

Summer 2007

CJI 2007 Planning

June 30

Initiative evaluation requests for input (P&E Committee).

July 30

BOC adopts CJI plan as part of SBM budget.

August 15

Initiative evaluation results sent to P&E Committee.

August 30

CJI final work plan adjusted per BOC budget/other actions.

By October 1

CJI annual review of initiative evaluation reports and mission/goals.

<http://www.michbar.org/programs/pdfs/11calendar.pdf>

"Justice is a universal value, and as lawyers, it is our job to see that everyone has access to the courtroom, especially the most vulnerable."

—Kimberly M. Cahill
President, State Bar of Michigan

Success for the Second Annual Runaway Training

On March 29, 2007 the SBM Equal Access Initiative (EAI) and the Public Outreach Committee, in collaboration with the Michigan Network for Youth and Families, held the second annual Runaway Training.

The program was developed because of the need to provide training and resources to providers of services to runaway and homeless youth. The focus of the training was to open communication between the providers and the legal community, answer questions, and debunk myths. All too often, the providers perceive the legal system as adversarial to their clients' interests. The Runaway Training hoped to change this perception.

Janet Welch, executive director, State Bar of Michigan, welcomed the providers and speakers. Ms. Welch thanked all the participants for attending. Anthony "Tony" Derezinski, director, Governmental Relations, Michigan Association of School Boards, long time friend and contributor to the State Bar, and volunteer member of the Criminal Issues Initiative (CII), moderated the event. Tony kept the program moving along and the jokes rolling. The participants responded to his humor and passion for juvenile justice.

Over 30 providers from across the state convened at the State Bar building to listen to a distinguished panel of speakers, including Deputy Chief Assistant Prosecutor Susan Le Duc; Probate Judge Ninth Circuit Court Honorable Curtis J. Bell; Chief Counsel—Juvenile Law Group Regina Daniels Thomas; and Juvenile Court Officer Tammy Williams. The participants were individuals from various organizations that provide services and



Anthony "Tony" A. Derezinski moderator Runaway Training Program

advocate for homeless and runaway youth.

The morning began with a roundtable discussion where the speakers presented a brief description of their areas of expertise. Judge Curtis Bell outlined the steps a juvenile offender goes through from getting the police report to final disposition. Judge Bell encouraged the participants to question findings from the court where there are areas of uncertainty.

Susan Le Duc reminded the participants of the role prosecutors play in the world of juvenile justice. She highlighted the frustration involved in prosecuting juveniles who are involved in crimes classified as “status offenses.” A status offense is the illegal behavior performed by a child less than 18 years old which would not be criminal if committed by an adult. The major status offenses are: running away, truancy, ungovernability (being beyond the control of one’s parents), liquor law violations, and purchase of tobacco. She ended by saying prosecutors are the gatekeepers and have a tremendous



Panelists Tammy Williams and Susan LeDuc



L-R - Roundtable discussion participants Tammy Williams, Susan LeDuc, Hon. Curtis J. Bell, and Serah E. Wiedenhoeffer

amount of discretion in these cases.

Serah Wiedenhoeffer spoke on the topics of delinquency, abuse and neglect. Serah, CII volunteer member, raised awareness on the subject of sealed records and how they affect sentencing guidelines. This alarmed many providers, as they were unaware sealed criminal records were considered during sentencing. Tammy Williams shed light on the probation phase and the kind of services that are available to juveniles. She expressed concern over the increasing number of cases she has seen over the years.

The afternoon session was different; in lieu of the roundtable discussion, there were presentations. Some of the topics included Juvenile Law Rights and Responsibilities, An Overview of the Abuse and Neglect System, and Rights and Resources of Homeless Students. The participants remained attentive and eager for more information.

Stacy Hickox and Regina Daniels Thomas spearheaded the discussion entitled Juvenile Law Rights and Responsibilities, which included

mental health services. Both speakers gave the providers a bird’s eye view of child protection proceedings and mental health/juvenile justice as it relates to the role providers play. The providers were guided through the preliminary inquiry/hearing to the last stage, the Supreme Court.

Serah and Regina fielded questions on the abuse and neglect system. They covered topics such as Parental Powers of Attorney and Temporary Authorization for Kinship Care. Terri Stangl, returning speaker, covered the area of The Rights and Resources of Homeless Students. Terri discussed the definition of homeless youth, educational rights of homeless youth, and information for school-aged youth.

The final speaker, Laura Athens, dealt with School-Law Discipline Issues. Laura discussed extensively the legal aspects of student discipline, including expulsion and interim alternative educational settings.

The day ended with an exhausted but well-informed group giving ideas and feedback for the next runaway training.



Jerome Reide at the 2006 fall Justice Initiatives Retreat

Justice Initiatives Bids Jerome Reide Farewell

Jerome Reide, Director of Justice Initiatives for the State Bar of Michigan, left his position in April in order to complete a book on diversity in Michigan. Reide joined the State Bar in June 2005, and directed programs in justice policy, pro bono service, equal access to the courts, criminal issues, and fundraising efforts.

