50th Anniversary of the War on Poverty and the Civil Rights Act

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2015 Events

Appellate Defense and Persuasive Writing Institute
January 22-25
New Orleans, LA

ABA/NLADA Equal Justice
May 2015

NLADA Annual Conference
November 4-7
New Orleans, LA

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Supreme Court Watch

When Objecting Isn’t Enough: Third-Party Consent Searches Under Fernandez v. California

By Marshall J. Hartman and Laurence A. Benner

In Fernandez v. California the Court held that where a defendant is validly arrested after objecting to the search of his home, his objection does not invalidate a subsequent search when police return an hour after his removal from the premises and obtain consent of a cohabitant to search in his absence.

The facts in Fernandez were most unsympathetic to a claim of Fourth Amendment rights. In 2009 Fernandez accosted a Mexican national named Lopez after seeing Lopez cash a check in his neighborhood in Los Angeles. Fernandez told Lopez he was in an area ruled by the Drifters gang, demanded the money and then pulled a knife cutting Lopez on the wrist when he resisted. Lopez tried to flee and called 911 on his cell phone, but in response to a whistle by Fernandez, four men came out of a building and beat Lopez, stealing $400 from him and his cell phone.

Police responded promptly to the area and saw a man they suspected was one of the robbers run into an apartment building that was a known gang location. Minutes later they heard screaming and fighting coming from one of the apartments in that building. After backup arrived police knocked at the apartment from which they had heard the screams and were met by Roxanne Rojas, who appeared to be battered and bleeding and stated she had been in a fight. The officer’s requested permission to enter and look around. At that point Fernandez, wearing only boxer shorts, came forward and objected, saying: “You don’t have any right to come in here. I know my rights.”

“The facts in Fernandez were most unsympathetic to a claim of Fourth Amendment rights.”

Suspecting that Fernandez had assaulted Rojas, the police arrested him. Fernandez was removed from his home and identified by Lopez in a “field show up” as the assailant who initially attacked him with a knife. About an hour later, officers returned to the apartment and received both oral and written consent from Ms. Rojas to search it. The search revealed Drifters gang paraphernalia, a knife and a sawed off shotgun.

Fernandez filed a motion to suppress, which was denied. He went to trial and was convicted of robbery, domestic violence as well as firearms violations and gang enhancements. The California Court of Appeal affirmed, distinguishing Georgia v. Randolph, 547 U.S. 103 (2006) which had held that...
police could not rely upon a disputed invitation where a husband, who was physically present, objected after his wife gave consent to search their home. Certiorari was granted on the issue of whether an objecting cohabitant’s physical presence was “indispensable” to the Court’s decision in Randolph.

Justice Alito, writing for a six justice majority, ruled that it was and agreed with the state court that Randolph did not apply here because the defendant was not physically present at the time consent was given. Justice Ginsburg, joined by Justices Sotomayor and Kagan, dissented.

Fifty years ago the Court in Stoner v. California, 376 U.S. 483 (1964) held that a hotel clerk could not give valid consent to search an absent guest’s room. Justice Stewart noted that what was at stake was not the right of the clerk or the hotel, but a right “which only petitioner could waive by word or deed, either directly or through an agent.”

However, the Court rejected this waiver paradigm in Schneckloth v. Bustamonte, 412 U.S. 218 (1973). There the Court relegated the Fourth Amendment to an inferior status deserving less protection than other provisions of the Bill of Rights designed to ensure a fair trial. Thus instead of requiring an “intentional relinquishment of a known right,” the Court held that the only test was whether “consent” was voluntary. Bustamonte thus undercut the waiver/agency approach to deciding third-party consent cases and paved the way for United States v. Matlock, 415 U.S. 164 (1974), which was decided the following year.

In Matlock, the defendant’s girlfriend met police at the door with a baby on her hip and consented to a search of the couple’s bedroom. Evidence from an armed robbery was found hidden in a diaper bag. At the time consent was given the defendant had been arrested and placed in a squad car. The record was silent as to whether Matlock was asked for consent or whether he had objected to search. In remanding the case without a decision on the merits, the Court observed in a footnote that the validity of third-party consent rests not upon the “legal refinements” of property interests, but on:

mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched. 415 U.S. at 171 n.7.

This footnote led to a two-pronged test requiring both “common authority” and an “assumption of risk.” See LaFave, 4 Search and Seizure §8.3 (4th). [But see Jones v. U.S. discussed below]

In Illinois v. Rodriguez, 497 U.S. 177 (1990), however, the Court appeared to collapse the analysis into a singular focus on “reasonableness.” The Court made clear that the test is not factual, but rather is based upon what the circumstances reasonably appear to be. In Rodriguez the defendant’s girlfriend moved out of his apartment after a breakup, but took a key without his knowledge and used it to allow police to enter, discovering cocaine in plain view. In upholding the search the Court, per Justice Scalia, ruled that the issue was not whether there had been a waiver (requiring a factual predicate of actual common authority) but rather, whether the consent search was “unreasonable.” This transformed the issue into whether the police “reasonably believed” the girlfriend had common authority over the premises even though it was conceded she did not.

In Randolph, the Court distinguished both Matlock and Rodriguez, explaining that “reasonableness” in third-party consent cases depends upon “widely shared social expectations...about the authority that co-inhabitants may exercise [regarding] each other’s interests.” Acknowledging that “shared tenancy is understood to include an ‘assumption of risk’ that privacy could be lost by the action of one tenant,” the majority nevertheless found “no common understanding that one co-tenant generally has a right or authority to prevail over the express wishes of another.” Thus “a physically present inhabitant’s express refusal of consent to a police search [of his home] is dispositive as to him, regardless of the consent of a fellow occupant.”

“Here the defendant had been present and had objected. Having notice of this objection, the police therefore could not reasonably rely upon the subsequent consent by Rojas.”

It would therefore appear, (as the dissenters in Fernandez maintained) that Fernandez would call for a straightforward application of Randolph. Here the defendant had been present and had objected. Having notice of this objection, the police therefore could not reasonably rely upon the
subsequent consent by Rojas. Justice Alito, however, ruled otherwise. Elevating the consent doctrine above the text of the Fourth Amendment, Alito argued that as a general rule consent searches are valid. He then rigidly applied *Randolph*, holding that it did not apply because Fernandez was not physically present at the time consent was given.

“Fernandez...argued that his objection while present should be sufficient because his absence was the result of the actions of the police in forcibly removing him from the premises.”

Fernandez made two arguments against this formalistic requirement of physical presence at the time of consent. First, he argued that his objection while present should be sufficient because his absence was the result of the actions of the police in forcibly removing him from the premises. Indeed the *Randolph* Court had observed that the police could not physically remove a “potentially objecting tenant from the entrance for the sake of avoiding a possible objection.” For Justice Alito and the majority, however, all that mattered was that the arrest was “objectively reasonable.” Apart from the “limited contexts of an inventory search or administrative inspection” Alito noted, the Court had never held that an officer’s improper motive invalidated otherwise objectively reasonable behavior under the Fourth Amendment.

Alito then expressly held that “an occupant who is absent due to a lawful detention or arrest stands in the same shoes as an occupant who is absent for any other reason.” By reaching beyond the facts of the case to include detentions (which can be based upon merely reasonable suspicion) and insulating officers from any inquiry into improper motivation, *Fernandez* therefore would appear to give police broad and largely unchallengeable authority to remove an actual objector from the premises and defeat his or her express assertion of Fourth Amendment rights by later obtaining consent from a third party.

