer additional client assistance. In addition to the faculty member as a resident scholar for the summer, LAS benefits from law student interns who are willing to work on a volunteer basis or through stipends paid by other funders.
- Several public interest organizations and law schools are jointly participating in the American Constitution Society’s ACS ResearchLink, a new online resource for law student research projects. The project collects legal research topics submitted by practitioners intended for faculty-supervised law review/journal notes, seminar papers and independent research. Further information can be obtained at <http://researchlink.acslaw.org>.

# Mending the Divide

## Public Defender Offices Outline Methods for Overcoming Legal System Race Disparities

By Kirsten D. Livingston

In his essay “Wrongly Accused: Is Race a Factor in Convicting the Innocent?” Professor Andrew Taslitz explains how decisions influenced by race hurt African-American young men throughout the juvenile process:

Young black males entering the juvenile justice system are more likely to be institutionalized because authorities assume that they cannot get adequate parental support. These same authorities are more likely to define black families as uncooperative. Juvenile justice decision-makers also favor black detention because they are more likely to attribute black youths’ behavior to dangerousness, and white youths’ law-breaking to situational pressures. Probation officers are more likely to write reports describing young black males’ problems as due to deep-seated character traits than to write similar reports about whites, leading to recommendations of

harsher black punishment. Re-offenders are also treated more harshly because they were institutionalized, yet that most extreme form of treatment seemingly failed to achieve rehabilitation.

Data suggests race plays a similarly problematic role for adults in the system. The Sentencing Project, a national criminal justice policy research and advocacy organization, found that nationwide African-Americans are incarcerated at nearly six times the rate of whites, while Hispanics are incarcerated at nearly double the rate of whites.

“In the Southern states where I practice,” said Stephen Bright of the Southern Center for Human Rights, “you go to the courthouse and it looks like a slave ship has docked outside the courthouse. All these African-American men in orange jumpsuits, very degrading, are brought into the courtroom handcuffed together, fill up the jury box, fill up the first few rows of where the people sit, and then one after another guilty plea, guilty plea.”

The South has no monopoly on racial disparity. The Sentencing Project found states with the highest black-to-



white ratio of incarceration are located in the Northeast and Midwest. Similarly, states with the largest disproportion in the Hispanic-to-white ratio of incarceration are in the Northeast as well. Disparities do not begin with incarceration, rather they “build at each stage of the criminal justice continuum of arrest through parole.”<sup>1</sup> No one justice agency can shoulder all the blame for creating the problem, nor all the responsibility for solving it. But each has a part to play.

When the Duke rape case fell apart some commentators viewed this as a sign the system works – the wrongfully charged go free and abusive prosecutors receive their comeuppance. Author and former public defender David Feige saw the case differently. “Had they been black, had they been poor, had they been public defender clients, rather than rich, white, well-connected university students, the Duke boys would be serving long sentences right now and Mike Nifong (the prosecutor disbarred because of his actions in the case) would still be the DA of Durham.” Implicit in Feige’s critique is a challenge to public defenders. What can – no, what will defenders do to eliminate racial bias and promote racial justice?

Several public defender agencies are answering that question with action – documenting disparities in the system; conducting in-house trainings; developing training materials for the defense bar and students; raising legal challenges to discriminatory practices; and tailoring services to meet the needs of youth of color in the criminal system.

## Training Defenders to Challenge Racial Disparities

Racial disparities in Minnesota’s criminal system are well documented. The Minnesota Council on Crime and Justice, a nonprofit think tank, has conducted some 17 studies on the topic and the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System published a 355-page study documenting the problem. Minnesota Public Defender John Stuart, who served on that task force, dutifully attended meetings and patiently waited for transformative change. Stuart welcomed the court’s interest in the issue. He also wanted to find a proactive way for his agency to take on the issue.

Stuart decided his agency should move the racial justice discussion from the pages of reports, to the briefs and arguments of his lawyers in the courtroom. The Minnesota Public Defender is now developing an intensive multi-day training for lawyers in his agency that will: 1) highlight racial justice case law; 2) identify successful legal arguments and strategies that can be used contemporaneously when issues arise in the heat of battle, and in framing issues for briefing; and 3) authorize lawyers across the state to make racial justice arguments in their cases. Through this racial justice training Minnesota will educate lawyers and begin to build the legal and cultural foundation for shaping criminal laws and policies relating to racial fairness.

## Educating the Defense Bar



Disproportionate minority confinement and minority overrepresentation in the criminal justice system is a well-documented problem in Kentucky, the state that brought us *Batson*. The chief justice there has urged members of the bar to eradicate any vestiges of racial discrimination in the courts. With support from the Kentucky Bar Foundation, the Department of Public Advocacy (DPA) in Kentucky has initiated a “Litigating Race Education Project” to inform members of the legal profession about disproportionate minority confinement and how to litigate issues of racial disparity in individual cases.

The project’s centerpiece is a “Litigating Race Manual” providing defense lawyers with the tools they need to identify issues of racial bias or racial disparity at each stage of the criminal process. The manual will address issues like racial profiling, immigration status and deportation, transfer hearings for juveniles, pre-trial release and *Batson*. After developing the manual, the DPA will distribute it to agency lawyers at its annual conference, to other defense lawyers through local bar associations and through several regional education summits convened to discuss race and ethnicity in the criminal justice process.

## Documenting Suspicious Arrest Patterns

In many places the racial disparities are observed, but not formally documented. Maryland is one of those places. Neighborhood Defenders Northwest, a community-based public defender office in Baltimore that addresses clients’ civil legal service needs in addition to their criminal issues, would like to change that by studying a problem clients have described and lawyers have observed – lack of identification leading to arrests. People from poor, communities of color in Baltimore City have reported being arrested for minor violations – like loitering, trespassing and failing to obey an officer – if they are unable to produce identification. In contrast, the office has observed that in more affluent, white areas police issue citations for the same conduct – even when identification cannot be produced. Neighborhood Defenders Northwest is partnering with the Brennan Center for Justice to document arrest patterns and evaluate what, if any, racial trends appear.

## Establishing a Unit Devoted to Racial Justice

In 1999, the Defender Association in Seattle, Washington, used private grant funding to establish a “Racial Disparity Project” (RDP) to reduce racial bias in criminal justice through community organizing, public education and legal advocacy. Since 2001, following reports identifying drug cases as the most significant driver of racial disparity in the state prison system, the RDP’s main focus

**See *DIVIDE* on page 29**

# It's the Salaries, Stupid! ... and Much More: The Developing National Crisis in the Delivery of Legal Aid

By Doug German, Tara Veazey and Kate Lang, *associate attorney for NLADA Civil Legal Services*

Legal services programs throughout the country face challenging obstacles to providing meaningful access to justice for the clients and communities they serve. With the reality of limited resources and growing needs, recruiting and retaining dedicated and talented lawyers is as important as ever. The results from a recent survey suggest that the legal services community is largely failing in this effort. The survey, developed and conducted in 2006 by the Recruitment and Retention Committee of NLADA's Civil Policy Group, garnered 786 responses by attorneys 35 years old and younger.<sup>1</sup>

The survey results indicate the extent of the growing crisis in the recruitment and retention of attorneys in civil legal aid practice. A high percentage of survey respondents (40 percent) reported that they expect to leave their current employment within three years. This finding is consistent with the results of other similar studies. For example, a recent survey conducted in Illinois found that 42 percent of legal aid attorneys plan to leave their position in the next three years.<sup>2</sup>

This high rate of turnover is extremely costly to legal aid programs, which are incurring the costs of training new attorneys, many of whom leave before the organization can recoup its costs.<sup>3</sup> By failing to address the causes of these departures, programs are increasing the costs of delivering high quality legal services and undermining their mission of effectively providing legal services to low-income individuals and communities.

The survey results also indicate that legal aid programs are failing to attract and retain a diverse cadre of passionate and talented staff. Specifically, males and minorities were considerably under-represented among respondents. Survey respondents were overwhelmingly female (79 percent) and white (72 percent). The reasons for this are not explicit from the survey

but need to be explored further.