Reide has a law degree from Hofstra University Law School, a master's from Columbia University, and a master's and a doctorate in political science from Michigan State University. He is vice chair of the American Bar Association's Committee on Civil Rights and Equal Opportunity, part of the ABA's Section of Individual Rights and Responsibilities, (IRR). Reide recently served as co-editor for an issue of IRR's Human Rights magazine that covered human rights in natural disasters.

Gregory Conyers has assumed the responsibility of acting director of the Justice Initiatives division.

Quick Notes

The Justice Initiatives Division staff considers itself very fortunate to work with very talented volunteers who serve on CJI and its initiatives. These individuals continuously and generously donate their time, expertise and experience to enhance the equality of Michigan's courts and legal profession. From time to time we become aware of honors, accomplishments, or awards bestowed upon them and wish to recognize those achievements. If you know of any justice initiative members who have received such accolades, please let us know so we can honor and acknowledge them.

Ann M. Cooper is an Equal Access Initiative (EAI) member and longtime State Bar of Michigan (SBM) justice issues volunteer. She is of counsel to Drew, Cooper & Anding in Grand Rapids. EAI is thrilled to announce that Ms. Cooper was recently presented

with the Donald R. Worsfold Distinguished Service Award by the Grand Rapids Bar Association (GRBA). The award recognizes a GRBA member who is highly respected by his or her colleagues and who has made significant contributions to the Association, the legal profession and the community. It is presented only when the Association wishes to acknowledge and honor the contributions of a member whose service stands out for its extraordinary impact on the life of the community.

Angela Kay Sherigan is a member of both the Committee on Justice Initiatives and the Criminal Issues Initiative (CII). She practices with Wojnecka & Sherigan PC in

CJI Entities Meeting Schedule

June

CJI—Tuesday, 6/05/07
SBM Bldg., 1:30 lunch
2:00 p.m.—4:00 p.m. meeting
JPI—Thursday, 6/28/07 (if needed)—
conference call 9:15 a.m.

July

CII—Monday, 7/23/07
SBM Bldg., 10:00 a.m.—12 p.m.
PBI—Thursday, 7/26/07
conference call 4:00 p.m.—6:00 p.m.

August

JPI—Thursday, 8/9/07
conference call—9:15 a.m.
EAI—Tuesday, 8/21/07
SBM Bldg., 1:30 p.m. lunch
2:00 p.m.—4:00 p.m. meeting

September

SBM Annual Meeting
Amway Grand Plaza, Grand Rapids
EAI—Thursday, 9/27/07 a. m. program
CII—Thursday, 9/27/07 p. m. program

Key

CII = Criminal Issues Initiative
CJI = Committee on Justice Initiatives
EAI = Equal Access Initiative
JPI = Justice Policy Initiative
PBI = Pro Bono Initiative

Warren, Michigan where her focus is Native American and criminal defense law. We are delighted to report that the Little River Band of Ottawa Indians recently held elections and Ms. Sherigan was elected Associate Judge.

Hon. William J. Caprathe has been a circuit court judge in Bay County since 1980. He has been very active in both SBM and American Bar Association (ABA) work and currently serves on EAI as well as being the liaison between that

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Norris J. Thomas, Jr. Michigan's Unsung Hero

Recently, Norris was nominated for two distinguished awards given by the State Bar of Michigan and the American Bar Association. The Criminal Law Section of the State Bar of Michigan nominated Norris for the Michael Franck Award. Norris was not given this award, but was this year's recipient of the State Bar of Michigan Representative Assembly's Unsung Hero Award. This annual award was created in 2004 to recognize a lawyer who has exhibited the highest standards of practice and commitment for the benefit of others. Norris will be recognized in September at the Distinguished Awards Celebration during the State Bar's 2007 Annual Meeting in Grand Rapids, where the award will be presented to a member of his family.

The Equal Access Initiative nominated Norris for the American Bar Association Dorsey Award. This coveted award recognizes exceptional work by a public defender or legal aid lawyer. The award was established as a tribute to Charles H. Dorsey, Jr., who, like Norris, was a champion of the poor and underprivileged. Norris was not chosen as the winner; however, the ABA recognized Norris and "greatly admired his lifetime of dedication to delivering legal services to those in need."

"No organization of lawyers can long survive which has not for its primary object the protection of the public"

—Roberts P. Hudson
First President
State Bar of Michigan



ABA Law Day 2007 in Washington, D.C. award presentation

ABA Law Day

A team of State Bar of Michigan (SBM) volunteers led by President Kim Cahill and including SBM Past President Thomas Cranmer, SBM Executive Director Janet Welch, SBM Board of Commissioners member Bruce Courtade, and SBM Justice Initiatives Acting Director Gregory Conyers traveled to Washington, D.C. April 18 and 19, 2007, in conjunction with the American Bar Association (ABA) annual ABA Day. The group met with the Michigan Congressional Delegation and lobbied in support of the Legal Services Corporation (LSC). SBM provided materials and information about the current state of legal services provision and access to services in Michigan. The Michigan team was assisted with confirming appointments with congressional offices by Dykema's Washington, D.C. office. David Arthur, government relations professional at Dykema, provided a briefing and assisted the team during the visits again this year.