Second, Fernandez also argued more broadly that having been physically present at the time his objection was made, his objection should remain in effect and be, as *Randolph* had asserted, “dispositive as to him” unless withdrawn. Because there is “no common understanding that one co-tenant generally has a right or authority to prevail over the express wishes of another” it seems clear that the *Randolph* Court’s emphasis on the fact that the defendant was present when objecting went to the unreasonableness of the police officer’s belief that the wife could give valid consent when both she and the police had notice of the objection.

Alito, however, posited a different social norm in which a friend or visitor of one co-tenant is told to stay out of the home by another co-tenant, but returns when the objector is absent and accepts an invitation to enter. As the dissent points out, however, “even if shared tenancy were understood to entail the prospect of visits by unwanted social callers while the objecting resident was gone, that unwelcome visitor’s license would hardly include free rein to rummage through the dwelling in search of evidence and contraband.”
fect, making it disappear.

Alito also rejected Fernandez’s second argument on the ground that it would create a “plethora of practical problems” and result in an unreasonable rule. As an example he argues that if a husband and wife co-owned a house, the husband’s objection would forever prevent the wife from permitting a search of that house. Honoring a cohabitant’s assertion of Fourth Amendment rights over a fellow cohabitant’s surrender of those rights would thus “unjustifiably interfere with legitimate law enforcement strategies” and “trample on the rights of the occupant who is willing to consent. Suppose, he theorizes for example, that an occupant desired the police to enter and remove dangerous contraband? These arguments, however, do not withstand analysis. If there was contraband, a weapon or evidence of crime in the home, the cohabitant could easily bring it outside or otherwise provide police with information to establish probable cause and exigent circumstances excusing a warrant. The “unreasonableness” Alito decries thus turns out to be imaginary.

“the Framers ‘saw the neutral magistrate as an essential part of the criminal process shielding all of us, good or bad, saint or sinner, from unchecked police activity.’ ”

Finally Justice Alito, in a display of righteous indignation, concludes that to deny the battered and bleeding Ms. Rojas the right to consent and allow police to enter her home (after her batterer had been arrested and removed) “would show disrespect for her independence.” Dissenting, Justice Ginsberg, joined by Justices Sotomayor and Kagan, dismissed this argument pointing out that the “specter of domestic abuse hardly necessitates the diminution of Fourth Amendment rights at stake here” because the exigent circumstances exception to the warrant requirement always justifies immediate entry whenever there are reasonable grounds to believe that a person’s safety is threatened by domestic abuse. Brigham City v. Stuart, 547 U.S. 398 (2006), LaFave 3 Search & Seizure §6.6 (4th ed.)

Justice Ginsburg points out that Alito’s new “main rule” that consent by one resident in shared tenancy situations “is generally sufficient to justify a warrantless search” of the home reduces Randolph to a narrowly drawn exception. As she correctly observes, however, Justice Alito “has it backwards.” Instead it should be consent searches that are the narrowly drawn exception to the warrant requirement found in the text of the Fourth Amendment. Noting the “ease and speed” with which a search warrant can be electronically obtained today, Justice Ginsburg reminds us that the Framers “saw the neutral magistrate as an essential part of the criminal process shielding all of us, good or bad, saint or sinner, from unchecked police activity.”

Under the guise of pragmatism, the Roberts Court, however, has once again diminished that protection by subordinating the warrant requirement to an artificial and formalistic rule that requires a citizen to always be physically present in order to prevent a third party with common authority from surrendering their Fourth Amendment rights under the Constitution. To allow the police to detain and remove an objecting cohabitant on reasonable suspicion (as dicta in Fernandez suggests) and at the same time immunize police from any inquiry regarding their motivation for such removal, takes us further down the path toward the beginnings of a police state where judicial warrants are no longer necessary, and the police may rule with impunity.

“Justice Scalia and Thomas, however, believe that Randolph was ‘wrongly decided.’ ”

The decision could have been worse, however. At least Randolph remains valid albeit in the limited circumstance where the objecting tenant is present at the time the police attempt to obtain consent from the cohabitant. Justice Scalia and Thomas, however, believe that Randolph was “wrongly decided.” Although they joined the majority opinion, each wrote separate concurring opinions. Justice Thomas argued that because Rojas had common authority and voluntarily consented, that should be “the end of the matter,” because co-occupants assume the risk that their companion might allow an area common to both to be searched. Thus even if Fernandez had been physically present and objecting that would have made no difference to Thomas.

Justice Scalia apparently also agreed with this analysis, but interestingly wrote separately to point out that if state property law did not give a cotenant the right to admit a visitor over a fellow cotenant’s objection, the case would have presented a more difficult question under the traditional trespass test resurrected in United States

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The Legal Aid Community Needs its Own Affordable Care Act

By Ellen Lawton

Whether you agree with the specific strategies of the Affordable Care Act (ACA) or not, it is a call to action for the healthcare community. It acknowledges that health has not always been at the center of how healthcare approaches either its service delivery or its business model. The ACA prioritizes prevention and asks the healthcare community to re-examine every aspect of how it trains professionals, partners with communities and delivers care. It sounds to me like the kind of call to arms that the legal community needs.

I have written before about the invisibility of civil legal aid – the reality that the general public is not aware of and does not understand what civil legal aid lawyers do. I have also written that the powerhouse skill set of lawyers could be a secret weapon to promote health in vulnerable communities. More fundamentally, however, to reach its true potential, the civil legal aid community needs to rethink its approach to the civil legal aid crisis in America. As we have learned in the recent healthcare debate – more funds without reform is not necessarily the answer. Is the civil legal aid community radically underfunded given its potential and importance to ensure fairness for people and communities and systems? Absolutely. But, have we examined our professional priorities and delivery systems to synchronize with a 21st century approach to problem-solving? No, we have not.

Like the healthcare sector’s struggle to move patients from expensive emergency room visits to better, cheaper, preventative or “upstream” care, it is time for the civil legal aid community to think about prevention strategies for the people and communities it serves. The civil legal aid office that allocates the overwhelming majority of its scarce, sacred resources to the hardy individuals and families who make it through the intake process is missing the opportunity to align its service provision “upstream” in a community setting – using public health data to identify and reach more vulnerable people before their legal problems turn into legal crises.

“This requires a wholesale shift in the conception of legal work and how it is valued internally in the civil legal aid community.”

This requires a wholesale shift in the conception of legal work and how it is valued internally in the civil legal aid community. Litigation, like its healthcare equivalent, surgery, will always have a place in the armament of legal tools. But like the healthcare system overhaul that has brought thousands of patient navigators and
community health workers front and center into the healthcare team, it is time for the civil legal aid community to re-conceptualize the roles of those attorneys and paralegals on the front lines so they can prevent, rather than react to, civil legal problems. It will not be easy. Look how hard the healthcare profession has worked – and is still working – to build the army of primary care physicians and nurse practitioners funded under the ACA to take care of the millions of Americans who will now have access to primary care.