Legal aid programs, and the clients they serve, cannot afford to continue to ignore these problems. There are programs that have recognized the importance of attracting and retaining committed and effective staff, and have made some of the changes necessary to bring about lower turnover rates. Discussion of the policies implemented by the Atlanta Legal Aid Society, Community Legal Services of Philadelphia, Legal Services of Northern California and New Hampshire Legal Assistance can be found in the MIE Journal (Vol. 21, No. 2). The survey results point to effective solutions for other programs concerned about recruitment and retention.

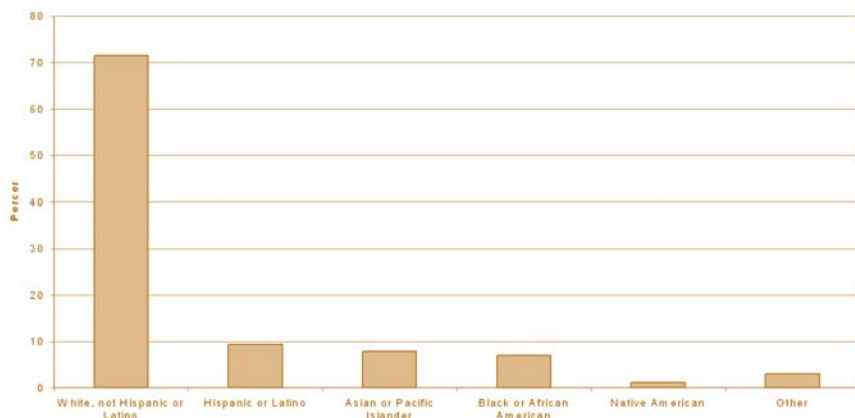
## Survey Results: Income and Debt

Analysis of the survey results reveal that current salary and related benefit levels, including access to loan repayment assistance programs, have the biggest negative impact on retention. With 90 percent of respondents indicating they had educational debt when they graduated from law school, and 41 percent of those carrying at least \$90,000 in loans,<sup>4</sup> most current legal services salaries are simply insufficient to retain attorneys, particularly as they begin planning for their futures. Forty-five percent of respondents expect it to take 25 to 30 years to pay off their educational debt. Fifty-three percent of respondents do not receive assistance from an loan assistance repayment program (LRAP).<sup>5</sup>

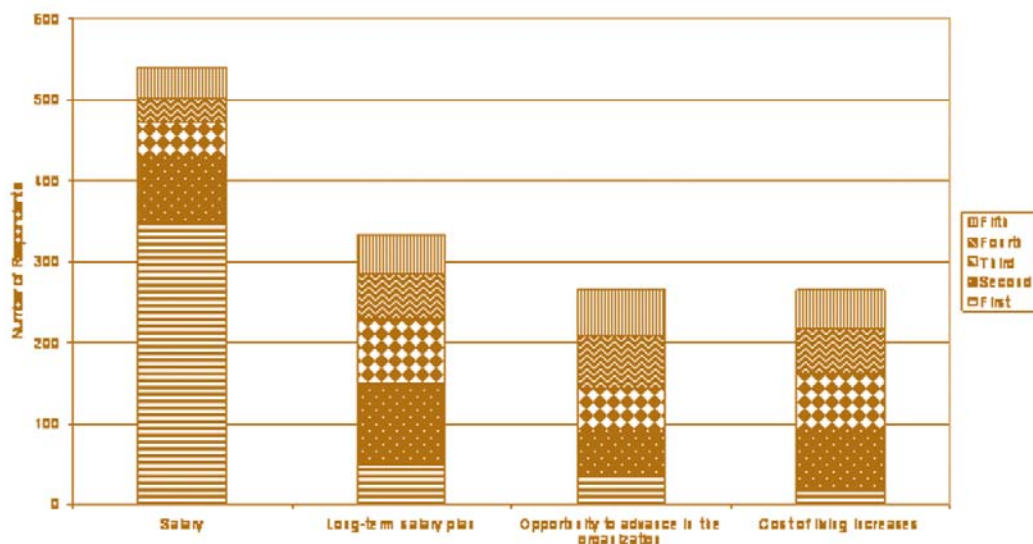
Without increasing salaries and benefits in conjunction with loan repayment assistance, legal services will continue to have trouble recruiting and retaining socio-economically diverse staff. In order to create a long-term career in legal services, too many attorneys have relied on the salary of a spouse or partner or taken a second job, neglected saving for their retirement, been unable to buy a home, or deferred having children.<sup>6</sup> Although the survey did not ask about the economic status of respondents' parents, the results suggest that many of the attorneys who are able to stay in legal services rely on additional economic support from their families.

Five hundred and forty respondents (69 percent) listed salary as one of the top five reasons they may leave their organization, with 350 (45 percent) listing it as the number one reason they may leave. In addition, 333 respondents (42 percent) listed long-term salary plans as one of the top five reasons they may leave their organization. While other important insights can be garnered from the survey, few are likely to make a difference if a long-term plan for increasing salaries and decreasing educational debt is not established.

Ethnicity or Race of Respondents



Reasons Respondent May Leave Employer



## Beyond Income and Debt: Why People Leave

Financial concerns are not the only factor influencing retention rates. After concerns about salary, lack of opportunity to advance in the organization was the most often cited reason a respondent would leave legal services. As shown in the graphic above, 266 respondents (34 percent) listed this reason as one of the top five reasons they would leave their employer.

Concerns about quality of management were also significant factors contributing to decisions to leave a legal services program. Over 20 percent of respondents recorded the quality of top management as one of the top five reasons they may leave, 16 percent listed quality of middle-management as one of their top five reasons, and 17 percent included general concerns about supervision as a top five reason.

Lack of opportunities to do varied and challenging work also has a negative impact on newer attorneys' decisions to

stay in legal services, with 19 percent of attorneys reporting that lack of varied work was a top-five reason they may leave their organization and 16 percent listing lack of challenging work as a top-five reason. Many of the respondents also indicated that they would like more involvement in their organization's direction, with 17 percent of respondents indicating that it was one of the top-five reasons they would leave their organization.

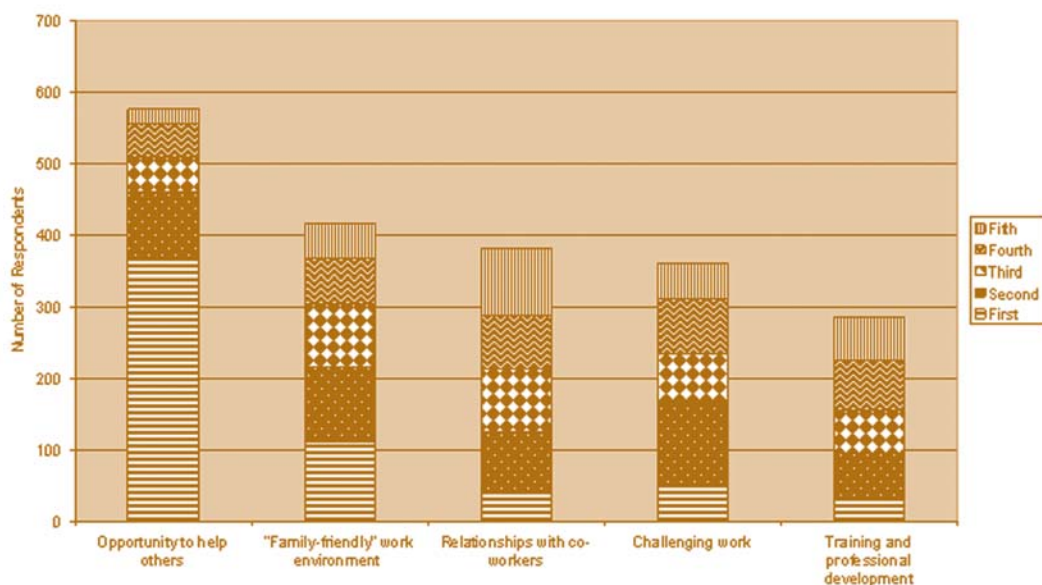
As paramount as salary and debt are to fixing the recruitment and retention crisis in legal services, it would be a mistake to ignore the other factors contributing to the problem. A portion of newer attorneys are longing for more challenging and varied work and for better supervision from management. Even if legal services programs could significantly raise salaries and erase student debt overnight, core program missions, quality of client services, and staff retention would still be compromised by these other factors. Although the survey does not explore the correlation between the numerous factors contributing to poor retention, one may reasonably assume that some staff might tolerate lower salaries if they found the work and work environment more rewarding. Conversely, discontent with work and with program management makes struggling to live on modest salaries all the more unattractive.