The delegation was able to meet with 11 of the 17 House and Senate members or their staff and discuss support for increasing the funding for LSC and the work of lawyers and the legal services community in Michigan. The discussion

also touched on Michigan's economy and the effect of population-based federal funding in a state with a shrinking overall population that is facing difficult economic challenges. All of the meetings were very productive; many of the offices committed to working with SBM to build and maintain support for a budget increase for LSC.

The ABA also held a reception as a part of their scheduled activities. The reception honored three outstanding members of Congress that have advocated on behalf of ABA's goal of equal justice for all. One of the honorees was Rep. John Conyers, Jr., a long-time advocate for legal services access and currently chair of the House Judiciary Committee. Former Detroit Mayor Dennis Archer presented the award, and the Michigan delegation was present to acknowledge the congressman and his contributions to the profession.

As a follow-up to the visit, letters went out to all Michigan congressional delegation members urging them to sign the letter of support from the House sent by William Delahunt (D—MA) and Jim Ramstad (R—MN) and one from the Senate by Edward Kennedy (D—MA) and Senator Gordon Smith (R—OR).

Equal Justice Conference

Justice in a Changing, Diverse World: Preserving the Rule of Law Through Inclusive, High-Quality Legal Services to the Disadvantaged

On March 21, advocates from around the country met in Denver for the annual Equal Justice Conference sponsored by the American Bar Association (ABA) and the National Legal Aid & Defender Association. The Equal Justice Conference 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. The emphasis of this conference was strengthening partnerships among the key players in the civil justice system. Through plenary sessions, workshops, networking opportunities, and special programming, the conference provided a wide range of learning and sharing experiences for all attendees.

Judge Cynthia Stephens, chair of the Committee on Justice Initiatives, was one of four panelists for a program entitled "The Pinnacle of Pro Bono Involvement: Judicial Participation in Pro Bono." Panelists discussed examples of how they can energize pro bono efforts at the local level. Laura Graham, program manager for EAI, attended the conference.



Former WLAM president and current State Bar of Michigan President Kimberly Cahill, WLAM 2007-08 president Kristin Arnett, and Jean Ledwith King, for whom the WLAM King Leadership award is named.

Women Lawyers Association of Michigan

How Women Can Own Their Own Success

On April 20, 2007, the Equal Access Initiative (EAI) partnered with the Women Lawyers Association of Michigan at their 87th annual meeting, where the theme was "How Women Can Own Their Own Success." Keynote speaker Jennifer Bluestein delivered a presentation on the best practices for the promotion of women in law firms. Bluestein discussed methods of identifying mentors and how

Below—WLAM past presidents: Kristin Arnett (2007-08); Kimberly Cahill (1996-97); Laura Canfield (2001-02); Justice Marilyn Kelly (1987-88); Margaret Costello (1999-2000); Kathleen Allen (2006-07); Ann Routt (2005-06); and Lee Somerville (2004-05).



to make your case to get what you want from your employer. Jennifer Bluestein is from the Chicago office of Baker & McKenzie, where she has worked on both diversity and professional development issues. Her firm has built a successful women's initiative. Honorable Marilyn Kelly, justice of the Supreme Court of Michigan, offered her personal perspective of juggling career and family while on the bench.

State Bar of Michigan President Kim Cahill received the Jean Ledwith King Leadership Award.

Evanne Dietz, chair of EAI; Janet Welch, executive director, State Bar of Michigan; Candace Crowley, manager development and external affairs; and Judy Hershkowitz, EAI staff, attended the event.

19th Annual Meeting of the National Consortium on Racial and Ethnic Fairness in the Courts

The National Consortium on Racial and Ethnic Fairness in the Courts dates back to December 1988, when the first meeting was organized. This was done primarily as a means to provide an opportunity for task forces and commissions to discuss their research and program activities. At the follow-up meeting a year later, four states were represented: Michigan, New Jersey, New York, and Washington. Today, over 30 states are represented at the meetings.

The theme for this year's annual meeting was "Saving Our Children: Justice and Fair Treatment of Youth in the Courts." It was hosted by the Franklin H. Williams Judicial Commission on Minorities, in conjunc-



Joyce Hartfield and Hon. Marilyn Kelly

tion with the New York State Unified Court System on May 2-5, 2007, in Brooklyn, New York. The Honorable Marilyn Kelly, justice of the Supreme Court of Michigan and current president of the National Consortium on Racial and Ethnic Fairness in the Courts, welcomed the attendees and thanked the organizers.