This, of course, brings me to the question of funding. How can chronically underfunded legal aid agencies besieged with demand take a deep breath and realign their work toward prevention? Many are treading water, jockeying for scarce funds while continuing to churn out a myriad of critical advocacy successes against the odds. A realignment of this scale requires investment. When dozens of families are in court every day facing eviction, it takes a leap of faith – not to mention leadership and the support of funding partners – to reallocate those resources to a “primary care” legal team further upstream, tasked with preventing those families from ever reaching the courthouse. Some legal aid agencies are bravely innovating preventive strategies, but they need help to scale them. They need the commitment of their peers and allies in the legal community.

“How can chronically underfunded legal aid agencies besieged with demand take a deep breath and realign their work toward prevention?”

Indeed, to move toward prevention, we in the civil legal aid community need our own version of the ACA. We need the incentive to change and the resources to develop the roadmap for change. When the civil legal aid community succeeds at becoming visible, we are going to need better strategies to meet the sea of civil legal needs that we know is out there.
The Second Chance Reauthorization Act of 2013

By Ed Burnette

When I was the Public Defender of Cook County (Illinois), I met with my senior staff to discuss and determine whether we would focus on re-entry as a policy focus for the office. Sounds like a no brainer now but, in 2004, we were trying to rebuild a strong appellate infrastructure to represent clients who were laboring under a presumption of guilt. Would we be able to effectively focus our administrative and legislative influence on returning “homecomers” who were no longer our clients? Our decision was to attempt to do just that, owing in no small part to State Representative Art L. Turner (now retired) who claimed to have more returning homecomers than any district in the nation. Who would make that claim if it were not true! He often told us that if we did not reach out to homecomers now, we would be representing them in short order.

It is against that background that I remind our community that:

“Every year, 650,000 Americans leave prison — but many never escape the legacy created by having been there in the first place. From massive debt accrued while locked up to barriers to accessing either jobs or public assistance upon release, ex-offenders are often relegated to the financial margins. These consequences are felt disproportionately within communities of color, which have been particularly hard hit by the extended drug wars that have been waged over recent decades.”

— New America Foundation

That is why all of us should know about and support the Second Chance Reauthorization Act of 2013.

The Facts About The Second Chance Reauthorization Act of 2013

This may be one of the jewels of the 113th Congress with champions and bipartisan sponsors and support in the House of Representatives (Rep. James Sensenbrenner Jr. (R-WI)) and the Senate (Sen. Patrick J. Leahy (D-VT)). Introduced in both chambers on November 13, 2013, (H.R. 3465 and S.1690) the act amends the Omnibus Crime Control and Safe Streets Act of 1968 to extend the authorization for appropriations through 2018 for adult and juvenile offender state and local reentry demonstration projects. Further, it amends the Second Chance Act of 2007 authorizations of appropriations for grants providing substance abuse and technical careers training and other programs to 2018. That amendment also provides for federal offenders, including elderly offenders extended grant funding to 2018. The concept and the focus is not new.

Said act also provides for significant oversight to ensure that the methodologies are accomplishing what was...
intended. One amendment requires the Inspector General of the Department of Justice to periodically conduct audits of not less than 5 percent of the grant recipients. Finally, it requires that the attorney general forms an interagency task force to evaluate and identify methods for improving programs under the grants and reports to Congress annually on barriers to reentry.

When this bill was introduced in November of 2013 there were 104 government agencies and nonprofit organizations that had been awarded grants to help improve the outcomes for individuals leaving prisons, jails and juvenile detention facilities. The goal was to reduce recidivism, but an outcome will surely be building social capital in many of the homecomer's communities. Since 2009, 49 states and the District of Columbia have received nearly 600 Second Chance grant awards, with a total funding amount of $255 million! Diverse initiatives have been employed by agencies and organizations throughout the nation to help individuals involved with the criminal justice system return home successfully.

This being the case there may be possibilities for defender involvement. This may involve connecting with these agencies or organizations to determine if joining them in some manner may improve your office standing or leverage. This could be as little as attending their meetings and offering input.

Partnering with these organizations or agencies may be a consideration. After all we have more contact with their clientele. This may entail some contact with clients as they enter and transition through corrections and maybe you are the best placed entity to identify needs and qualifications when homecomers come home. In any case, being familiar with the Second Chance Act requirements, qualifications and possibilities may position an office to let these organizations and agencies know what an office has to offer and find out what they (organizations and agencies) have to offer. It may be that they can assist your office in budget hearings, legislative hearings and generally building a community base. Many of these factors that regulate a homecomers return are monitored by probation offices but note that defender offices with social work support can do a far more timely and effective job at preparing those accused of offenses to reenter society.

There are several ideas on how to put forth new approaches to address the challenges in the right to counsel area, but let us not overlook approaches such as the Second Chance Act that have garnered bipartisan support which indicates a firm foundation on which to build.

Congress began work on its Fiscal Year 2015 Justice Appropriations bills. As this process continues, Congress will prioritize programs with widespread support and it is important that they be reminded of the critical need for continued funding of the Second Chance Act (SCA).

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“2014 marks the 50th anniversary of the War on Poverty and the Civil Rights Act. These landmark achievements continue to resonate in the work of civil legal aid programs and with others concerned about equal justice...”

50th Anniversary of the War on Poverty and the Civil Rights Act

By Don Saunders

The year 2014 marks the 50th anniversary of the War on Poverty and the Civil Rights Act. These landmark achievements continue to resonate in the work of civil legal aid programs and with others concerned about equal justice in the United States. However, the political and legal landscape has changed dramatically since the mid-60s which saw so many landmark achievements.

Earl Johnson, an architect and historian of the legal aid movement in this country, was there at the creation of the national legal services program and continues to be an astute observer of today’s legal aid world.

The following two articles chronicle some of the early days of the legal aid movement, and hopefully provide some lessons from key moments from the past that might provide insight into the challenges of the day. Both articles are reprinted with the permission of the National Equal Justice Library.

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War on Poverty — The beginning...

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National Equal Justice Library Blog

By Earl Johnson, Jr.

The history of the Legal Services Corporation begins with the history of the OEO Legal Services Program. Indeed the vast majority of LSC’s grantees, except for those in the South, received their first federal government funding from OEO and for many of them their very existence began with those grants. But the history of the OEO Legal Services begins with the birth of the nation’s “War on Poverty.” For, almost certainly, there would be no Legal Services Corporation today and indeed no federal financial support for civil legal services for the poor had there not been a “War on Poverty.” Furthermore, after researching the genesis of that program for my book, I concluded that, in all probability, there would not have been a “War on Poverty” had anyone other than Lyndon Johnson succeeded to the presidency in the wake of a terrible national tragedy, the assassination of John Kennedy.

It is true President Kennedy had asked his economic team to explore what might be done about the problem of abject poverty in the midst of affluence. But it is not at all clear he would have mounted a significant program to do something about that problem. Kennedy’s political advisors were warning him that any program helping poor people wouldn’t gain him a single vote. “To the extent they vote, they already vote for you.” Instead, they advised Kennedy his administration should concentrate on initiatives that aimed to help the “middle class” because that’s where the undecided voters lived. This is a political priority that most presidents, including the current Obama administration, have recognized and emphasized. And recall, Kennedy and his advisors believed he was facing a difficult election in 1964, so political calculations were a paramount concern.