## Beyond Income, Debt: Why People Stay

An understanding of why attorneys choose to stay in legal services is also important in tailoring solutions to the recruitment and retention problem. The most important factor that keeps attorneys in legal services programs is the opportunity to help others. Five hundred and seventy-six respondents (73 percent) listed "opportunity to help others" as one of the top five factors that keep them working at their organization, significantly outranking other considerations.

Other important factors were associated with the workplace environment. Four hundred and fifteen respondents (53 percent) listed "family-friendly work environment" and 381 (48 percent) listed "relationships with co-workers" as top five factors keep-

Reasons Respondent Continues Working for Employer



**See SURVEY on page 32**



# NLADA 2007 Annual Conference Awardees



Photo by Jane Ribadeneyra

**From Left: NLADA Board Chair Leonard Noisette, Public Defender's Office 11th Judicial Circuit of Florida Public Defender Bennett Brummer, Public Defender's Office 11th Judicial Circuit of Florida Deputy Public Defender Carlos Martinez, Regional Counsel for Legal Services of Northern California Mona Tawatao, Nelson Mullins Riley & Scarborough LLP Partner Stuart Andrews, Massachusetts Legal Assistance Corporation Board Member Peggy Santos, Centro Shalom Director Amelia Nieto and NLADA President & CEO Jo-Ann Wallace.**

## Honors Recognize Equal Justice Heros, Champions

*By Jeff Billington, NLADA deputy director of Communications*

**I**n honor of their far-reaching contributions and dedication to providing quality legal representation for those in need, NLADA presented awards to four individuals and one public defender office during its 2007 Annual Conference in Tucson, Ariz.

This year's honorees were client advocates Amelia Nieto and Peggy Santos; pro bono champion and private attorney Stuart Andrews; legal aid attorney Mona Tawatao and the Public Defender's Office, 11th Judicial Circuit of Florida, led for the last 30 years by Bennett Brummer.

### Charles Dorsey Award

**Stuart Andrews**, a partner at Nelson Mullins Riley & Scarborough LLP in Columbia, S.C., was the 2007 recipient of the Charles Dorsey Award. Given biennially, the Charles Dorsey Award goes to an individual who has provided extraordinary and dedicated service to the equal justice community and to organizations that promote expanding and improving access to justice for low-income people. To be eligible to receive this award, an



Photo by Jane Ribadeneyra

**Awardee Stuart Andrews speaks to luncheon attendees about his dedication to equal justice.**

individual must have demonstrated a commitment to equal justice for all through service as an officer, board or

committee member of a national or statewide organization devoted to fulfilling the promise of equal justice. Andrews practices in Columbia, S.C. and leads Nelson Mullins Riley & Scarborough LLP's South Carolina Health Care Group. Having been selected for inclusion in *The Best Lawyers of America* (1995-2008 editions) for his practice in health law, he represents hospitals, health systems, physicians, and ancillary providers in a wide range of regulatory and litigation matters. Andrews has served on numerous statewide task forces responsible for the development of recommendations concerning health care policy in South Carolina. A leader in philanthropic and civic affairs, he received the South Carolina Bar Pro Bono Lawyer of the Year Award in 2005. He has served as chairman of numerous organizations and initiatives, including South Carolina Legal Services, Appleseed Legal Justice Center, the South Carolina State Board of Education, the American Red Cross, the S.C. Access to Justice Task Force and Nelson Mullins' nationally recognized Pro Bono Program, among others. Prior to joining Nelson Mullins, Andrews was a staff attorney with Palmetto Legal Services and executive director of the South Carolina Legal Services Association. Andrews has shown vision, compassion and leadership in serving the legal needs of the low-income community throughout his career.

In describing his time as a legal aid attorney, Andrews stated "I had an unexpected gift that had a profound effect on me. I was riding a high that all of you believers in human rights know. I was filing lawsuits against powerful interests. Life seemed good."

He explained that it was around this time that he began to get a vague sense that he was slipping into a danger zone, getting too much of an ego. Then the minister of a church he was representing asked him if he had thought about how much he might be able to help the poor by working in a private firm and making change happen there.

"The idea of working within what I considered the dark side was inconceivable," Andrews explained.

He ended up accepting the minister's challenge and it created a change in the focus of his life's work. His mission became to create opportunities for others.

"There are opportunities for them to learn firsthand the effects of poverty and bigotry, opportunities for them to understand their privilege from the standpoint of those who have none," Andrews said, adding, this includes pro bono work, becoming members of access to justice commissions, serving on local advocacy boards and being involved in any activity that fights against systemic injustices.

## Clara Shortridge Foltz Award

The recipient of the Clara Shortridge Foltz Award was the **Public Defender's Office of the 11th Judicial Circuit of Florida (PD-11)**. The Clara Shortridge Foltz Award commends a public defender program or defense delivery system for outstanding achievement in the provision of indigent defense services. This award, established in 1985, is co-sponsored by NLADA and the American Bar Association Standing Committee on Legal Aid and Indigent Defendants. The achievement may be the result of an effort by the entire pro-

gram, a division or branch or a special project. This award was named for the founder of the nation's public defender system. Foltz, California's first woman lawyer, introduced the "Foltz Defender Bill" at the Congress of Jurisprudence and Law Reform in Chicago in 1893.

Despite inadequate funding and limited resources, PD-11 is widely known for its exceptional work on behalf of indigent clients, extensive community involvement and proactive legal reform efforts. Through the years, PD-11 has faced tremendous budgetary challenges, won major legal battles,



*Photo by Jane Ribadeneyra*

**Public Defender's Office 11th Judicial Circuit of Florida Public Defender Bennett Brummer and Deputy Public Defender Carlos Martinez accept the award on behalf of their organization.**

and developed a world-class public defender office in the process. Led by Bennett H. Brummer, who has been the public defender since 1977, PD-11 is the largest indigent defense law firm in Florida. Brummer's leadership in providing quality defense to indigent clients is best exemplified by his determination in 1989 to force the government to address excessive caseloads that had resulted from years of inadequate funding for Florida's public defender offices. In the face of overwhelmingly negative publicity, he took the politically unpopular position of withdrawing from thousands of cases until local officials finally agreed to fund additional public defender attorneys. Accepting the award on behalf of PD-11, Brummer issued a challenge to public defender offices and staff across the country.

"And I'd like you to rededicate yourself," he said, adding that in the current political climate it is easy to stand by and let abuses happen against those least able to take care of themselves.

"We have to earn our freedom everyday," Brummer explained. "You can work for those in need with the idea that you work to stay free yourselves."

He asked that everyone move forward in their careers with the courage to help others.

"I urge you to stand up now, there is no time to waste,"

**See AWARDS on page 24**

## AWARDS - Continued from page 23

Brummer said. “Be more innovative and be better managers. We have to be dedicated to never ending improvement of our offices and ourselves.”