The conference offered many breakout sessions packed with information provided by experts in their fields of practice. One highlight of the program was a field trip to the Brooklyn Treatment Court (BTC). Laura Graham, EAI program manager, and Judy Hershkowitz, Justice Initiatives administrative assistant, had the opportunity to visit the BTC. This court represents an innovative and very successful approach to substance-abusing defendants within the court system. The BTC has created a network of community-based treatment and social service agencies to provide services to its clients. The BTC boasts a low 9% recidivism rate. While visiting a session of the BTC, a successful participant gave an emotional testimonial on how the program has changed her life and thanked the presiding judge

and all the other support staff. There wasn't a dry eye in the courtroom.

Honorable Cynthia D. Stephens Acknowledged at Barristers' Ball

March 17, 2007 marked the 46th Annual Barristers' Ball presented by the Wolverine Bar Association. SBM Executive Director Janet Welch and President Kim Cahill, and several SBM staff members, were in attendance at the President's Reception. The Honorable Cynthia D. Stephens, chair of the Committee on Justice Initiatives, received a special acknowledgement from Wolverine Bar President Diane Hutcherson. The acknowledgement is given by the president to honor someone who has gone above and beyond the call of duty to support the president's efforts and the efforts of the Wolverine Bar. Ms. Hutcherson said, "Service is rent we pay for living," and Judge Stephens exemplifies this. Ms. Hutcherson also noted that even though Judge Stephens has one of the busiest dockets in the state she still found time to aid the efforts of the Wolverine Bar. Judge Stephens was called upon to assist with the National Bar Association's Children's Camp, which included over 200 children from ages 4 to 14, and she did this without hesitation.

School Visit a Success

On May 17, 2007, Laura Graham, Justice Initiatives, was invited by Bennett Elementary School in southwest Detroit to speak at their annual Career Day. Graham spoke to fourth and fifth grade students about what it's like to be an attorney, the

kind of work she does at the State Bar of Michigan, and her life as a former criminal defense attorney. Unfortunately, many of the students from this neighborhood in Detroit have had far too many police contacts in their young lives. One student shared with Graham that his older teenage brother was killed last September, and the police still have not made an arrest. There were lots of questions from the children such as how much schooling does it take to be a lawyer, is it scary to be in the same room with people who have done really bad things, and what is the best part about being a lawyer. The students had many questions and were either eager for information or attempting to avoid doing real classroom work. It was a fun day for all.

Launch of Prisoner Re-Entry Wiki Website

Helping ex-convicts navigate obstacles transitioning from prison to the general population is the focus of a website launched by Legal Aid of Western Michigan's Re-entry Law Project (RLP) and the Michigan Poverty Law Project.

The Michigan Re-entry Law Wiki <http://reentry.mplp.org/wiki> provides answers to frequently asked questions, current case law, statutes, trends regarding prisoner re-entry, and downloadable forms for everything from obtaining a state identification card to expunging criminal records. It contains a wealth of information to help lawyers, judges, social service providers, and others involved in the re-entry process.

The RLP and the Michigan Poverty Law Program spearheaded the

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Determining Proper Accommodations for Deaf Law Students

by David Cohen and Richard Bernstein

Most attorneys remember the anxiety of being a law student. Imagine how much greater the feeling of trepidation would be if one sat in his/her law school classes unable to hear the professor or his fellow students. This is the reality for the growing number of law students who are deaf or hearing impaired.

While no official census has been taken to determine the exact number of deaf or hearing impaired students currently enrolled in law school, it appears that there is a trend towards a significant increase in the number of such students attending and succeeding in law school. By one estimate, the current number of deaf or hearing impaired attorneys/law students has increased from approximately 35 in the late nineties to as many as 170, and the numbers may be far greater.

Advances in technology have also increased the available services that can be utilized to help students with hearing loss succeed. As of 2006, over 90 law schools had faced the issue of accommodating a student or students with hearing impairments.

As there appears to be a trend towards increased hearing loss at a younger age, the demand for proper accommodation is likely to increase. Yet, there still is not a uniform system for determining which tools are needed to ensure the success of the deaf student.

Various methods exist to help a student succeed. Some of the more common means of accommodation include the following:

Note Taking

Some schools facilitate the taking of notes for deaf or hearing impaired students. This allows the students to view a classmate's notes to fill in the "gaps" missed by the lecture. The difficulty, of course, is that note taking remains a subjective science, and not everyone agrees on what constitutes comprehensive note taking. This means of accommodation also further removes the deaf student from the dynamic of classroom participation.

Sign Language

Perhaps the most traditional form of accommodation is the use of a sign language interpreter. A difficulty with this system is that many hearing-impaired students are not fluent in American Sign Language. As growing numbers of deaf students grow up in non-signing homes and are educated in mainstream schools, it is increasingly common for individuals with significant hearing loss to lack fluency in signing.