Lyndon Johnson, however, had no such reservations. The very night he assumed the presidency he had a late night meeting with Walter Heller, the Chair of the Council of Economic Advisors. When Heller mentioned the possibility of doing something about poverty, Johnson said, “that’s my kind of program” and moved it to the top of his agenda. Johnson ordered his staff to begin developing a detailed proposal and his speech writers to draft a public announcement of a major campaign to eliminate poverty in the United States. He saw his other major accomplishment, the passage of the Civil Rights legislation, as just completing another man’s—that is, President Kennedy’s—vision. The War on Poverty, on the other hand, was his and his alone. He hoped and expected it would be his major accomplishment and his claim on history. Beyond that, Johnson had an emotional attachment to the program. He had been born and raised in a poverty-stricken area of Texas and saw helping those people, for many years his constituents, as his cause. Earlier in his career he had been a loyal and vigorous New Dealer, committed to improving the lives of those decimated by the Great Depression.
It is entirely possible, but far from certain, that President Kennedy would have ignored the political calculations and eventually launched some sort of program to address the poverty problem. But it is highly unlikely that any program he started would have approached the scale of Johnson’s War on Poverty and thus unlikely to ever include a significant, if any, legal services component. President Johnson’s proposal called for a nearly one billion dollar appropriation for the first year—almost seven billion dollars in 2013 dollars. A brand new program with a budget larger than many existing domestic programs—and aimed to help people that “to the extent they vote, already vote for you.”

So on January 8, 1964, just six weeks after inheriting the presidency, Lyndon Johnson was ready to announce his signature policy initiative as part of his first “State of the Union” address to the nation. To choose this particular priority spoke to Johnson’s political confidence and maybe his political courage. As he told the nation that evening—

“Very often a lack of jobs and money is not the cause of poverty, but the symptom. The cause may lie deeper—in our failure to give our fellow citizens a fair chance to develop their own capacities, in a lack of education and training, in a lack of medical care and housing, in a lack of decent communities in which to live and bring up their children.

“But whatever the cause, our joint federal-local effort must pursue poverty, pursue it wherever it exists, in city slums and small towns, in sharecropper shacks or in migrant worker camps, on Indian reservations, among whites as well as Negroes, among the young as well as the aged, in the boom towns and in the depressed areas.

“Our aim is not only to relieve the symptoms of poverty, but to cure it and, above all, to prevent it.

“This administration today, here and now, declares unconditional war on poverty in America.”

Notably absent from President Johnson’s litany of deprivations that could cause poverty was any mention of their lack of access to the legal system. This oversight may have suggested why it was to prove difficult to introduce a legal services component as part of the “War on Poverty” Johnson had declared. But there already were those who were trying—chiefly a small group headed by Harvard Professor Abram Chayes who had become involved in this effort while still the Legal Counsel in the State Department. They were rebuffed when they sought to have a section on justice for the poor included in the War on Poverty legislation. Evidently those designing that war saw no utility in adding a legal services arm to the campaign against poverty. It required a lucky break for legal services to be accepted as part of the Office of Economic Opportunity, and more than twenty months after Johnson’s declaration of a War on Poverty, before it came into existence.

So there is some irony in the contrast between the omission of legal services or access to justice in Lyndon Johnson’s War on Poverty speech with what he was saying about the program’s contribution to that war by 1968.
“To a great many poor Americans, the law has long been an alien force—the ally of unscrupulous men who prey on their weaknesses and brutalize their rights as citizens....The Legal Services Program was created to give the poor the same access to the protection of the law that more fortunate citizens have. It is more than a legal aid program. It is a weapon in our comprehensive attack on the root causes of poverty....It is this enormous task that the American Bar and the Office of Economic Opportunity have undertaken these past three years. I commend you for all you have done, and for what you have resolved to do.”

Lyndon Johnson’s ascendancy to the presidency was important to the creation of a full scale “War on Poverty.” This provided the essential foundation without which a federal legal services program could never have happened. But that program probably would still not have come into existence but for Johnson’s choice of a certain individual, Sargent Shriver, to lead that war. The president announced that choice on February 1, 1964 and why Shriver’s selection was so critical will be among the subjects of my next article for this blog.

Earl Johnson, Jr., Visiting Scholar, University of Southern California Law School and the Western Center on Law and Poverty. He is the author of: To Establish Justice for All: The Past and Future of Civil Legal Aid in the United States (Praeger, 2014).

Johnson, who had served as the Deputy Director of the Neighborhood Legal Services Project in Washington, DC since 1964, was chosen to be the first deputy director of the Office of Economic Opportunities Legal Services Program in October 1965. Eight months later, Johnson succeeded Clinton Bamberger in that position, and served as director of the OEO Legal Services program until July 1968.

Parts of this account draw heavily on information in the superb biography by Robert A. Caro, THE YEARS OF LYNDON JOHNSON: THE PASSAGE OF POWER (Knopf, 2012) while other incidents are based on other sources uncovered during research. All of these events and many others are covered in my recently published history of civil legal aid—TO ESTABLISH JUSTICE FOR ALL: The Past and Future of Civil Legal Aid in the United States (Praeger, 2014].
Johnson’s Choice of Shriver to Head the War on Poverty

By Earl Johnson Jr.

Once Lyndon Johnson decided he wanted to wage and win a war against poverty and declared that war to the nation in his 1964 State of the Union address, he next had to choose a Commander-in-Chief to plan and execute the campaign. After only a short period, the President settled on Sargent Shriver, then the charismatic director of the highly successful Peace Corps he had launched from scratch three years earlier. From President Johnson’s perspective, Shriver had many plusses—among them, a proven record in taking a new program from concept to reality and a connection to the glamorous Kennedys without really being one of them. But Shriver also had plusses for those interested in adding a legal services arm to the war on poverty, plusses no other likely choices for that position would have had.

Because he so quickly became a businessman after law school, it is easy to overlook the fact Sargent Shriver started out as a lawyer and always thought of himself as one. In fact, as a Yale Law graduate he had no trouble landing a job at a Wall Street law firm when he returned from World War II after service as a naval officer on a battleship and a submarine. It is because Sarge found little value or interest in his work as an associate serving business interests that he soon left the law firm for an editorial job at Newsweek magazine. He had the credentials for that job, too, because as an undergraduate at Yale, he had been the editor in chief of the university’s newspaper.

But Shriver left Newsweek after a few months when Joe Kennedy Sr. learned from his daughter, Eunice, that her new date was a magazine editor. He asked Sarge to look over his late son Joe Jr’s papers for a biography he hoped to see published. Kennedy soon recognized Shriver had other talents, too, and offered him a position as assistant manager in his latest business venture, the Merchandise Mart in Chicago, a failing enterprise he had recently acquired.

But Joe Kennedy Sr. wasn’t done asking Sarge to shift roles. When Eunice accepted a position in government—as head of a new Committee on Juvenile Delinquency in the U.S. Department of Justice—Kennedy dispatched Shriver to “help Eunice” in her new assignment. He paid Sarge’s salary while he was a “dollar a year” employee serving as her deputy at the Department of Justice. This job proved to be a nearly perfect preparation for Sarge’s future role as director of the Office of Economic Opportunity. In the year they were at the Justice Department, Eunice and Sarge planned a multi-pronged, multi-disciplinary, local

“Shriver had many plusses—among them, a proven record in taking a new program from concept to reality...”
community-oriented attack on juvenile delinquency. They were impatient to put their ambitious program into action and soon frustrated by the many bureaucratic obstacles to implementing that plan. After a year, they resigned from the Justice Department—Eunice to travel and work on other passions, Sarge to become the Merchandise Mart’s director and a major figure in the Chicago business and social community. Four years later, when Sarge was 37, Eunice Kennedy became Mrs. Sargent Shriver. From that moment on, Sargent Shriver’s fate—for both good and sometimes not so good—was tied to the Kennedys.

