

# **National Public Defense Symposium**

## ***Achieving the Promise of the Sixth Amendment: Non-Capital and Capital Defense Services***

**Thursday and Friday, May 20-21, 2010  
University of Tennessee College of Law  
Knoxville, Tennessee**

**Presented by**

**The American Bar Association  
Standing Committee on Legal Aid and Indigent Defendants**

**The American Bar Association  
Death Penalty Representation Project**

**The University of Tennessee College of Law  
Center for Advocacy & Dispute Resolution  
and  
The Tennessee Journal of Law & Policy**

**The Justice Project  
Washington, D.C.**

### **AGENDA**

Thursday, May 20, 2010

1:45 p.m. Welcome to the Symposium!

Dean Douglas A. Blaze  
University of Tennessee College of Law

Robert Stein  
Washington, D.C.  
Chair, ABA Standing Committee on Legal Aid and Indigent Defendants

John Terzano  
President and Co-Founder,  
The Justice Project  
Washington, D.C.

Professor Penny J. White  
Director, Center for Advocacy & Dispute Resolution  
Faculty Advisor, Tennessee Journal of Law and Policy

**Program Related to Non-Capital Defense Representation**

2:00 p.m. - The Persistence of Excessive Caseloads in Public Defense  
2:30 p.m.

Norman Lefstein  
Professor of Law and Dean Emeritus  
Indiana University School of Law – Indianapolis

Due to chronic underfunding throughout the country, extremely high caseloads are common among lawyers who represent indigent persons in criminal and juvenile delinquency cases. Excessive caseloads were the subject of a first-ever opinion issued in 2006 by the ABA Standing Committee on Ethics and Professional Responsibility. This was followed in August 2009 by the ABA House of Delegates' adoption of *Eight Guidelines of Public Defense Related to Excessive Workloads*. During the past two years, Professor Lefstein, who served as the reporter for the *Eight Guidelines*, has been working on a book dealing with the excessive caseload problem. His presentation will discuss the content of his book and provide an opportunity for dialogue with the audience. A prepublication copy of the book will be available to conference attendees.

2:30 p.m. Dealing with Excessive Workloads without Litigation

Indigent defense experts will discuss supervision and oversight programs; deciding when a workload is excessive; strategies for reducing excessive workloads through the use of standards; workload studies; and whether time sheets can be beneficial.

5:00 p.m. Moderator: Professor Lefstein

Avis Buchanan  
Director, D.C. Public Defender Service  
Washington, D.C.

Robert Boruchowitz  
Professor from Practice  
Seattle University School of Law  
Seattle, Washington

3:10 p.m. – Break  
3:30 p.m.

Dennis Keefe  
Public Defender  
Lancaster County (Lincoln), Nebraska

Response to Presentations:

James R. Neuhard:  
Chief, State Appellate Defender Office  
Detroit, Michigan

Audience Questions and Discussion

6:30 p.m. - Social Hour  
7:30 p.m.

7:30 p.m. Dinner  
Featured Speaker: Hon. Laurie O. Robinson  
Assistant Attorney General, Office of Justice Programs  
United States Department of Justice  
Washington, D.C.

**Friday, May 21, 2010**

8:00 a.m. – Continental Breakfast  
8:45 a.m.

8:45 a.m. – Dealing with Excessive Workloads through Litigation  
10:45 a.m.

The program will focus on handling excessive caseloads through motions to withdraw, requests to stop court assignments, and systemic lawsuits related to indigent defense. Lawyers who have litigated the excessive caseload issue in Florida and Tennessee will be featured, as well as academics who have published about systemic litigation.

Moderator: Mark E. Stephens  
District Public Defender  
Knoxville, Tennessee

Carlos Martinez  
Public Defender  
Dade County (Miami), Florida

Max Bahner,  
Chambliss, Bahner & Stophel, P.C.  
Chattanooga, Tennessee

Professor Cara H. Drinan  
Columbus School of Law, Catholic University of America  
Washington, D.C.

Response to Presentations:

Professor Adele Bernhard  
Pace Law School  
White Plains, New York

Audience Questions and Discussion

10:45 a.m. – Break

11: 00 a.m.

**Program Related to Capital Defense Representation**

11:00 am – Unique Ethical Dilemmas in Capital Representation

12:30 pm

Ethical considerations in death penalty cases are often different from those in other criminal cases. This session will discuss hypothetical situations taken from actual cases. For example, what should the defense lawyer do when the client wants to plead guilty or abandon all death penalty appeals against the lawyer's advice? What is an ethically appropriate response from a trial lawyer accused of ineffectiveness by appellate counsel? Who makes decisions about strategy in a death penalty trial if there is disagreement? Should the client's mental health or suicidal tendencies affect answers to these questions? What happens is the lawyer's responsibility if the client does not want certain mitigation evidence to be presented?

Moderator: Professor Penny J. White  
University of Tennessee College of Law

Professor Sean O'Brien  
University of Missouri-Kansas City School of Law  
Kansas City, Missouri

Bradley A. MacLean  
Office of the Post-Conviction Defender  
Nashville, Tennessee

Mary Ann Green  
Assistant Public Defender  
Chattanooga, Tennessee

Response to Presentations:

Lawrence J. Fox  
Drinker Biddle & Reath LLP  
Philadelphia, Pennsylvania

12:30 pm – Lunch  
2:00 pm Speaker to be Announced

2:00 – Finding a Silver Lining in the Darkest Clouds: How Today’s Economic Crisis  
3:45 pm Creates Opportunities for Reform and Cost Savings in the Administration of  
the Death Penalty

The economic crisis affecting many states has resulted in an unusual moment of shared understanding for all stakeholders in the criminal justice system. Judges, prosecutors and defenders must all do more with less and make hard choices about priorities. The panelists will discuss how the economic crisis creates an unprecedented opportunity to set aside adversary politics and collectively focus on what makes sense from a public safety and cost standpoint. Panelists will discuss the high cost of the death penalty and offer specific proposals to contain or reduce these costs. The discussion will include measures taken by some states to address insufficient funding.

Moderator: Robin M. Maher  
Director, ABA Death Penalty Representation Project  
Washington, D.C.

Jean Faria,  
Louisiana State Public Defender  
Baton Rouge, Louisiana

Professor Jon B. Gould  
Director, Center for Justice, Law & Society  
George Mason University  
Fairfax, Virginia

Elizabeth (Libby) Sykes  
Director, Administrative Office of Tennessee Courts  
Nashville, Tennessee

Response to Presentations:

Malcolm R. Hunter  
Executive Director, Center for Death Penalty Litigation  
Durham, North Carolina

Audience Questions and Discussion

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**Note on CLE, Hotel and Conference Events:**

Approximately 7.5 hours of CLE credit will be available, pending approval from the state of the attendee.

All conference events will be held at the University of Tennessee College of Law in Knoxville, Tennessee, except for Thursday evening's dinner, which will be held at the Baker Center for Public Policy. Both the Baker Center and College of Law are a short walk from the conference hotel, which is the Sheraton Four Points Knoxville Cumberland House Hotel. To reserve a room at the Sheraton Four Points, please phone (865) 971-4663 and ask for the block rooms reserved for the conference by the University of Tennessee College of Law Center for Advocacy & Dispute Resolution. The room rate that has been reserved for the conference is \$105 per night, except for government employees who will be able to reserve rooms at \$85 per night.

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