Lip Reading

Certainly the most cost efficient system for accommodation is to have the students lip read the professor. Difficulties with this system include the reality that some of the professor's comments will likely be lost due to poor articulation and the speaker's movements during class. Certainly, many of the student comments and the group interaction through the Socratic Method are at risk with this system.

Lip Reading Through an Interpreter

Some accommodations have been provided through the use of a lip interpreter who mouths/repeats everything said in class in a pronounced manner, aiding the ability to follow the class through lip reading. This person mouths in a whispering fashion what the professor and students say, but in a more exaggerated way. Of course, while some students are excellent lip readers, others lack this skill. In the end, the same difficulties can exist that arise from the use of sign language. Success is very dependant upon the fluency of the student in the method of accommodation provided.

T-Coil

This is a special digital device available on many hearing aids. Often used to tune in to the frequency of telephone calls, it can be adapted to pick up the microphone frequency of a professor. Of course, it creates the obvious problem of failing to pick up the interaction of classmates and class discussions. This is no small concern. The authors of this article had the pleasure of interviewing John Machiorlatti, a law student diagnosed with significant hearing loss. During our interview, he indicated that he recently used a stopwatch to track the amount of time in a class when the professor was talking vs. the amount of time when students were speaking. Not surprisingly, about 55 percent of the class was spent in student discussion.

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CART Computer Assisted Real Time Translation

CART seems to be the preference of students such as the aforementioned Mr. Machiorlatti, as it is all-encompassing in its ability to capture whatever is said in class. The system uses a specially equipped stenographer, who transcribes the class in shorthand, generating an instant and complete transcript onto a student's laptop computer. The inherent problems of fluency with other accommodation systems and the difficulty of dropped portions of classes are solved through the use of this form of transcription. The primary drawback to this system is that it is potentially cost prohibitive as it necessitates the hiring of a properly trained stenographer. An added benefit of the system is the ability to preserve an entire transcript of each lecture. The existence of a transcript could benefit other members of the student body who are absent due to an unforeseen circumstance such as illness.

Choosing the right system can make a significant difference. John Machiorlatti went through great difficulties in establishing the CART system as his form of accommodation. Struggling through his initial classes without proper accommodation, he decided to re-start his first year of law school a year later, to provide the time that his school needed to establish his accommodation. Did the proper accommodation work? Among several impressive accomplishments, Mr. Machiorlatti received a Certificate of Merit for the highest grade distinction in his first year criminal law class. Without proper accommodation, Mr. Machiorlatti believes he could not have succeeded in law school.

Although the Americans With Disabilities Act offers provisions to help assure the success of students with disabilities, there remains a large gap in the success of deaf students and the manner in which they are treated. A part of this trouble arises from the language of ADA which speaks in terms of providing "reasonable accommodations" for students with disabilities. As one deaf student put it to me, "The language [reasonable accommodation] is not specific and is in fact vague to the detriment of some students." Many well-intentioned institutions are motivated by budget to choose the most economically feasible means of accommodation, and this is not necessarily the best.

Adding to the conundrum of what is reasonable in accommodating deaf students is the variable factor that each student is different, and students with identical disabilities may excel with the very different accommodations discussed above. It seems increasingly evident that it is in everyone's interest for law schools to reach out to entering students who are deaf, hearing impaired, or otherwise disabled before they begin their classes. Assessing the best means of accommodation on an individual basis maximizes the chances of the student succeeding, and decreases unnecessary anxiety and frustration for the students. It is, of course, the mission of all law schools to see their student body excel, and when schools focus attention on the various means of accommodation, they demonstrate their commitment to the best ideals of the legal profession. This is in the interest of all students and the entire legal community.

References

Deafattorneys.com

Hearinglossweb.com

"This is something the baby boomers are finding out as their hearing deteriorates years before their parents' did."

The list of common accommodations was compiled through an interview with Mr. John Machiorlatti, an outstanding deaf law student at Thomas M. Cooley Law School. The authors are most indebted for assistance and input.

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State Bar of Michigan Volume 3, Issue 2, March 2007 Committee on Justice Initiatives and Equal Access Initiative Disabilities Project *Disabilities Project Newsletter*.

Quick Notes

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initiative and CII. We are pleased to announce that Judge Caprathe will become Chair of the National Conference of State Trial Judges in the Judicial Division of the ABA in August 2007.

Hon. William G. Schma is a retired Kalamazoo circuit court judge with a special interest in drug courts and therapeutic jurisprudence. The Criminal Issues Initiative is very pleased to announce his addition to their membership.

Kathleen N. Harris and **Barbara J. Kelly** are long-time EAI volunteers, who have recently "retired" from the EAI. The initiative extends its heartfelt gratitude for their many contributions. Ms. Harris contributed countless hours to several projects to assist persons with disabilities in the legal profession. She and her husband are moving to Arizona. Ms. Kelly is the Deputy Friend of the Court with the Washtenaw County Friend of the Court Office in Ann Arbor. Among other things, she provided time, expertise and leadership to a multifaceted alimony guidelines project.