### Reginald Heber Smith Award

**Mona Tawatao**, regional counsel with Legal Services of Northern California (LSNC), received the Reginald Heber Smith Award. The Reginald Heber Smith Award recognizes the dedicated service and outstanding achievements of a civil legal aid attorney or indigent defense attorney while employed by an organization supporting such services. The “Reggie” is named for a former counsel at the Boston Legal Aid Society and the author of “Justice and the Poor,” published by the Carnegie Foundation in 1919. As an advocate for legal services, Tawatao has developed a national reputation for her groundbreaking advocacy on housing preservation and race equity. In 2003, Tawatao was the moving force responsible for convening a legal services retreat on race equity advocacy. Using the latest data, social science theory, as well as nuts and bolts advocacy tools, she challenged LSNC staff and the broader



Photo by Jane Ribadeneyra

#### Mona Tawatao accepts the Reginald Heber Smith Award.

public interest community to assess all substantive work as a vehicle to close the opportunity gaps which divide our communities along racial lines. When the law doesn't serve the needs of her clients, Tawatao will make an effort to change the law. She understands this is an essential component to her multi-forum approach to solving her clients' legal problems. Many state legislators recognize her expertise and have asked her to provide input on some of the most important housing bills of the past decade. At the ceremony, Tawotao said it was a great feeling to receive an award for doing something she loves and encouraged others to take part in aggressive substantive work for the poor.

“Our first question is, what is the right thing to do,” she said of her office's take on providing legal aid. “We have to step out of our comfortable roles.”

Tawotao said it is important to change the way clients are dealt with and to be more proactive in helping them and their communities.

“We're rewriting the scripts of the most important issues of what it means to serve our clients,” she said.

### Mary Ellen Hamilton Award

Awarded biennially, the Mary Ellen Hamilton Award honors clients who, on a compensated or volunteer basis, have provided extraordinary service or support to the delivery of legal services to the poor. A member of the National Clients Council and the Alliance for Legal Rights, Mary Ellen Hamilton served on NLADA's board of directors and remained an active member of the Alliance until her death in 1985.



Photo by Jane Ribadeneyra

#### Awardee Amelia Nieto describes her office's work for the poor.

**Amelia Nieto**, a board member of the Legal Aid Foundation of Los Angeles (LAFLA) and the director of Centro Shalom, was one of this year's recipients of the Mary Ellen Hamilton Award. Nieto has a widespread and distinguished reputation among the region's poorest residents and a deep commitment to the low-income community. Nieto's familiarity with current client issues comes largely from her responsibility as the director of Centro Shalom, a grassroots organization in Long Beach. In a small office with a team of community volunteers, she operates Centro Shalom as an urban “campesino center,” a concept she learned as a United Farm Workers staffer. Her office assists some 1,200 documented and undocumented people a month, confronting hunger, eviction, family problems and immigration issues. In accepting her award, Nieto said her passion for helping stems from her childhood.

“I've been blessed to have been born to a family of activists, who told me early on that we don't live in a vacuum,” she said. “When my mother was called an agitator by someone who didn't like her, she thanked him.”

Nieto also said it is vital for legal aid programs to make use of client members, because their perspective and drive





Photo by Jane Ribadeneyra

**Peggy Santos shares her lifelong struggle to provide equal justice.**

will make huge strides in helping underprivileged populations.

"If you give people a chance they will usually rise to your expectations," she explained. "If you don't have an active client council in your legal aid program, you need to get one."

This year's second Mary Ellen Hamilton Award Winner, **Peggy Santos**, is a board member for the Massachusetts Legal Assistance Corporation (MLAC). Santos has been involved in social justice activities for more than 35 years, more than 25 of these in legal services activities.

She was instrumental in creating the MLAC client steering committee and helped to design the steering committee training manual. She has testified before the LSC board of directors on client issues and works with community organizations in collaboration with legal services programs on issues that impact the quality of life for low-income people. As a board member for the Massachusetts Law Reform Institute (MLRI), Santos served as a persistent voice for advocacy through many different forums and strategies. She not only pressed for low-income people to have access to attorneys, she was also a strong voice for client empowerment. She pushed legal services to provide trainings for and with low-income people.

Santos said receiving the award was a great honor, especially knowing that her peers in equal justice advocacy were the ones giving it to her.

"There is nothing like having people doing the same work you are doing telling you are doing something special," she said, adding that her dedication to helping others also dates to her childhood.

"The family I was brought up in instilled values in me when I was very young," Santos said, explaining that her mother "would fill my Coca-Cola bottle with water so I didn't have to drink out of the 'colored' fountains."

This, among other similar actions, helped give her self-dignity and appreciation of the need to help improve the lives of others, she said. ★

"Change is on the horizon  
and we in the equal justice  
community must be ready  
to embrace that change  
together."

## MESSAGE - Continued from page 1

increase funding of LSC, so they can assist the nation's legal aid attorneys in meeting the needs of those who cannot afford legal help when faced with life damaging situations, such as child custody, unfair evictions, discrimination, unscrupulous employment practices and predatory lending among other practices.

It is also vital to continue the push for the Civil Legal Assistance Loan Repayment bill, introduced by Senator Tom Harkin and included by both the House and Senate in their versions of the Higher Education Amendments Act and the John R. Justice Prosecutors and Defenders Incentive Act of 2007. If made law, these bills will permit gifted young attorneys to practice in the legal aid arena, while mitigating overwhelming and staggering student loan debt.

The foundation for an improved public defense system formed in Louisiana must be nurtured, to ensure its success, by continuing to

work with the state legislature to make sure appropriate funding sources are identified.

And in the states of Michigan, Nevada and New York, continued research and planning has to take place to ensure NLADA can also offer them support in rebuilding their failing public defense systems. In addition, we must look for other areas where those who can least afford it continue to fall through the cracks of the legal system.

So, while great progress was made in 2007, 2008 is not a time to rest. Change is on the horizon and we in the equal justice community must be ready to embrace that change together.

It has been a great honor to serve as chair of the NLADA board of directors. I thank you, the dedicated members of NLADA, and I thank Jo-Ann Wallace, president and CEO of NLADA and her talented staff, for all you have done to improve the lives of thousands of men, women and children in America. ★

## EJA - Continued from page 4

the nation's law students have been able to receive substantial funding for fellowships to work as interns in our offices. Some of these students have impressed us so much that they later have become staff attorneys in our organization. Other students have gone on to make substantial contributions to the public interest field through other organizations. We are really grateful for our relationship with Equal Justice America."

Through the years, Equal Justice America has strived to expand its program and its influence. In 1997, EJA began funding the Yale Law student-run Temporary Restraining Order (TRO) Project at the New Haven Legal Assistance Association (NHLAA). The TRO Project assists domestic violence victims attempting to file orders of protection on their own.

For years the TRO operated strictly with student volunteers.

"The funding from Equal Justice America that now pays the student directors has enabled it to become a much more established and professionally run project," said Patricia Kaplan, executive director of NHLAA. "The TRO is one of the most successful student projects to come out of the law school and is a demonstration project for law schools and legal services programs throughout the country."

In September 2000, Pace Law School established the Equal Justice America Disability Rights Clinic with a major grant and an ongoing commitment from EJA. The EJA Clinic has delivered much needed civil legal services to indigent disabled children and adults, while educating law students who are committed to becoming effective advocates for those in need. Nearly 60 Pace law students have taken part in the EJA Clinic and Equal Justice America has renewed its support of the clinic through

August 2009. The EJA Clinic has become an integral part of the law school's highly regarded clinical program.

In 2002, EJA began awarding post-graduate fellowships to launch the public interest careers of outstanding young attorneys. More than \$800,000 has been committed to these two-year post-graduate EJA Fellowships, allowing legal services organizations to receive new full-time staff to better meet a community's needs. In cooperation with Harvard University, EJA has awarded post-graduate fellowships that began this fall at the New York Legal Assistance Group and New Hampshire Legal Assistance (NHLA). John Tobin, executive director at NHLA wrote that "the fellowship will make an enormous difference in our program's ability to serve vulnerable and troubled children."

In 2006, Equal Justice America hired Joel Katz, a former executive in the performing arts center industry, to expand EJA's fundraising strategies. Katz took the job of director of development and among many other projects, he created Virginians for Equal Justice which funded 16 Virginia law students at seven legal service organizations this past summer. This simple idea, placing Virginia law students at Virginia legal service organizations funded by Virginia attorneys, exceeded expectations for its first year.

A major grant from the Cameron Foundation has recently been awarded to EJA to place a recent law school graduate in a full-time job at the Legal Aid Justice Center in Petersburg, VA. The grant represents EJA's largest contribution in its 15-year history.