Fast forward to February 1964. After Shriver proved a loyal and effective campaigner in his brother-in-law’s presidential campaign, he then proved himself a charismatic, energetic, imaginative and highly successful leader of one of the Kennedy administration’s signature programs—the Peace Corps. As Sarge was returning from a month long trip reviewing Peace Corps stations in Asia, he was met at the gangway by the agency’s general counsel bearing gifts—two thick briefing books on President Johnson’s new War on Poverty initiative. This was his “draft notice” that Johnson wanted him as the general of his own personal initiative, this War on Poverty.

When Shriver arrived back in Washington, he received a call from the President informing him that there would be a news conference in a couple of days at which Johnson was announcing Shriver would be heading the War on Poverty. Shriver tried every excuse for why that shouldn’t happen. After all, he was still directing the Peace Corps and couldn’t abandon that program midstream. Neither the President nor anyone else wanted that landmark and popular venture to falter. Johnson’s answer was short—you can run both. No matter what objection Shriver voiced, Johnson persisted.

So, on a Saturday in early February, 1964, without having ever said yes, Sargent Shriver listened to a press conference at which he was named the man respon-
possible for leading the nation’s War against Poverty. The next day, a Sunday, he spent all day as a draftee not a volunteer beginning the difficult task of creating Johnson’s new program.

That Johnson chose Shriver to head the War on Poverty was critical for the prospects of including a legal services component. For one, he was a lawyer while many other possibilities were not. Second, he was not a bureaucrat, as many logical contenders were. Third, he was not an elected official or a former one, overly concerned with political consequences, which other conceivable candidates might have been. Fourth, while he wanted local community planning and action, he was not a community action purist, unlike many who were part of the team planning the War on Poverty. He knew from his Peace Corps experience that if he were to maintain Congressional support beyond the first year he needed early successes and ideas that would capture the nation’s attention.

The first idea to capture Shriver’s own imagination was what came to be known as “Head Start.” That idea struck Shriver when his wife, Eunice, then involved in efforts to help mentally impaired children, told him of early intervention programs that had proven successful with that population. If early intervention worked with mentally impaired children, it should work with normal children who, because of poverty, didn’t get the same start as middle class children. He consulted some experts in early childhood education, asked them to work with him in designing a preschool program for the poor kids, and launched “Head Start.”

Shriver told President Johnson about this proposed “Head Start” initiative and Johnson loved it, saying they should double its size. But how to fund that program under the legislation they had managed to pass? Most of the available funding was in the Community Action Program section of the OEO budget. But the “head start” idea had not originated in local CAP programs nor had scores or hundreds of those local groups flooded OEO with requests to start
their own early education projects. Yet both Shriver and the President were convinced this was just the sort of program that fit the underlying goal of lifting people out of poverty—equipping a future generation with the knowledge and skills to join the mainstream economy.

Shriver’s solution was to superimpose on the community action program what he called “national emphasis programs.” These were to be nationally designed and promoted programs that local community action agencies were encouraged to adopt and adapt—that is, adopt the basic concept but adapt it to their local situations.

This made Shriver receptive to new ideas for other national emphasis programs—which put him at odds with community action purists, many of whom were on the senior staff at OEO. They tended to resent the “national emphasis programs” and the incursions they made in the overall CAP budget. But it also helps explain how Shriver became so excited when in the fall of 1964 he read an article to appear in his law school’s law review, written by two young lawyers and outlining a new vision for what lawyers could do to improve the economic and social prospects of poor people. That article, of course, was Edgar and Jean Cahn’s Yale Law Review article, “The War on Poverty: A Civilian Perspective.” Shriver stayed up until 2 AM reading it and called the Cahns early the next morning telling them to come to his office. Within the week, Edgar was Shriver’s special assistant and speech writer and Jean was an OEO consultant charged with the responsibility of putting together a new “national emphasis program,” a legal services program. That program had a long gestation period—a full year before it had a director and was in operation—but from that moment on it was part of the War on Poverty.

Whether any other person who if chosen as OEO director would have been so receptive to devoting a slice of OEO’s Community Action Program budget to...
a legal services program seems doubtful. Not many would even have been willing to deviate from the community action purist position that all wisdom and all ideas resided at the local level or started the “national emphasis programs” that became the centerpiece of Shriver’s War on Poverty. Several other such programs were to come into being—among them, “Upward Bound” which encouraged and supported low income high school students to enter college, and “neighborhood health centers” which gave poor people ready access to health care.

There is another sense in which those interested in legal services for the poor should thank Sargent Shriver for having agreed, reluctant as he may have been, to serve as OEO’s first Director. He understood and supported the role of legal services lawyers as loyal advocates for the interests of their clients and the need for independence from outside pressures, political or otherwise. Two incidents illustrate his commitment.

In the Spring of 1966, the grant proposal for California Rural Legal Assistance (CRLA) was under consideration at OEO. As might have been expected, most rural bar associations opposed the opening of CRLA offices in their counties. But what might seem unusual now, given the strong support the State Bar of California has given legal services programs over the years, in 1966 the Bar’s board of governors passed a resolution telling OEO it should not fund this program. After striking out with OEO-LSP director Clint Bamberger, the California Bar’s then president, John Sutro, called Shriver himself to register his personal opposition as well as that of the association he headed. Sutro was not just the state bar’s president but one of the California’s preeminent lawyers, the leading partner in one of San Francisco’s largest corporate law firms. Sutro told Shriver that if OEO made the grant to CRLA, it would be funding one side of an economic struggle between growers and farm workers. Shriver’s reply, “Well, if the members of the California Bar Association will stop representing the growers, OEO won’t provide lawyers to represent the farmworkers.” Sutro had no
good answer to that point. Shortly thereafter, Bamberger and Shriver signed the CRLA grant. And, a year later, the State Bar of California changed positions and supported CRLA’s refunding proposal.

The second incident also involves CRLA. In late 1967, while I was the OEO-LSP director, we anticipated then Governor Ronald Reagan would be vetoing the CRLA refunding grant for 1968. I met with Shriver to find out whether he would be willing to override that veto—a power he retained as OEO director under the provisions of the OEO Act. His answer was unequivocal. “If I didn’t override that veto, we might as well turn the country over to the John Birch Society.”

Some idea of how much Shriver valued what legal services lawyers did and how much he understood the independence they needed in order to do for their clients what other lawyers do for theirs can be gleaned from what he said years later. Looking back, Shriver was asked which war on poverty program he thought was most important. He answered, “My favorite is Head Start because it was my idea. But I am proudest of Legal Services because I recognized that it had the greatest potential for changing the system under which people’s lives were being exploited. I was proud of the young lawyers who turned down fat, corporate practices to work for the poor, and proudest of them when they dared to challenge state and federal procedures and win.”

That was the kind of War on Poverty director Sargent Shriver was—and the kind the OEO Legal Services Program needed if it were to come into existence and be able to perform its role, the role of the lawyer, in that difficult, controversial and ultimately rewarding endeavor.