Justice Policy Initiative

What the JPI Does

The Justice Policy Initiative (JPI) is charged with monitoring proposed legislation and court rules for the benefit of the Committee on Justice Initiatives (CJI). The JPI members evaluate whether such policies would impact low and moderate income persons and/or legal services organizations and pro bono attorneys serving such people. JPI submits recommended policy positions to the CJI, which decides whether or not such recommendations should be passed along to the Board of Commissioners (BOC) or Representative Assembly (RA). Both the JPI and CJI consider whether proposed legislation concerns an issue on which the bar is permitted to take a policy position. Proposed court rules are always an area where comment is permissible. JPI also occasionally proposes new or amended legislation, court rules, or court forms that it believes will promote the Bar's concerns with ensuring access to the courts and to counsel.

The State Bar's Public Policy staff helps JPI by keeping its co-chairs informed about policy recommendations taken by other committees or sections within the Bar. The staff sometimes tries to bring different groups together to see if consensus positions can be developed on behalf of the bar as a whole. Any policy positions on pending legislation or court rules that are taken by the State Bar can be found at the public policy website. See www.michbar.org/publicpolicy. Any SBM committee or section that would like to

know whether the CJI will be taking action on a particular policy matter should contact the JPI chairperson. The State Bar's public policy staff has copies of any policy recommendations that CJI has forwarded to the Board of Commissioners and will share them with interested Bar entities.

Recent Activities

During the past year, the JPI has reviewed legislation and rules and recommended positions related to such areas as the guardianship process, appellate procedures, small claims court, evidence rules, and privacy protections. CJI positions are posted online only after receiving authorization from the Board of Commissioners or if the SBM adopts the same position.

In the past year, the Representative Assembly also adopted a recommendation to the Michigan Supreme Court initiated by JPI. The recommendation proposed revisions to the State Court Administrative Office's standard garnishment forms that would make it clearer to those collecting judgments and garnishee defendants that persons receiving only supplemental security income (a needs-based income given to indigent persons who are either disabled or at least age 65) are exempt from garnishment under federal law. The Supreme Court has indicated to the State Bar that it intends to publish this proposal for public comment.

Issues of Recent Interest

In the past couple of years, JPI has also begun to review and recommend positions on federal legislation that may impact the availability of



Terri L. Stangl
Chair, Justice Policy Initiative

civil counsel to low-income persons in Michigan. This legislation is brought to JPI's attention by members of the various initiatives under the CJI umbrella.

An area of growing concern for the JPI and others working on justice issues is the increased number of reports from around the state that indigent persons are having difficulties obtaining waivers of filing fees under MCR 8.120. This rule requires waiver of filing and motion fees for persons attesting that they receive public assistance. In order to determine if a policy recommendation should be made, JPI plans to gather more information about the reported problems and best practices and welcomes ideas and information from other entities within the Bar.

Another area of continued concern is the lack of help for indigent persons in appeals who have no resources with which to obtain a transcript. Other states have set up funding mechanisms to ensure that such persons have access to transcripts without cost, but Michigan has nothing in place. This is a significant barrier to indigent persons who wish to appeal a lower court decision.

Accommodating A Person With A Visual Disability In The Legal Process

by Hon. Paul S. Teranes, Wayne County Circuit Judge, retired

If you are an attorney, no doubt at some time during your professional career you will encounter a client, witness, or an opposing party who has a visual impairment. While it is difficult to obtain exact statistics on persons with visual impairment and how serious those impairments may be, statistics from the National Center for Health Statistics indicate that 10,000,000 people over the age of 16 in the United States have a functional limitation in seeing. Of those 10,000,000 people with sight limitations, 1,300,000 are legally blind. To be legally blind means that a person has a visual acuity of 20/200 or less in the better eye with the best possible correction, or a visual field of 20° or less. In other words, a person who is legally blind can see at 20 feet or less with glasses what a person with normal vision can see at 200 feet, or if a person has tunnel vision, they can see a visual area of 20° or less as opposed to a normal visual field of 180°. Of the 1.3 million persons who are legally blind, 260,000 have light perception only, and another 130,000 have no vision at all.

Courthouses and buildings that contain attorneys' offices must have facilities that comply with the Americans with Disabilities Act (ADA). The ADA includes requirements for making a building more accessible to a person with a visual impairment. The most important requirement concerns elevator service. The call buttons for an elevator must have tactile raised letters or arrows on the Up and Down buttons. The floor in-

dicators inside an elevator car must be in Braille and raised numbers. An elevator must include audio indicators to indicate whether the elevator is going up or down, and to indicate the passing of each floor. Despite the ADA regulations, many buildings constructed before 1991 do not have ADA-compliant elevators. It is the responsibility of the landlord or the municipal building authority to ensure compliance with these ADA regulations. The tenant, however, can also insist on ADA compliance. This compliance will greatly assist a visually impaired person who must visit an attorney's office or courthouse.