For more information, visit EJA's comprehensive website: [www.equaljusticeamerica.org](http://www.equaljusticeamerica.org) ★

*Joel Katz is director of development at Equal Justice America.*

## Who do YOU think is leading the charge for equal justice? 2008 Kutak-Dodds Prizes Nominate TODAY!

NLADA is seeking nominations for the 2008 Kutak-Dodds Prizes. The prestigious award will honor two legal advocates for equal justice, one from the public defense community and another from the civil legal aid community, who, through the practice of law, are contributing in a significant way to the enhancement of human dignity and quality of life of those persons unable to afford legal representation.

**EACH PRIZE CARRIES A CASH AWARD OF \$10,000!**

The nominations deadline is Friday, April 11, 2008. For nomination criteria, please visit [www.nlada.org/About/About\\_Awards\\_Kutak](http://www.nlada.org/About/About_Awards_Kutak)

**For further information: Contact the Development Department at (202) 452-0620 ext. 223 or [development@nlada.org](mailto:development@nlada.org)**

## FAMILIES - Continued from page 14

\$625,000 in June 2006. LASC hired four attorneys to be responsible for the holistic civil legal representation of these victims of domestic violence. Each of the FCCS's four regions, as well as the intake department, have a dedicated attorney. In addition, due to the high demand around housing issues, there is also a housing attorney at LASC who handles the housing issues for all clients. In addition to the attorneys, there are four victim advocates in each FCCS region and intake to work intensively with each client. Due to the smaller caseload and increased knowledge of both social services and legal services needed by this population, these advocates work more effectively with the victims than a FCCS caseworker alone can.

Since the implementation of this project, FCCS and LASC have also been working with FCCS caseworkers and supervisors to ensure they have the education and training they need, both to recognize victims of domestic violence, and to refer these victims to the Project, in order to better serve the families. Once a caseworker suspects that the client may be a victim of domestic violence, they will ask the victim to consent to release information to LASC. If the client consents, then the LASC victim advocate follows up with the client to assess legal and social service needs. If the client fits within the guidelines and is amenable to obtaining services from the Project, the team works on both the social service and legal needs of the client in conjunction with the client's FCCS caseworker.

With the referral having been made, the initial first step is to develop safety planning with separate case plans developed. Safety plans should be tailored to the victim's needs, community resources and safety of the victim and children. Lastly there should be a collaboration and coordination of services to obtain the best results for the victim. The Project works to fulfill these goals. We are also able to address the legal needs of the clients in a proactive manner. Many of the clients are being abused by a spouse or intimate partner. We not only can be helpful with civil protection orders but can assist these clients in obtaining a divorce, custody when necessary and other significant domestic relations issues. The Project can perform all of the civil legal work to put the client in the best position possible. Most of these clients would not be able to obtain these services if it were not for this project, thus continuing to be tied to the abusive partner. Aiding the client without addressing these legal needs

would not provide a permanent long-term solution.

In addition, clients also face other obstacles. Many lose their source of income when leaving a batterer. The Partnership for Child and Family Safety can provide guidance through the system of public benefits. Some clients have faced employment problems due to their abusive situation. The Project can work with employers to ensure the safety of the clients at work as well as to ensure that the employers do not discriminate against them due to their status.

In creating this project, LASC has created an innovative project that addresses the holistic needs of the client to ensure long-term success. This provides more permanent safety and security to the victims of domestic violence. It decreases the stress that the children are forced to deal with in these situations. It often alleviates the need to remove the children from the home. By addressing all of these needs, it is hoped that there will be a reduction in the need for FCCS to reopen these cases.

The anticipated long-term results of this project are a decrease of maltreatment recurrence and a reduction in the number of children removed from their homes. Since the Project's inception in June 2006, the Partnership for Child and Family Safety has served almost 400 families. A wide array of services has been provided. The Project has served over 150 clients with housing, public benefits, and employment issues. More than 275 cases involving domestic relation matters (including divorces and civil protection orders) have been handled. In addition, 78 percent of all victims referred were successful in keeping their children with them and out of placement. So the preliminary results indicate that the Project is reducing the need to remove children from their homes to keep them safe. Because of our success, the Project has been funded for an additional year by FCCS.

There is no doubt that this Project has served the best interest of the victims of domestic violence who are involved with Children's Services. They have been afforded an opportunity to have not only their immediate needs served, but they have been given the tools to permanently break ties to the abuser and live a safe, healthy and productive life. ★

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*"There is no doubt that this project has served the best interest of the victims of domestic violence who are involved with Children's Services."*



## SUPREME COURT - Continued from page 7

any reasonable suspicion of wrongdoing or fear for their safety? The Court expressly declined to decide this question in *Maryland v. Wilson*,<sup>32</sup> which held that police could “order a passenger out of the car as a precautionary measure, without reasonable suspicion that the passenger poses a safety risk.”<sup>34</sup> In *Michigan v. Summers*, the Court did, however, uphold the detention of all occupants of a home during the execution of a search warrant for narcotics. It is the Court’s reliance upon *Wilson* and *Summers* that is the most disturbing aspect of *Brendlin*. These cases are used to form the basis for the conclusion that there is a general “societal expectation” that police have “unquestioned command of the situation” during a traffic stop.<sup>35</sup> If the police have “unquestioned command” of the situation then passengers apparently can be detained for the duration of the traffic stop.<sup>36</sup> Thus, the Court has sub silentio answered the question left open in *Maryland v. Wilson*.

Justice Souter ignores, however, the fact that in *Summers* a valid narcotics search warrant based on probable cause created at least reasonable suspicion that occupants of the home were engaged in criminal activity. Souter appears to view the *Summers* decision as resting on the policy ground that “[t]he risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation.”<sup>37</sup> This policy consideration, mentioned in passing by the *Summers* Court, was not, however, the primary rationale for the holding in *Summers*. Substantively, the Court relied upon the fact that a narcotics search warrant provided reasonable suspicion to detain the occupants of the home:

A judicial officer has determined that police have probable cause to believe that someone in the home is committing a crime ... The connection of an occupant to that home gives the police officer an easily identifiable and certain basis for determining that suspicion of criminal activity justifies a detention of that occupant ... Thus, for Fourth Amendment purposes, we hold that a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted.<sup>38</sup>

While reasonable suspicion of criminal activity by the occupants of premises targeted by a narcotics search warrant thus automatically flows from the probable cause justifying the search, no similar suspicion exists with respect to a passenger in a car stopped for a mere traffic violation. Yet the Court in *Brendlin* concludes that it is reasonable for passengers (like

occupants of a home during the execution of a search warrant) to expect that they will not be free to leave or terminate the encounter “without advance permission.”<sup>39</sup> This expectation could not be “reasonable” if their detention was in fact unreasonable. Thus the Court would appear to have already laid the groundwork for holding that passengers may be detained at the scene of a valid traffic stop “as a precautionary measure” without any reasonable suspicion of wrongdoing or fear that the passenger presents a risk to the officer’s safety. It will also follow that brief interrogation of such detained passengers will not require Miranda warnings because they will not be in “custody” under *Berkemer v. McCarty*.<sup>40</sup>

In *Boyd v. United States*<sup>41</sup> a Supreme Court respectful of the protections guaranteed by the Bill of Rights observed: “it may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure.”<sup>42</sup> The preference for “preemptive executive action” which spawned the detentions and interrogations at Guantanamo, can also be seen in the Court’s implicit assumption in *Brendlin* that the police have the right to exercise “unquestioned command of the situation” during a traffic stop. *Brendlin* may therefore turn out to be a Trojan horse, carrying deep within its logic the capacity to spread the concept preemptive detentions (and interrogations) from the inner recesses of the Gulag at Guantanamo to the streets of Everytown, USA. ★

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<sup>1</sup> 127 S. Ct. 2400 (2007).

<sup>2</sup> Id. at 2403-04.

<sup>3</sup> 499 U.S. 621 (1991).

<sup>4</sup> *Brendlin*, 127 S. Ct. at 2409-2410.

<sup>5</sup> 489 U.S. 593 (1989).