Earl Johnson, Jr., Visiting Scholar, University of Southern California Law School and the Western Center on Law and Poverty. He is the author of: To Establish Justice for All: The Past and Future of Civil Legal Aid in the United States (Praeger, 2014).

Johnson, who had served as the Deputy Director of the Neighborhood Legal Services Project in Washington, DC since 1964, was chosen to be the first deputy director of the Office of Economic Opportunities Legal Services Program in October 1965. Eight months later, Johnson succeeded Clinton Bamberger in that position, and served as director of the OEO Legal Services program until July 1968.

Parts of this account draw heavily on events reported in several chapters of Scott Stossel’s excellent biography of Shriver’s life and career—SARGE: THE LIFE AND TIMES OF SARGENT SHRIVER (Smithsonian Books, 2004), while other incidents are based on information from other sources and my own personal experiences with Sarge while he was the OEO Director and I was directing the OEO Legal Services Program. All of these events and many others are covered in my recently published history of civil legal aid—TO ESTABLISH JUSTICE FOR ALL: The Past and Future of Civil Legal Aid in the United States (Praeger, 2014).
State and Federal Defense Advocates Gather in New Orleans for 2014 National Appellate Defense and Persuasive Writing Skills Institute

By Phyllis H. Subin, Esq.

Last January approximately 100 state and federal court appellate advocates came to the Sheraton Hotel in New Orleans to attend the 2014 national Appellate Defense & Persuasive Writing Skills Institute, one of the few national training programs that attracts both state and federal appellate practitioners. This year’s Institute was co-sponsored by the National Legal Aid & Defender Association; the training division of the Defender Services Office at the Administrative Office of the United States Courts; the National Alliance of Indigent Defense Educators (a section of NLADA Defender Council); and the Louisiana Appellate Project. Both NLADA and the Louisiana Appellate Project are long time sponsors of the Institute, and we are very grateful for their continuing support and commitment to this outstanding training program.

The Institute consists of two separate but concurrent, specialized training tracks. The United States Supreme Court Advanced Advocacy Track has as its focus appellate practice and procedures in the nation’s highest court, including case issue analysis and the drafting of a “winning” Writ of Certiorari, as well as oral argument communication techniques, presentation practice and skills building. The Skills Writing Track takes advocates through a process of brainstorming facts and law, developing a theory of the defense and supporting themes, and writing a persuasive appellate brief. Both tracks require that participants bring their own appellate case file to the Institute and that they work on that particular case throughout the program.

The Institute is supported by an outstanding national appellate faculty, many of whom are returning and experienced Institute trainers. Both training tracks involve participant small workshop group assignments. Two faculty members are assigned to each workshop group of no more than five or six participants. This small faculty/participant ratio offers each participant the opportunity to receive...
in-depth, individual feedback, suggestions, and comments from both faculty and their group peers. By drafting on their laptops, participants maintain a record of brief writing development, and they leave the program with a much stronger theory of the case, issue articulation, and critical points for final brief writing.

“The Institute received uniformly excellent evaluations from the participants, and faculty feedback was equally positive.”

For the United States Supreme Court Advanced Advocacy Track, Timothy P. O’Toole from Miller Chevalier, PC, Washington, DC, began the program with an important discussion about the current U.S. Supreme Court process and procedures for evaluating and deciding applications for a Writ of Certiorari. He also talked about strategies for issue drafting to improve our chances for having a Writ granted and for the denial of the state’s/government’s Writ application. Participants then went to their small group workshops to apply Tim O’Toole’s discussion points to their own Writ case file. Faculty members Franny Forsman (Nevada Federal Defender Office), Marshall Dayan (Pittsburgh Federal Defender Office/Capital Habeas Unit), Stuart Lev (Philadelphia Federal Defender Office/Capital Habeas Unit) Valerie Newman (Michigan State Appellate Defender Office) and Phyllis Subin (Institute Director) guided participants through the complex process of issue analysis and issue drafting for their Writ. Jeff Sherr and Patti Heying from the Kentucky Department of Public Advocacy spent a full day working with participants on communication techniques and preparation for oral argument in the U.S. Supreme Court. Professor Lawrence Benner, California Western School of Law, discussed with the faculty and participants criminal cases from the Supreme Court’s current and last terms of court, their impact, meaning, and demonstration of future trends. Prof. Benner’s presentation was greatly enhanced by faculty and participants who had actually briefed and argued two of the cases that he discussed with the group. During the final morning of the program, participants argued their case before a mock court consisting of faculty and peer

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SAVE THE DATE
January 22-25, 2015
Appellate Defense & Persuasive Writing Institute
Sheraton New Orleans

NLADA’s Appellate Defense & Persuasive Writing Institute is an intensive, four-day learning experience designed specifically for public defenders who represent indigent defendants in criminal trials and appeals. This unique, national skills training program is available to both state and federal court litigators, and participants will follow either the Skills Writing Track, or the Supreme Court Advanced Advocacy Track.

Find out more and register at www.nlada100years.org/ADPWI2014
Don’t Just Say It, Show It: the Use of Video to Humanize Clients and Change the Outcome of Cases

By Raj Jayadev

I have sat in countless courtrooms alongside families whose loved ones are being sentenced. After these hearings, most families — in the parking lot, at home, or elsewhere — will ask for one wish. Their wish is not that this never happened, or that they could rewind time and rewrite his- tory. Rather, families often state: “I just wish they knew him like we know him.”

The people referred to as “they” are the prosecutors, the judges, and sometimes even the defense attorneys. Families and loved ones wish their son, daughter, father, or mother could be understood by those making life-altering decisions beyond the simple information contained in a police report or case file. Families want their loved ones to be understood as human, with the complexities and richness of their lives as part of that knowledge. People wish that the collateral damage of incarceration on a family would be more fully known, understood, and considered by the institutions of the court. They want their lives, and the impact of the court’s decisions, to be understood — truly understood — not limited by the narrow lens of an assembly-line type court proceeding.

But in courts across the country, the input of family and community is regularly sidelined from the decision-making process. The result is a tunnel-vision understanding of the defendant — stripped of the larger story of family, community, future, and history (a history which includes more than past convictions). Of course, while on paper the depiction seems reasonable — the State vs. “Some lone individual” — that surgical removal of someone’s life context from the people around him or her is not reality. One quick glance into the audience seats at court and it is evident: despite how a person may be painted, even the accused is loved.

“...a new way for family and community voices to penetrate and impact the court process.”

And while courts haven’t changed much over the years the world around them has, opening up a new way for family and community voices to penetrate and impact the court process. At my community organization — Silicon Valley De-Bug, where we support families who have loved ones going through the court system — we

“Social biography videos are usually 5-10 minute interview compilations that allow the viewer to walk in the defendant’s world...”
call them “social biography videos.” Think of them as the 2.0 versions of character letters.

In an era where video is becoming both more accessible to produce and integrated into everyday aspects of daily life — the ubiquity of YouTube and videophones — a production company, expensive equipment, and “professionally trained” videographers are no longer necessary. At my organization, our video-makers are mid-twenty year olds with no formal training, some of whom were former public defender clients themselves, using cameras they bought at Costco. It’s not about the technology, it’s about the story.