In addition to ensuring building compliance, an attorney can do many things to accommodate a visually impaired client. If your client is visually impaired, determine the degree of the impairment. Although a person may appear to have sufficient vision, he or she may have great difficulty in reading. This is particularly true with elderly clients. Many older people have a vision loss, but are reluctant to talk about it. You should tactfully inquire whether a client may have a problem reading because of a visual impairment. If a client has difficulty reading, read all documents to him or her. After the reading, ask the client if everything was understood, or if any information should be repeated. If a document requires a signature, include a notation that the document was read to the client before signing. When handing a document to a visually impaired person, indicate verbally

that you are handing a document to him or her.

If a client with a visual disability must appear in court, ensure that the client has a way to get to the courthouse and make transportation arrangements if necessary. Before the date of a court appearance, take the client to the courthouse. Show the client where to enter the building, and walk through the metal detection process. When court is not in session, walk the client through the courtroom. If the client is participating in a trial, have the client sit at the counsel table. Ask the client to sit in the witness chair, and indicate where the jury box, judge, and attorney's podium will be in relation to the witness chair. Take the client into the hall outside the courtroom and point out the elevators, exits, restrooms, and any other facilities located in the hallway. Finally, ask the visually impaired client if any other special assistance is needed to facilitate the trial process. Doing this beforehand will put the visually impaired person at ease on the day of the court appearance.

Inform opposing counsel, the judge, court staff, and jurors that a party or witness has a visual impairment. This will explain why some assistance for the person may be necessary.

If a client needs assistance getting around because of very limited vision, ask if you can help. If assistance is needed, do not take the person by the arm, but rather let the person take your arm. This will

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The Trials of Darryl Hunt

In 1985, Darryl Hunt, an 18-year-old African American, was convicted for the rape and murder of a young newspaper reporter. In two trials, despite the fact that there was no evidence linking him to the crime, 23 white jurors found Hunt guilty based on eyewitness testimony. The testimonies taken included those of a 14-year-old heroin addict, a former Klansman, and a man who wrongly identified two other men before fingering Hunt as the perpetrator.

Before his second trial in 1990, Darryl Hunt rejected a plea bargain that would have made him a free man. In 1994, DNA tests performed on semen samples did not match Darryl Hunt's DNA, and yet he was denied a third trial. Ultimately, in response to a petition by Darryl's attorney, a superior court judge ordered that the DNA specimen from the crime scene be matched against a database containing information on violent criminals in North Carolina. This resulted in a match to another individual, proving Darryl Hunt's innocence. In February 2004, all charges against Darryl Hunt were dismissed, and he received a full pardon from Mike Easley, the governor of North Carolina.

Darryl Hunt's story has been documented in an HBO film entitled *The Trials of Darryl Hunt*, which aired on HBO April 26, 2007. In November 2006, at the National Legal Aid and Defender (NLADA) conference in Charlotte, North Carolina, participants were given the opportunity to see a special screen-



Laura Graham, Justice Initiatives; Darryl Hunt, The Darryl Hunt Project for Freedom and Justice

ing of the documentary. After the film, Darryl Hunt was present to say a few words and answer questions. Laura Graham, Justice Initiatives program manager, was present and had the opportunity to talk with Darryl about his current work helping people in similar situations.

Darryl Hunt will be a guest speaker at the State Bar of Michigan's Annual Meeting in Grand Rapids. The Criminal Issues Initiative of the SBM will feature Darryl Hunt's story at their program on Thursday, September 27, 2007. In addition to Mr. Hunt's story, the initiative will have a panel discussion on the state of indigent defense in Michigan and the civil consequences associated with criminal convictions.

The mission of the Darryl Hunt Project for Freedom and Justice is to educate the public about flaws in the criminal justice system, to advocate for those wrongfully incarcerated as a result of those flaws, and to provide resources and support for those trying to re-build their lives post-conviction. Through public awareness, judicial advocacy, and re-entry programs, the project hopes to provide assistance to individuals who

have been wrongfully incarcerated; to help ex-offenders obtain the skills, guidance, and support they need as they return to life outside the prison system; and to advocate for changes in the justice system so innocent people won't spend time in prison.

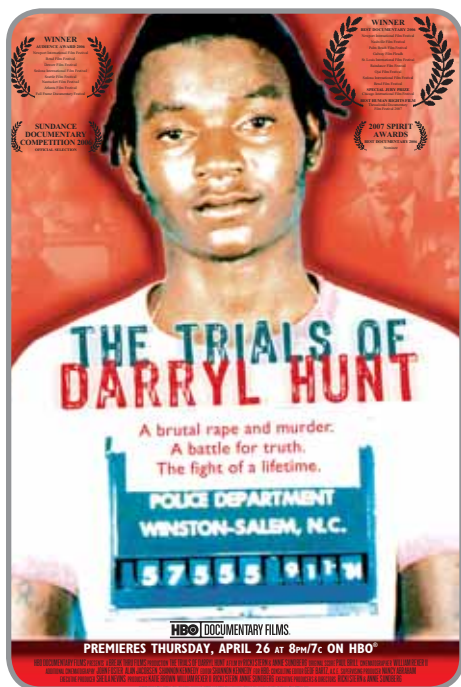
Hunt's case has led to statewide reforms.