<sup>6</sup> *People v. Brendlin*, 38 Cal. 4th 1107, 1115-1116, 1123 (2006).

<sup>7</sup> 517 U.S. 806 (1996).

<sup>8</sup> *Brendlin*, 127 S. Ct. at 2408 (citing *Whren v. United States*, 517 U.S. 806, 813 (1996)).

<sup>9</sup> Id. at 2409.

<sup>10</sup> Id. at 2407.

<sup>11</sup> See id. at 2410 n.6.

<sup>12</sup> See *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). In *Mendenhall*, Justice Stewart found no seizure occurred when officers in plain clothes approached a female traveler on the airport concourse, identified themselves only as federal agents, asked to see her airline ticket and identification, and then returned these items to her. Justice Stewart stated: “We conclude that a person has been ‘seized’

within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Id.* Because Justice Stewart's opinion announced the judgment of the Court, this formulation is often referred to as the "Mendenhall" test, although only Justice Rehnquist (as he then was) joined the above-quoted portion of Justice Stewart's opinion. *Id.* at 545. Subsequently, however, in *Florida v. Royer*, 460 U.S. 491 (1983), a majority of the Court adopted the "free to leave" test coined by Justice Stewart.

<sup>13</sup> 501 U.S. 429 (1991).

<sup>14</sup> *Id.* at 436.

<sup>15</sup> The Court observed: "Bostick was a passenger on a bus that was scheduled to depart. He would not have felt free to leave the bus even if the police had not been present. Bostick's movements were 'confined' in a sense, but this was the natural result of his decision to take the bus; it says nothing about whether or not the police conduct at issue was coercive." *Id.*

<sup>16</sup> *Id.* (emphasis added).

<sup>17</sup> 499 U.S. 621 (1991).

<sup>18</sup> *Id.* at 626.

<sup>19</sup> *Id.* at 629.

<sup>20</sup> 536 U.S. 194 (2002).

<sup>21</sup> *Id.* at 204 (citing Joint Appendix at 132a, *Drayton*, 536 U.S. 194 (No. 01-631)).

<sup>22</sup> Transcript of Oral Argument at 40, *Drayton*, 536 U.S. 194 (No. 01-631).

<sup>23</sup> Both Justices Breyer and Souter dissented in *Drayton*.

<sup>24</sup> *Brendlin v. California*, 127 S. Ct. 2400, 2410 n.6 (2007).

<sup>25</sup> *Id.* at 2410.

<sup>26</sup> *Rakas v. Illinois*, 439 U.S. 128, 148 (1978).

<sup>27</sup> *Id.*

<sup>28</sup> *Brendlin*, 127 S. Ct. at 2410 n.6.

<sup>29</sup> *Id.* at 2409.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 2410. It should be noted that this statement only applies to the seizure of passengers because passengers have the opportunity to submit to a show of authority only after the car has come to a stop. It does not necessarily follow, therefore, that the driver is not seized until the moment the car has come to a complete halt. Assume, for example, that in response to a police siren and flashing lights, a car pulls off the road onto the shoulder and the driver throws drugs out the window, just before the car comes to a complete stop. Whether this would constitute sufficient submission to the officer's display of authority to constitute a seizure would appear to still remain an open question not controlled by Justice Souter's statement in *Brendlin*.

<sup>32</sup> 519 U.S. 408 (1997).

<sup>33</sup> *Brendlin*, 127 S. Ct. at 2407. We are indebted to Professor Daniel Yeager at California Western School of Law for calling attention to the fact that Wilson left this question open, and for contributing to the discussion that led to the insights expressed in this section.

<sup>34</sup> 452 U.S. 692 (1981).

<sup>35</sup> *Brendlin*, 127 S. Ct. at 2407.

<sup>36</sup> In dicta the Court goes even further stating: "It is also reasonable for passengers to expect that a police officer at the scene of a crime, arrest or investigation will not let people move around in ways that could jeopardize his safety." *Id.*

<sup>37</sup> *Id.* at 2407 (quoting *Maryland v. Wilson*, 519 U.S. 408, 414 (1997)).

<sup>38</sup> *Summers*, 452 U.S. at 704-03 (emphasis added). The *Summers* Court expressly declined to hold that the same result would follow in a case involving a search warrant for mere evidence. *Id.* at 705 n.20.

<sup>39</sup> *Brendlin*, 127 S. Ct. at 2407.

<sup>40</sup> 468 U.S. 420 (1984). *Berkemer* held that roadside questioning during a traffic stop did not require *Miranda* warnings because the driver, although seized, was not in "custody" until formal arrest.

<sup>41</sup> 166 U.S. 616 (1886).

<sup>42</sup> *Id.* at 635.

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has been on racial bias in drug enforcement.

Among its many activities, the RDP has challenged the way the Seattle Police Department enforces drug laws in communities of color. RDP commissioned a study by graduate researchers on the causal relationship between department enforcement choices and the racial composition of those arrested in Seattle on drug crimes. They concluded there was a link. RDP used this study and other evidence to move for discovery on a selective enforcement motion seeking to dismiss a group of consolidated drug prosecutions in King County. After intensive briefing the trial court ruled RDP had met the *Armstrong* evidentiary burden and could depose police commanders about their practices. When the ruling was upheld on appeal, prosecutors made RDP clients offers they could not refuse – reduced charges for time served instead of up to a possible ten years in prison if the case proceeded to trial and ended badly.

This litigation not only assisted individual clients, but also educated the community about how racial bias limits the effectiveness of drug enforcement by ignoring similarly-situated white people engaged in the same activities as African-Americans. The effort also allowed RDP to share important data on law enforcement resource allocation, information that supported community arguments that funds could be used more effectively to promote public safety. Now RDP is partnering with community allies, public health experts and social scientists to connect racial justice analysis with a good government framework – promoting use of treatment instead of arrest to keep communities safe and use police resources effectively.

## Steering Youth of Color Clear of the System

African-American youth comprise 9 percent of the King County, Washington population, yet are 40 percent of the average daily population in detention. Seattle-based public defender Society of Counsel Representing Accused Persons (SCRAP) is seeking to steer young people clear and reduce their disproportionate involvement in the system. In addition to their caseloads – which include adult felonies and misdemeanors, dependencies, family law contempt of court and delinquency issues – Society of Counsel is involved in Project ROYAL, Raising Our Youth As Leaders. ROYAL is a unique partnership with local human service agencies and neighborhood groups to provide mentoring and legal representation to youth of color at risk of detention and in high need of social service intervention. Society of Counsel staff working on the ROYAL project provide individual and family counseling, school support and advocacy and even bus tokens for important appointments, as well as one-on-one guidance on setting and accomplishing personal goals, reducing stress and improving relationships. ★

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<sup>1</sup> Reducing Racial Disparity in the Criminal Justice System, p. 2

## LAW SCHOOLS - Continued from page 17

requirements for graduation, finding a job and repaying loans.

In order to accommodate these different goals, a number of strategies can be employed:

### Top down support

Legal service providers must ensure top down support of involving law students in their program. Program staff must not view students as a totally free resource but as a lucrative investment. They should be provided with meaningful experiences that are sufficiently challenging to enable them to develop basic lawyering skills.

Programs must remember that law students are future advocates in and for legal services and must be sensitized to the legal needs of the poor.

### Foster Relationships with Law School

In order to develop a partnership, legal service providers should contact the law school(s) in their area to assess their interest in a partnership. Appropriate contacts include faculty/staff involved in the law school clinical or externship program or faculty/staff involved in the law school's pro bono or public interest program. A list of these contacts can be found in the "Directory of Law School Pro Bono and Public Interest Programs."<sup>5</sup>

### Maintain a Presence at the Law School

In order to be effective, the law school faculty, administration and students must be familiar with the program. Programs should consider participating in the law school on-campus interview program or conducting presentations at the school to recruit student volunteers and/or summer interns. Other forms of recruitment include: posting information on the law school website, flyers and word-of-mouth testimonials from current and former participants. Another strategy is to collaborate with the law school in offering an award to honor extraordinary students whose volunteer efforts contributed to the low-income community.