Social biography videos are usually 5-10 minute interview compilations that allow the viewer to walk in the defendant’s world — see their home, meet their kids, go with them to their job, learn about how they grew up, and meet who will be waiting for them when they get out. In this context, the medium of video does what it has always done: brings life, context, emotion, and a multi-dimensional understanding of the subject. It can go where traditional avenues for families to share with the courts often fall short. Composing a letter to a judge is nerve-wracking and limited by one’s writing ability. Testifying in an intimidating court in front of judges and bailiffs is an even more anxiety-riddled experience, limited by time. But to see a mother talk about her son while sitting comfortably on her couch with her kids’ photos behind her, sharing future prospects and family support, produces a very different experience than a letter could.

Since we have been producing these videos, they have been used by defense attorneys in different ways and with positive results. They have been tools to negotiate down charges with prosecutors, to remove strike priors and to lower sentencing by a judge after conviction. We started initially by helping families produce photo essays.

“The family information, presented through images, impacted the outcome of the case. He was not seen just as a drug user, but as a father, committed to improving himself for his kids.”

The idea originated when a community member approached us after he had already pled to a drug charge, but had not yet been sentenced. Facing a prison sentence, mainly due to the fact he had prior drug charges from his past, he admitted he relapsed and was determined to address his addiction, but didn’t think prison was the way. I remember him saying, “I can do the time, but they will end up taking my kids.” He was a single father of three young girls. We suggested that he take pictures of his experience as a father to show what this loss would mean. He took pictures of getting the girls ready for school, making them breakfast, dropping them off, picking them up, taking them to volleyball practice, helping them with homework, and tucking them in at night.

He walked his probation officer through the binder of photos while they were interviewing him for their probation report (in which a sentence recommendation would be provided to the court), and submitted the photo essay to the court through his attorney. He was facing a maximum exposure of five years in prison. Instead, he received a six month outpatient
program so he could both work on his rehabilitation and keep the family together. The family information, presented through images, impacted the outcome of the case. He was not seen just as a drug user, but as a father, committed to improving himself for his kids.

When a public defender approached us and said she had an 18-year-old undocumented client named Emigdio who was facing jail time, but was having a hard time convincing the prosecutor why he was over-charging, we produced a video to “show” her argument through video. We did interviews of the young man’s family in their small, scant, yet tidy home, where mother and father spoke about how their detained son was the main breadwinner of the house, the reason they are able to pay rent for their family of five.

While the two younger siblings played in the background, the mother talked about how the younger kids looked at Emigdio as a second father, how he cooks and cleans for the household. The father took us to a nearby golf course, where Emigdio cleans the golf carts, and interviewed a manager who said he has his job waiting for him for when he gets out. We also interviewed an immigration lawyer who pointed out how there were new forms of immigration relief available to Emigdio, all of which would vanish if he was convicted with the current charges. The attorney called weeks after we turned in the video and informed us the prosecutor agreed to resolve the case with Emigdio doing weekend work program, and never had to “take a step in jail.” The resolution also preserved his vital immigration relief. The video worked to show what she had been attempting to communicate the whole time— that there was significant collateral damage if the charges stayed at this felony level.

“She spoke about what it would mean for her life to have him back, and how she dreamed of a day to just have breakfast with her dad. The attorney showed the video to the Three Strikes Panel...[the] panel decided not to contest.”

One of our more recent videos was used for a Proposition 36 re-sentencing hearing. Voted in by California voters last year, the law makes those serving a life sentence due to three strikes eligible for re-sentencing if their third offense was not serious or violent. A public defender reached out who had a Prop 36 client, Will, who did eighteen years for a non-violent offense. If his last offense was not a strike, he would have been released years ago. The attorney was concerned the district attorney’s office would contest the re-sentencing, and asked us to produce a video on the 27-year-old daughter Angela — the main support system for his re-entry if released. Angela spoke eloquently about how despite his physical absence throughout her growing up, he was still an involved parent, and how in many ways he has been with him as she went through college, a master’s degree, and now into her professional life—all through heart to heart phone calls and letters.

We showed photos from prison visits coupled with shots time-lining significant moments of her life, as she narrated how her father always emboldened her to continually strive for bet-
She spoke practically; explaining how she is prepared to ensure that he has housing, employment, emotional support and family to make sure he doesn’t re-offend if given a chance. She spoke about what it would mean for her life to have him back, and how she dreamed of a day to just have breakfast with her dad. The attorney showed the video to the Three Strikes Panel, a group of prosecutors, as part of his larger presentation. The panel decided not to contest.

Will had breakfast with Angela a couple weeks after the video was viewed, as a free man. In delivering us the news, the Public Defender wrote, “The video made a substantial impact! It allowed us to introduce our client’s daughter Angela to the District Attorney’s Office in a very meaningful way. By getting to know Angela the DA’s Office found that our predictions of re-entry success for her father were credible and viable.”

While Will’s video was about the future, social biography videos can also provide important windows to the past. A video we did earlier this year for a juvenile case showed how impactful telling the back story can be when deliberating on charges and sentences, or even understanding current behavior. We were able to eliminate two strikes from the charges for this 16 year old by producing a video for the defense attorney that illustrated he was a teenager that the foster care system — and really every single adult in his life — had either abused or turned their back on. We showed footage of the abandoned lot behind a fast food joint where he would sleep at night because he had nowhere else to go.

We showed, by putting motion to a map, all of the cities across the state he was bounced around to through the foster care system, never experiencing any sense of stability. The video was not to refute the claim of the charge; it was to explain the story and context of a teenager who, as his relative says in the video, “grew up feeling

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Please Join Us in Welcoming Three New Team Members to Our NLADA Family

Christina Salu

Christina Salu has joined NLADA as our Director of Membership. Christina has an impressive background in association membership, including the management of annual dues revenue in excess of $7 million. Her extensive experience will be invaluable as we strive to expand the organization’s capacity to meet and exceed member needs.

Christina will be responsible for all aspects of member services and will work closely with Development, the executive team, and board of directors to design and implement a strategic plan to grow membership. This will include a comprehensive assessment of current and potential member benefits. In addition, she will create and oversee new processes for member recruitment, retention and engagement, including the development of new benefits and outreach through social networking and direct mail.

Christina joins NLADA from the American Association of Blood Banks (AABB), where she managed AABB’s membership department since 2007. Her impressive accomplishments included expanding and retaining members, optimizing the delivery of constituent benefits, and maintaining an accurate and comprehensive membership database.

Prior to AABB, Christina served as Membership Director at Sister Cities International in Washington, D.C. She received her B.S. in Business Management from Hampton University and her MPA from George Mason University, where she concentrated her studies in Nonprofit Management.

Leah Garabedian

Leah Garabedian joined NLADA in April as our new Defender Counsel.

Leah brings a diverse range of experience to NLADA, having worked for five years as an assistant public defender in the Trial Division at the Missouri State Public Defender, and in private practice. She also conducted policy advocacy on criminal justice issues at the Pew Charitable Trusts, where she served as Policy Advisor & Legislative Advocate.

As Defender Counsel, Leah will actively support NLADA members and stakeholders. In addition to producing NLADA publications and training materials, she will serve as faculty at NLADA conferences and workshops, provide support for Association governing bodies, and act as liaison on government relations matters.