- The Chief Justice of the North Carolina Supreme Court refers to Darryl Hunt as "the poster child for misidentification" cases and uses his case as an example of why an Innocence Review Commission is needed in the state.
- In 2004, the North Carolina Senate passed moratorium legislation that included a two-year halt of executions and review of the state's death penalty system. The speaker of the House has appointed a 15-member study commission to review the fairness of the death penalty to ensure that no innocent person is sentenced to death in North Carolina.
- The North Carolina legislature passed a law in 2004 that requires prosecutors to turn over copies of all law enforcement files. In Darryl's case, 2,700 pages were withheld.
- The North Carolina Actual Innocence Commission has recommended changes regarding eyewitness ID procedures and videotaping of suspects, and is currently reviewing improvements to state crime laboratories.

Darryl Hunt's case is not unique.

Darryl Hunt is the 142nd exonerated person in the United States. As of December 21, 2005, 168 men and women have been found wrongfully convicted and freed from incarceration. (Innocence Project)

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The Trials of Darryl Hunt, special showing at the SBM Annual Meeting, September 27, 2007 at 3:00 p.m.

Hunt's case was indicative of racial divisions in Winston-Salem.

- A comprehensive study of the death penalty in North Carolina found that the odds of receiving a death sentence was 3.5 times greater among those defendants whose victims were white. (Prof. Jack Boger and Dr. Isaac Unah, University of North Carolina, 2001).
- 96% of the states that have reviewed race and the death penalty found a pattern of race discrimination, either in race-of-victim or race-of-defendant discrimination, or both. (Prof. David Baldus report to the ABA, 1998).

Darryl Hunt was an indigent teen, represented by a court-appointed defense attorney in 1984.

- About 90% of people facing capital charges cannot afford their own attorney. (Center for Death Penalty Litigation, Durham, NC).
- Each post-conviction appeal costs an average of \$20,000 if done by a public defender, but upwards of \$50,000 if done by a paid attorney.

Estimated total costs of Darryl's case.

- \$358,545 compensation from the State of North Carolina.
- \$517,006 to supervise close custody in North Carolina State Prison for 19 years.
- \$64,000 total for Hunt's two trials. (*The Racialization and Privatization of American Prisons* by Earl Smith and Angela Hattery, 2005).
- Five lawyers and three private investigators spent 15,000 hours from 1984-2004, with value of over \$2.5 million of which the government paid less than \$100,000. (*The Racialization and Privatization of American Prisons* by Earl Smith and Angela Hattery, 2005).

Visual Disability

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make maneuvering around objects and moving up and down stairs and through doorways much easier.

Frequently during the course of a trial, a witness is asked to read from an exhibit or from a deposition. Advise a visually impaired client of that possibility and inquire whether this would pose any difficulty. A little thing, such as reminding a client to bring his or her reading glasses to court or having a pre-arranged plan to help a client read something in court, can save the client from embarrassment. Also, inform the client of gestures made by a witness if they are not indicated on the record. If photographs will be used as exhibits during a trial, describe the photograph to a client who may be unable to see the photo before it is used in court.

If a client or witness has a guide dog to assist in travel, do not distract the dog by talking to it or petting it. If a person with a guide dog must appear in court, ask if the dog

requires any accommodations.

When selecting a jury, an attorney should tactfully ask if any juror has a visual impairment that requires accommodation. Many people with visual impairments want to serve on a jury. Generally speaking, people with severe visual impairments rely greatly on their hearing, so listening to the testimony is not a problem. An accommodation, however, may have to be made if a photograph or a written document is introduced into evidence. The witness may have to describe the photograph in greater detail, or the document may be read as a part of the record for the sake of the visually impaired juror.

We hope that the suggestions described in this newsletter will assist the attorney and the client in accommodating a person with a visual disability in the legal system.

References

The Americans with Disabilities Act—42 USC Sec. 12103.

National Center for Health Statistics, National Health Interview Service Disability supplement (1994-1995), <http://www.cdc.gov/nchs/nh>.

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Prisoner Re-Entry Wiki

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project, Michigan State Bar Foundation; the Grand Rapids Community Foundation; the Open Society Institute; and the Justice, Equality, Human Dignity, and Tolerance Foundation assisted financially.

The State Bar's Criminal Issues Initiative (CII) assisted with development. Contact SBM Equal Access Initiative Program Manager Laura Graham at (517) 346-6417 or lgraham@mail.michbar.org for more information.