## Create Incentives for Schools, Students

Programs should stress both the critical need for legal services delivery and quality legal education. They should stress the benefits of volunteer service including, developing legal skills and a network of references for future employment; exposure to various areas of substantive law and public service opportunities; greater involvement in the community; and personal fulfillment.

### Case Management

Depending on the type of model, tension could arise if clients are being jointly represented by attorneys from different organizations. In order to avoid potential conflicts over decision-making, participants should clearly define the scope of the relations and the obligations of each party in a written agreement.

### Timing and Logistics

Providing meaningful opportunities that meet the students' learning needs and busy schedules is a primary challenge of law school partnerships. Opportunities should enable students to engage in sufficiently challenging real lawyering activities yet not be so difficult or complex that the work is too demanding on their limited skills set and availability. Effective partnerships often involve fairly routine areas of law in which projects can be set up

## Pro Bono Initiatives

- In a partnership between the University of Arizona James E. Rogers College of Law and the Volunteer Lawyers Program (VLP) (Southern Arizona Legal Aid), VLP advocates provides training and supervision for students who commit at least 12-15 hours per semester. Students participate in one of four clinics: Child Support Project, Bankruptcy Court Reaffirmation Hearings, Domestic Relations Clinics and Probate Court Guardianship Project. VLP has a full-time attorney to oversee and collaborate with law student coordinators on recruitment and recognition efforts such as monthly and annual awards and spring and a fall luncheon.
- Several law schools allow students to perform legal research for legal services attorneys and lawyers engaging in pro bono representation. These projects enable students to simultaneously improve legal research and writing skills under the supervision of a practicing attorney or faculty member while providing much needed assistance to attorneys in the public sector. One example is a collaboration between the University of Tennessee Law School and Legal Aid of East Tennessee on a Web-based TIG funded tool. The Student Assisted Legal Research Network allows legal aid attorneys at various sites in Tennessee to request research assistance from law students. The requests are screened by student coordinators at participating law schools who then assign research tasks to students.
- Villanova University School of Law Lawyering Together Initiative pairs volunteer alumni attorneys with volunteer law students to handle pro bono cases. Together they represent low-income clients referred by the following three Philadelphia public interest agencies: Philadelphia volunteers for the Indigent Program, Senior Law Center and the Support Center for Child Advocates. The law school director of Public Service Careers and Pro Bono Programs matches interested attorneys with students and assigns each pair to work as a team with one of the co-sponsoring public interest organizations. Participating public interest organizations provide training and consultation, while pro bono attorneys are ultimately responsible for the case.
- Several law schools organize alternative winter or spring break projects that enable teams of students to travel to programs throughout the country to perform legal work. Examples include projects in which students work on criminal justice and death penalty defense issues, post-hurricane relief work, environmental justice and immigration work.
- The Pro Bono Legal Corps (PBLC) is an Equal Justice Works AmeriCorps-funded program, which places attorneys at pro bono and legal aid organizations across the country to promote public service among law students at law schools. Americorps attorneys collaborate with community legal aid providers and law schools in developing quality pro bono opportunities and projects; recruit and train law students to volunteer with the pro bono project; and provide ongoing management and coordination of the pro bono project and volunteers. ([www.equaljusticeworks.org](http://www.equaljusticeworks.org))



to serve distinct phases or be broken into smaller components.

### **Supervision and Oversight**

In order to make a student's experience effective, projects should be structured and include built-in training and support. Supervising attorneys should explain assignment and deadline expectations carefully and be accessible to students' questions. Quality control mechanisms, such as monitoring the type and quality of all assignments, feedback on work provided and evaluation should be in place.

### **Decide on a Program Model**

The appropriate model will depend on the availability of funding and community need. Programs should conduct a needs assessment or consider what legal needs are currently unmet in the community that could be addressed by law students. Other important considerations are where the program will be housed; how many staff will be needed to adequately set up, coordinate and manage the program; who will be responsible for supervising the students and what the supervisory structure will be; and how the program will recognize students for their service.

## **Models of Law School Partnerships**

There are a variety of ways in which legal services programs can effectively engage law students in their advocacy efforts.<sup>6</sup>

**In-house Clinics and Externships** - Both in-house clinics and externships enable students to gain practical experience with clients and cases under the supervision of law school professors (in-house clinics) or a licensed attorney in a nonprofit organization (externships). Students receive academic credit for their work.

**Courses with Public Service Components** - Some faculty partner with legal service providers in order to incorporate service components into their doctrinal courses.

**Independent Research and Scholarship** - Several law school faculty are exploring ways to incorporate public service opportunities not only into the law school curriculum but also by involving students in faculty-related pro bono projects such as research assistance and independent study.

**Pro Bono Initiatives** - Pro bono programs in the law school setting are designed to inspire and enable students to engage in pro bono legal service, uncompensated by credit or pay, while in law school. The primary purpose of these programs is to teach all students why pro bono service is an important professional value and to introduce them to the ways in which they can contribute in

## **Summer Paid Internships**

- The University of Baltimore School of Law in partnership with the Legal Aid Bureau of Maryland, Inc. and the Maryland Public Defender established a Public Interest Fellowship Program in which students serve fulltime as summer law clerks, remunerated with a law school grant of \$4,000, plus a tentative offer of permanent post-graduate employment contingent on successful summer performance. Successful applicants receive full remission of tuition and fees their final year of law school in the form of a forgivable loan and are expected to remain employed at the public interest partner organization for three years.

their practice as attorneys.

**Summer Paid Internships** - Several law schools have partnered with nonprofits to provide summer fellowships and stipends to students who would otherwise not be able to accept low-paying or non-paying public interest summer employment. ★

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*“Both in-house clinic and externships enable students to gain practical experience with clients and cases under the supervision of law school professors (in-house clinics) or a licensed attorney in a nonprofit organization (externships).”*

- <sup>1</sup> Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (2007)
- <sup>2</sup> Roy Stuckey and Others, *Best Practices For Legal Education* (2007), available as a PDF formatted file at <http://cleaweb.org>
- <sup>3</sup> ABA Standards for Approval of Law Schools, 2007-2008, available at <http://www.abanet.org/legaled/standards/20072008StandardsWebContent/Chapter%203.pdf>. (The Interpretation further acknowledges that while most existing law school pro bono programs include only activities for which students do not receive academic credit, it maintains that the Standard does not preclude the inclusion of credit-granting activities within a law school's overall program of pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program.)
- <sup>4</sup> Directory of Law School Public Interest and Pro Bono Programs at [www.abaprobono.org/lawschools](http://www.abaprobono.org/lawschools). (According to the Directory, 35 law schools have pro bono and/or public service graduation requirements; 109 law schools have formal, administratively supported voluntary programs; and 25 law schools rely on student groups to provide opportunities.)
- <sup>5</sup> Directory of Law School Pro Bono and Public Interest Programs, *supra* at [www.abaprobono.org/lawschools](http://www.abaprobono.org/lawschools). See also the Clinical Legal Education Association website at <http://www.cleaweb.org/index.html> for a 2007 compiled list of law school clinic directors and the E-Guide to Public Service at America's Law Schools at [www.equaljusticeworks.org](http://www.equaljusticeworks.org).
- <sup>6</sup> To identify further information about involving law students, including examples of law school legal service delivery models, see Directory of Law School Pro Bono and Public Interest Program, *supra* at [www.abaprobono.org/lawschools](http://www.abaprobono.org/lawschools); The Renaissance of Idealism in the Legal Profession Pro Bono and Public Service Best Practices Resource Guide at <http://www.abanet.org/renaissance/bestpractices/home.html>; and the Private Attorney Involvement (PAI) Section of the LSC Resource Library at <http://www.lri.lsc.gov/probono/lawschoolcollaborations.asp>.

## SURVEY - Continued from page 21

ing them at their organizations.

Many also reported that the opportunity to do challenging work keeps them at their organization, with 361 respondents (46 percent) listing it as one of their top-five reasons and another 25 percent listing varied work as a top-five reason. Two hundred and eighty-five respondents (36 percent) stressed that they value training and professional development, and 15 percent listed mentoring as one of their top-five reasons for remaining with their employer.