Leah joined NLADA by way of the Missouri State Public Defender Office and the Pew Charitable Trusts.
As a public defender and later in private practice, Leah represented clients throughout the State of Missouri, conducting hearings and jury trials in 23 different jurisdictions, both rural and urban. Her first jury trial was an alleged misdemeanor assault on the deputy sheriff’s wife, tried against the elected county prosecutor—the verdict was not guilty. Leah managed a 100+ caseload while juggling a heavy trial docket, and her trial experience includes armed robbery, forcible rape, child molestation, and various drug offenses. At Pew, Leah relied on her legal and court systems expertise gained as a public defender, aiding in the development and successful passage of comprehensive criminal justice reform in South Dakota. Leah has a B.A. in Philosophy from Colgate University and received her J.D. from Washington & Lee University School of Law.

**Tiffany Wu**

Tiffany joined NLADA in April as our Senior Program Associate, Research. She holds a Master of Public Policy degree from the McCourt School of Public Policy at Georgetown, where she specialized in social policy. Her master’s work relied on quantitative analysis skills, including advance regression methods, to interpret and communicate findings on issues that affect low-income families. With an A.B. in English (Magna Cum Laude) from Princeton University, Tiffany also possesses strong writing skills, which she has used to transform statistical analyses into clear and convincing reports on a range of public policy issues. Tiffany has extensive experience in qualitative research methods through a team capstone project for the Government Accountability Office. At Mosaica, a nonprofit consulting organization, she was responsible for data analysis to conduct evaluation work for clients. Tiffany also served as Research Assistant at the Center for Juvenile Justice Reform, where she worked and reported on a range of issues affecting at-risk youth and youth of color, including foster care, education and employment barriers, and juvenile delinquency.
Don’t Just Say It, Show It: the Use of Video to Humanize Clients and Change the Outcome of Cases

and knowing he had nothing and nobody in the world.”

And though the ultimate measuring stick for a video is whether or not an attorney was able to use it to impact a case, there is an important byproduct of the process. Namely, the creation of a video allows for new points of collaboration between families and the attorneys who represent their loved ones. To know how to use a social biography video assumes the defense attorney is already processing the larger story of their client — already creating more involved advocacy. That families get a chance to assert their voice, if only to tell the story of their loved one, is empowering in arguably the most disempowered moments of their lives.

Technology has allowed new possibilities to change the way courts have worked for years, but ultimately, the capacity to transform the courts rests where it always has — the power of families, communities, and attorneys partnering to bring fairness and justice to those the system is attempting to de-humanize.

Raj Jayadev is the founder and executive director of Silicon Valley De-Bug — a community organizing, advocacy, and media organization based in San Jose, CA.

Second Chance
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For more information please go onto The Council of State Governments website by searching for Second Chance Act Grants.

Ed Burnette is the vice president for Defender Legal Services at the National Legal Aid & Defender Association.

1. In FY 2013 there were 11 Second Chance Act grant categories including: Smart Probation programs which support community supervision agencies; reentry for adults or juveniles with co-occurring substance abuse and mental health disorders; technology career training; adult mentoring and transitional services; statewide recidivism reduction; reentry demonstration programs for adults or juveniles.

2. For example if a homecomer is seeking to expunge his/her records there may be generally five criteria and they are:

• No convictions for a violent offense or for a nonviolent offense other than the one to be expunges
• All requirements of the sentence must be fulfilled
• Must have remained free from drug or alcohol dependency for at least a year and be rehabilitated to the court’s satisfaction
• Must have obtained a High School diploma or GED
• Must have completed at least a year of community service

These requirements are illustrated to suggest that there are some ways that a defender office may qualify to monitor some of the events put forward to screen applicants.

Supreme Court Watch
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v. Jones, 132 S. Ct. 949 (2012). Scalia concluded, however, that it was not established under California law that a guest who entered under a disputed invitation would commit a trespass. The burden is therefore on the defendant to show a trespass under state property law. If this can be done, however, there is an escape hatch from the formalistic (physical presence at the time of consent) rule established by Fernandez.

Marshall J. Hartman, a former director of NLADA’s Defender Legal Services department, is an adjunct professor at I.I.T. Chicago Kent College of Law, Chicago, Il, where he teaches seminars on the Death Penalty, Philosophy of Criminal Justice and White Collar Crime.

Laurence A. Benner is a professor at California Western School of Law, San Diego, CA, where he teaches Criminal Procedure and Constitutional Law.

Raj Jayadev is the founder and executive director of Silicon Valley De-Bug — a community organizing, advocacy, and media organization based in San Jose, CA.
The Skills Writing Track included two special sections for federal court practitioners, primarily Criminal Justice Act private attorneys but also a few federal defenders. We were very pleased to welcome to the Institute federal faculty members Gail Ivens (Los Angeles Federal Defender Office), Judith Mizner (Boston Federal Defender Office), Jennifer Gilg (Nebraska Federal Defender Office), and Vicki Lai (Seattle Federal Defender Office). Our federal faculty and practitioners also greatly benefited from the program planning efforts and on-site contributions of Lisa M. Porcari, attorney advisor at the Training Division, Defender Services Office, Administrative Office of the U.S. Courts.

“The Institute is a truly unique national program, one of the few that brings together state and federal defense advocates.”

State court practitioners in the Skills Writing Track were assigned to specialized small group workshops. Experienced and returning participants had the opportunity to work with small group faculty that included Ira Mickenberg (NY), who was also the faculty facilitator for this track; Melinda Pendergraph (MO); Prof. Diane Courselle (WY); Joseph Nursey (NY); and Trace Rabern (NM). Juvenile delinquency appellate advocates worked in their small group with juvenile appellate specialists Jacqueline Bullard (IL) and Eileen Hirsch (WI). Intermediate appellate practitioners received instruction and feedback from Sara Thomas (ID) and Ed Burnette (NLADA). New, beginner appellate advocates received excellent feedback and suggestions from Jim Looney (LA), Vicki Rogers (IL), Chris Aberle (LA), and Sarah Ottinger (LA).

The Skills Writing Track involved plenary learning sessions with interactive discussion, followed by participant drafting application in the small workshop group of the subjects discussed. Sara Thomas offered the first plenary session on “Brainstorming the Facts,” and she was followed by Ira Mickenberg who talked about “The Reality Check: Brainstorming the Law.” At the end of the first day, Joe Nursey presented “Developing a Theory of Defense and Supporting Themes,” and he was followed by Prof. Diane Courselle who talked about “Transforming the Facts into a Persuasive Story.” Ira Mickenberg returned at the end of the next day to discuss “Writing a Persuasive Brief: Statement of Facts-Words and Pictures.” The next concurrent plenary sessions were offered by Gail Ivens, who addressed the federal practitioners, and Trace Rabern who talked about “Integrating the Facts and the Law: Dealing with the Good, the Bad and the Ugly-Writing Your Argument.” The program’s plenary sessions ended with a Sunday morning presentation by Jeff Sherr and Patti Heying on “Communication Skills Building for Dynamic Advocacy.”

The Institute received uniformly excellent evaluations from the participants, and faculty feedback was equally positive. The Institute could not have happened without the consistently strong support of Stacy Green, NLADA’s Conference Manager, who worked for several months on this complex skills based program, and we very much appreciate Stacy’s many contributions in making the Institute an outstanding national appellate training.

The Institute is a truly unique national program, one of the few that brings together state and federal defense advocates. We will continue to offer this special training in 2015. So, please save the date, January 22-25, 2015! ■

Phyllis H. Subin is a qualified trainer and technical assistance provider for the Bureau of Justice Assistance and the Office of Juvenile Justice & Delinquency Prevention.
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