In many ways the survey results are harrowing for the legal services community, but the respondents have also provided insight into potential solutions to the current recruitment and retention crisis. Although the need for higher salaries and lower student debt burden is clear, other factors should not be ignored.

### Recommendations for Change

#### 1. Increase Salaries and Benefits

Salaries and benefits should be increased to a level that will enable staff to pay off student loans, enjoy a reasonable standard of living and prepare for retirement. When programs decide to support a system of increased compensation, they should ultimately realize some savings from reduced turnover rates. However, in order to do so, they may need to defer the hiring of additional staff and experience a corresponding reduction in the number of clients served.

#### 2. Recognize “Full-Status Professionalism”

In spite of the current working conditions in legal aid offices, highly motivated people, who are willing to make considerable personal sacrifices, are attracted to doing legal aid work. However, too many advocates come to view their positions as temporary and unsustainable. Employers should not be relying on, or taking advantage of, the passion and commitment of their advocates. In order to improve retention rates, new policies should be put in place that recognize “full-status professionalism.” That is to say, conditions that allow:

- A diverse spectrum of legal professionals to be attracted to the work;
- A standard of living that allows for long-term, lifestyle choices commensurate with being a skilled professional; and
- The operation of an efficient and effective legal aid program.

#### 3. Require Results and Demand Accountability

Management must be willing to demand, and staff must be willing to accept, the responsibility and expectations that go along with “full-status professionalism.” Policies should be put in place that require results and accountability from front-line staff and the necessary professional oversight by management. To the extent that high quality staff is retained and accountability is demanded, the decrease in the number of clients served as a result of increased salaries may be minimized.

#### 4. Improve Management Practices

Legal aid programs need to demand better leadership,

management skills and accountability. Programs and national organizations must continue to offer training for management at all levels. In addition, management experience and/or human resource skills need to be considered when hiring for and retaining management positions, rather than just longevity with the program or skills as an attorney.

While management issues were less important than salaries to respondents when deciding whether to stay in legal services, concerns about management were substantial and should not be ignored. Ultimately, either unresponsive management must change, or more responsive management needs to replace it.

#### 5. Encourage Impact & Systemic Advocacy

A significant number of survey respondents expressed their disappointment and surprise that their legal aid work is routine and not focused enough on systemic solutions. Policies need to be developed that encourage and allow such advocacy to the degree possible within any applicable rules and regulations.

#### 6. Offer Opportunities for Advancement

Local programs and national networks must do a better job of both creating more opportunities for advancement in legal services and communicating about the existence of these opportunities. As there are a finite number of management level positions that a program needs, and as not every lawyer is well-suited to being a supervisor, programs should be creative with the range of possible opportunities for advancement. This type of leadership role in the program could include serving as an expert and a resource in a particular substantive area, handling major litigation, coordinating a legislative effort, staffing a state-wide task force or committee, or managing a major project. The new responsibilities should be responsive to both the interests of the attorney and the needs of the program.

#### 7. Connect Advocates to the “Big Picture”

Efforts to retain attorneys need to capitalize on attorneys’ desire to “help others” by creating environments where attorneys are regularly reminded of and involved in discussions and debates surrounding the importance of legal services work. All attorneys, regardless of position or length of time with program, should be provided with ample and consistent opportunities to discuss the importance of their work, how their work fits into the organization’s larger vision and goals, and the overall direction of the organization.

#### 8. Establish LRAPs, but Don’t View Them as the Sole Solution

Efforts to expand LRAPs need to continue with law schools, legal services organizations, and state and federal governments. However, unless LRAPs provide for meaningful debt reduction, they are unlikely to substantially shift retention rates. Nearly 50 percent of respondents to the survey indicated they receive some benefits from an LRAP and, still, a high percentage reported they plan to leave their current position in the next three years.

#### 9. Increase Diversity: Make it Happen

Current working conditions are such that men and minori-

ties are not being attracted to legal aid work. The policies suggested above will assist in changing this situation. However, specific policies must be put in place that directly confront the relative lack of diversity in the legal services community. Further studies are needed to identify specifically why males and minorities are not being successfully recruited or retained.

## 10. Resource Development

In order to minimize reductions in services, the development of resources should be a major component of any legal aid program. If staff cuts are required, resource development staff should be retained.

## Conclusion: Next Steps

All stakeholders (including funders, boards of directors, bar associations, law schools, etc.) need to be part of the discussion regarding the problem and the consequences of any proposed solutions. NLADA will continue to bring together these stakeholders to help legal aid organizations address issues of recruitment and retention. We will provide ongoing training, technical support, and distribution of examples and best practices in the following areas:

- Recruiting and retaining diverse staff
- Developing and communicating opportunities for advancement within and between legal services organizations
- The importance of and components of effective supervision and management
- Developing protocols for hiring management positions which offer guidelines beyond seniority and legal skills
- Providing opportunities for new attorneys to engage in varied and challenging work as well as training and professional development, for example by having new staff co-counsel with experienced staff on impact cases.

Legal services programs cannot hope to recruit and keep diverse and talented staff without an accurate picture of the financial needs of staff. In order to develop effective solutions, programs need to be armed with more specific data regarding how much salaries and LRAPs need to be increased in order to make legal services a financially viable career

option. Legal aid programs can begin their efforts to revise their salary structures by researching the compensation rates for comparable government or other local public service lawyers, and investigate what would be a fair and equitable compensation level for their geographic area.

In general, legal aid program staff and boards should develop a comprehensive plan identifying short-term and long-term goals designed to help their organization address their recruitment and retention challenges. The successes of legal services programs and the clients they serve hinge in part on creating environments where committed and talented staff want to and can afford to build careers.

**Appendix A** — Data from all respondents can be found at <http://www.nlada.org/DMS/Documents/1192026367.22> and **Appendix B** — a summary of comments from respondents is at <http://www.nlada.org/DMS/Documents/1192026604.25> ★

*Doug German is with Legal Aid of Nebraska and Tara Veazey is with Montana Legal Services Association*

- 1 The survey, open on the Survey Monkey web site from October 16 to November 30, 2006, was widely publicized through e-mail and NLADA publications. Respondents accessed the survey anonymously, so no response could be linked to an individual's e-mail address or other identifying information. There were 786 respondents from 41 states, the District of Columbia and Puerto Rico. Some of the survey results have been reported in a previous issue of NLADA's *Cornerstone* (Vol. 28, No. 3) and the *MIE Journal* (Vol. 21, No. 2).
- 2 Chicago Bar Foundation and the Illinois Coalition for Equal Justice, *Investing in Justice: A Framework for Effective Recruitment and Retention of Illinois Legal Aid Attorneys* (November 2006), p. 6, <http://www.chicagobarfoundation.org/documents/RetentionStudyFINAL.pdf>
- 3 The authors of the Illinois report calculate the cost of each exiting attorney at a minimum of \$32,549 in lost knowledge, recruiting and re-training, as well as hundreds of fewer clients served. *Investing in Justice*, pp. 16-18.
- 4 Between 1986 and 2006, the average law school tuition increased almost fourfold at private institutions (\$8,225 to \$30,520), almost fivefold at public institutions for non-resident students (\$5,160 to \$25,227), and over six fold at public institutions for resident students (\$2,206 to \$14,245). Consequently, the average amount borrowed for law school has spiraled upward to \$54,509 at public institutions and \$83,181 for the 2005-2006 academic year. American Bar Association, <http://www.abanet.org/legaled/stats.html>.
- 5 Of those that do, 44 percent receive LRAP assistance from their law school, 36 percent from their employer, 16 percent from a state program, and 10 percent from LSC.
- 6 78 percent of respondents indicated they do not have children living with them.
- 7 Policies listed as examples of a "family friendly work environment" were flexible schedules, eight-hour days, and good parental leave policies.

## NLADA Cornerstone • Volume 29, Number 3 • January-April 2008

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Volume 29, Number 3  
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